

ALBUQUERQUE-BERNALILLO COUNTY
AIR QUALITY CONTROL BOARD

REGULAR MONTHLY MEETING

March 12, 2014

5:43 p.m.

Vincent E. Griego Chambers
Albuquerque-Bernalillo County Government Center
One Civic Plaza, Northwest
Albuquerque, New Mexico

Item #4: Request for a Hearing in the Matter of the
Petition to Amend Title 20, Chapter 11 of the New
Mexico Administrative Code to Require Review and
Consideration of Cumulative Air Impacts (AQCB
Petition No. 2014-1) -- Mr. Eric Jantz, Environmental
Law Center

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Dona Upson, MD, City, Chair
Ms. Jane Cudney-Black, City
Mr. Jens Deichmann, County
Robert Goldstein, MD, County
Ms. Deborah L. Stover, County
Ms. Kelsey Curran, Vice Chair, City
Mr. Augustin Grace, City

Dr. Lenton Malry, BCPC Liaison
Ms. Margaret Nieto, Secretary to the Board
Mr. Danny Nevarez, Deputy Director, EHD

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1 BOARD MEMBER UPSON: Moving on to item
2 number 4, request for a hearing in the matter of the
3 petition to amend Title 20, Chapter 11 of the New
4 Mexico Administrative Code to require review and
5 consideration of cumulative air impacts, AQCB
6 permittee number 2014-1. That's going to be
7 Mr. Eric Jantz from the Environmental Law Center.

8 And just to go over sort of the ground
9 rules of how we're going to do this, the petitioner
10 will have 15 minutes initially. Okay, 15 to 20
11 minutes, initially, and then five minutes later
12 on -- after those in opposition to the petition,
13 he'll have five minutes to reply to that.

14 So then after the petitioner, we're going
15 to ask who in the audience supports the petition,
16 and that will just be a show of hands. And then if
17 there are people in the audience who would like to
18 provide additional comments that are not covered by
19 the petitioner -- so something that's information
20 that's new; we don't want to keep hearing the same
21 thing over and over -- then you'll have a chance to
22 speak at that time.

23 And then the Environmental Health
24 Department will have up to ten minutes, in response,
25 in opposition, and the Association of Commerce and

1 Industry will also have up to ten minutes.

2 After those presentations, we'll ask who
3 in the audience opposes the petition by a show of
4 hands, and again, if there are people in the
5 audience who have new information to offer, then
6 you'll be invited to present that. Again, we don't
7 want repetition. And then we'll close comments and
8 we'll go to Board deliberation.

9 I'd like to reiterate that this petition
10 is for a hearing. It's not the hearing itself. And
11 we're not going to be judging the merits of a
12 hearing. We're going to be judging whether we have
13 jurisdiction over the topic and then, as a Board, we
14 can also decide whether or not a hearing is
15 justified in our opinions.

16 So we'll have Mr. Jantz.

17 MR. JANTZ: Thank you, Madam Chair,
18 members of the Board. My name is Eric Jantz. I'm a
19 staff attorney with the New Mexico Environmental Law
20 Center. I'm here with Emily Alsen. She's our legal
21 intern this semester from the University of New
22 Mexico Law School.

23 We are here to present SWOP's petition,
24 the reason why this Board should hold a hearing on
25 the merits, and SWOP's petition for a rule change to

1 require the inclusion of an ordinance for
2 consideration of cumulative air impacts.

3 Now, as I go through this presentation,
4 I'd like the Board to keep in mind three things and
5 ask itself three questions during this about whether
6 or not it should hold a hearing on the merits of our
7 petition. One: Is there a problem? Have we
8 identified a problem on the ground in the petition
9 for our rule change? Second: Is there authority
10 for the Board to consider and adopt this proposed
11 rule change? And third: Does the proposed
12 ordinance offer a solution, a remedy, to the problem
13 that's been identified? And if the answer to those
14 three questions is yes, then this Board should hold
15 a hearing on the merits of SWOP's petition, and SWOP
16 submits that the answer to those three questions are
17 yes.

18 I want to go through each in turn. First,
19 is there an air pollution problem on the ground?
20 The answer to that is yes. And as I talk about this
21 issue, I'm going to stress some slides from some of
22 the folks who are members of SWOP and in communities
23 who are impacted disproportionately by cumulative
24 air impacts. All of these pictures are from the San
25 Jose neighborhood downtown, in the South Valley, and

1 all are from residential areas that are located near
2 industrial zones.

3 Now, the petition cites several studies,
4 in particular the Morello-Frosch and Straif studies
5 that indicate there is a causal link between air
6 pollution and disease, including cancer. Those
7 studies also indicate that low-income communities
8 and minority communities are much more susceptible
9 to the health impacts of cumulative air impacts than
10 nonminority and affluent communities.

11 Now, these studies are more generalized.
12 They're not particular to Albuquerque/Bernalillo
13 County, but the Place Matters study, which I have
14 attached to the petition, is. And the Place Matters
15 study confirms the conclusions in these more general
16 studies for Albuquerque and Bernalillo County.

17 In that study, Place Matters found that
18 exposure to environmental hazards -- and granted, it
19 looked at many different environmental hazards,
20 including air pollution, and identified some very
21 specific sources of air pollution: Industrial
22 emissions, traffic emissions, and hazardous air
23 pollutants -- all those are more likely to occur in
24 low-income communities and Latino communities in
25 Albuquerque and Bernalillo County.

1 The study, the Place Matters study, also
2 concluded that life expectancy in these
3 neighborhoods that were more at risk for being
4 exposed to pollution hazards was 5.2 years less than
5 the life expectancy in more affluent and nonminority
6 communities. So where you live in
7 Albuquerque-Bernalillo County affects how long you
8 live. And that's in part due to living near
9 environmental hazards, including air pollution.

10 This is a conclusion that is supported by
11 findings of this Board's 2008 Environmental Justice
12 Task Force. That Environmental Justice Task Force
13 found two relevant findings that are relevant to
14 this petition. One is that there is inadequate
15 enforcement of industrial emissions, air pollution
16 emissions in Bernalillo County. And second, the
17 existing health burdens on low-income and minority
18 communities make them more susceptible to health
19 problems from air emissions.

20 So in answer to the first question,
21 whether there's enough information in the petition
22 to identify a problem, the answer is yes.

