

MINUTES – March 13, 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 5:30 pm.

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

Present: 6 – Dennis Armijo, Judy Calman, Elis Eberlein, Joseph Galewsky, Kitty Richards, Maxine Paul

Absent: 0

Vice Chair Richards and Member Calman attended virtually.

2. CONSENT AGENDA

A. Approval of the March 13, 2024 Meeting Agenda

B. Approval of the February 14, 2023 Meeting

Vice Chair Richards had a change to the 2/14/24 minutes and requested that they be removed from the consent agenda and put on the agenda. Member Armijo moved to approve the agenda with the removal of the 2/14/24 minutes. Member Eberlein seconded and the motion passed by the following vote.

For: 6 – Armijo, Calman, Eberlein, Galewsky, Richards, Paul

Against: 0 Abstain: 0 Absent: 0

Vice Chair Richards requested that a brief summary of the board’s discussion be added to the 2/14/24 minutes. Chair Paul agreed and after asking if there was any other discussion and hearing none stated that the approval of the 2/14/24 minutes would move to April’s meeting.

3. AIR PROGRAM REPORT

Presentation- Fugitive Dust Mitigation Plan and Public Comment Period

Allen Smith, Regulation Development Coordinator of EHD gave a brief presentation about the Fugitive Dust Mitigation Plan and public comment period. He then stood for questions from the board along with Deputy Director Chris Albrecht.

4. FIRST PUBLIC COMMENT OPPORTUNITY

Marla Painter gave a general comment. Ken Ortiz, Carlos Garcia, Pete Domenici and Jane Yee gave a comments on specific items.

5. REPORTS/DISCUSSION/ACTION ITEMS

A. Nominations of candidates for Chair and Vice Chair for 2024-2025 (Board).

Chair Paul nominated Member Galewsky for the position of chair. Member Galewsky accepted the nomination. Vice Chair Richards nominated Member Calman for the position of Vice Chair. Member Calman accepted the nomination. Chair Paul asked for any other nominations and hearing none closed the nominations for the meeting. She then reminded the board that they will have another chance to make additional nominations at next month's meeting.

B. Meeting location discussion and possible action on amending the AQCB Bylaws to change meeting location (Board).

Chair Paul stated that the possible change to the bylaws is changing the location from City Council Chambers to the basement hearing room of Plaza del Sol. Catalina Lehner Control Strategies Manager of EHD showed a draft of the proposed language and stood for questions from the board. After some discussion by the board, Member Armijo made a motion to amend the bylaws to specify the basement hearing room of 600 2nd St NW Albuquerque, New Mexico instead of the Vincent Griego Council Chambers. Member Eberlein seconded and the motion passed by the following vote:

For: 6 – Armijo, Calman, Eberlein, Galewsky, Richards, Paul
Against: 0 Abstain: 0 Absent: 0

After the vote Chair Paul called for a break from 6:45 to 6:55 pm.

C. 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).

D. Discussion and possible action on Motion for Stay, filed by Automundo de Garcia, 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 at the last month's meeting the discussion left off with trying to coordinate with EIB. Chair Paul said that she and Counsel Sedillo Lopez have

reached out the EIB chair and counsel and they responded that they have scheduled their own hearing on this topic but that she and Counsel Sedillo Lopez are looking into whether it can be a joint hearing.

Chair Paul said that that the board would address items 5.C and 5.D at the same time since they are the same motion.

Pete Domenici representing NMADA and Automundo de Garcia gave a statement on the legal argument and basis for the motion to stay. Counsel Domenici stated that the appeal could take some time and the motion to stay would help prevent irreparable harm to the auto dealers' businesses. Mr. Domenici went on to give examples of how the businesses could be harmed when Advanced Clean Vehicles goes into effect if the motion is not granted.

Mr. Domenici then stood for questions from the board. In response to a couple of questions, he stated that the EIB has scheduled a hearing for March 22, 2024 with Felicia Orth as the hearing officer and that there was no mention of it being a joint hearing at the pre-hearing meeting. He also said that appellants for the appeal are procedurally required to go before the EIB and the AQCB with the motion to stay first for a decision before approaching the court of appeals with a stay.

