



Albuquerque-Bernalillo County Air Quality Control Board



Angel Martinez Jr., Director

MINUTES –December 14, 2022 Regular Hybrid Meeting

AQCB MEMBERS PRESENT

Ms. Lauren Meiklejohn (CITY), Chair
Ms. Maxine Paul (CITY), Vice Chair
Dr. Elis Eberlein (CITY)
Dr. Johnnye Lewis (COUNTY)
Ms. Kitty Richards (COUNTY)

AQCB MEMBERS ABSENT

Ms. Judy Calman (COUNTY)

AQCB LIAISONS ABSENT

Ms. Connie Chavez (Bernalillo County Planning Commission Liaison)
Mr. Joseph Cruz Jr. (City of Albuquerque Environmental Planning Commission Liaison)

STAFF PRESENT

Mr. Angel Martinez Jr., Director
Mr. Chris Albrecht, Associate Director
Mr. Albert Chang, Deputy Director
Ms. Maria Gallegos, Community Liaison
Mr. Ken Miller, Env Health Manager
Mr. Travis Miller, Env Health Manager
Mr. Damon Reyes, Env Health Manager
Ms. Antoinette Sedillo Lopez, AQCB Attorney
Ms. Kelsea Sona, Asst. City Attorney
Ms. Valerie Armijo, AQCB Liaison
Mr. Dwayne Salisbury, Env Health Manager
Mr. Brenard Beamon, Env Health Supervisor
Ms. Carina Munoz-Dyer, Env Health Manager
Ms. Maia Rodriguez, Marketing Manager
Mr. Kyle Tumpane, Env Health Scientist
Mr. Jeff Stonesifer, Sr Env Health Scientist
Mr. Charles Barber, Env Health Manager
Mr. Steven Santiago, Interpreter

MEMBERS of the PUBLIC PRESENT

Ms. Rhiannon Samuel
Mr. Robert Caldwell
Ms. Nora Garcia
Mr. Dale Armstrong

MEMBERS of the PUBLIC PRESENT (Continued)

Ms. Sybil Wertheim
Mr. Eric Jantz
Ms. Maslyn Locke
Mr. Paul Ross
Mr. David Barber
Ms. Sofia Martinez
Ms. Melissa McCue
Mr. Rafael Voldepewe
Mr. David Otoski
Mr. Brian Caffrey
Ms. Kathy Caffrey
Mr. Paul Layer
Ms. Carla Kugler
Mr. Lauro Silva
Ms. Sophie Trusty
Mr. Pete Domenici Jr.
Mr. Robert Wood
Mr. Dan Fisher
Ms. Magdalena Avila
Mr. Jim Garcia
Mr. Chris Love
Ms. Julie Radoslovich
Ms. Marla Painter
Mr. Michael Celente
Ms. Amzie Yader
Mr. Elias Abrego
Mr. Paul Silverman
Mr. Alan Marks
Mr. Patrick Jaramillo
Ms. Anni Hanna
Ms. Lilian Dorka
Ms. Carrie Paige
Modulus Architects & Land Use Planning
Ms. Eneedith López
Mr. Tim Atler
Mr. Thomas Donelan
Mr. Adam DeVoe
Ms. Kelly Roepke Orth
Mr. Matt Cross Guillen

MEMBERS of the PUBLIC PRESENT

Ms. Michelle Meaders
Ms. Andria Cuevas
Mr. Walter Gerstle
Ms. Justine Vaivai
Ms. Kate Cochran
Mr. Xavier Barraza
Ms. Linda Marianiello
Mr. Anthony Harkness
Mr. Robert Baade RFK
Ms. Jane Kotovsky
Ms. Elaine Cimino
Ms. Sally Davis
Ms. Camilla Feibelman
Mr. Santiago Maestas
Mr. Isreal Tavarez
Mr. Adam Bolotsky
Mr. Forest Replogle
Ms. Sofia Jenkins-Nieto
Ms. Jennifer Owen-White
Mr. Daniel Willard
Ms. Anna Maldonado
Ms. Elizabeth Pomo
Ms. Nancy Singham
Ms. Angela Williamson
Mr. Russell Brito
Mr. Eric Olivas
Mr. Juan Abeyta
Ms. Susan Selbin
Ms. Shawna Ballay

