

ALBUQUERQUE – BERNALILLO COUNTY AIR QUALITY CONTROL BOARD



DRAFT MINUTES – February 10, 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. Maggie Fitzgerald, Community Liaison
Mr. Travis Miller, EH Manager
Ms. Carina Munoz-Dyer, EH Supervisor
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

AQCB MEMBERS ABSENT

STAFF PRESENT

Ms. Mara Elana Burstein, EHD Deputy
Director, Secretary to the Board
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 Eyerman, Sr. EH Scientist

MEMBERS of the PUBLIC PRESENT

Mr. Steven Abeyta
Mr. Eric Jantz
Ms. Jazmine Johnston
Mr. Lauro Silva
Ms. Sue Schuurman
Ms. Virginia Necochea
Ms. Alejandria Lyons
Ms. Maslyn Locke
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 5:32 p.m.

Item #1 Approval of February 10, 2021 Agenda (Chair)

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

Item #2 Approval of January 13, 2021 Meeting Minutes (Chair)

Member Meiklejohn asked why Deputy Director Mara Elana Burstein was listed in the meeting minutes under the AQCB Members Present section.

Air Board Attorney Sue Chappell explained that the Air Board's bylaws state that the Deputy Director of EHD is an ex-officio Board member, but there is debate about that.

Deputy City Attorney Samantha Hults stated she will be meeting with Board Attorney Chappell later in the week to discuss the matter.

Chair Richards stated her preference to table approving the minutes until the matter had been addressed by the attorneys.

Member Sandoval moved to table the January 13, 2021 meeting minutes and Member Langner seconded. The motion passed by a vote of 7-0.

AIR PROGRAM REPORT

Presentation on Environmental Health Dept.'s perspective on addressing cumulative impacts by Mara Elana Burstein, Deputy Director, City of Albuquerque, Environmental Health Dept.

Deputy Director Burstein presented on how the Air Board might go about addressing cumulative impacts and gave the Board some items to consider, including: ways that the Air Board could collaborate with other departments to address more than air quality within a cumulative impact assessment; and how EHD and the AQCB could establish scientific evidence as the basis for a cumulative impact rulemaking. Deputy Director Burstein also stated that Jeff Stonesifer, Senior Environmental Health Scientist, could present on how cumulative impacts are included in EHD's air dispersion permit modeling at the next Air Quality Control Board meeting.

Member Sandoval said that law doesn't equal justice wondered if the Air Board should push against the existing law through litigation.

Chair Richards shared her perspective on and experience with cumulative impacts. She said EHD's presentation was problematic because previous efforts to address cumulative impacts were not included. She mentioned the efforts of the 2008 EJ Task Force, health impact assessments, the Place Matters report, citizen science efforts, five unsuccessful legislative attempts, and state-level laws passed in Minnesota and North Carolina. She said EHD would never place enough monitors at the micro level to get a neighborhood by neighborhood analysis of hotspots nor show cause and effect at a micro level.

Deputy Director Burstein explained that her presentation outlined how EHD would develop a legally- and scientifically-defensible cumulative impacts regulation and the Air Board is not required to follow EHD's recommendations.

Member Sandoval stated that he appreciated Chair Richard's comments.

Member Calman said she also shares Chair Richard's concerns and wants EHD to use community-developed data.

Member Paul explained that EHD's role is to follow the law. She said the law requires scientific evidence in the way that was presented. She said the Board was the regulatory authority.

Member Sandoval asked whether EHD staff could research the regulations and other work referenced in the presentation that has already been done, specifically looking at Minnesota and work done by the local community starting in the early 2000's.

Ms. Reitzel asked EHD to identify the gaps in what has already been done and to provide recommendations on a path forward. She would also like to see a more concrete plan from EHD to start addressing cumulative impacts, including milestones. Finally, Member Reitzel would like to see cumulative impacts incorporated in EHD's 2021 goals.

Deputy City Attorney Hults, explained that the purpose of the presentation was to be helpful, not discouraging.

Air Board Attorney Chappell, said she sees that presentation wasn't intended to discourage the Board: it was meant to provide information. She said EHD is just showing you a process. She doesn't see EHD as the driver of this effort, the Board is driver of addressing cumulative impacts.

PUBLIC COMMENT

(Suggested five-minute time limit)

Mr. Steven Abeyta gave public comment on cumulative impacts and stated that cement, petroleum, refineries, and metal shredding operations are all located in his neighborhood.

Ms. Marla Painter (affiliated with Mountain View Community Action) gave public comment on the Mountain View Neighborhood. Ms. Painter mentioned they have not had one bit of help from county planning, or City Environmental Health. Ms. Painter mentioned that she has been taking pictures of the black rock operation.

Mr. Lauro Silva delivered public comment stating that community members have collected a lot of data on environmental health, environmental pollution, and different contaminants. Mr. Silva mentioned that many communities have been impacted from VOCs and hazardous toxic waste. Mr. Silva asked the Board to protect the public health and welfare.

REPORTS/DISCUSSION/ACTION ITEMS

Item #3 Role of Board Chair (Board Attorney)

Board Attorney Chappell presented on the role of the Board Chair, which includes setting the final agenda for, and maintaining order during, Board meetings.

Chair Richards stated that she would like to keep future agendas manageable.

Member Paul stated that she would like to keep the meetings accessible to the public and would like for meetings to end earlier.

Item #5 Announce Vice Chair Langner as point of contact for Board members should Board members wish to submit agenda items for a subsequent Board meeting and deadlines for communication of requested agenda items. (Chair)

Item #5 was inadvertently covered before Item #4. Vice Chair Langner asked for all members of the Board to communicate with her regarding possible agenda items in the two weeks after each Board meeting.