23 And these next two photos were taken from
24 the window of a residence near these industrial
25 sites.

1 Now, the second question regards: Does
2 this commission have the authority, the
3 jurisdiction, to entertain and adopt SWOP's proposed
4 rule change? The answer to that question is also
5 yes. The Air Quality Act, the Clean Air Act, are
6 the specific sources of authority for this. In the
7 Air Quality Control Act, the Board's authority stems
8 from two places. One is the general charge to
9 prevent and abate air pollution, and second is the
10 Air Board's authority under section 74-2-5(C)(6)(a)
11 through (e), and in particular subsection (C)(6)(e)
12 to require any information regarding the emissions
13 of air contaminants and pollutants. So this is a
14 mandate for gathering and recording on data, which
15 is really what this ordinance is about. It's a
16 data-generating and reporting ordinance.

17 Now, there are some limitations on this
18 Board's authority. Those limitations are very
19 limited. The Board can't enact standards that are
20 more stringent than the Clean Air Act standards in
21 three instances, and I bullet-pointed them here.
22 Those are protecting the visibility and achieving
23 NAAQS, performance standards for hazardous air
24 deciare pollutants, and regulating emissions from
25 waste incinerators. And the proposed ordinance

1 doesn't set standards for any of those things, and
2 thus doesn't conflict with them.

3 More important, though, is that in 1987,
4 the New Mexico Attorney General rendered an
5 opinion -- and I passed this out to you before the
6 proceeding of today's hearing -- where the AG was
7 asked this very same question, and the AG's opinion
8 was this. In those areas not preempted by the Clean
9 Air Act, and not specifically -- and that's
10 important -- specifically precluded in the Air
11 Quality Control Act, New Mexico and, in this case,
12 the Board, since this Board and the Environmental
13 Improvement Board have the same powers, just in
14 different geographical regions, New Mexico can
15 promulgate standards and regulations that are more
16 stringent than federal standards and regulations,
17 and can promulgate standards and regulations for
18 which there is no equivalent standard or regulation.
19 So the fact that there's no cumulative air impacts
20 mandate in the Air Quality Act, Air Quality Control
21 Act, doesn't preclude this Board from adopting the
22 proposed rule change at all.

23 Now, with respect to the third question,
24 will the proposed ordinance, proposed rule change,
25 address the problem, the answer to that question is

1 yes, as well. This is a rule that will mandate the
2 monitoring and generation of data. It does nothing
3 more than that. And it's not designed to generate
4 data just for the sake of generating data. It's to
5 be used for a purpose. And the purposes are to help
6 this Board and division understand permitting
7 actions more clearly, putting the individual air
8 permit applications in the proper context where they
9 lie in space and time. That, in turn, helps the
10 division craft permit conditions that could help
11 mitigate cumulative air impacts on a particular
12 community. It would also help the division, in our
13 estimation, enforce existing standards.

14 There's actual data now given to the Board
15 about whether standards are being violated, and as
16 the 2008 Environmental Justice Task Force found,
17 that was a weakness in the division's authority and
18 process.

19 And finally, it will help communities. It
20 will help communities be informed of the risks that
21 they face due to cumulative air impacts and air
22 pollution, and it will help them help the division
23 craft permit conditions that are appropriate for
24 each community. Right now, as this slide indicates,
25 communities are forced to take it upon themselves to

1 understand what's being emitted in their
2 communities.

3 This is a citizen science bucket brigade
4 here. They have taken air samples, they ship them
5 off to experts for analysis, and only then do they
6 properly understand what's being emitted in their
7 communities. That is, we submit, not the proper
8 place for community members. It should be the
9 responsibility of the polluter to make public what
10 they're putting out in the air and what's already
11 out there. It's simply a matter of personal
12 responsibility, we think.

13 Now, before I conclude, I want to address
14 a couple of issues and concerns that were brought up
15 in the ACI, Association of Commerce and Industry,
16 and Environmental Health Department memoranda in
17 opposition to this rulemaking.

18 First, I'd like to note for the Board that
19 there was a lot of verbiage on the cost, the
20 prospective cost of this, as well as concerns about
21 the scientific sufficiency of the Place Matters
22 study, and I'd submit to the Board that both of
23 those things are more appropriate for hearing on the
24 merits, that that's something that's not -- these
25 are substantive issues that can be addressed by the

1 parties to a merits hearing, and would allow for us
2 to present our experts, the opposition to present
3 their experts, and have cross-examination which
4 would allow the Board to make a determination about
5 whether the costs were actually what the opponents
6 say they are, and it also gives the Board the
7 opportunity to weigh the cost of not enacting this
8 ordinance, the health costs, the costs due to lost
9 productivity due to illness, public health costs,
10 things like that.

11 So all of those things are things that are
12 better left for the merits, as well as the
13 sufficiency of not only the Place Matters studies,
14 but the toxic hazards study that was attached to the
15 Environmental Health Department's memorandum in
16 opposition.

17 So we'd ask that the Board disregard those
18 issues in determining whether or not to hear the
19 merits and save those issues for a hearing on the
20 merits.

21 Now, more to the issue that is in front of
22 the Board today, this evening, and that's its
23 jurisdiction. The ACI memorandum had several
24 arguments in opposition to this Board's
25 jurisdiction, none of which have merit. First it

1 argues that the proposed rule change violates
2 stringency requirements. But as I have said, this
3 proposed rule change doesn't set any standards and
4 doesn't contemplate denial of permits for a showing
5 of disproportionate cumulative impacts. It's a
6 data-generating statute or rule only. And so that
7 argument is premised on an assumption that permit
8 denial for disproportionate cumulative impact is
9 something that's going to happen and something
10 required under this proposed rule, and it's not.

11 Second, that same argument posits or
12 suggests that the very fact that there's no
13 cumulative impacts section in the Air Quality
14 Control Act automatically means that this proposed
15 rule violates stringency standards. But again,
16 that's without merit. As the Attorney General said
17 in 1987, if there is no equivalent in the Clean Air
18 Act or Air Quality Control Act, this Board has the
19 authority to promulgate that rule, and it should.

20 Secondly, the ACI argues that this rule
21 violates statutory deadlines, but again, that's an
22 argument without merit. This, as we conceive it, is
23 a precursor to a permit decision. So for example,
24 in the regulations governing construction permits at
25 20.2.72.203 NMAC -- and just as an aside, there's

1 similar language for operating permits -- we see
2 this as -- those regulations require that the
3 division can require any kind of information before
4 deeming a permit application administratively
5 complete. And we think that this would be that type
6 of information, that the monitoring and cumulative
7 impacts analysis would be a precursor to a permit
8 decision, would be essentially part of an
9 application, and that the application wouldn't be
10 deemed administratively complete until that
11 information was given to the division. At that
12 point, the division could consider the permit
13 administratively complete and the statutory
14 deadlines would unfold as they're intended to.

