



Angel Martinez Jr., Director

# Albuquerque-Bernalillo County Air Quality Control Board



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## MINUTES – September 13, 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 5:33pm. Board Liaison Anita SdeArmijo then called roll and the Chair determined a quorum was present.

Present: 6 – Dennis Armijo, Elis Eberlein, Joseph Galewsky, Johnnye Lewis, Kitty Richards, Maxine Paul

Absent: 1 – Judy Calman

Member Lewis attended virtually.

### 2. CONSENT AGENDA

- a. Approval of the September 13, 2023 Meeting Agenda
- b. Approval of the August 9, 2023 Meeting Minutes:

Chair Paul stated that there were some changes on the agenda and would like to take it off the consent agenda. She stated that a request for a disability accommodation was made by Elaine Cimino a Pro Se party to petition 2022-0 whose item on the agenda was listed for later in the evening. Chair Paul proposed that item 5.i be moved to before item 5.c Chair Paul also asked the board to postpone item 5.b the presentation by the UNM students and move it to the October meeting.

Vice Chair Richards moved to approve the agenda with the changes that item 5.i be moved before 5.c and the UNM student presentation be postponed. The motion was seconded by Members Armijo and Lewis. The motion passed by the following vote:

For: 6 – Armijo, Eberlein, Galewsky, Lewis, Richard, Paul  
Against: 0    Abstain: 0    Absent: 1 – Calman

Member Eberlein suggested several spelling corrections for the August meeting minutes and Vice Chair Richards requested a section be added for when Jeff Stonesifer and Chris Albrecht spoke about the history of the burn/no-burn program. Member Galewsky moved to approve the

minutes with the changes discussed. Vice Chair Richards seconded and the motion passed by the following vote:

For: 6 – Armijo, Eberlein, Galewsky, Lewis, Richard, Paul  
Against: 0 Abstain: 0 Absent: 1 – Calman

### 3. AIR PROGRAM REPORT

- Update from EHD on Regional Emergency Response System Development
  - Chris Albrecht, Deputy Director, EHD stated that they invited the Fire Chief Jaramillo and Roger Ebner, Director of the Emergency Operations Center (EOC) to the airboard meeting that night but they were unable to come, but were willing to attend another time to address this issue.
- Dropbox Docket for AQCB No. 2022-03
  - Airboard liaison Anita SdeArmijo stated that if a person is having trouble viewing all the documents in the Dropbox, the suggestion is to clear out the cache on their internet browser, switch browsers or switch to grid view in Dropbox.
- Discussion of the Air Quality Program’s September Report.
  - Vice Chair Richards and Member Eberlein both sent comments regarding the Air Program report to Ms. SdeArmijo for EHD before the airboard meeting. Deputy Director Albrecht thanked them for doing that and said that EHD is looking into the comments. Member Galewsky asked about the Gateway Center OHSB asbestos issue and Deputy Director Albrecht replied that it was not under EHD’s authority or jurisdiction but rather the New Mexico Environment Department Occupational Health and Safety Bureau (OHSB) authority

### 4. FIRST PUBLIC COMMENT OPPORTUNITY

There was no one signed up for general comments. Marla Painter gave a comment on the general process for the HEEI rulemaking.

### 5. REPORTS/DISCUSSION/ACTION ITEMS

- a) Discussion and Possible Action on changing hearing date from November 13-15 to November 13-16 in [Docket Entry 4. Order Granting Hearing and Pre-Hearing Order](#), AQCB No. 2023-01 in the Matter of the Petition to Amend Existing Rule 20.11.104 NMAC, New Motor Vehicle Emission Standards (Board)

Chair Paul stated that this is a simple change to the order to reflect that the hearing will be a four-day hearing instead of three days and will go from November 13-16, 2023. Member Armijo moved to approve the change of the hearing date to reflect November 13-16, 2023 on the order, Member Eberlein seconded. The motion passed by the following vote.

For: 6 - Armijo, Eberlein, Galewsky, Lewis, Richards, Paul

Against: 0    Absent:1- Calman    Abstain: 0

- b) Presentation: Environmental Modeling, Microplastics and Disaster Response Resources (Board and UNM Students)

This item was postponed until next month's meeting.