Ms. Eleanor Bravo
Ms. Melanie Magee
Mr. Miguel Acosta
Mr. David Wood
Ms. Elisa Navarette
Mr. Keith Hamilton
Ms. Katie Dix
Jaimy Karacaoglu
NMUCA Jane Jernigan
C. Holloway
Ms. Virginia Necochea
Villalobos#Kevin AFCEC ISS
CH
David S.
Stewart
Admin
AJ
Sally
Penny
Cassandra
Brad
F Barnes
Kurtis
Susan
Kateri
LCR
MTL
Paul
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MEMBERS of the PUBLIC PRESENT
(Continued)

This meeting was conducted in a hybrid format with both in-person and remote participation via Zoom video conference.

1. CALL TO ORDER

Chair Meiklejohn called the meeting to order at 5:31 p.m.
Member Calman was absent.

2. CONSENT AGENDA

- a. Approval of the December 14, 2022 meeting agenda**
- b. Approval of the November 9, 2022 meeting minutes**
- c. Formation of a World Health Organization Air Quality Guidelines Work Group**

d. Resolution 2022-2, Setting the Official List of Regular Albuquerque-Bernalillo County Air Quality Control Board Meetings for the Year 2023

Chair Meiklejohn gave a brief description of the World Health Organization Air Quality Guidelines work group and stated that an introductory meeting will be hosted by Ms. Antoinette Sedillo-Lopez, counsel for the Air Quality Control Board (AQCB). She then indicated that anyone interested in participating should submit their name, a brief introduction of themselves, and the groups they represent or are working with to the AQCB Liaison, Ms. Valerie Armijo, by January 20, 2023. Contact information for Ms. Valerie Armijo is on the AQCB website and was provided in the Zoom chat.

Vice Chair Paul then moved to approve the items on the consent agenda. Member Eberlein seconded. The motion passed by a vote of 5-0.

3. AIR PROGRAM REPORT

Mr. Ken Miller introduced the new AQCB Liaison, Ms. Valerie Armijo, to the Board and to the public.

Chair Meiklejohn welcomed Ms. Armijo and asked if there were any questions from the Board on the Air Quality Program's December report. She commented on the excellent community engagement work and stated that continued growth is ideal to include other agencies and partners in Bernalillo County and throughout Albuquerque. There were no questions from the Board on the Air Quality Program's December report.

4. FIRST PUBLIC COMMENT OPPORTUNITY

No members of the public gave comment during the first comment opportunity.

5. REPORTS/DISCUSSION/ACTION ITEMS

a. Presentation on EPA's Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions (Lilian Dorka, EPA Office of Environmental Justice and External Civil Rights)

Ms. Lilian Dorka from EPA's Office of Environmental Justice and External Civil Rights gave a presentation on Title VI, Civil Rights laws, and EPA's Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions (FAQs). She provided additional resources and information including an email box for feedback, questions and suggestions about the FAQs. She then stood for questions from the Board.

Vice Chair Paul asked about tribal consultation between the neighboring tribes and the Mayor. Ms. Dorka stated that the EPA has experience in working with tribal governments and directed questions to the Office of International Tribal Affairs citing that they are available to assist with tribal consultation. Member Richards asked for an example of a cause and effect of potential permits on a community. Ms. Dorka referenced online sources such as the EPA's policy documents, the 2017 toolkit, and the Department of Justice's Title VI legal manual to provide

some examples within the environmental context. She explained that a causal connection needs to exist between the permit and the possible effects, although it doesn't have to be the cause but could be contributing to it.

b. Presentation on the National Ambient Air Quality Standards and Current Opportunities for the Public to Provide Input on the Ozone and Particulate Matter Standards (Carrie Paige, EPA Region 6)

Ms. Carrie Paige from EPA Region 6 gave a presentation on the National Ambient Air Quality Standards (NAAQS). She provided links and contacts for questions and opportunities for public input. She then stood for questions from the Board.

