

## Albuquerque-Bernalillo County Air Quality Control Board



### **MINUTES –August 10, 2022** **Regular Virtual Meeting**

#### **AQCB MEMBERS PRESENT**

Ms. Lauren Meiklejohn (CITY), Chair  
Ms. Maxine Paul (CITY), Vice Chair  
Ms. Judy Calman (COUNTY)  
Dr. Elis Eberlein (CITY)  
Dr. Johnnye Lewis (COUNTY)  
Ms. Kitty Richards (COUNTY)

#### **AQCB MEMBERS ABSENT**

Ms. Elizabeth Reitzel (CITY)

#### **AQCB LIAISONS ABSENT**

Ms. Connie Chavez (Bernalillo County  
Planning Commission Liaison)  
Mr. Joseph Cruz Jr. (City of Albuquerque  
Environmental Planning Commission  
Liaison)

#### **STAFF PRESENT**

Mr. Albert Chang, Asst. City Attorney  
Ms. Maria Gallegos, EH Comm. Liaison  
Mr. Ken Miller, Acting AQCB Liaison  
Ms. Carina Munoz-Dyer, EH Supervisor  
Ms. Elizabeth Pomo, Sr. EH Scientist  
Mr. Dwayne Salisbury, EH Manager

#### **STAFF PRESENT (Continued)**

Ms. Antoinette Sedillo Lopez, AQCB Atty.  
Ms. Kelsea Sona, Asst. City Attorney  
Ms. Jane Yee, Asst. City Attorney

#### **MEMBERS of the PUBLIC PRESENT**

Mr. Matt Cross Guillen  
Ms. Theresa DuBois  
Ms. Ella Joan Fenoglio  
Ms. Nora Garcia  
Ms. Jazmine Johnston  
Ms. Maslyn Locke  
Rep. Moe Maestas  
Ms. Virginia Necochea  
Mr. Karl Pergola  
Mr. Forest Replogle  
Ms. Rosemary Romero  
Ms. Sue Schuurman  
Mr. Lauro Silva  
Ms. Nancy Simmons  
Mr. Glenn Streibig  
Ms. Cara Vandergriff  
Mare  
Navarro  
Rob

Due to COVID-19 this meeting was held via Zoom video conference.

#### **CALL TO ORDER**

Chair Meiklejohn called the meeting to order at 5:34 p.m.  
Member Reitzel was absent.

#### **Item # 1 Approval of the agenda (Chair)**

Member Richards moved to approve the agenda with omission of item #3, which was removed from the agenda due to Member Reitzel's absence. Vice Chair Paul seconded. The motion passed by a vote of 6-0.

**Item # 2 Approval of the August 1, 2022 meeting minutes (Chair)**

Chair Meiklejohn stated she had not had an opportunity to review the August 1, 2022 meeting minutes and tabled them for the September meeting.

**AIR PROGRAM UPDATE**

The Air Quality Program did not provide a written report for August. Instead Ken Miller, Acting AQCB Liaison, provided a brief verbal update letting the Board know that the information EHD had recently shared with Board members regarding the types of permits EHD issues, what permitting information EHD posts on its website, and how members of the public can access permitting information that EHD does not post on its website had been added to the EHD Documents Provided to the Air Board folder on the Board's webpage.

Member Lewis asked if the next agenda could include a discussion of how the monthly Air Quality Report could be organized in a more useful way. Chair Meiklejohn responded in the affirmative and noted that she is in the process of setting up a meeting with Director Martinez to discuss the issue.

Member Richards mentioned the discussion at the previous meeting regarding the posting of notices of violation (NOVs) on EHD's website and said she hoped the Board could get an update on that in a future report. Mr. Miller responded that it is a long-standing policy of the department not to post NOVs on its website and that the policy was put in place for some specific reasons, so it not something the department is going to change without thinking through all the implications of doing so. That will involve discussions at the highest levels of the department and will take some time, but EHD hasn't forgotten about it and will get back to the Board on it.

Finally, Chair Meiklejohn let everyone know that the Board is working with EHD to fine tune how the Air Program Report is put together so it better supports the mission of the Board, keeps the public informed about what is happening, and gives Board members an opportunity to get more in-depth answers to questions that they have.