15 Third, ACI argues that this proposed rule
16 fails to set out a standard. That's absolutely
17 true. It doesn't set standards at all. But setting
18 standards is not the exclusive way by which this
19 Board can prevent and abate air pollution. If ACI's
20 legal interpretation of the Air Act were taken as
21 true, then all the other provisions for monitoring,
22 reporting information, technical assistance,
23 financial assistance, would be surplus, surplus
24 information, and that would violate the standard
25 rule of statutory construction the judges use all

1 the time.

2 Fourth, the ACI argues that the proposed
3 rule is void for vagueness. Arguably this is a
4 merits argument, but in any event, it's assumed that
5 there are criminal penalties levied because of the
6 violation of the statute if there's a finding of
7 disproportionate cumulative impact. Again, that's
8 not true. There's not even permit denial
9 contemplated by this rule change, much less the
10 criminal penalties. And in any event, the worst
11 that could happen under our conception of this rule
12 is that a permit application would be rejected and
13 sent back for additional information. So that
14 argument is without merit.

15 And finally, ACI alleges this is a back
16 door zoning requirement, zoning ordinance. It's
17 not. As I said before several times, this rule
18 doesn't contemplate allowing for permit denial. It
19 simply is an information-gathering tool that the
20 division could use to fashion permit conditions, and
21 that's all. So without permit denial authority, the
22 division can't say where a particular operation
23 might be able to locate. And that argument is
24 likewise without merit.

25 Now, just to sum up, with respect to these

1 three questions, our petition certainly does present
2 evidence of a problem. This Board clearly has the
3 authority to adopt the proposed ordinance and I
4 should say that it needn't adopt it as written.
5 That's part of the administrative process, is going
6 through, hearing the evidence, and fashioning
7 changes in the ordinance based on what evidence this
8 Board hears.

9 And third, the ordinance will address the
10 problem that we've identified, and that is a problem
11 with communities.

12 So with that, Madam Chair, members of the
13 Board, we urge you to hold a hearing on the merits
14 of this petition. I thank you for your attention,
15 and I'm happy to answer any questions that you may
16 have.

17 BOARD MEMBER UPSON: Thank you, Mr. Jantz.
18 Any questions from the Board? Mr. Deichmann.

19 BOARD MEMBER DEICHMANN: Thank you, Madam
20 Chair. I have a hard time getting this thing going.
21 Mr. Jantz --

22 MR. JANTZ: I can hear you.

23 BOARD MEMBER DEICHMANN: So you suggest
24 that costs and scientific sufficiency should be a
25 matter of a hearing on the merits and not on this

1 particular petition. And yet you provided a report
2 for to us read, so it was hard to avoid.
3 Nonetheless, my question is: In your opinion, what
4 are the criteria by which the Board separates out
5 the merits from the petition itself?

6 MR. JANTZ: And that's, Madam Chair, Board
7 Member Deichmann, a very good question, and I'm not
8 sure that I have a very good answer for it. It's
9 not entirely clear where the line is drawn. I mean,
10 I think that it may be the case that the Board
11 should disregard all of these kinds of information,
12 any scientific or specific factual information, and
13 just consider whether it has the jurisdiction, the
14 authority, to take a look at this ordinance. I
15 mean, that's one interpretation.

16 I think it's probably the job of your
17 counsel to guide you on the proper line to follow,
18 where the line is drawn. But my opinion, in my
19 estimation, I think if we've made at least a
20 credible showing that there's a problem, that the
21 Board thinks it has authority, and that there is at
22 least a credible suggestion that this proposed rule
23 will deal with the problem, then that should be the
24 analysis the Board undertakes. But again, I think
25 it's up to the Board's counsel to guide the Board

1 specifically. And I'm unaware of any particular
2 guidelines that say one way or another.

3 BOARD MEMBER DEICHMANN: Thank you. We'll
4 rely on that. I was just curious what your opinion
5 was, so thank you.

6 MR. JANTZ: You're welcome, Board Member
7 Deichmann.

8 BOARD MEMBER UPSON: Dr. Goldstein.

9 BOARD MEMBER GOLDSTEIN: Mr. Jantz, you
10 said this is largely an information-collection
11 proposal that you're bringing before us. How do you
12 envision the Air Quality Division will use the
13 information that is collected?

14 MR. JANTZ: Madam Chair, Dr. Goldstein, as
15 we stated, as I stated in my presentation, I think
16 they could be used in a number of ways. One, it
17 could be used to fashion permit conditions that
18 would mitigate cumulative air impacts, so stuff like
19 hours of operation, setbacks from residential areas,
20 stack heights, things like that, to help mitigate
21 the cumulative air impacts on a particular
22 community.

23 Second, it would give actual data. As we
24 heard in the presentation prior to ours, you know,
25 in a lot of cities apparently decisions are based on

1 modeling results. And as sexy as modeling might
2 seem, I don't think it's any substitute for actual
3 empirical data. And I think that this would help go
4 a long way to helping improve modeling results,
5 because those models -- and I'm not a scientist by
6 any means, but it's my understanding after having
7 worked many, many years with groundwater modelers
8 that, you know, one of the cardinal rules of any
9 model is checking that model against actual
10 empirical results. And when a model is not
11 calibrated -- they call it calibrating. When a
12 model is not calibrated against actual empirical
13 results, it really doesn't -- it really calls into
14 question the efficacy of the model itself, and
15 whether or not that is actually a very useful tool
16 for making permitting decisions. So that's another
17 reason.

18 But one of the largest reasons in our view
19 has to do with public participation. The public
20 will finally be able to have a sense of the
21 entirety -- well, not the entirety, but a larger
22 part of the universe of what is being emitted in
23 their neighborhoods. For some neighborhoods it's
24 not a concern. But for many of the neighborhoods
25 that our client SWOP represents, it's very much a

1 concern, as you saw from the photos that I presented
2 this evening. So that's how we envision it,
3 Dr. Goldstein.

4 BOARD MEMBER GOLDSTEIN: Thank you.

5 BOARD MEMBER UPSON: Mr. Grace.

6 BOARD MEMBER GRACE: Mr. Jantz, you have
7 the three premises that you used to initiate the
8 petition, identified a problem, whether we have the
9 authority to do it, and then you talked about the
10 solution.