Chair Meiklejohn asked if there would be an opportunity in the future for EPA to host a workshop for community members to participate in the review of the standards. Ms. Paige said she would share the request with staff that can facilitate this. Member Lewis made note that a comment was made via Zoom regarding interest in a workshop.

****A break was taken at 6:44 p.m. and the meeting was reconvened at 7:00 p.m.****

c. Request for a Hearing in the Matter of the Petition to Amend Title 20, Chapter 11 of the New Mexico Administrative Code to Require Review and Consideration of Health, Environment and Equity Impacts (ACQB Petition No. 2022-3) and Possible Action by Board (Eric Jantz and Maslyn Locke)

Chair Meiklejohn commented that some participants on Zoom were unable to stay for the public comment portion and invited them to email their comments to be read after the upcoming item. Mr. Eric Jantz stated his representation along with his co-counsel, Ms. Maslyn Locke, on behalf of the Mountain View Neighborhood Association, Mountain View Community Action, and Friends of Valle de Oro (collectively the Mountain View Coalition). He stated these organizations and neighbors and stated that they are most impacted in various ways by the concentration of polluting industries in their communities. He specified that these communities are made up primarily of working-class citizens and people of color. He stated that the petition is to improve the air quality in their community throughout the South Valley, the North Valley, and Bernalillo County. He stated that all should share in the burdens of economic development. He cited the American Lung Association's indication of rising levels of ozone levels in Bernalillo County since 2016 and noted that Bernalillo County received an 'F' for ozone quality and a 'B' for particulate matter. These communities receive little to no benefit of industrial development. He stated that the purpose of the proposed rule is to protect public health, the environment and promote equity and justice. He referenced the presentation given earlier by Ms. Dorka. He stated the proposed rule will promote clean economic development in overburdened neighborhoods and also provide better quality living throughout the county. He stressed the urgency of the matter and stated that generations of people have become ill or died due to exposures. He referenced data that has been collected through the New Mexico Community Data Collaborative (NMCDC). He showed a map of New Mexico from the NMCDC's website highlighting various layers including data of pollutants, health information, and race within communities. He detailed the framework of the proposed rule stating that it allows EHD and permit applicants to better assess the equity and justice impacts of issuing air permits in certain areas. A slide was shared that compared the existing Part 41 permitting process with the proposed health, environmental and equity impacts process.

Ms. Maslyn Locke, a staff attorney with the New Mexico Environmental Law Center (NMELC), detailed the Board's authority and the rulemaking process. She stressed that the proposed rule is implementable, will better protect the health and welfare of the public, and improve the economic health by improving public health in Bernalillo County. She noted that the rule complies with all Federal air quality guidelines and asked for a hearing on the matter to discuss perceived issues on the subject. She explained the process for petitioning the Board for a rulemaking citing the New Mexico Administrative Code. She noted that the Mountain View Coalition did engage with various stakeholders including experts in economics, air quality, toxicology, environmental justice, a representative from the New Mexico Department of Health, the City's Environmental Health Department (EHD) and various other community groups. She mentioned EHD filed a response to their petition and noted that the response raises issues that are better served to be addressed by a full hearing on the merits of the petition. She stated that any other documentation related to the development of the proposed regulation can't exist in the record yet. She requested a hearing and referenced Ms. Dorka's presentation on the disparate impacts of permitting decisions. She suggested any hearing on the matter be held around March 20, 2023.

Chair Meiklejohn then opened the floor for public comment and reminded everyone of a two-minute time limit so that everyone would have a chance to speak. During the public comment portion, Chair Meiklejohn repeatedly encouraged speakers to send their comments by email to the AQCB Liaison, Ms. Armijo, if unable to cover the full extent of their comment in the time afforded.