**PUBLIC COMMENT**

The Board did not take comment during the first public comment opportunity.

**REPORTS/DISCUSSION/ACTION ITEMS**

**Item # 3 Update on the Board's public comment policy (Public Concerns Committee)**

Item #3 was removed from the agenda due to Member Reitzel's absence.

**Item # 4 Discussion and possible action on whether to delegate authority to the Hearing Officer to recommended a decision on the Joint Motion to Remand the Permit, AQCB Docket No. 2020-1, In the Matter of the Petition for a Hearing on the Merits Regarding Air Quality Permit No. 3340-RMD [New Mexico Terminal Services, LLC] (Board)**

Nancy Simmons, Hearing Officer, explained that it was her recollection that when she was first appointed as the hearing officer in this matter, the Board delegated authority to her to recommend a decision on the merits of the appeal. When the joint motion to remand the permit, which would dispose of the petition without a hearing on the merits, was filed one of the parties questioned whether she also had the authority to recommend a decision on the motion. Ms. Simmons responded that she believed she did, but told the parties that it was acceptable to her to ask the Board whether it wanted her to recommend a decision on the motion.

Ms. Simmons asked the parties for their position on the matter. Both EHD and Petitioners stated through their attorneys that they did not object to the hearing officer recommending a decision on the joint motion to remand the permit. Following discussion by the Board and responses to questions from Board members by Ms. Simmons, the attorneys representing the parties, and Ms. Sedillo Lopez, the Board's attorney, Member Lewis moved to delegate authority to the Hearing Officer to recommend a decision on the motion. Member Richards seconded. The motion passed by a vote of 5-1.

The full discussion regarding delegation of authority to the hearing officer to recommend a decision on the joint motion to remand the permit was transcribed by Court Reporter Theresa DuBois with Albuquerque Court Reporting Service, LLC. The transcript is available for review during normal business hours in the office of the Hearing Clerk, located at 1 Civic Plaza NW, Room 3023, Albuquerque, NM 87102. To review the transcript, contact the Hearing Clerk at 505-768-2660 or [airboard@cabq.gov](mailto:airboard@cabq.gov). A pdf copy of the transcript has also been placed in the online repository of documents filed in this proceeding. The repository is available at [https://www.dropbox.com/sh/ixgnvai4j7pajuw/AADFrrOYsYq\\_IYQLzfKAUyUVa?dl=0](https://www.dropbox.com/sh/ixgnvai4j7pajuw/AADFrrOYsYq_IYQLzfKAUyUVa?dl=0) and the transcript is document number 67.

**Item # 5      Hearing and possible action on the Joint Motion to Remand the Permit, AQCB Docket No. 2020-1, In the Matter of the Petition for a Hearing on the Merits Regarding Air Quality Permit No. 3340-RMD [New Mexico Terminal Services, LLC] (Board)**

The hearing began at approximately 6:08 p.m.

Maeslyn Locke, attorney for the Petitioners, presented Petitioners' position on the joint motion to remand permit no. 3340-RMD to EHD. Jazmine Johnston, attorney for EHD, then presented EHD's position on the motion. Ms. Locke and Ms. Johnston answered questions from Ms. Simmons and the Board during their presentations. Kelsea Sona, Assistant City Attorney, also answered questions from Ms. Simmons and the Board. Karl Pergola and Nora Garcia gave public comment.

The hearing concluded at approximately 7:04 p.m. The Board allowed Ms. Simmons 20 days to file her recommended decision, and Ms. Simmons granted the parties 10 days to comment on her recommended decision after she files it.

The hearing on the joint motion to remand the permit was transcribed by Court Reporter Theresa DuBois with Albuquerque Court Reporting Service, LLC. The transcript is available for review during normal business hours in the office of the Hearing Clerk, located at 1 Civic Plaza NW, Room 3023, Albuquerque, NM 87102. To review the transcript, contact the Hearing Clerk at 505-768-2660 or [airboard@cabq.gov](mailto:airboard@cabq.gov). A pdf copy of the transcript has also been placed in the

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**Item # 6 Update on the Cumulative Impacts Committee (Rosemary Romero)**

Rosemary Romero, cumulative impacts committee facilitator, gave a brief update on the committee's progress and expressed confidence that the committee is on track and that there will be a proposed regulation at some point.