11 MR. JANTZ: Correct.

12 BOARD MEMBER GRACE: The Air Quality Board
13 is kind of low on the food chain when it comes to
14 land use and zoning. Have you -- has your client or
15 you pursued county, city government to control land
16 use and planning rather than sort of attaching the
17 problem to air quality? Because I would think land
18 use and zoning would be a better way to control the
19 quantity or the types of businesses that surround
20 maybe a neighborhood. Or are you strictly coming to
21 the Air Quality Board to try to solve the problem,
22 and that might not be the best way?

23 MR. JANTZ: Excuse me, Madam Chair, Board
24 Member Grace, our clients are pursuing a number of
25 different avenues, including state legislative

1 avenues, to address this problem. However, I will
2 say that no one agency, even planning and zoning, is
3 going to be the solution to this problem. It's a
4 multifactorial problem. It demands multifactorial
5 solutions, including action by this Board. So even
6 though this Board may consider its role small -- and
7 I don't necessarily agree with that proposition,
8 with all due respect -- I think that it's incumbent
9 upon this Board as the Bernalillo County
10 Albuquerque-Bernalillo County agency or
11 administrative body charged with preventing and
12 abating air pollution to at least consider the
13 merits of it.

14 BOARD MEMBER CUDNEY-BLACK: Mr. Jantz, can
15 you tell me if there are other states or
16 jurisdictions who are implementing this monitoring
17 in the rule that you propose?

18 MR. JANTZ: Madam Chair, Board Member
19 Cudney-Black, there are a number of different states
20 who take a number of different approaches to this.
21 So as we indicated in our petition, Minnesota
22 specifically under its environmental statutes has a
23 cumulative impacts ordinance or rule for a
24 particular part of Minneapolis-St. Paul.

25 In California, for example, the California

1 Environmental Quality Act is the legislation that
2 governs this sort of cumulative impact analysis. In
3 other states, it varies from city to city, and state
4 to state.

5 Montana has cumulative impacts analysis.
6 New York, many northeastern states, as well. So
7 this isn't something that's unprecedented.

8 I'd also like to add that it's not
9 unprecedented under the Clean Air Act, which is
10 obviously the federal statute that gives this Board
11 ultimately its power, its delegated power, there's a
12 case back in 1976, Ethyl Corporation versus EPA,
13 where the Environmental Protection Agency considered
14 the cumulative impacts from various sources, not
15 just air pollution sources, but many different
16 sources, including water, paint, food, for lead, in
17 fashioning a rule that eliminated lead additives
18 from gasoline. So for almost 40 years now, it's
19 been understood that the Clean Air Act contemplates
20 cumulative impacts analysis in the context of air
21 emissions.

22 BOARD MEMBER UPSON: Mr. Jantz, I have a
23 couple of logistical questions. You propose that
24 whoever is applying for a permit monitor the air and
25 the surrounding five miles for 12 months prior to

1 the permit being addressed; is that right?

2 MR. JANTZ: That's correct, Madam Chair.

3 BOARD MEMBER UPSON: And how do you
4 propose that they do the monitoring?

5 MR. JANTZ: In the ordinance, we
6 specifically contemplated that it be done in
7 accordance with EPA monitoring guidelines. So the
8 EPA -- those guidelines would at least guide it and
9 then it would be incumbent on the division to work
10 with the permit applicant to decide exactly where
11 those monitoring stations would be. And hopefully
12 it would include some community input, as well.

13 BOARD MEMBER UPSON: So there would be new
14 monitoring stations put up for each proposed permit?

15 MR. JANTZ: That's as we conceive it, yes.

16 BOARD MEMBER UPSON: And you also proposed
17 that the health effects be monitored, I think after
18 the fact, after the new source is there; is that
19 right?

20 MR. JANTZ: Well, yeah, that at least that
21 be considered. And it could be considered using
22 epidemiological data, data from the New Mexico Tumor
23 Registry, publicly available data. It could also be
24 done through community surveys if the applicant
25 wanted to be that thorough.

1 BOARD MEMBER UPSON: So that would be up
2 to the applicant to do the health effects
3 surveillance after the source is there?

4 MR. JANTZ: And the division, as we
5 conceive of it. But I think that part of the idea
6 of making this information and this analysis public
7 and available for public comment is to allow
8 community members to bring their own data to the
9 table if they have it.

10 BOARD MEMBER UPSON: And how did you
11 decide on 12 months?

12 MR. JANTZ: We found it to be a typical
13 time period for monitoring. It's a standard in the
14 New Mexico Mining Act for monitoring background,
15 what they call a baseline monitoring report. It's
16 typical for monitoring groundwater contamination at
17 a closed nuclear site under the Atomic Energy Act.
18 Those are just the statutes I'm familiar with. So
19 we wanted to choose a number that had -- or a time
20 frame that had been typically used in other
21 statutes.

22 BOARD MEMBER UPSON: Thank you.
23 Dr. Goldstein.

24 BOARD MEMBER GOLDSTEIN: Mr. Jantz, I
25 think it's safe to say for most of us on the Board

1 the concept of cumulative impact regarding air
2 quality is rather new. So I'm curious to know, with
3 regard to other forms of pollution, are cumulative
4 impacts routinely considered, for instance, water
5 and soil?

6 MR. JANTZ: Madam Chair, Dr. Goldstein,
7 absolutely. Various federal statutes require
8 cumulative impacts analysis. Most particularly the
9 National Environmental Policy Act. So any federally
10 permitted operation is going to have to make those
11 sort of analyses. It's a typical procedure in terms
12 of doing any sort of mining under the New Mexico
13 Mining Act. Very often they consider the cumulative
14 impacts under that statute. And the Solid Waste
15 Act. The case of Colonias Development Council
16 versus Rhino Environmental Services suggested while
17 it wasn't specifically -- this is a New Mexico
18 Supreme Court case -- while it wasn't specifically
19 mandated in the Solid Waste Act to talk about
20 sociological effects and cumulative impacts, the
21 Supreme Court said that the mandate of the Solid
22 Waste Act and its public input provisions
23 essentially implied that there was this cumulative
24 impact analysis requirement. So that's something
25 that's done now, as I understand it, under the Solid

1 Waste Act.

2 BOARD MEMBER GOLDSTEIN: Thank you.

3 BOARD MEMBER UPSON: So by cumulative
4 impact, do you mean the cumulative effects of
5 multiple air pollutants or the cumulative effect of
6 multiple sources of a single air pollutant?