Item #4 Statement regarding the Board's commitment to transparency and compliance with the Open Meetings Act and posting of EHDs response to questions and requests for information made by the Board. (Chair)

Chair Richards stated that the Board is committed to transparency and compliance with the Open Meetings Act. She recommended that EHD post questions from Board members, as well as EHD's responses, to the Board website.

Item #6 Discussion and action to create three (3) two (2)-member standing advisory committees, subject to Board approval, as follows:

- a. **Public Concerns Committee, to review and engage in fact-finding regarding concerns raised to Board by members of the public (except concerns related to pending rulemakings and/or adjudicatory proceedings), and report to Board at regular Board meetings.**
- b. **EHD Liaison Committee, to meet with EHD staff to study topics of joint concern, guided by concerns raised to the Board by members of the public (except concerns related to pending rulemakings and/or adjudicatory proceedings), and report to Board at regular Board meetings.**
- c. **Information Committee, to research and compile information regarding concerns raised to Board by members of the public (except concerns related to pending rulemakings and/or adjudicatory proceedings), and report to Board at regular Board meeting, including making any information compiled available to the public. (Chair to create committees and appoint members, subject to Board approval after motion and vote)**

Member Paul asked if Item #7 could be combined into Item #6 to make three committees instead of four.

The following committees were established:

EHD Liaison Committee - Member Meiklejohn and Member Paul
Public Concerns Committee - Member Reitzel and Member Sandoval
Information Committee- Chair Richards and Member Calman

Member Meiklejohn moved to approve the committees and Member Sandoval seconded. The motion passed by a vote of 7-0.

Item #7 Discussion and action to create a two-three (2-3)-member Cumulative Impacts Committee advisory committee, subject to Board approval, to explore scope, representation, ground rules, and timeline for the creation of a Cumulative Impacts Committee, and report to Board at regular Board meetings. (Chair to create and appoint members, subject to Board approval after motion and vote)

Member Sandoval moved to incorporate the proposed Cumulative Impacts Committee (Item #7) into the approved Information Committee (Item #6): Member Paul seconded. The motion passed by a vote of 7-0.

Item #8 Discussion and action on Southwest Organizing Project, et al. v. Albuquerque-Bernalillo County Air Quality Control Board, et al., No. A-2-CA-36398 (appeal arising from 2014 Honstein Oil Petition for Hearing), Mandate to Administrative Hearing Officer

from the Court of Appeals of the State of New Mexico. (EHD's legal counsel, Tim Adler and Board attorney)

Chair Richards recused herself from Item #8 due to a conflict of interest. Vice Chair Langner presided over the meeting in Chair Richards' absence.

Board Attorney Chappell presented the Order of Mandate on this agenda item. She recommended the Board accept the Order and close the matter.

Mr. Silva (community member) asked via the chat function if the current Board is obligated to sign this mandate.

Board Attorney Chappell said yes, the Court of Appeals opinions stands, there is nothing that this Board can do to change the final word in this case. She said the Board can decide to not enter this order, but she believes it would be inappropriate.

Member Sandoval stated that he will not vote to sign off on the Court of Appeals mandate because he believes that there is a gap between what's legal and what's just. He said it would strong a message to the community that there's some commitment on this Board to not just follow legal writs but to actually seek some semblance of justice for a community that has been sorely abused, for many, many decades. He invited the other Board members to vote no on the mandate.

Board Attorney Chappell said that if the Board doesn't enter into the Order of Mandate, they will be violating their obligations as Board members to follow the rules that apply. She said Board members may be subject to removal from the Board and recommended they seek more guidance on what the ramifications are of voting no.

Member Sandoval confirmed that the mandate was legal, and reiterated his commitment to serve the community.

Member Meiklejohn moved to table action on the Court of Appeals mandate and Member Calman seconded. This motion did not go for a vote.

Member Calman restated this motion, moving to table this action until the next meeting in order to hear more from Board Attorney Chappell and Member Sandoval regarding this matter. Member Paul seconded. The motion passed by a vote of 6-0.

Chair Richards returned as Chair at the conclusion of Item #8.

Item #9 Discussion of possible agenda items for next meeting.

Member Paul asked to hear from EHD staff on how cumulative impacts are included in EHD's Air Dispersion Modeling as a requirement of the permitting process. Member Paul also requested an agenda item about moving Board meetings to start at 4:30 PM.

Member Meiklejohn asked to hear report-backs at the next meeting, as necessary, as well as have a discussion on EHD-AQCB dynamics.

Board Attorney Chappell and Member Sandoval will give presentations on the Court of Appeals mandate.

Deputy Director Burstein explained that there is a State Implementation Plan (SIP) requirement for EHD to present to the Board on the sulfur dioxide milestone report and for the Board to take public comment on the report at the March meeting. The Board is then required to act on the report at the April meeting. Deputy Director Burstein mentioned that nominations for board leadership should take place at the March meeting for elections at the April meeting. She also mentioned that EHD is required to present to the Board in May or June on the Regional Haze SIP.

Member Reitzel asked to add possible action items to the agenda on cumulative impacts.

PUBLIC COMMENT

(Suggested three-minute time limit)

There were no public comments.

OTHER BUSINESS

No other business was discussed.

ADJOURNMENT

Chair Richards adjourned the meeting at 8:13pm.

NEXT SCHEDULED BOARD MEETING: Video Conference.

March 10, 2021 will be conducted using Zoom

SUBMITTED:

READ AND APPROVED:

Ms. Mara Elana Burstein date
Board Secretary/Deputy Director
Environmental Health Department, Air
Quality Program

Ms. Kitty Richards date
Chair
Albuquerque – Bernalillo County Air Quality
Control Board