- i. Discussion and Potential Action on Pro-Se Party Participation, [Letter from Elaine Cimino regarding HEEI hearings and pre-hearing meetings](#), AQCB Petition No. 2022-03 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 Elaine Cimino sent a letter of complaint to the Board about the issue of Pro Se parties being shut out of the pre-hearing process. Chair Paul then invited Ms. Cimino to speak and gave her a 3-minute time limit. Ms. Cimino gave a statement over Zoom in which she stated that there was not adequate notice to Pro Se parties regarding deadlines. She went on to say that there were also what appeared to arbitrary timelines and a requirement of signing a nondisclosure agreement (NDA) to participate. Ms. Cimino also state that the exclusion of Pro Se Parties is contrary to transparency and that the pre-hearing meetings should not have been designated as confidential. Chair Paul let Ms. Cimino know that she was at the end of her 3-minutes and opened the floor to response from the other parties.

Pete Domenici stated that at one of the early pre-hearing meetings hearing officer Virtue indicated that the meeting would be governed by the state mediation statute which requires confidentiality.

Sofia Martinez a Pro Se party expressed support that the other Pro Se parties coming in be allowed to participate in the pre-hearing conferences.

After some discussion, the Board decided to address this issue with agenda items f, g, and h as they are all related.

- c. Report from Board Leadership on Pueblo of Isleta Meeting, Discussion and Possible Action on [draft letter from the Board to EHD](#) formally requesting information on the August 6, 2023 Atkore fire and requesting regulation development (Board)

Chair Paul and Vice Chair Richards both attended the meeting on August 20, 2023. Vice Chair Richards drafted the letter and gave an overview of it for the board to consider. Chair Paul then opened the floor for discussion and suggestions on the letter. After some discussion Member Armijo moved to formally support the letter with the discussed amendment. Member Galewsky seconded and the motion passed by the following vote.

For: 6 - Armijo, Eberlein, Galewsky, Lewis, Richards, Paul

Against: 0    Absent:1- Calman    Abstain: 0

- d. Discussion and Possible Action on [resignation of hearing officer](#), and hiring replacement hearing officer [AQCB Petition No. 2022-03 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)

Chair Paul stated that Hearing Officer Virtue resigned for personal reasons and opened the floor for discussion and hearing none called for a motion to accept his resignation and replace Mr. Virtue. Member Galewsky moved to accept the resignation and to find an alternative hearing officer. Member Eberlein seconded and the motion passed by the following vote.

For: 6 - Armijo, Eberlein, Galewsky, Lewis, Richards, Paul

Against: 0 Absent:1- Calman Abstain: 0

- e. Discussion and Possible Action on delegating authority to Board leadership to finalize hiring of replacement hearing officer, AQCB Petition No. 2022-03 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)

Chair Paul stated that after receiving Mr. Virtue's resignation she asked Counsel Sedillo Lopez to look for a replacement and that because of her efforts, there is a potential hearing officer replacement Judge William Sanchez. He retired in 2014 and has been running a private arbitrator, hearing officer and mediator practice since then. Chair Paul and Vice Chair Richards were able to speak with retired Judge Sanchez and do recommend that the Board appoint him as hearing officer and then opened the floor for discussion. Mr. Sanchez attended virtually and was able to give a brief rundown of his history in mediation and answer questions from the Board.

Chair Paul then asked for a motion to appoint retired Judge William Sanchez as the hearing officer going forward to conduct the formal rulemaking proceeding and any pre-hearing conferences, if applicable. Member Armijo moved to do so and Vice Chair Richards seconded. The motion passed by the following vote.

For: 6 - Armijo, Eberlein, Galewsky, Lewis, Richards, Paul

Against: 0 Absent:1- Calman Abstain: 0

Chair Paul asked about the contracting process and Kelsea Sona, Assistant City Attorney, EHD, Air Quality, gave a brief overview of how contracts work within the specific procurement rules the city has. In general, EHD has to make sure that it closes out the contract for Mr. Virtue along with the purchase orders for that contract. After that EHD can then engage into a new contract for the same services that Mr. Virtue provided. Ms. Sona also mentioned that this process can sometimes take up to one or two months and then stood for questions from the board.

After quite a bit of discussion Vice Chair Richards then made an additional motion to delegate authority to Board leadership to finalize the hiring of the replacement hearing officer Judge Sanchez and to request that EHD expedite the contracting process and to ensure that the termination of the prior hearing officer is also done expeditiously. Member Armijo seconded and motion passed by the following vote.