Public comment in support of a hearing on the petition was given by:

Ms. Nora Garcia(Mountain View Neighborhood Association), Mr. Paul Ross(Mandy's Farm), Mr. David Barber(Valle de Oro Wildlife Refuge, Mountain View Neighborhood Association), Ms. Sofia Martinez(Los Jardines Institute), Mr. Lauro Silva(Mountain View Neighborhood Association), Ms. Magdalena Avila(resident of Mountain View neighborhood), Ms. Julie Radoslovich(Pat Hurley Neighborhood Association/Metropolitan Advisory Board), Ms. Marla Painter(Mountain View Community Action/Mountain View Coalition), Mr. Alan Marks(Mountain View Community Action) read a written comment by Sen. Linda Lopez(NM State Senate, District 11), Mr. Patrick Jaramillo(American Friend Service Committee), Mr. Matt Cross Guillen(Department of Health), Ms. Ennedith López(Mountain View Coalition), Ms. Anni Hanna(resident), Ms. Nancy Weeks Singham(resident), Ms. Linda Marianello(resident) comment was read aloud by Liaison, Ms. Cassandra Reid(South Valley small business owner) comment was read aloud by Mr. Miller, Ms. Sophia Jenkins-Nieto(resident/Earth Care NM), Mr. Tom Donelan(resident).

Public comment in opposition to a hearing on the petition was given by:

Mr. Robert Caldwell (small business owner), Mr. Dale Armstrong (TLC Plumbing), Ms. Rhiannon Samuel (NAIOP), Ms. Carla Kugler (Associated Builders & Contractors), Mr. David Otoski (Mountain States Constructors), Mr. Robert Wood (Albuquerque Asphalt), Mr. Jim Garcia (Associated Contractors of New Mexico), Mr. Dan Fisher (Albuquerque Asphalt), Mr. Adam DeVoe (GCC), Ms. Angela Williamson (Modulus Architects & Land Use Planning), Ms. Kelly Roepke Orth (Associated General Contractors).

Additional public comment on the petition was given by [Kelsea Sona (Assistant City Attorney, on behalf of the City of Albuquerque Environmental Health Department, Air Quality Program), Pete Domenici Jr., Mr. Xavier Barraza (Valle de Oro)].

Following public comment, Chair Meiklejohn opened the floor for discussion amongst the Board. She stated that public comment had also been submitted via email and there was not time to hear it. She cited the rule that public comment must be heard at or before the meeting to determine whether or not to hold a hearing. Vice Chair Paul reiterated that there wouldn't be time to hear all public comment at the meeting and asked if the Board should delay the decision to hold a hearing to give Board members time to read all of the comments. Chair Meiklejohn stated that the Board is able to decide on what they would like to do in the interest of being equitable and fair. Member Richards asked what the timeline is for public comments to be submitted and if the Board would be extending the time for public comment to be given. Chair Meiklejohn deferred to Board counsel, Ms. Antoinette Sedillo-Lopez. Ms. Sedillo-Lopez stated the rule for public comment is that comments must occur at this meeting or before the meeting. She asked if the Board would like to delay due to public comments that are still coming in. Member Richards asked if there were public comments submitted by email and if they could be read. Mr. Miller responded that the AQCB Liaison had received about 11 comments before the meeting and they were posted to the docket earlier. He further stated that additional comments had come in during the meeting and believed all those where the commenter had to leave the meeting before the Board took comment had been read aloud. Member Richards stated that she read the comments in the docket but didn't know if other members had read them. Both Chair Meiklejohn and Vice Chair Paul stated they had reviewed the docket.

A break was taken at 8:42 p.m. and the meeting was reconvened at 8:52 p.m.

