



ALBUQUERQUE-BERNALILLO COUNTY AIR QUALITY CONTROL BOARD



DRAFT MINUTES – March 13, 2013

Regular Meeting

Vincent E. Griego chambers

Albuquerque-Bernalillo County Government Center

One Civic Plaza NW, Albuquerque, NM 87102

AQCB MEMBERS PRESENT

Dr. Dona Upson (City), Chair
Dr. Margaret Menache, Vice Chair
(County)
Mr. Stephen Baca (County)
Ms. Kelsey Curran (City)
Dr. Naomi Kistin (County)
Dr. Lenton Malry (BCPC Liaison)
Mr. Jack Sullivan (City)

AQCB MEMBERS ABSENT

STAFF PRESENT

Mr. Neal Butt, EH Scientist, AQD
Mr. Glen Dennis, EH Manager, VPMD
Mr. Mark DiMenna, Deputy Director,
EHD
Mr. Bill Grantham, Air Board Attorney
Ms. Liz Jones, AQCB Liaison
Ms. Adelia Kearny, Deputy City Attorney
Ms. Mary Lou Leonard, Director, EHD
Mr. Fabian Macias, Air Quality Official
Mr. Danny Nevarez, EH Technical
Program Manager II, EHD
Ms. Margaret Nieto, AQCB Secretary,
EH Supervisor

Ms. Felicia Orth, Hearing Officer
Mr. Isreal Tavarez, EH Manager, Permitting
Mr. Bill Westmoreland, Deputy Director, EHD

VISITORS PRESENT.

Mr. Jarrett Airhart, Trinity Consultants
Mr. James Berge
Mr. Andy Carrasco
Ms. Melissa Clark, KAFB
Mr. Matt Cross-Guillen, Bernco. EH
Mr. Pete Domenici Jr., Attorney for Andy
Carrasco
Mr. Brad D. Hall, Representing Andy Carrasco
Mr. Vern Hershberger, Trinity Consultants
Mr. Dennis Neff
Ms. Georgianna E. Peña-Kues
Mr. Frank Salazar, Smith's Food & Drug Centers,
Inc.
Mr. Arthur Sharpe
Mr. Pat Toledo
Mr. Doug Vancil
Ms. Julie Vancil

Draft Meeting Minutes

CALL TO ORDER

The meeting was called to order by Chair Dr. Dona Upson at 5:45 pm on March 13, 2013 with seven Air Quality Control Board (Board) members present: Chair Dr. Dona Upson, Vice Chair Dr. Margaret Menache, Mr. Steve Baca, Ms. Kelsey Curran, Dr. Naomi Kistin, Dr. Lenton Malry, and Mr. Jack Sullivan.

Chair Dr. Upson introduced Dr. Lenton Malry who will be the new liaison to the Bernalillo County Planning Commission.

Item #1 Approval of Agenda (Chair)

A motion to approve the agenda was made by Member Baca, seconded by Member Curran and approved by a unanimous vote of 6-0.

Item #2 Approval of February 13, 2013 Meeting Minutes (Chair)

A motion to approve the February 13, 2013 minutes was made by Member Sullivan, seconded by Member Kistin and approved by a unanimous vote of 6-0.

PUBLIC COMMENT

There was no public comment.

ACTION ITEMS

Item #3 Hearing on Smith's Food and Drug Centers, Inc.'s Motion to Vacate Air Quality Control Board's Final Order for Lack of Majority Vote and possible reconsideration of the Proposed Final Order consistent with reasons for Reversal of COA's Issuance of Minor Source Air Quality Authority-to-Construct Permit No. 2037-M1 with Conditions to Smith's Food and Drug Centers, Inc.

Mr. Art Sharpe made a statement regarding his decision to leave the Air Quality Control Board and clarified the circumstances regarding his absence from the February 13, 2013 vote to adopt the final order.

The Hearing regarding Smith's Food and Drug Centers, Inc.'s Motion to Vacate Air Quality Control Board's Final Order for Lack of Majority Vote was conducted by Hearing Officer Orth. Parties made oral arguments and answered questions posed by the Board, the Board's Counsel and the Hearing Officer.

A motion to vacate the final order was made by Member Curran, seconded by Member Baca and carried with a vote of 5-1 (in favor: Ms. Kelsey Curran, Dr. Naomi Kistin, Dr. Margaret Menache, Mr. Jack Sullivan and Dr. Dona Upson; against: Mr. Stephen Baca).