For: 6 - Armijo, Eberlein, Galewsky, Lewis, Richards, Paul

Against: 0 Absent:1- Calman Abstain: 0

- f. Discussion and Possible Action on delegating authority to hearing officer [AQCB Petition No. 2022-03 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)

Chair Paul stated that she asked Counsel Sedillo Lopez to prepare a delegation of limited authority to the Hearing Officer to simplify issues for the replacement hearing officer. Counsel Sedillo Lopez stated that she took the existing order and removed the items that have been completed by Mr. Virtue. She suggested that the board address the next items on the agenda including Ms. Cimino's agenda item before addressing this item. Chair Paul agreed and asked if there were any objections to discussing item f after g, hearing none she stated that the board would move onto item g after a 10-minute break.

A 10-minute break started at 7:10pm and the board resumed at 7:21pm.

- g. Discussion and Possible Action on [117. Joint Motion to Extend Hearing Date](#) AQCB Petition No. 2022-03, 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 pre-hearing process was intended to substitute stakeholder consultation that an agency would normally engage in before a rule is filed. She then opened the floor for discussion. Counsel Sedillo Lopez mentioned that the Board would be unable to use the backup hearing date as there was administrative issue with filing the notice. Chair Paul then opened the floor for discussion.

Stan Harris, representing NTESS, presented the reasoning that led to the motion. He mentioned that the parties have been working towards potential points of agreement regarding a proposed revised rule and did result in the second revised petition that the petitioners filed earlier that day. He stated that the filed petition would not have been submitted in time for further review by the parties or published in advance of the currently scheduled hearing dates. As a result, all of the parties including petitioners have moved to vacate the current hearing dates and reschedule at a later date. Mr. Harris then stood for questions from the board and clarified that the revision that was submitted is actually the third revised petition not the second.

According to Maslyn Locke, representing the petitioners, in order to publish in the New Mexico Registrar for a December 4<sup>th</sup> hearing date the notice would need to be submitted by October 12<sup>th</sup> in order to be published in the October 24<sup>th</sup> issue and that if EHD has an internal turnaround time of say, 4 days, that essentially gives petitioners until October 6<sup>th</sup> to draft a regulation that incorporates all of the feedback and points of compromise from the pre-hearing meetings and that they would be unable to do this in a meaningful way in such a short time. Ms. Locke also stated that it is the petitioners' position that any more formal pre-hearing meetings would delay the process and cause extra chaos for everyone. The petitioners also encourage the board to have a hearing that lasts more than 5 days. Ms. Locke then stood for questions from the board.

Counsel Sedillo Lopez stated that a draft of the notice has been prepared but EHD has to submit it and pay for it. Alan Heinz, Managing Attorney for City of Albuquerque, came up to the podium and said that it comes down to the translation, because Board counsel had translated it. He stated that if Counsel is willing to state that they are accepting responsibility for the translation then EHD agreed to find that acceptable and can probably get the notice done within four or five days. Counsel Sedillo Lopez disclosed that she had used a template to draft the notice and that she reviewed the translation and found it adequate.

Vice Chair Richards expressed concern about extending the process and that it becomes more unwieldy the longer it goes.

Ruhika Caughfield a clinical law student at UNM, on behalf of Sofia Martinez, also echoed the sentiments that there have been significant improvements to the most recent version of the rule as a result the progress made in the pre-hearing meetings. She also stated that Ms. Martinez strongly supports the motion to extend the hearing date as long as the rulemaking happens before the new year as she is concerned that the legislative session might call for other causes of delays to the rulemaking process.

Lindsey Cutler, Associate General Counsel for the Pueblo of Isleta, stated that their participation in the pre-hearing process at this stage was not intended to cause any unnecessary delay and request to participate in the pre-hearing process rather any formal pre-hearing conference.

Mr. Domenici stated that he agreed with a lot of the sentiments made by the Environmental Law Center and suggested that the Board consider encouraging the parties to have a pre-hearing meeting with or without the hearing officer on one of the days on October.

Anita SdeArmijo, Board Liaison, gave an update about the venue space available for the hearing. The convention center was unavailable for the dates in October but was available for the December date range of the 4<sup>th</sup> through the 14<sup>th</sup>.

After much discussion, Member Armijo moved for the hearing to be held December 4<sup>th</sup> through the 8<sup>th</sup> and possible longer if necessary. Member Eberlein seconded and the motion passed by the following vote.