Counsel Sedillo Lopez stated in response to a question by Vice Chair Richards that if the Air Board wanted to join EIB's hearing they would have to set it up as a special meeting.

After discussion by the Board, Vice Chair Richards made a motion for the Chair to reach out to EIB with the request to join their already scheduled hearing with Felicia Orth as the hearing officer and appropriate public notification. Member Galewsky seconded and the motion passed by the following vote.

For: 5 – Armijo, Eberlein, Galewsky, Richards, Paul
Against: 0 Abstain: 0 Absent: 1- Calman

E. Discussion and Possible Action on Draft Order resolving the request to correct the regulation. (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).

Chair Paul stated that they heard from Mr. Domenici earlier during public comment on this item and then opened the floor for discussion amongst the board.

Member Galewsky stated that the transcript seems very clear in the questions he asked and the answered he received during the HEEI hearing. Vice Chair Richards said that she thinks that there was a misunderstanding that happened during the hearing. In the transcript, Member Lewis mentioned the one-mile radius of overburdened communities and that Vice Chair Richards then made another friendly amendment adding the BACT provision for about specific chemicals. Vice Chair Richards stated that she did not intend for that amendment to be within the one-mile radius. Counsel Sedillo Lopez stated that she drafted, had the chair and vice chair

review, and then filed the final order during a time she believes that the board did not exist because her understanding was that you comply with the regulations until they are reversed by the Court. She said that she believes that the change requested is a substantive change not just an errata, and that the board does not have the authority to make it without a new rulemaking hearing.

She stated that she drafted this order and that it essentially says the Board reviewed the motion for correction, discussed it, and concluded that the board had no authority to correct a published regulation if there was a correction to be made and no action was taken.

After discussion by the board, Vice Chair Richards made a motion to accept the order as written with the corrections that Counsel Sedillo Lopez made during the meeting. The motion was seconded by Member Armijo and passed by the following vote.

For: 5 – Armijo, Eberlein, Galewsky, Richards, Paul
Against: 0 Abstain: 0 Absent: 1- Calman

F. **CLOSED MEETING:** The Board will go into closed meeting with the Board Attorney 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 vs Albuquerque Bernalillo County Air Quality Control Board, City of Albuquerque. D-202-CV-2023-09435, and appeals of Clean Cars II regulations and HEEI regulation (Board).

- After the closed meeting, the board will announce the scope of discussion in the closed session and taking of any motions and votes based on closed session discussion (Board).

At about 7:55 pm the board went into closed session with Vice Chair Richards [[+and Member Calman+](#)] attending virtually. The board came out of closed session at 8:40 pm and Chair Paul announced that the scope of discussion. She stated that the board and board attorney discussed the HEEI appeal, the Advanced Clean Vehicles appeal, and various court cases involving the Board and those not involving the board. Along with retaining board attorney Antoinette Sedillo Lopez for any other appeals that come up.

Chair Paul put forth a motion for retaining Counsel Sedillo Lopez to work on the Advanced Clean Vehicles appeal. Member Armijo moved in support. Member Eberlein seconded and the motion passed by the following vote:

For: 6 – Armijo, Calman, Eberlein, Galewsky, Richards, Paul
Against: 0 Abstain: 0 Absent: 0

6. SECOND PUBLIC COMMENT OPPORTUNITY

Nicholas Maxwell gave comment during the second public comment opportunity.

7. OTHER BUSINESS

- A. Reports from Committees (Board) - No Reports
- B. Possible Future Agenda Items (Board)
 - Highlights on Mapping – Vice Chair Richards
 - SO2 milestone report – Chair Paul
 - Closed meeting

8. ADJOURNMENT

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

NEXT SCHEDULED BOARD MEETING: April 10, 2024 at 5:30 p.m.

SUBMITTED:

READ AND APPROVED:

Paul Rogers
Interim Director
Environmental Health Department

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