Chair Meiklejohn opened the floor for Board Members to ask the Petitioners questions. Vice Chair Paul asked Mr. Jantz if there were opportunities for industry members to be engaged in the petition writing process given that the comments in opposition were primarily from industry. She stated that opportunities for public engagement had been presented with public meetings on community impacts regulation for over a year and noted that the discussion started decades ago. But she asked if the NMELC team reached out directly and what could be said in response to public comments in opposition. Mr. Jantz stated that the public engagement process begins now. He also noted that the commenters in opposition did not cite any section of the regulations governing how a petition is filed or how the process works that the NMELC violated. He stated that the NMELC followed the rulemaking petition rules and industry will have the opportunity to put forth its position in a hearing and engage its experts. Mr. Jantz stated that the NMELC is open to listening and possibly modifying the proposed regulation to allow for an easier hearing process. Vice Chair Paul stated that she would like clarity on the enactment of the policy and believes there is a good chance the regulation can work. She asked other Board members how they can bridge the gap between the policy and the enactment of the policy that receives engagement from the industry. Chair Meiklejohn stated that the Board can either decide they are unable to engage with all stakeholders and have a non-functioning process or recognize the whole community as stakeholders, all of whom deserve to contribute. She stated this will require compromise, consultation, and good faith. She stated the Petitioners gave that offer, and that the purpose of a hearing is to listen to all factors. She stated that the Board's responsibility is to look at the evidence and to abate and reduce air pollution.

Member Lewis stated that she would like to vote on a hearing during this meeting. She stated that the Board heard a broad range of comments and that it would be difficult to envision future comments being more polarized than those the Board heard that night, although the other comments should be read and placed in the docket. Furthermore, she was pleased to hear Mr. Jantz mention that there is room for discussion and modification. She stated that many of the opposing comments were not based on this petition but on an already existing process. She expressed the possible need for a separate mailing list for permit holders to receive information and said she was not sure why the invitation to participate in the community impact working group never reached industry. Member Lewis extended a public invitation to industry stating that she appreciated those perspectives. She stated that a hearing is needed to hear from both sides and reach compromise. She also stated if the objections were about the process that we should integrate that in and hopefully streamline the process. She hoped that people could come together in a hearing with an open mind and reiterated that Mr. Jantz stated that NMELC is open to discussions regarding possible modifications even before a hearing.

Chair Meiklejohn stated that if action was taken by the Board this evening, it doesn't mean that a hearing date would be determined. She stated that this would be a good starting point to negotiate a process for all stakeholders to address their concerns. She referenced the COVID-19 crisis and stated that this matter is acutely related. The Board is committed to creating a stakeholder process where everyone can contribute stating that we are all responsible for everyone's health. Member Richards stated there had been previous discussions amongst the Board and the Board's counsel in meetings where a committee was created to address cumulative impacts and stakeholders were invited to submit their name if interested in participating. She also stated that a hearing is an opportunity to allow people to discuss their feelings and present technical and non-technical testimony. She questioned whether further stakeholder meetings would decrease the polarization between the groups. She stated that she was in favor of deciding on a hearing now.

Member Eberlein requested the slide that Mr. Jantz referenced in his presentation be sent out and said he would like to vote on if a hearing should be held. Vice Chair Paul asked Ms. Sedillo-Lopez if modifications to the petition can be made before the hearing or if it must be done in the hearing process because she still had further questions. Ms. Sedillo-Lopez explained the hearing process and stated that further discussions can be held with Mr. Jantz regarding the proposed regulation and how to improve it or meet the needs of all before the hearing. She stated that if there were still disagreements or problems then it would be up to the Board to decide which perspective they want in the rule or identify what the problems were. Vice Chair Paul asked if within the process any party could submit redlines or comments to change the regulation and present that to the Board in a hearing. Ms. Sedillo-Lopez stated that stakeholders must enter an appearance to be involved in the hearing process and added that the hearing will also have public comment but entering their appearance assures a seat at the table. Member Lewis stated that the vote on a hearing is based on the petition that was already presented and wanted to know how the Board or the public would know if the petition was amended. Ms. Sedillo-Lopez stated that the Board has the ability to modify whatever is proposed and the applicant has the ability to modify as well. She anticipates that EHD will have informal discussions on how to modify the petition.

