



DRAFT MINUTES – March 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)

AQCB MEMBERS ABSENT

Ms. Elizabeth Reitzel (CITY)

AQCB NON –VOTING MEMBER

Ms. Connie Chavez (Bernalillo County
Planning Commission Liaison)

STAFF PRESENT

Ms. Mara Elana Burstein, EHD Deputy
Director, Secretary to the Board
Ms. Susan Chappell, AQCB Attorney
Ms. Stephanie Apodaca, AQCB Liaison
Mr. Andrew Daffern, Field Ops Officer
Ms. Regan Eyerman, Sr. EH Scientist
Ms. Maggie Fitzgerald, Community Liaison
Ms. Samantha Hults, Deputy City Attorney
Mr. Jon Lutz, EH Supervisor
Mr. Travis Miller, EH Manager

Ms. Carina Munoz-Dyer, EH Supervisor
Mr. Elizabeth Pomo, EH Specialist II
Mr. Dario Rocha, EH Manager
Mr. Jeff Stonesifer, Sr. EH Scientist
Mr. Dwayne Salisbury, EH Manager
Mr. Isreal Tavarez, EH Manager
Mr. Kyle Tupane, EH Scientist

MEMBERS of the PUBLIC PRESENT

Ms. Esther Abeyta
Mr. Steven Abeyta
Mr. Eric Jantz
Ms. Penny Avery
Mr. Lauro Silva
Ms. Sue Schuurman
Ms. Sarah Vance
Ms. Alejandria Lyons
Ms. Maslyn Locke
Ms. Marla Painter
Mr. Martin Schluep
Ms. Nora Garcia
Mr. Tim Adler
Mr. Xavier Barraza
Mr. Rhett Zyla
Ms. Jane Kotovsky
Mr. Richard Moore

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

CALL TO ORDER

Chair Kitty Richards called the meeting to order at 5:31 PM.

Item #1 Discussion and approval of March 10, 2021 Agenda (Chair)

Member Maxine Paul moved to approve the agenda and Member Meiklejohn seconded. The motion passed by a vote of 5-0. Member Arturo Sandoval was unavailable for this vote.

Item #2 Discussion and approval of January 13, 2021 meeting minutes (minutes were tabled at the February 10, 2021 meeting) (Chair and Board Attorney)

Member Sandoval rejoined the meeting at 5:39 PM.

Board Attorney Chappell discussed approving the minutes that were tabled at the last meeting to resolve a question about Deputy Director Mara Elana Burstein's status in relation to the Board, arising out of her designation in the minutes as a non-voting Board member.

Deputy City Attorney Samantha Hults and Board Attorney Sue Chappell determined that Deputy Director Burstein is the Board Secretary, but not a non-voting Board member.

Board Attorney Chappell's recommendation to the Board was that the January minutes be changed before approval to identify Deputy Director Burstein as Board Secretary.

City Attorney Hults commented that the AQCB Bylaws should be updated to address the Deputy Director's status.

Chair Richards proposed to identify EHD Deputy Director Mara Elana Burstein as Board Secretary, but not as a non-voting Board Member. This proposal was seconded by Member Lauren Meiklejohn and passed by a vote of 6-0.

Item #3 Discussion and approval of February 10, 2021 meeting minutes (Chair)

Vice Chair Susan Langner moved to approve the February 10, 2021 Minutes and Member Paul seconded. The motion passed by a vote of 6-0.

PROGRAM REPORT

Mara Elana Burstein, Deputy Director, City of Albuquerque, Environmental Health Department, provided an update to the Board.

Deputy Director Burstein introduced Bernalillo County Planning Commissioner (BCPC) Connie Chavez as the non-voting BCPC Liaison. Commissioner Chavez introduced herself to the Board.

Deputy Director Burstein mentioned that EHD requested \$400,000 from the City Council to place community-scale monitors.

- Member Paul asked how many monitors do you get for \$400,000?
 - Deputy Director Burstein replied that, since funding hasn't been secured, the final monitors haven't been selected. Currently, the purple air monitors will be piloted at four local highschools.
- Chair Richards asked if has council approved the funding?
 - Deputy Director Burstein replied no, not yet.

Deputy Director Burstein gave an update on weekly inspections conducted from mid-February to present.

- Member Paul asked whether 16 to 19 inspections were typical for a week?

- Deputy Director Burstein replied that the weekly amount is low because they are down one inspector.

Chair Richards asked about who in EHD is working with the Health Equity Council and if they are working with another health equity group.

- Deputy Director Burstein replied that the City has a contract with the Health Equity Council but was not sure of any other partners.

Presentation on Air Dispersion Modeling, by Jeff Stonesifer, Senior Environmental Health Scientist, City of Albuquerque, Environmental Health Dept.

