



Albuquerque-Bernalillo County Air Quality Control Board



Angel Martinez Jr., Director

MINUTES – June 14, 2023 Regular Hybrid Meeting

This Albuquerque-Bernalillo County Air Quality Control Board (“Board”) meeting was conducted in a hybrid format with both in-person and remote participation via Zoom video conference.

1. CALL TO ORDER

Chair Paul called the meeting to order at 5:34pm. Board Liaison Anita SdeArmijo then called roll and the Chair determined a quorum was present.

Present: 6 – Dennis Armijo, Judy Calman, Elis Eberlein, Joseph Galewsky, Johnnye Lewis, Maxine Paul

Absent: 1 - Kitty Richards

Vice Chair Richards was absent, all other members were present.

2. CONSENT AGENDA

a. **Approval of the July 12, 2023 Meeting Agenda**

b. **Approval of the June 14, 2023 Meeting Minutes:**

Chair Paul took a moment to introduce Mr. Dennis Armijo as the newest member of the board and asked him to say a few words. Member Galewsky moved to approve the consent agenda, Member Eberlein seconded. The motion passed by the following vote.

For: 6 – Armijo, Calman, Eberlein, Galewsky, Lewis, Paul

Absent: 1 – Richards

Member Eberlein noticed a typo in the minutes for the June 14 minutes and moved to approve the minutes provided the typo is corrected. Member Calman seconded. The motion passed by the following vote.

For: 6 – Calman, Eberlein, Galewsky, Lewis, Paul

Abstain: 1- Armijo

Absent: 1 – Richards

3. AIR PROGRAM REPORT

Chair Paul announced that Director Angel Martinez was present to give an update and asked the court reporter to start transcribing. Director Martinez gave an update on the budget and

that he is trying to get more staff. Director Martinez also stated that he bringing back the Public Health division and expects to grow it in the next few years. He briefly introduced Maria Gallegos as the manager of the new division and stated that they are working on staffing it and collecting data. Director Martinez gave an update on the air quality in Bernalillo county and spoke about strategies for monitoring ozone. He answered some questions about volatile organic compounds (VOCs) and also mentioned the ozone reduction campaign that EHD started recently. He then stood for questions from the Air Board regarding the Air Program report.

Chair Paul asked the court reporter to start transcribing at this point as she had a question for Director Martinez regarding the rulemaking. She asked that since there had been some confusion surrounding the issue of transcript if EHD was going to provide a court reporter for the disparate impacts 2022-3 hearing. Director Martinez responded that yes, a court reporter will be providing a court reporter for the hearing. He also mentioned that he was in process of restructuring the legal representation for EHD and asked for the board to bear with him through the changes.

4. FIRST PUBLIC COMMENT OPPORTUNITY

Marla Painter was asked to hold her comment until the appropriate agenda item. Clint Atwood gave a general comment not related to the agenda topics. Anenden Lopez opted to hold her comment. Xavier Barraza of the Los Jardines Institute also gave a general comment and one in support of the board for the rulemaking.

5. REPORTS/DISCUSSION/ACTION ITEMS

- a.** Discussion and Possible Action on the Board’s Hybrid Meeting Policies in Response to the Expiration at the End of March of the State’s COVID-19 Public Health Emergency and Related Applicable Rules (Board)

The court reporter was asked to pause the transcription for this item as it is not related to the HEEI petition. Chair Paul asked Counsel Sedillo Lopez to briefly restate what was in the memo she sent to the board regarding this topic. Chair Paul then opened the floor for discussion amongst the board. After some discussion Chair Paul stated that the board does not need to take any action on this item today and tabled it for a future meeting.

- b.** Discussion and Possible Action on [Docket Entry 50. GCC Rio Grande, Inc., Western Refining Terminals, LLC, and HF Sinclair Asphalt Company, LLC's: Motion to Stay Proceedings](#), AQCB Petition No. 2022-3, 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 (Board and Parties)

Chair Paul stated that the parties would have five minutes each to present their arguments. Mr. Louis Rose representing GCC Rio Grande et al., briefly stated that the proposed petition does not define a measurable standard of what quantities and the duration of contaminates constitute air pollution. Mr. Rose argues that until there is such a standard, they ask the board not to move forward on this petition. Mr. Eric Jantz representing the petitioners argued that the petitioners have listed several standards and that the Motion to Stay should be denied.

Mr. Pete Domenici Jr. representing Albuquerque Asphalt et al., who attended virtually asked the board if it was possible for him to speak on item c as he would be unable to later in the meeting due to an emergency and the board allowed it. Mr. Domenici stated that he filed this request for a couple of reasons; one is that his experts won't be available until October and that scheduling for the hearing before September would be difficult with the large number of parties and the board members schedules. He asked the board to consider setting the hearing in October as he doesn't believe that the parties would be able to participate meaningfully if it was scheduled on July 30th.

After Mr. Domenici finished the discussion turned back to item b. Chair Paul asked for the board attorney to give her opinion. Counsel Sedillo Lopez recommends that it would be premature to stay the proceedings and that Mr. Rose should raise the issue as part of the formal rulemaking or in the prehearing process. After Member Galewsky asked some clarifying questions and discussion amongst the board Member Lewis moved to deny the motion to stay. Member Calman seconded. The vote to deny the motion to stay passed by the following:

For: 6 – Armijo, Calman, Eberlein, Galewsky, Lewis, Paul
Absent: 1 – Richards

Chair Paul asked Counsel Sedillo Lopez to draft the order to memorialize this position.