7 MR. JANTZ: Both of those things, Madam
8 Chair. So the cumulative effects of multiple air
9 pollutants from a single source combined with the
10 effects of whatever the Board ultimately adopts, if
11 it chooses to adopt this proposed rule, combined
12 with those pollutants from multiple existing
13 sources.

14 BOARD MEMBER UPSON: Member Deichmann.

15 BOARD MEMBER DEICHMANN: Madam Chair,
16 thank you.

17 Mr. Jantz, going to the cumulative impact,
18 I'm familiar with the term in a variety of different
19 contexts, but I can't get my head around the
20 distinction between what you may be proposing and
21 what's already being done. Just as we heard earlier
22 today with the presentation on the modeling, where
23 all the emissions, whether modeled or empirical, we
24 can argue over the value of one or the other, but
25 assuming that there's a scientific validity in the

1 process that's going on right now, in using all the
2 surrounding emissions as baseline, how do you
3 distinguish what you're proposing from what's
4 already being done?

5 MR. JANTZ: Well, I think the problem,
6 Madam Chair and Board Member Deichmann, comes down
7 to averages. So as I understood it, the background
8 levels that are put into this model -- and you know,
9 again, I don't think that this is necessarily the
10 forum for discussing whether modeling is an
11 appropriate way to deal with this issue or not -- is
12 an average of the air concentration, pollution
13 concentration from all these different air
14 monitoring stations. And while, you know, that
15 might be sufficient to some extent to deal with the
16 cumulative impacts, it really doesn't give a very
17 accurate picture, in our estimation. And the reason
18 is this. Averages are -- those of you who are
19 science folks know this better than I, but as I
20 understand it from a lawyer's perspective, averages
21 are pretty -- a very shorthand way of dealing with
22 these things. So if you have Bill Gates walking
23 into a homeless person shelter, on average you have
24 a room full of really rich guys. But the fact of
25 the matter is, you have got one really, really rich

1 guy and a bunch of homeless folks.

2 So I don't think it really paints a very
3 good picture of actual air emissions in specific
4 areas. And in low-income and minority areas, I
5 think that that's very important to have that
6 site-specific information and site-specific
7 cumulative impacts information.

8 BOARD MEMBER DEICHMANN: So do you know
9 for a fact that that's how those emissions are
10 actually recorded, monitored and recorded, or are
11 you just speculating on that?

12 MR. JANTZ: That's my understanding from
13 reading the Air Quality Division's website. So I
14 mean, it's obviously a layperson's understanding.
15 Take that for what it's worth.

16 BOARD MEMBER DEICHMANN: Thank you.

17 BOARD MEMBER CURRAN: I have another
18 question. Based on the proposed rule, who would be
19 responsible for the cost of the monitoring on both
20 the initial installation, then the upkeep of the
21 monitoring stations and then processing the data?

22 MR. JANTZ: Madam Chair, Board Member
23 Curran, we envision it as potentially to track
24 process that sort of mimics the federal process
25 under the National Environmental Policy Act.

1 Underneath the feds, when they do NEPA analysis,
2 environmental impact statement, they give the permit
3 applicant a choice. They say, "We can do it. We'll
4 use our resources to do this. Don't expect it in
5 less than five or ten years. Or we have a list of
6 preapproved contractors that you can use at your
7 expense, we'll do the review and ultimately we'll be
8 responsible for signing off on it, but it will be
9 out of your pocket, and that will take as long as,
10 you know, it takes for you to work it out with your
11 contractor."

12 And we envision that same sort of process
13 here. And that's why we put in the language that
14 the Air Quality Board would cause -- either do one
15 or cause to be done a cumulative impacts analysis.
16 Does that make sense?

17 BOARD MEMBER CURRAN: Uh-huh.

18 BOARD MEMBER CUDNEY-BLACK: Mr. Jantz, I
19 have kind of some general questions. I'm looking
20 over the list of chemicals, the California list, and
21 there are some here that don't strike me as air
22 pollutants. And there are no standards associated
23 with some of these pollutants. So if I understand
24 the proposal, what you're asking a permittee to do
25 is monitor for these substances, which might not be

1 air pollutants, do some assessment of it, and then
2 generate a standard. Is that what you'd like to see
3 happen?

4 MR. JANTZ: Madam Chair, Board Member
5 Cudney-Black, for the most part, yes, except that I
6 will say we're not asking them to generate a
7 standard, because they can't do that. And only this
8 Board can set standards. And we're not necessarily
9 asking for standards to be set for each and every
10 one of these pollutants. And as a matter of fact,
11 we don't necessarily -- we weren't necessarily -- we
12 weren't necessarily counting on this Board adopting
13 that list wholesale if we do get eventually a
14 hearing on the merits. It was mostly put in as a
15 matter of showing that the current monitoring menu
16 is incomplete, that there are other serious
17 chemicals of concern that may be worth taking a look
18 at.

19 BOARD MEMBER DEICHMANN: Madam Chair,
20 Mr. Jantz, so in putting this petition together and
21 the proposed rules, did you undertake any sort of an
22 effort to estimate the cost to a permittee or an
23 applicant to actually go through this whole process?

24 MR. JANTZ: Madam Chair, Board Member
25 Deichmann, we did not. We saw it as our place to

1 identify the problem. We did consider some of the
2 costs of not doing it, not in any sort of formal way
3 with an economist, but, you know, we sort of did
4 back-of-the-envelope kind of discussions, but we did
5 not endeavor to take a shot at the cost to the
6 permit applicant or the Environmental Health
7 Department.

8 BOARD MEMBER DEICHMANN: So if the whole
9 effort were to cost \$500,000, it didn't really
10 matter, one way or another. That's just the way it
11 is.

12 MR. JANTZ: Madam Chair, Board Member
13 Deichmann, we didn't see it as our place to weigh
14 those factors. That's actually the province of this
15 Board and the province of the hearing process on the
16 merits to sift that stuff out.

17 I think that if we were to say there's a
18 \$500,000 price tag associated with this, we wouldn't
19 necessarily say no, this Board shouldn't adopt it,
20 if that were the case. That's the cost of doing
21 business in some cases. If you look at the flip
22 side of it, what's the worth of a human life, that's
23 the other side of the calculus. And so that's the
24 side of the calculus we were most concerned with.

25 BOARD MEMBER DEICHMANN: So I guess I'm

1 not sure that the Board has the resources or would
2 have the resources to conduct that sort of
3 evaluation. And so where would that information
4 come from? Who has that capacity to do that?