For: 5 - Armijo, Eberlein, Galewsky, Richards Paul

Against: 0    Absent:2- Calman, Lewis    Abstain: 0

Member Lewis's unexpectedly dropped off the Zoom due to connection issues.

After discussing it amongst the Board and hearing input from the parties, Chair Paul called for a motion on having an October 23<sup>rd</sup> final pre-hearing meeting, with or without a hearing officer. Member Armijo moved, Member Galewsky seconded and the motion passed by the following vote.

For: 4 - Armijo, Eberlein, Galewsky, Paul

Against: 1-Richards                      Absent:2- Calman, Lewis                      Abstain: 0

- h. Discussion and Possible action on [123. Entry of Appearance for the Pueblo of Isleta and Motion to Participate in the Pre-hearing Negotiation Process](#) AQCB Petition No. 2022-03, 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 during discussion of item g it was agreed that the Pueblo of Isleta and the Pro Se parties can participate in the single pre-hearing meeting and item i. was discussed earlier. She then asked Counsel Sedillo Lopez if it was acceptable to disregard items h and i as they

have now been covered. Counsel Sedillo Lopez stated they had been taken care of with one motion.

Chair Paul stated that the Board would now be continuing the discussion of item f to see if they want any changes to the order drafted by the board counsel. She then opened the floor for discussion. Counsel Sedillo Lopez suggested delegating the creation of a scheduling order to the hearing officer and herself to work with the hearing officer and the liaison to make sure the notice requirements are met.

Some concerns were raised by Member Armijo and Vice Chair Richards regarding confidentiality and the Mediation Act along with who will run the October 23 pre-hearing meeting if the hearing officer is not under contract yet.

After some discussion Chair Paul made a motion to amend their previous motion for an October 23, 2023 pre-hearing meeting to only occur if the replacement hearing officer is able to conduct it. Member Galewsky seconded and the motion passed by the following vote.

For: 4 - Armijo, Eberlein, Galewsky, Paul

Against: 1-Richards      Absent:2- Calman, Lewis      Abstain: 0

After discussion from the Board, Chair Paul summarized the changes suggested for the Third Amended Order Delegating Authority to the Hearing Officer.

- Delegating creation of a scheduling order to the hearing officer
- Any changes to version 3 must be filed by the October 6, 2023 deadline
- Giving authority to Counsel Sedillo Lopez to work with the board liaison and hearing officer to make sure that the deadline is met for the notice
- That the hearing officer do a scheduling hearing 10 days before the rulemaking hearing
- Deleting that if the hearing officer determines that more or fewer than 3 days would be required, the hearing officer should explain the reason

Member Armijo moved that the revisions to the third amended order as reiterated by the chair and attorney be adopted. Vice Chair Richards seconded and the motion passed by the following vote.

For: 5 - Armijo, Eberlein, Galewsky, Richards, Paul

Against: 0      Absent: 2- Calman, Lewis      Abstain: 0

j. Reports from Committees (Board)

- Committee on Public Interest – Member Calman and Member Armijo
  - Member Armijo stated that they received a copy of the suggestions from the former board attorney regarding public comment.
- Committee on Technology – Members Eberlein and Lewis
  - Member Eberlein stated that they had a meeting with Counsel and Chair to discuss the hearing process but did not have a chance to discuss any technology issues this month.
- Committee on Mapping – Member Galewsky and Vice Chair Richard

- Member Galewsky stated that they met with the board attorney and that a lot of what was discussed was getting him up to speed on what data sets were available and how to access them.

k. Discussion of Possible Future Agenda Items (Board)

- Report from the hearing officer-Chair Paul
- Update from EHD on Hearing Officer contract -Member Armijo
- Presentation by UNM Students-Vice Chair Richards

**6. SECOND PUBLIC COMMENT OPPORTUNITY**

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

**7. OTHER BUSINESS**

None

**8. ADJOURNMENT**

Chair Paul adjourned the meeting at 8:45 p.m.

**NEXT SCHEDULED BOARD MEETING:** October 11, 2023 at 5:30 p.m.

SUBMITTED:

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*Angel Martinez*  
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Mr. Angel Martinez Jr.  
Director  
Environmental Health Department

READ AND APPROVED:

DocuSigned by:  
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Ms. Maxine Paul  
Chair  
Albuquerque-Bernalillo County Air Quality  
Control Board