EHD staff Jeff Stonesifer presented on the following: 1) the purpose of using air dispersion modeling; 2) its relationship to permitting; 3) an analogy, inputs, and source types, 4) federal, state, and local guidelines for modeling; 5) how cumulative impacts are modeled; 6) comparing modeling results to standards; 7) EPA's model, its reliability, verification, and safety margin; and 8) reasons to reject applications with modeling errors.

Following the presentation, the Board asked questions and discussed cumulative impacts. Public comments followed.

- Member Paul asked whether it is correct that modeling a fairly good estimate of cumulative impacts of each National Ambient Air Quality Standard (NAAQS), but that it doesn't consider all of the pollutants together with Hazardous Air Pollutants (HAPS) and Toxic Air Pollutants (TAPS)?
 - Mr. Stonesifer replied that it isn't accurate so much as an overestimate of impacts. Also, it does model each pollutant separately, but not cumulatively. The modeling also doesn't include HAPS or TAPS.
- Chair Richards asked how modeled emissions and reported efficiencies of control equipment are validated?
 - Mr. Stonesifer deferred question to Isreal Tavarez, Permitting Division Environmental Health Manager.
 - Mr. Tavarez replied that the first approach is to require an operation to do opacity readings and/or performance testing. The second approach is that the permittee has to track and monitor various operating parameters, which are then checked by Air Quality Program inspectors.
- Member Meiklejohn stated that EHD and AQCB should agree on what is meant by "cumulative impacts" for clarity and to avoid confusing the community.
 - Mr. Stonesifer referred back to the Code of Federal Regulations (CFR) Part 51, Appendix W, and said that synergistic effects are not examined in AERMOD, which is the modeling tool recommended by the Environmental Protection Agency (EPA).

PUBLIC COMMENT

(Suggested five-minute time limit)

Mr. Lauro Silva (Mountain View Neighborhood Association) delivered public comment on the air dispersion modeling methodology. He was concerned about the synergistic health effects of cumulative effects of air pollutants combining. Mr. Silva also mentioned that the community

doesn't typically have the capacity to independently evaluate and validate the modeling assessments.

Mr. Xavier Barraza (resident of the South Valley) mentioned that he would like to hear the distinction between cumulative modeling and cumulative impacts.

- Chair Richards answered that the cumulative modeling is part of a modeling dispersal process, but cumulative impacts includes synergies, as well as vulnerabilities of the populations.
- Member Meiklejohn reiterated her desire to be particular and precise in the terms that are being used.
- Mr. Xavier Barraza asked for the Board to define, or work to define, what cumulative impacts means.

Richard Moore (The Gardens Institute) thanked the Chair and the Board for this discussion and echoed the desire to define terminology. Mr. Moore mentioned that, in the past, discussions have been limited to specific permits, not to all permits. Mr. Moore also asked how communication can be delivered to constituents without mobile phones? Finally, Mr. Moore wanted to know if the community would be engaged with helping to decide where the air monitors will be located.

Ms. Nora Garcia (Mountain View Neighborhood Association) asked the AQCB to look into new ways for monitoring for cumulative impacts because she doesn't believe that the current monitors are accurate. She said EHD's monitoring stations are ugly and we need to look at new equipment where information can instantly be transmitted to a computer for total pollutant calculations, including cumulative calculations and hotspot areas.

REPORTS/DISCUSSION/ACTION ITEMS

Item #4 Presentation on cumulative impact regulations in other states and New Mexico's efforts (Chair), and reports from three Board committees: EHD Liaison Committee, Public Concerns Committee, and Information Committee (including the Cumulative Impacts Committee)

Chair Richards presented on the following: 1) definition of cumulative impacts, 2) the need for environmental justice, 3) the need for health equity, 4) a timeline of local health studies conducted, 5) a timeline of NM legislation (both failed and successful) related to health and equity, 6) the Supreme Court ruling related to the Solid Waste Rule, 7) a list of other states that have addressed cumulative impacts, 8) information on place-based regulations, and 9) next steps, including potential additional members for the Board's cumulative impacts committee, and to present a draft cumulative impacts regulation to the Board by July 2021.

Following this presentation, there were no questions nor discussion.

Member Sandoval expressed his appreciation for Chair Richard's presentation.

Deputy City Attorney Hults requested that EHD be included in the proposed cumulative impacts committee to provide our expertise.

Members Paul and Meiklejohn reported on their EHD Liaison Committee.

- Member Paul reported on the siting of facilities that emit toxics and mentioned Health Impact Assessments (HIAs) as an option. She mentioned the Frosh et. al study from 2002.
- Member Meiklejohn also mentioned her review of the legislation passed by Minnesota.

Item #5 Procedural update by Board Attorney 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

Board Attorney Chappell gave a procedural update on AQCB Petition No. 2021-1. She stated that the substitutive discussion on the merits of the petition will not be included her update. The update to the Board and public is on how to obtain the documents filed so far in the case. Board Attorney Chappell briefly went through each item one by one that was filed on behalf of Permit No. 3340-RMD, New Mexico Terminal Services, LLC .