5 MR. JANTZ: Madam Chair, Board Member
6 Deichmann, the parties, if there were a hearing on
7 the merits, would set forth their respective
8 economic analysis and we are prepared to address
9 economic analyses at some point, just not at this
10 point, because it was our understanding and it's our
11 reading of the regulations that now is not the time
12 to do that.

13 BOARD MEMBER DEICHMANN: Okay. But we're
14 going to be hearing about the impact of economic
15 impact and whether that's appropriate or not, you
16 know, we'll have to make that decision. But I'm
17 just -- I think that making any kind of a decision
18 on this, even on just the merits of the petition,
19 there has to be some sort of an understanding of
20 what we're talking about. And so I guess just going
21 directly what you said, you said you'd be prepared
22 to address that. Does that mean you would be
23 proposing or providing some sort of an economic
24 impact analysis, if you will, or will you just be
25 reacting to somebody else's?

1 MR. JANTZ: Madam Chair, Board Member
2 Deichmann, we'd be doing both. We'd be doing both.
3 So we would -- I think that as a responsible --
4 hopefully responsible attorney, I'd make sure that
5 we had somebody who could address the economic
6 impacts, both from our perspective and the
7 perspective of business, to criticize -- not
8 criticize -- analyze and evaluate the business
9 community's concerns, economic concerns, and present
10 that to this Board during the merits hearing.
11 Absolutely. It's a routine part of rulemaking, and
12 it's one that we're very comfortable with.

13 BOARD MEMBER DEICHMANN: Thank you.

14 BOARD MEMBER UPSON: Commissioner Grace.

15 BOARD MEMBER GRACE: Mr. Jantz, what is
16 your back-of-the-envelope cost of not implementing
17 the regulations in the petition?

18 MR. JANTZ: Well, Madam Chair, Board
19 Member Grace, based on the information that we
20 gathered from the various studies we looked at, it
21 runs well into the millions. The public health cost
22 runs well into the millions. And if you're asking
23 me whether it's \$500 million or \$300 million, I
24 can't say. But it does run well into the millions,
25 potentially tens of millions of dollars, based just

1 on the public health costs.

2 BOARD MEMBER GRACE: So it's not back of
3 the envelope; it's some study that you're citing?

4 MR. JANTZ: Well, it's extrapolation from
5 those studies, Board Member Grace. So it's kind of
6 back of the envelope based on extrapolation from
7 some of these studies we have looked at.

8 BOARD MEMBER UPSON: Member Deichmann.

9 BOARD MEMBER DEICHMANN: Thank you, Madam
10 Chair. Going off of that, what Member Grace asked,
11 when you speak of public health cost, are you
12 speaking cumulatively of all the different kinds of
13 risk factors that were presented in the report that
14 you're talking about, or specifically what we have
15 jurisdiction over?

16 MR. JANTZ: When we looked at this, Madam
17 Chair, Board Member Deichmann, we didn't have
18 specific Bernalillo County information. There was
19 some specific Bernalillo County information, but we
20 used numbers from various different sources. So we
21 didn't segregate out exclusively air pollution
22 impacts on public health. It was sort of a more
23 broad cost estimate than that. And I think that
24 that would probably be well beyond the purview of
25 what I'm able to do, you know, just sort of on my

1 own and with the community members. I think that
2 that sort of analysis that you're looking -- that
3 you asked your question about I think would require
4 a trained economist to really parse out.

5 BOARD MEMBER DEICHMANN: I'm just trying
6 to understand whether the millions of dollars you're
7 talking about referred to the factors that were in
8 the report that we may or may not discuss, but only
9 air quality in Bernalillo County.

10 MR. JANTZ: No, no, these were numbers we
11 tried to focus as much as we could on air quality
12 numbers, numbers that were garnered from impacts
13 from air pollution, but it wasn't exclusively that,
14 and some of these studies have multifactorial
15 analyses.

16 BOARD MEMBER DEICHMANN: Thank you.

17 BOARD MEMBER UPSON: Member Grace.

18 BOARD MEMBER GRACE: Mr. Jantz, there's a
19 lot of references to California standards. Are you
20 asking us to pass basically what's a California
21 standard? Because the last time this Board did
22 that, and I was a member of the Board, it was a
23 disaster. But is that what this is? As an
24 attorney, is that what most of the requirements in
25 here pull from?

1 MR. JANTZ: Madam Chair, Board Member
2 Grace, not necessarily. Some of the pollutants that
3 we noted specifically in our petition are pollutants
4 under the Clean Air Act. So those are already in
5 the Clean Air Act and already in the Air Quality
6 Control Act. They're just not analyzed for their
7 cumulative effects.

8 In terms of the toxics, the toxics list
9 from California, obviously we would be thrilled if
10 this Board adopted those, but we understand that
11 there will probably be some evaluation of that
12 involved. So you know, we're under no illusion that
13 this Board will necessarily adopt those standards
14 wholesale.

15 BOARD MEMBER UPSON: This is a point. Our
16 air is cleaner than the air in California.

17 MR. JANTZ: Madam Chair, I wonder if
18 California would agree.

19 BOARD MEMBER UPSON: Other questions?
20 Mr. Grantham.

21 MR. GRANTHAM: I have a pretty narrow
22 legal question. Can you hear me?

23 MR. JANTZ: I can, yes.

24 MR. GRANTHAM: Regarding one of the
25 sections of the Air Quality Control Act that you

1 cited as one of your primary sources of authority, I
2 believe, 74-2-5(C)(6), which reads that the
3 regulations may require any person emitting any air
4 contaminant to do various things, including,
5 reciting subsection E of that section, which reads
6 that one of the things that can be required is to
7 provide any other reasonable information relating to
8 the emission of air contaminants.

9 So my question -- that section, the first
10 part, C, requiring any person emitting, that's in
11 the present tense. But your proposal would require
12 any person opposing to emit to do certain things.
13 So there's just that question of, can you get past
14 that, just how you reconcile the tense? And also
15 from that tense, the whole context of that section
16 is that the emissions we're talking about are the
17 emissions from that person's source and they should
18 monitor their own emissions, which is completely
19 different than monitoring ambient air.

20 MR. JANTZ: Right. Well, first of all,
21 Madam Chair, Mr. Grantham, that's not the sole
22 source of authority. I think that the Board has
23 authority, under its authority, to prevent and abate
24 air pollution. I think that alone gives the Board
25 ample authority to adopt this rule.

1 In terms of the tense of the language
2 you're talking about, I think that, as you know,
3 it's often arguable what these particular words
4 mean, and I think that we could argue that a
5 potential for emitting could be encompassed in that
6 language. And I certainly think that that's an
7 argument that's colorable to a court. I would feel
8 comfortable making it. And I think it would be
9 based on not only the context of the language
10 itself, but the goals of the Air Quality Control
11 Act.

