

## ALBUQUERQUE – BERNALILLO COUNTY AIR QUALITY CONTROL BOARD



### DRAFT MINUTES – January 13, 2021 Regular Virtual Meeting

#### AQCB MEMBERS PRESENT

Ms. Kitty Richards (COUNTY), Chair  
Ms. Susan Langner (COUNTY), Vice Chair  
Ms. Judy Calman (COUNTY)  
Ms. Lauren Meiklejohn (CITY)  
Ms. Maxine Paul (CITY)  
Mr. Arturo Sandoval (CITY)  
Ms. Elizabeth Reitzel (CITY)  
Ms. Mara Elana Burstein (EHD Deputy  
Director, Secretary to the Board)

#### AQCB MEMBERS ABSENT

#### STAFF PRESENT

Ms. Susan Chappell, AQCB Attorney  
Ms. Lara Christensen, Asst. City Attorney  
Ms. Stephanie Apodaca, AQCB Liaison  
Mr. Andrew Daffern, Field Ops Officer  
Ms. Lisa Serna-Cordova, Program Analyst  
Ms. Regan Eyeran, Sr. EH Scientist  
Ms. Maggie Fitzgerald, Community Liaison  
Mr. Travis Miller, EH Manager

Mr. Damon Reyes, EH Manager  
Mr. Dario Rocha, EH Manager  
Ms. Samantha Hults, Deputy City Attorney  
Mr. Dwayne Salisbury, EH Manager  
Mr. Isreal Tavarez, EH Manager  
Mr. Kyle Tupane, EH Scientist

#### VISITORS PRESENT

Mr. Steven Abeyta  
Mr. Eric Jantz  
Mr. Martin Schluep  
Ms. Jazmine Johnston  
Ms. Elizabeth Kuehn  
Mr. Lauro Silva  
Mr. Tim Adler  
Ms. Jennifer Owen-White  
Mr. William Athas  
Ms. Aryn LaBrake  
Ms. Diane Reese  
Ms. Maslyn Locke  
Mr. David Barber  
Ms. Nora Garcia  
Ms. Valerie Rangel  
Ms. Marla Painter

Due to COVID-19 this meeting was held via Zoom Video Conference.

#### CALL TO ORDER

Chair Richards called the meeting to order at 5:31 p.m.

#### **Item #1      Approval of January 13, 2021 Agenda (Chair)**

Member Reitzel moved to approve the agenda and Member Paul seconded. The motion passed by a vote of 7-0.

#### **Item #2      Approval of December 9, 2020 Meeting Minutes (Chair)**

Member Meiklejohn moved to approve the December 9, 2020 meeting minutes and Member Calman seconded. The motion passed by a vote of 6-0, with Member Reitzel abstaining.

## **AIR PROGRAM REPORT**

Mara Elana Burstein, Deputy Director, City of Albuquerque Environmental Health Department (EHD), delivered the Air Program Report.

Environmental Health Manager Damon Reyes gave information on settlements and notices of violation in answer to questions from Chair Richards.

Member Meiklejohn asked Mr. Reyes how violations are most commonly drawn to EHD's attention. Mr. Reyes stated that source surveillance accounted for the most common way and that complaints submitted to 311 were the second most common way.

Environmental Health Manager Isreal Tavarez updated the Board on the air quality permit applications that had been denied by the Program in 2018, 2019, and 2020.

## **PUBLIC COMMENT**

(Suggested five minute time limit)

Ms. Nora Garcia (resident of the Mountain View Neighborhood) gave public comment in opposition of the New Mexico Terminal Services, LLC (NMTS) permit.

Ms. Marla Painter (resident of the Mountain View Neighborhood) gave public comment on the City's Environmental Health Department (EHD) and Bernalillo County cooperating on issuing permits in the South Valley. Ms. Painter also commented on fugitive dust from the southern portion of Broadway Blvd. during commute times. Ms. Painter mentioned that members of the public have not seen the definition from EHD on cumulative impacts referenced by Deputy Director Mara Elana Burstein in the Air Program Report. Ms. Painter mentioned that perhaps EHD staff could take a tour of the Mountain View Neighborhood. Ms. Painter also mentioned Albuquerque Metals Recycling and asked for an update on the status of their permit.

- Chair Richards directed Deputy Director Burstein to provide an update on Albuquerque Metals Recycling permit at the next meeting.

Mr. Lauro Silva (Mountain View Neighborhood Association) delivered public comment on air quality impacts and cumulative impacts in his community. Mr. Silva encouraged the AQCB to pass a cumulative impacts regulation.

- Chair Richards requested that Board Liaison Apodaca contact Mr. Silva to obtain the materials he referenced in his public comment.

Ms. Diane Reese (Chair of the Central Group of the Rio Grande Chapter of the Sierra Club and a resident of the South Valley) delivered public comment on the NMTS permit appeal in support of the petitioners.

Chair Richards asked Board Attorney Sue Chappell if there were any limitations to the Board receiving comments on the ongoing NMTS permit appeal. Board Attorney Sue Chappell Stated that there were no limitations on receiving public comment in regard to NMTS.