Chair Meiklejohn asked if there was a motion on the request to hold a hearing in the Matter of the Petition to Amend Title 20, Chapter 11 of the New Mexico Administrative Code to Require Review and Consideration of Health, Environment and Equity Impacts (ACQB Petition No. 2022-3). Vice Chair Paul moved to hold a hearing. Member Lewis seconded. The motion

passed by a vote of 5-0. Chair Meiklejohn then stated that the Board would determine what a pre-hearing process would look like and work with stakeholders to determine a timeline that is reasonable.

d. Resolution 2022-1, Determining Reasonable Notice of Public Meetings of the Albuquerque-Bernalillo County Air Quality Control Board (Ken Miller)

Mr. Miller presented Resolution 2022-1 and stood for questions from the Board. Member Richards moved to approve the resolution and Chair Meiklejohn seconded. The motion passed by a vote of 5-0.

e. Discussion of possible Future Agenda Items (Board)

Member Richards requested that Director Martinez update the Board on the Environmental Health Department (EHD) working with Mayor Keller for an inclusive and environmentally responsible air permitting program.

Vice Chair Paul requested to hear more from EHD about the large number of unhealthy air quality days recently, which she assumed was due to fireplaces.

Member Lewis stated that there has been an ongoing dialogue with EHD regarding the issue of coarse particulates, moderate air quality, and ok-to-burn advisories. She would like EHD to discuss possible remedies to that information. She also stated that she is giving a presentation on precautionary principle to the New Mexico Environment Department on January 11 and could present to the Board at the AQCB meeting on that date as well. Chair Meiklejohn agreed.

Ms. Kelsea Sona noted for the questions about the City's work on environmental justice and cumulative impacts, the City will carefully consider whether any of that will go to the merits of the petition so as to avoid having off the record discussions about that.

f. Closed Meeting Session Under the Open Meetings Act, NMSA § 10-15-1(H)(7), for Board Members and the Board Attorney Only, for Board Members to Receive an Update Regarding Complaint No. 13R-14-R6 Against the Board and the Albuquerque Air Quality Division Alleging Violations of Title VI of the Civil Rights Act of 1964 (Board and Board Attorney)

Member Richards stated that she needed to recuse herself from the conversation and asked the Chair if she could leave the meeting. Chair Meiklejohn granted the request. Chair Meiklejohn stated that she would call Member Lewis for the closed meeting session. Ms. Antoinette Sedillo-Lopez then explained the purpose of the closed meeting session. She also stated that she didn't expect any action to be taken, and Chair Meiklejohn agreed. Chair Meiklejohn asked for a motion to close the meeting. Vice Chair Paul made a motion to close the meeting and Chair Meiklejohn seconded. The motion passed by a vote of 4-0.

The Board went into closed session at 9:30 p.m. The Chair reconvened the meeting at 9:55 p.m.

6. SECOND PUBLIC COMMENT OPPORTUNITY

Chair Meiklejohn elected to skip the second public comment opportunity as there no longer any members of the public present.

7. Other Business

No other business was discussed.

8. Adjournment

Chair Meiklejohn adjourned the meeting at 9:57 p.m.

NEXT SCHEDULED BOARD MEETING: Wednesday, January 11, 2023 at 5:30 p.m.

SUBMITTED:

READ AND APPROVED:

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Angel Martinez, Jr. 1/12/2023 | 9:06 AM
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Mr. Angel Martinez Jr.
Director
Environmental Health Department

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Lauren Meiklejohn 1/12/2023 | 5:37 PM MST
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Ms. Lauren Meiklejohn
Chair
Albuquerque-Bernalillo County Air Quality
Control Board