- c. Discussion and Possible Action on setting a hearing date in AQCB Petition No. 2022-3, 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 (Board and Parties)

Chair Paul opened the floor for discussion amongst the board using the date referenced in the filing by Mr. Domenici as a starting point. The board discussed their scheduling availability and board liaison Ms. SdeArmijo brought up a spreadsheet with availability and blackout dates for the board and parties. Ms. Kelsea Sona representing EHD pointed out some logistical concerns and cautioned against the board rushing this decision. Chair Paul stated that she would like to set a date to work backwards from and that if needed it would be possible to change it.

After some discussion the board and input from the parties, the board settled on the date of the week of the 23rd of October as the primary date for the hearing with the week of October 30th as the backup date. Member Armijo moved to set the date for the hearing on October 23rd through October 27th. Member Calman amended the motion to include the backup date being October 30th through November 2nd. Member Galewsky seconded the motion. The motion passed by the following vote:

For: 6 – Armijo, Calman, Eberlein, Galewsky, Lewis, Paul
Absent: 1 – Richards

Chair Paul then called for a 10 minute break starting at 7:25pm. The board resumed at 7:35pm.

- d. Discussion and Possible Further Action on [Docket Entry 24. Motion Seeking Alternative Methods of Recording](#), AQCB Petition No. 2022-3, 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 (Board and Parties)

Chair Paul briefly stated that this item is a continuation from the April 12th meeting and was in part decided by the board to have the Zoom recording be the main record for regular meetings, i.e. dealing with the ancillary and preliminary elements of the petition. Chair Paul then opened the floor for discussion.

Ms. Sona asked a clarifying question about how the term “backup” is used in the order. She asked whether the board looking to identify a transcript provided by EHD as an official transcript that can be used as a reliable record upon appeal or is an aid to utilize with the Zoom recording to better identify where statement where made without having to use a slider. Chair Paul responded that it was the second option.

Counsel Sedillo Lopez brought up some of the differences between the drafted order and the redline version filed by EHD. There was a lengthy discussion following this by the board and the parties.

Mr. Domenici was able to come back into the meeting virtually once more and was able to give some insight into how the court reporters operations work. He mentionend the significant time and expense involved in those operations.

Ms. Sona made a suggestion for the Liaison to put together a historical summary of what has happened when board proceedings have been appealed.

After discussion by the board and hearing from the parties, Chair Paul asked Counsel Sedillo Lopez to summarize the changes they would like made to the draft order;

- That in Line 3, delete “as a backup record”
- On number 6, the Zoom recording of the proceeding and the transcript will be the official record and may be used on appeal.
- On number four, correction of spelling error of preheating to prehearing

Member Lewis moved to adopt the order with the discussed changes, it was seconded by Member Galewsky. The motion passed by the following vote:

For: 6 – Armijo, Calman, Eberlein, Galewsky, Lewis, Paul

Absent: 1 – Richards

- e. Discussion and Possible Action on clarification of [Docket Entry 57. Order Delegating Limited Authority to Hearing Officer](#), AQCB Petition No. 2022-3, 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 (Board and Parties)

Chair Paul started by saying that the Hearing Officer Mr. Richard Virtue indicated that it was unclear if the prehearing process would pause while the Board decided ancillary motions. She stated to clarify that if the board agrees then the board intends to decide ancillary motions in the regular meetings.

Chair Paul also wanted to clarify a discussion from last months meeting on having a 72-hour deadline for parties to file documents other than motions like joinders. Ms. Sona shared EHD's experience in trying to comply with the 72 hour deadline. After some discussion the deadline for parties to file documents was changed to 48 hours prior to the Air Board meeting.

Chair Paul stated that the Board clarifies that the prehearing process will go forward while the Board considers any ancillary motions that may be filed. There is to be no stay or delay of the process unless the Board orders it. The goal is to meet the hard deadlines in the order.

Chair Paul moved that the parties must file anything at least 48 hours before the Board meeting, if they want it to be considered by the Board at an Air Board meeting. And a change in the language around the date of the formal rulemaking that the board already decided by removing the mention of the Hearing Officer setting the date. Member Calman seconded and the motion passed by the following vote:

For: 6 – Armijo, Calman, Eberlein, Galewsky, Lewis, Paul
Absent: 1 – Richards

Chair Pauls asked Counsel Sedillo Lopez to prepare both orders.

f. Reports from Committees (Board)

Committee on Technology – Members Eberlein and Lewis will have an update for next months meeting

Committee on Mapping – Member Galewsky and Vice Chair Richard (absent) will have an update for next months meeting

Committee on Public Interest – Member Calman and Member Armijo- no update as Member Armijo just joined the Air board

g. Discussion of Possible Future Agenda Items (Board)

- The question of how parties would be able to appeal without official transcripts (Chair Paul)
- Objection to Member Richards reappointment to the Air Board (Chair Paul)

6. SECOND PUBLIC COMMENT OPPORTUNITY

Mr. Daniel Willard representing Kirkland Air force Base commented that they are working with the Department of Defense regional environmental coordinator to review petition No. 2022-3 and will be submitting written comment at a later date. No other members of the public gave comment.

7. OTHER BUSINESS

None.

8. ADJOURNMENT

Chair Paul adjourned the meeting at 9:06 p.m.

NEXT SCHEDULED BOARD MEETING: July 12, 2023 at 5:30 p.m.

SUBMITTED:

DocuSigned by:
Angel Martinez 7/17/2023 | 11:17 AM PDT
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Mr. Angel Martinez Jr.
Director
Environmental Health Department

READ AND APPROVED:

DocuSigned by:
Maxine Paul 7/17/2023 | 2:54 PM PDT
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Ms. Maxine Paul
Chair
Albuquerque-Bernalillo County Air Quality
Control Board