Item #6 Nominations for Air Quality Control Board Chair and Vice-Chair positions for April 2021 – April 2022 (Chair)

Members Meiklejohn and Sandoval nominated Chair Richards to continue serving as Chair for the next year. Chair Richards accepted the nomination.

Member Sandoval nominated Vice Chair Langner to continue serving as Vice Chair. Vice Chair Langner accepted the nomination.

Item #7 Presentation on 2019 Sulfur Dioxide Milestone Report by Environmental Health Department Staff

Mr. Dario Rocha, Control Strategies Division Environmental Health Manager presented on the Draft 2019 Sulfur Dioxide Milestone Report. He invited members of the public to comment on the report at the meeting and explained that the public comment period started 3/1/2021 and ends 3/31/2021. Mr. Rocha also said EHD will ask the Board to consider the report for their approval during next month's meeting.

- Chair Richards asked whether the report is posted to the website.
 - Mr. Rocha replied that yes, the report is posted to the website.

Item #8 Presentations, 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

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

- Presentation on Board's Authority regarding Mandate (Board Attorney)**

Board Attorney Chappell presented on the following: 1) sources of the Board's authority; 2) judicial review; 3) disposition by the Court of Appeals; 4) Order of Mandate; and 5) adjudicatory standards. In short, she explained that Board Members could be removed from the Board if they go against the law and do not enter in the Order of Mandate.

Board Members expressed their appreciation for the presentation.

b. Presentation by Board Member Sandoval regarding Mandate (Member Sandoval)

Member Sandoval explained why he would vote no on the Mandate and encouraged other Members to do the same. His reasons include: the South Valley and San Jose communities are sacrifice zones, which is immoral and unethical. He stated that the law is not a neutral institution that treats everyone equally. The law and the legal system have a default mode which is to protect and promote white supremacy.

Board discussion followed Member Sandoval's presentation.

Member Meiklejohn expressed their support for the sentiment of Member Sandoval's comments and stated that she believed that voting "No" might derail the Board from the other initiatives they would like to pursue; she will vote "Yes" so that the Board can work on Cumulative Impacts.

Member Paul echoed what Member Meiklejohn said and mentioned that she is on this Board to help pass regulations that can better help the community. Member Paul indicated that she planned to vote "Yes," but with hesitancy. She vowed to spend her remaining time on the Board addressing the issues that led to this [Honstein Oil permit appeal] in the first place.

Member Sandoval indicated that he believed this is a moral issue and that, in this case, he believed following his values is more important than following the law. He also explained that this was his last meeting.

Board Attorney Chappell reiterated the Order of Mandate from the NM Court of Appeals on the 2014 Honstein permit appeal. She recommended the Board enter in the Order of Mandate and close this issue.

c. Board action on Mandate (Board)

Member Paul moved to approve and enter the Mandate and member Meiklejohn seconded. The motion passed by a vote of 4-1. Member Sandoval voted no. The Order of Mandate was entered and the case on the Honstein permit appeal is now closed.

Mr. Silva (Mountain View Neighborhood Association) said that today's Board is not the same Board that heard the permit appeal. He also stated that Honstein Oil has moved from San Jose to Mountain View. Finally, he mentioned that he is concerned about the possibility of precedent being set by this action.

Chair Richards returned as Chair after the conclusion of item #8.

Item #9 Discussion of possible future agenda items (Board)

Member Paul stated she would like to discuss starting AQCB meeting earlier and would also like to define cumulative impacts.

Chair Richard would like to change the Bylaws and would like to have access to website for questions and answers.

Deputy Director Burstein stated that EHD would request that the Board adopt the Final 2019 SO2 Milestone Report and that Board leadership elections would take place at the next meeting.

PUBLIC COMMENT

(Suggested three-minute time limit)

Mr. Steven Abeyta (resident of the South Valley) thanked Member Sandoval for his earlier comments and also mentioned his perspective on how cumulative modeling is conducted.

Mr. Richard Moore (The Gardens Institute) thanked the Chair and the Board, as well as Member Sandoval. Mr. Moore mentioned that everything discussed is a question about environmental racism and that justice is the primary goal.

Ms. Marla Painter (Mountain View Community Action) asked for clarification on a portion of Jeff Stonesifer's presentation.

OTHER BUSINESS

Chair Richards thanked Member Sandoval for serving on the Board. Chair Richards also welcomed Commissioner Chavez to her role with the Board.

ADJOURNMENT

Chair Richards adjourned the meeting at 8:57 PM.

NEXT SCHEDULED BOARD MEETING: April 14, 2021 will be conducted using Zoom Video Conference.

SUBMITTED:

READ AND APPROVE:

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

DRAFT