Deputy Director Mara Elana Burstein requested that members of the public provide their comments in writing so that EHD could respond to them.

### **REPORTS/DISCUSSION/ACTION ITEMS**

**Item #3** Procedural update, by EHD's counsel Tim Adler, on AQCB Petition No. 2020-1, Request for a Hearing in the Matter of the Petition for a Hearing on the Merits Regarding Air Quality Permit No. 3340-RMD – New Mexico Terminal Services, LLC; Petitioners: Mountain View Neighborhood Association, as an organization, and Nora Garcia and Lauro Silva, as individuals, and Mountain View Community Action; Counsel for Petitioners: Eric Jantz, Gail Evans, Maslyn Locke of the New Mexico Environmental Law Center.

Mr. Adler, EHD's counsel in the above-referenced matter, gave a procedural update to the Board. Mr. Adler also requested that the Board not receive written public comment related to the NMTS Appeal. The Board Attorney agreed with Mr. Adler's analysis and Chair Richards asked that members of the public not provide written public comment related to the NMTS Appeal outside of the Appeal process.

Mr. Eric Jantz, counsel for petitions in the above-referenced matter, requested that future updates to the Board be given by the Board Attorney, not by a party to the matter.

- Chair Richards requested that future updates be given by Board Attorney Chappell. The rest of the Board agreed with this request and Chair Chappell agreed to do so.

**Item #4** (2014 Honstein Oil appeal) Possible Board action on Southwest Organizing Project, et al. v. Albuquerque-Bernalillo County Air Quality Control Board, et al., No. A-2-CA-36398, Mandate to Administrative Hearing Officer from the Court of Appeals of the State of New Mexico.

Board Attorney Chappell provided background on this matter to the Board and recommended that the Board postpone any action on this item until the next meeting, at which time it is anticipated that there will be an agreed-upon form of order for the Board to consider.

Member Sandoval asked if the Board is required to follow the Court of Appeals decision. Board Attorney Chappell replied yes, they are required to follow the law.

Member Paul moved to postpone any action until the next Board meeting and Member Meiklejohn seconded. The motion passed by a vote of 7-0.

**Item #5** Possible Board action to ratify Chair's request for Board Attorney to present on the Board's legal authority regarding cumulative impacts and supporting legislation.

Member Calman moved for the Board to ratify the Chair's request for the Board Attorney to research and present to the Board on the Board's legal authority regarding addressing cumulative impacts and supporting legislation. Member Meiklejohn seconded the motion. The motion passed by a vote of 6-0, with Member Sandoval abstaining.

**Item #6** Presentation from the Board Attorney on the Board's legal authority regarding addressing cumulative impacts and regarding supporting legislation.

Board Attorney Chappell delivered the presentation. In short, the Board has authority to pass cumulative impacts regulation, but it does not have the authority to support legislation.

Board Attorney Chappell then answered questions from Board members, including the following:

- Board members could support legislation as individuals, but not as a Board.
- The Board could form a committee and choose the composition, assuming that the Board gave themselves that authority when the committee was formed.

**Item #7 Possible Board action on addressing cumulative impacts, subject to the Board's legal authority.**

Member Meiklejohn asked the Board Attorney for legal advice on potential next steps that the Board could take regarding cumulative impacts. Board Attorney Chappell advised the Board on possible actions that could be taken, including appointing a committee at this meeting or asking EHD to take action at this meeting.

After discussion, Member Paul moved to postpone any Board action until the next meeting and Member Sandoval seconded. The motion passed by a vote of 7-0.

**Item #8 Possible Board action on participation by the Board in supporting legislation regarding the "no more stringent than" provisions in § 74-2-5(C) of the Air Quality Control Act, subject to the Board's legal authority.**

Board Attorney Chappell addressed this item in the presentation for Agenda Item #6. Based on the Board Attorney's advice, the Board did not act on this agenda item.

**Item #9 Closed meeting session under the Open Meetings Act, NMSA § 10-15-1(H)(7), for Air Board members and Air Board attorney, only - status update regarding Complaint to U.S. Environmental Protection Agency under Title VI of Civil Rights Act of 1964, EPA Case No. 13R-14-R6 (Title VI Complaint).**

Chair Kitty Richards recused herself from any Board actions regarding EPA Complaint No. 13R-14-R6 (Title VI Complaint), due to a conflict of interest. Vice Chair Langner presided over the meeting in Chair Richards' absence.

Member Sandoval moved to close the meeting under Section 10-15-1(H)(7) of the Open Meetings Act for an attorney-client privileged discussion of pending litigation. Member Reitzel seconded. The motion passed by a vote of 6-0.

The Board then went into closed session.

Member Paul left the meeting before the Board returned from closed session. All other Board members returned from the closed session. After the end of closed session, Vice Chair Langner stated that the closed session discussion was limited to matters identified in Agenda Item #9

Chair Richards returned to chair the rest of the meeting.

**OTHER BUSINESS**

