

MINUTES – February 14, 2024
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 5:33 pm. She stated that they were holding this meeting and proceeding with the board that was duly appointed by the Mayor and confirmed by council before the passage of Ordinance O-23-88 and Resolution R-23-26. The board will continue to follow their regulations and ordinances, until the case is decided by a court or by settlement. Chair Paul asked that a copy of the court order be included with the minutes for the February meeting.

Board Liaison Anita SdeArmijo then called roll and the Chair determined a quorum was present.

Present: 5 – Judy Calman, Elis Eberlein, Joseph Galewsky, Maxine Paul, Kitty Richards
Absent: 2- Dennis Armijo, Johnnye Lewis

2. CONSENT AGENDA

- A. Approval of the February 14, 2024 Meeting Agenda
- B. Approval of the October 08, 2023 Meeting Minutes, November 21, 2023 and the December 11, 2023 Special Meeting Minutes

Chair Paul stated that she had one change for the consent agenda and asked to remove the November 21, 2024 special meeting minutes from the consent agenda. Vice Chair Richards moved to approve the consent agenda without the November 21, 2023 special meeting minutes. Member Calman seconded. The motion passed by the following vote:

For: 5 – Calman, Eberlein, Galewsky, Richards, Paul
Against: 0 Abstain: 0 Absent: 2 - Armijo, Lewis

Chair Paul had a small correction for the November 21, 2023 special meeting minutes. She stated that the votes showed her name both for and against, but instead should show as against in both votes. Member Galewsky moved to approve the November 21, 2023 special meeting minutes with the suggested correction, and the motion was seconded by Vice Chair Richards.

For: 5 – Calman, Eberlein, Galewsky, Richards, Paul
Against: 0 Abstain: 0 Absent: 2 - Armijo, Lewis

3. AIR PROGRAM REPORT

There was no report as the Air Program is evaluating the report for content and format. Deputy Director Chris Albrecht stood for any questions from the board.

4. FIRST PUBLIC COMMENT OPPORTUNITY

Nicholas Maxwell gave comment during the first public comment opportunity. However, due to technical difficulties, Board Liaison Anita SdeArmijo read his comment aloud.

5. REPORTS/DISCUSSION/ACTION ITEMS

A. EPA's February 7, 2024 PM 2.5 NAAQS Standard-Update (EHD)

Deputy Director Chris Albrecht gave a quick summary of the rule the EPA published regarding making the PM 2.5 annual standard more stringent. He then stood for questions from the board.

B. Regional Haze update (EHD)

- **2022 SO2 Milestone Report (Presentation)**

Regulation Development Coordinator Allen Smith gave a brief presentation that included an overview on the Regional Haze Rule, the SO2 Milestone program, and the steps in terms of public notice, comment, and approval from the board. He then stood for questions from the board.

- **State Implementation Plan (SIP) Update**

Mr. Smith also gave a brief update on the SIP and that EHD is working on the Regional Haze SIP for the second planning period. He stated that EHD is collaborating with NMED and plans to start the formal FLM consultation process around mid-March. He then stood for any questions from the board.

C. Discussion and Possible Action on Amending the AQCB Bylaws to change meeting day from the 2nd Wednesday of the month to the 1st or 3rd Wednesday of the month and Amending Resolution 2023-1 and Resolution 2023-2 (Board)

Chair Paul stated that EHD requested this item, since the current meeting room in the basement of Plaza del Sol would no longer be available on the second Wednesday of the month and also that she was informed that the City Council Chambers were available on the regular day. She also noted that the Board used to meet in the city council chambers and that location is the one stated in the bylaws. She then opened the floor for discussion by the board.

Deputy Director Chris Albrecht stated that EHD recommend the first and third Wednesdays because it was available at Plaza del Sol and that they are still looking into the availability of the City Council Chambers, but have not confirmed it. He then asked the board to defer this item to next month's agenda. After some discussion, the board agreed to defer this matter until next month.