**Item #7 Discussion and possible action on membership on Board committees (Board)**

Chair Meiklejohn explained the purpose of the Board's committees, how they operate, and how they should report back to the Board on their work. She then proposed the following changes to the committees:

- The addition of Member Lewis to the Public Concerns Committee (with Member Reitzel) to look into the precautionary principle and community expert testimony
- The formation of a new Interagency Liaison Committee, comprised of Member Eberlein and Vice Chair Paul, to reach out to other agencies working on similar issues as the Air Board
- Continuation of the EHD Liaison Committee with only Chair Meiklejohn to continue working to improve the workflow, capacity, and efficiency between the Board and EHD
- Continuation of the Information Committee with Member Calman and Member Richards to look more closely at diesel regulations

Member Paul suggested that details regarding each committee's work should be left to the members on each committee, and Chair Meiklejohn agreed. The Chair then responded to a request for clarification from Member Richards regarding the Information Committee's role in investigating diesel regulations, stating that she envisioned the committee gathering information and looking at what, if anything, the Board might do in the future to address diesel emissions. Vice chair Paul then moved to accept the new committee assignments with the proviso that some of the details of the committees' work was yet to be determined. Member Lewis seconded. The motion passed by a vote of 5-0, Member Calman having left the meeting early.

**Item #8 Discussion of possible future agenda items (Board)**

Member Richards requested an update from Director Martinez or his staff on DART (real-time monitoring) and a presentation on the GIS mapping on EHD's website indicating where permitted facilities are located.

Member Eberlein requested a discussion of how to address the issue of what constitutes a reasonable time to construct an asphalt plant or other type of permitted facility. Ms. Sedillo Lopez, the Board's attorney, suggested that could be addressed through a rule change, potentially as part of a larger project to update of all the Board's rules over a period of time. Ms. Sona indicated that EHD would prefer that the Board defer having such conversations until both pending permit appeals are resolved to avoid prejudicing the rights of any of the parties in those matters. Ms. Sedillo Lopez added that waiting until after the appeals are resolved would allow the Board to see the current rules in action, after which members might have some concrete

thoughts about possible changes. Member Lewis noted her agreement with Member Eberlein's statements regarding things that need to be clarified to give all parties a clearer map on how these things are going to proceed. Vice Chair Paul requested that the chicken and egg zoning problem be part of the discussion when the current appeals are resolved.

Chair Meiklejohn suggested a presentation by Ms. Sedillo Lopez on the process of updating all of the Board's rules and the time and resources that might require. Member Lewis suggested that the age of rules might be a factor to consider when determining what rules need to be updated. Mr. Miller acknowledged that many of the Board's rules need to be updated and noted that EHD has a plan for what it must do/is likely to have to do/would like to do over the next 2-3 years. Ms. Sona added that there are efforts to get new staff into the control strategies division and encouraged the Liaison Committee to meet with Mr. Miller to talk about EHD's plans and capabilities. Member Richards stated that she would like to see information from both Ms. Sedillo Lopez and EHD regarding which rules are most important for the Board to address and how to prioritize the needed changes.

**PUBLIC COMMENT**

During the second public comment opportunity, Mr. Lauro Silva thanked the Board and EHD for taking into account many of the considerations the community has been looking at regarding both cumulative impacts and rulemaking and asked that community involvement be incorporated as much as possible in some of the planned rulemakings.

**OTHER BUSINESS**

Chair Meiklejohn noted that in her capacity as Chair she granted a joint motion for stay of proceedings in the matter of the Star Paving permit appeal (permit no. 3448).

**ADJOURNMENT**

Chair Meiklejohn adjourned the meeting at 7:49 p.m.

**NEXT SCHEDULED BOARD MEETING:** September 14, 2022 at 5:30 p.m.

SUBMITTED:

READ AND APPROVED:

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Mr. Angel Martinez Jr.  
Director  
Environmental Health Department

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Ms. Lauren Meiklejohn  
Chair  
Albuquerque-Bernalillo County Air Quality  
Control Board