12 MR. GRANTHAM: Thank you.

13 BOARD MEMBER UPSON: Five miles is a
14 pretty large area in the city, and it seems very
15 plausible that there could be multiple applicants or
16 permits who are wanting to locate in the same area.
17 How would that be taken into account?

18 MR. JANTZ: I think that that, Madam
19 Chair, would be something that the division could
20 work out. I mean, I could even envision a situation
21 where applicants could pool resources for air
22 monitoring in terms of gathering information for
23 their respective applications. And I think
24 cooperation could be beneficial. But I think that
25 sort of the specifics would be left for the division

1 to sort out.

2 BOARD MEMBER UPSON: Thank you.

3 Any further questions? Okay. Thank you,

4 Mr. Jantz.

5 MR. JANTZ: Thank you, Madam Chair,

6 members of the Board. I appreciate your time.

7 BOARD MEMBER UPSON: Could we have a show

8 of hands for everyone here who's in favor of the

9 petition? Thank you. Seems like a majority in the

10 audience.

11 And how many of you are interested in

12 providing new information that we have not already

13 heard?

14 Okay. So a minute and a half each, do you

15 think? So let's start with a minute and a half per

16 person, and if somebody in front of you has said

17 something you want to say, it doesn't need to be

18 repeated. In fact, if it seems like we're hearing a

19 lot of repetition, we'll cut off the testimony. So

20 do we have a list?

21 MS. NIETO: We have a sign-up sheet.

22 First is Charles Dickerman.

23 BOARD MEMBER UPSON: And if your name is

24 called and your comments have already been made,

25 please let us know.

1 MS. NIETO: And after that is Cheryl Rein.

2 BOARD MEMBER UPSON: Thank you. Please
3 come forward and state your name.

4 MR. DICKERMAN: I wasn't going to speak
5 relative to the subject.

6 BOARD MEMBER UPSON: What's that?

7 MR. DICKERMAN: All right. I'm sorry. I
8 wasn't --

9 BOARD MEMBER UPSON: Are you speaking
10 about the petition?

11 MR. DICKERMAN: No. Oh, I'm in favor of
12 it, yes. I just have something else to insert, and
13 it won't take a minute and a half. May I do so?
14 It's an air quality thing, but it's not relative to
15 the petition.

16 BOARD MEMBER UPSON: As long as you don't
17 go over a minute and a half total.

18 MR. DICKERMAN: Thank you very much,
19 ma'am. I'll be candid, at 2:00 I didn't even know I
20 was going to be here.

21 BOARD MEMBER UPSON: State your name for
22 the record.

23 MR. DICKERMAN: Charles Dickerman,
24 D-I-C-K-E-R-M-A-N. The famous phrase, "the elephant
25 in the room," it's really an elephant in the sky.

1 I'm talking about the chemical spraying that people
2 all seem to know about, and nobody's doing anything
3 about it, and it's the ultimate example.

4 Mr. Jantz references being near an
5 industrial zone. We are all in an industrial zone
6 with the spraying which has been going on for month
7 after month after month. Now, I'll take three
8 sentences and be done, because they're not
9 technical. Chemicals that are being sprayed, if I
10 can read it -- oh, boy. Well, let's see. As shown,
11 dangerous, extremely poisonous brew. Okay. We'll
12 start with barium, nano aluminum-coated fiberglass
13 known as CHAFF, radioactive thorium, cadmium,
14 chromium, nickel. These are all being sprayed upon
15 us and our children. Mold spores, yellow fungus,
16 fungi. I'm almost done. I have eight seconds. I'm
17 done. Anyway, a terrible brew, and I want people to
18 be aware of it, and something has to be done. Can't
19 lose sight of it.

20 BOARD MEMBER UPSON: Thank you,
21 Mr. Dickerman.

22 MR. DICKERMAN: Thank you for your time.

23 MS. NIETO: Cheryl Rein.

24 MS. REIN: Madam Chair, members of the
25 Board, I'm here to speak in opposition to it, so I

1 wasn't clear if that's --

2 BOARD MEMBER UPSON: So you'll have a
3 chance later after the opposition does their part.

4 MS. NIETO: It's not indicated on the
5 sign-up sheet form.

6 BOARD MEMBER UPSON: I'm sorry, maybe we
7 decided this after the fact. This part is just for
8 people who are supporting the petition. People in
9 opposition to the petition will have a chance after
10 the two parties who are going to be presenting the
11 opposition.

12 So other people in favor of the petition?
13 Is the next person on your list? If you're speaking
14 in favor of the petition, please raise your hand.

15 Okay. Come forward and state your name,
16 please.

17 MS. PAINTER: Madam Chair, members of the
18 Board, my name is Marla Painter. I live in the
19 Mountain View neighborhood, am past president of the
20 Mountain View Neighborhood Association, on the Board
21 of the Friends of the Valle de Oro Urban Wildlife
22 Refuge and facilitator for Mountain View Community
23 Action. I also sat on the task force, on the
24 Environmental Justice Task Force, that was referred
25 that this Board put together that was referred to

1 earlier.

2 I have been working on air quality issues
3 in Mountain View for about 15 years now. I also
4 have a family home in California, and I can assure
5 you the air I breathe in Mountain View is much worse
6 than the air I breathe in California. Just for the
7 record. No disrespect intended.

8 Okay. Most everything I had to say has
9 been said, except Mr. Grace, you're wrong. We in
10 Mountain View are denied a sector plan, which would
11 address some of these interactive problems that
12 affect our health, safety, and well-being. That's
13 politics. We are denied a sector plan. The zoning
14 rules we have to abide under are from the 1970s, and
15 they're racist.

16 Also, I want to address -- even though
17 this is not intended for anybody individually, but
18 toward the Board and the staff as a culture -- over
19 the last 15 years the only time we've been able to
20 get the attention of anybody on the Board or on the
21 staff is when we take you to court. The good
22 people, the enlightened people, the people who want
23 to sit down with community members and work these
24 things out are somehow mysteriously shoved off the
25 Board. The hostility that comes from the air

1 quality staff over the years is rampant. Never has
2 anybody come to us as a community and said, "We
3 recognize the problems. Now, let's sit down, put
4 our heads together and come up with a solution."