D. Discussion and Possible action on Motion for Stay, filed by New Mexico Automotive Dealers Association, In the Matter of the Petition to Repeal Existing Rule 20.11.104 NMAC, Emission Standards for New Motor Vehicles and Adopt Proposed Replacement 20.11.104 NMAC, New Motor Vehicle Emission Standards, AQCB PETITION NO. 2023-01 (Board, Parties)

Chair Paul stated that Counsel Sedillo-Lopez provided the board with a memo regarding options for the Motion to Stay, as she is not presently at the meeting. Chair Paul reviewed the options provided by Counsel Sedillo-Lopez and then invited the counsel for the parties to provide comment on this issue.

Pete Domenici, representing the New Mexico Auto Dealers Association, stated that he has made the same request of the EIB, which is not to stay the entire rule but just the Clean Cars II sections of the rule. He stated that these sections are easily severable and that the other portions of the rule would not be stayed. Mr. Domenici stated that he believes that there was misinformation provided on a couple of key items. One is that Clean Cars I would still have been in effect if the board had not voted for Clean Cars II, and that all three sections had to simultaneously pass or fail when the board voted on them.

Mr. Domenici said that the reason for asking for the Motion to Stay is because appeal cases do not get expedited and can take up to a year or more, and there is a likelihood that the rule will take effect while its on appeal and could cause irreparable harm if it is reversed. He then went over the possibilities of what might happen depending upon how the motion is voted on. Mr. Domenici then stood for questions from the board.

After some discussion, Member Calman moved to defer this item to the next meeting and, in the interim, for board leadership to reach out to EIB leadership to try and coordinate a meeting. Member Eberlein seconded and the motion passed by the following vote.

For: 5 – Calman, Eberlein, Galewsky, Richards, Paul
Against: 0 Abstain: 0 Absent: 2 - Armijo, Lewis

E. Discussion and possible action on Motion for Correction of Adopted Rules, In the Matter of the Petition to Amend Title 20, Chapter 11, Part 72 of the New Mexico Administrative Code to Require Review and Consideration of Health, Environment, and Equity Impacts (Board, Parties)

Chair Paul asked Counsel Sedillo-Lopez, who had just joined the meeting virtually, if she had been able to find any authority that would allow the board to correct a mistake if one was made and filed with the State Records Center. Counsel Sedillo-Lopez responded that she was unable to find any and that the pleadings did not cite any authority. She stated that once it was published in the state register it is a regulation and so to modify it a petition notice and a rulemaking hearing would be needed. Chair Paul then opened the floor to the parties for arguments.

Mr. Domenici suggested that rule 60-A of civil procedures, which applies to the courts, allows for this sort of correction. He then mentioned that numerous court cases have applied this rule.

Counsel Sedillo-Lopez responded that the Motion for Correction is a question about the substance of the rule- and not a clerical error like in one of the cases Mr. Domenici mentioned. She went on to say that any kind of clerical errors or similar types of errors have to be corrected before the final regulation is passed and published in the state register as the state records center will not permit a change without a motion, a proper notice and rulemaking.

Mr. Domenici stated that the board never had a meeting to approve the rule or the language in it and this is quoted in his brief.

Maslyn Locke, representing Mountain View Coalition, stated that the board's rulemaking procedures and the Air Quality Control Act only have one post hearing post rule promulgation motion in the rules and it is the Motion for Stay that Mr. Domenici presented. She said that the only remedy is an appeal of the substance of the published rule to the Court of Appeals. She also stated that in the board's rulemaking procedures that only the document submitted to the register is the board's final decision, and believes that any action taken by the board to change the language would impact the finality of the rulemaking process.

Elaine Papadakos, Clinical Law Student at UNM representing Sofia Martinez and Manuel Criollo, stated their support for the petitioners' response to the Motion for Correction and believe that the board should dismiss the motion based on the reasons already mentioned.

Dori Richards, representing NNSA, supported Mr. Domenici's motion and stated that the language of the rule is not consistent with the deliberation, discussions and concessions of the board members from December 11, 2023. Ms. Richards stated that the whole board never had the opportunity to review the language that was drafted by Counsel Sedillo-Lopez or vote on it by a quorum.

Counsel Sedillo-Lopez stated that the board had ceased to exist during the time before the rule was filed and that the board did not have the opportunity to review the language. She stated that it was hectic to try and get the rule written in the short timeframe before the filing deadline with the State Records Center and that they had to write a letter to say that the rule was passed at a time when the board was legally constituted.