A motion to adopt the proposed final order that was filed on February 7 by the Board's Counsel was made by Vice Chair Menache, seconded by Member Sullivan and carried with a vote of 5-1 (in favor: Mr. Stephen Baca, Dr. Naomi Kistin, Dr. Margaret Menache, Mr. Jack Sullivan, and Dr. Dona Upson; against: Ms. Kelsey Curran).

The hearing was recorded and transcribed by Court Reporter Mary Abernathy Seal with Bean & Associates. The transcript is available for review during business hours in the office of the Board's Hearing Clerk located at One Civic Plaza NW, Suite 3023, Albuquerque NM 87103.

The Board took a short break after the conclusion of Agenda item #3.

Item #4 Hearing on Smith’s Food and Drug Centers, Inc.’s Motion for a Stay of Air Quality Control Board’s Final Order

The Hearing regarding Smith’s Food and Drug Centers, Inc.’s Motion for a Stay of Air Quality Control Board’s Final Order was conducted by Hearing Officer Orth. Parties made oral arguments and answered questions posed by the Board, the Board’s Counsel and the Hearing Officer.

A motion to grant the motion for a stay of Air Quality Control Board’s final order was made by Member Baca and seconded by Member Curran. Clarification on the motion was sought by both Ms. Adelia Kearny on behalf of herself and others and by Ms. Margaret Nieto. Hearing Officer Orth confirmed with Member Baca that he had moved to grant the stay after each request for clarification. Mr. Baca then stated that he intended to vote against the motion to stay the order. Ms. Kearny and Mr. Salazar jointly questioned the propriety of a member voting against his own motion. After consultation, Member Baca requested and was granted permission by Chair Dr. Upson to withdraw his motion.

It was noted by Board Chair Dr. Upson that Dr. Malry left the meeting at the time of the break.

A motion to grant a stay of Air Quality Control Board’s final order was made by Member Curran, seconded by Chair Upson and failed with a vote of 2-4 (for: Ms. Kelsey Curran and Dr. Dona Upson; against: Mr. Stephen Baca, Dr. Naomi Kistin, Dr. Margaret Menache and Mr. Jack Sullivan).

The hearing was recorded and transcribed by Court Reporter Mary Abernathy Seal with Bean & Associates. The transcript is available for review during business hours in the office of the Board’s Hearing Clerk located at One Civic Plaza NW, Suite 3023, Albuquerque NM 87103.

ADJOURNMENT

Chair, Dr. Dona Upson, adjourned the meeting at 9:38 pm.

Item #5 Acceptance of Final 2011 Regional Sulfur Dioxide (SO₂) Emissions and Milestone Report – Neal Butt, EH Scientist, AQD

Agenda item was not heard.

Item #6 Request for a hearing in the matter of the Petition to Adopt a State Implementation Plan (SIP) for NO₂ to Address Sections 110(a)(1) and (2) of the Federal Clean Air Act (CAA), 42 U.S.C. § 7410(a)(1) and (2), hereafter referred to as the “NO₂ Infrastructure SIP” (AQCB Petition No. 2013-3) – Neal Butt, EH Scientist, AQD

Agenda item was not heard.

Item #7 Request for a hearing in the matter of the Petition to Amend the State Boards State Implementation Plan (SIP) to Satisfy the Requirements of the Clean Air Act Section

128(a)- State Boards [§7428, U.S.C.A.]; hereafter referred to as the “State Boards SIP Revision” (AQCB Petition No. 2013-4) – Neal Butt, EH Scientist, AQD

Agenda item was not heard.

REPORTS

OTHER BUSINESS

Item #8 Notification of Order Dismissing the Hearing on the Merits Regarding the Denial of a Wood Burning Exemption, Michael S. Fulp, Petitioner (AQCB Petition No. 2013-2) – Bill Grantham, Attorney for the AQCB

Agenda item was not heard.

Item #9 Reminder of Air Board elections at April 10 meeting for positions of Chair, Vice Chair, non-voting advisory member and alternate to Mid-Region Council of Governments (MRCOG) Transportation Program Task Group (TPTG) and Transportation Coordinating Committee (TCC), and Liaison to the Governor’s Task Force on Environmental Justice – Margaret Nieto, Secretary to the AQCB

Agenda item was not heard.

NEXT SCHEDULED BOARD MEETING AND HEARING:

- April 10, 2013 5:30 pm.

SUBMITTED:

READ AND APPROVED:

Ms. Margaret Nieto date
Board Secretary/Env. Health Supervisor, Control Strategies Section
Air Quality Div., Environmental Health Department

Dona Upson M.D. date
Chair
Albuquerque – Bernalillo County Air Quality Control Board