Text added to address Vice Chair Richards requests at the March meeting and the April meeting to revise the minutes to reflect what she stated (note: please refer to the 12/11/23 transcript and/or Zoom recording online for full details).

[+Vice Chair Richards made an amendment after Member Lewis made an amendment. Member Eberlein accepted both amendments. Vice Chair Richards clarified that she wouldn't have asked for BACT technology within the one-mile radius because that had already been established through Member Lewis' amendment. Her amendment didn't have any limitation.+]

After a few questions from the board, Counsel Sedillo-Lopez stated that the time to make any corrections would have been from when the board issued the order to before it was published in the register, and that once it was published it became a regulation and to make any corrections the rulemaking process would essentially need to start from the beginning.

Chair Paul asked if any members of the board would like to make a motion and, hearing none, moved onto the next item.

- F. Closed Meeting: The Board will go into Closed meeting to Discuss and take possible action concerning Litigation: Albuquerque-Bernalillo County Air Quality Control Board, Board of County Commissioners of Bernalillo County vs. City of Albuquerque, 202-CV-2-23-09295 and GCC Rio Grande et al v. Albuquerque Bernalillo County Control Board, City of Albuquerque vs City of Albuquerque and Air Board, D-202-Cv-2023-09435.

Chair Paul called for a break from 7:19-7:30 pm.

At 7:30 Chair Paul announced that the board would now go into a closed meeting to discuss and take possible action concerning the litigation for the Albuquerque-Bernalillo County Air Quality Control Board, Board of County Commissioners of Bernalillo County vs. City of Albuquerque, 202-CV-2-23-09295 and GCC Rio Grande et al v. Albuquerque Bernalillo County Control Board, City of Albuquerque vs City of Albuquerque and Air Board, D-202-Cv-2023-09435.

- Announcement about scope of discussion in closed session and taking of any motions and votes based on closed session discussion. (Board)

At 7:58 pm the board came out of the closed session. Chair Paul announced that the board received updates from Counsel Sedillo-Lopez about the status and process of the case, had a question and answer session, and voted to reaffirm that the Chair and Vice Chair are Counsel's point of contact. The motion was moved by Member Calman and seconded by Member Galewsky. The motion passed by the following vote:

For: 5 – Calman, Eberlein, Galewsky, Richards, Paul
Against: 0 Abstain: 0 Absent: 2 - Armijo, Lewis

- G. Notice of resignation of Dr. Johnnye Lewis (Board)

Chair Paul stated that Dr. Lewis submitted her resignation in December and that she will be missed.

- H. Discussion and possible action on Air Quality Control Board counsel contract renewal or extension (Board)

Counsel Sedillo-Lopez stated that she currently has a contract the expires on February 24 and that she is willing to go until December 31, 2024. Her reasoning is that it is very difficult to be the counsel for the air board when she also has a legislative job, but she feels very responsible for completing the litigation.

After some discussion by the board, Member Calman made a motion to reauthorize Counsel Sedillo Lopez's contract and Vice Chair Richards seconded.

For: 5 – Calman, Eberlein, Galewsky, Richards, Paul
Against: 0 Abstain: 0 Absent: 2 - Armijo, Lewis

Chair Paul then asked Counsel Sedillo-Lopez to work with the city to formalize the agreement.

I. Discussion of Possible Future Agenda Items (Board)

- Nominations for Chair and Vice Chair (Chair Paul)
- SO2 report from EHD in either March or April (Chair Paul)
- Motion for Stay- Advanced Clean Vehicles (Chair Paul)
- Closed Meeting (Member Calman)
- Meeting Locations and Dates (Vice Chair Richards)

6. SECOND PUBLIC COMMENT OPPORTUNITY

Jane Yee and Nicholas Maxwell gave comment during the second public comment opportunity.

7. OTHER BUSINESS

No other business was discussed.

8. ADJOURNMENT

Chair Paul adjourned the meeting at 8:19 p.m.

NEXT SCHEDULED BOARD MEETING: March 13, 2024 at 5:30 p.m.

SUBMITTED:

READ AND APPROVED:

Paul J. Rogers, Interim Director
Environmental Health Department

Joseph Galewsky, Chair
Albuquerque-Bernalillo County Air Quality
Control Board