5 It's always discounting us, pushing us
6 aside, telling us that we don't know what we're
7 talking about. It's time for this culture to be
8 changed, and this hearing is a very good step toward
9 changing that culture. So I encourage you to listen
10 to what we are trying to say to you. Thank you.

11 BOARD MEMBER UPSON: Thank you. Next.

12 MR. REYNOSA: Hello, everyone. Juan
13 Reynosa, with SWOP. And you all might have read the
14 op ed I wrote in the Journal which does say, "Don't
15 pass the buck on air quality," which I would
16 recommend to you all today.

17 So we've done an air quality data checks
18 campaign over the last year with really excited
19 people in San Jose. They're excited because this is
20 what they have been wanting for a long time. They
21 want to be able to show the impacts on their
22 community. There's a lot of talk about 12 months of
23 data collection being onerous. We work with
24 community members who are impacted, who have jobs,
25 who are really wanting to do this, because it helps

1 them tell their story, helps provide you all with
2 information about what they're experiencing, and
3 that's exactly what this ordinance is trying to do.
4 They're trying to get you all to help provide
5 information. That way, when another permitter tries
6 to come in and pollute their community, they know
7 exactly what the impacts are going to be.

8 Through our studies, we have found
9 elevated levels of chlorobenzene, more than ten
10 times what would be expected in urban ambient air.
11 Also elevated levels of elemental carbon which
12 corresponds with diesel emissions.

13 I would love for you all to go take a
14 cruise through these neighborhoods and actually see
15 for yourself the impacts of this. We'll leave you
16 to talk about, oh, you know, all these economic
17 costs. Go look at these communities and see what
18 the costs are to the actual community. Talk to
19 community members about the health impacts, what
20 they have been dealing with for generations. That
21 is an important piece to this puzzle that we really
22 need to be considering.

23 The cost to communities in regard to
24 health care, in regard to their lives, is something
25 of very important consideration. A lot of the

1 questions you all are presenting today I think are
2 things that should be brought to a hearing. We
3 don't -- you know, there's numerous community voices
4 here. I really think it's important for you all to
5 hear all their voices today. They all have
6 something very important to say. We have expert
7 witnesses lined up to be able to provide answers to
8 a lot of the questions that you all are asking
9 today, but those are the merit-based questions that
10 Eric referred to that need to be referred to a
11 hearing. He did say that you all have the
12 jurisdiction to be able to pass this ordinance, and
13 that's what's important in this matter right now.
14 You all should be able to bring this to a hearing.
15 That way, we can have a fuller discussion about the
16 impacts.

17 I will also say, in regard to this EJ task
18 force, one of the specific recommendations was to
19 explicitly consider EJ and cumulative impacts in the
20 permitting process and regulations. That
21 recommendation comes from people in this room who
22 sat on the Board, are sitting there now, working for
23 the City Air Quality Division. So you know, there
24 are people who look at these things and have made
25 those recommendations, and I really think that

1 recommendation is important to be made.

2 We took it upon ourselves to work with
3 community members to do a so-called onerous,
4 expensive data collection. We monitored over 100
5 elements, and it worked great. These folks were
6 trained. I think they're very good technical
7 experts now. Maybe some of these monitoring folks
8 have a thing to learn from community members in
9 regard to this. I really think there should be a
10 conversation amongst you all. That way, it's a
11 learning experience on both ends, and that way we
12 can come to something that works for both parties.

13 I know there's a lot of points to be made
14 about -- I'll close it out real quick -- about how
15 these things will work. We're willing to have that
16 conversation, but it should be within a hearing
17 setting, and we hope that you all grant it. Thank
18 you.

19 BOARD MEMBER UPSON: Thank you. I'm going
20 to ask people to please stick to the time limit so
21 that as many people as possible can get a chance to
22 talk. If there is a hearing, anybody who wants to
23 talk will be able to talk towards the merits.
24 Tonight we just want to decide if we're going to
25 have a hearing or not. So if you can please stick

1 to your time limit, and we're going to try to listen
2 to everybody. Thank you.

3 MR. SILVA: Madam Chair, Board members, my
4 name is Lauro Silva. I live at 5005 Fifth Street,
5 Southwest. I live in Mountain View. I am currently
6 the president of the Mountain View Neighborhood
7 Association. I have in the past served on the Air
8 Quality Control Board in the 1980s. I also served
9 four years on the planning commission, Bernalillo
10 County Planning Commission. I also served on the
11 Sandia National Laboratories Environmental
12 Remediation Committee. And so I have been working
13 on some of these issues for a substantial period of
14 time.

15 One of the many things in my work has been
16 as a principal investigator for the South Valley
17 Partners for Environmental Justice. And that was
18 done through a grant from the National Institute for
19 Environmental Health Sciences under the NIH. So
20 some of these concerns certainly have been studied
21 and looked at and monitored.

22 The work that we could present to you --
23 and we will, if there's a hearing on this matter --
24 will present to you our studies, our findings. Some
25 of those findings include some of the cardiovascular

1 disease, asthma, respiratory illnesses that we have
2 found; traffic studies that we've found, the impacts
3 of diesel fuel, diesel emissions from trains,
4 airplanes, diesels, all of these.

5 And the new developments and the potential
6 that we have now -- we're completely saturated.
7 We've got 39 EPA-regulated facilities in the South
8 Valley. 33 of those are in Mountain View. So we
9 are too saturated already with environmental hazards
10 and VOCs. We've done our own VOC monitoring, we've
11 taught community members how to do the bucket
12 community-based analysis and send them to the labs.

13 Also, we have a VOC monitor and we have
14 access to particulate matter, simply because we
15 can't rely on the so-called empirical data that
16 comes from the owners themselves. The permitting
17 process has been too lax. Even when I was -- back
18 in the day, we liked to upgrade it and come up to
19 step in society that we need to make today.

20 Cumulative impacts are critical to the health and
21 the welfare of our communities. Public welfare is a
22 primary directive of the Albuquerque-Bernalillo
23 County Air Quality Board and the NMED.

24 BOARD MEMBER UPSON: Thank you, Mr. Silva.

25 MR. ABEYTA: Good evening, Madam Chair,

1 and esteemed members of the Air Quality Board. My
2 name is Stephen Abeyta. I live at 2419 Williams
3 Street, Southeast. I'm in San Jose. So I'm right
4 in the thick of this environmental justice issue
5 that we're addressing today.

6 I have attempted to deal with the entities
7 that are in charge of our air quality, Mr. Tavaréz,
8 and I'm here today because we could not get any
9 help. We had to go to an outside group from
10 California to go ahead and help us by funding an air
11 bucket campaign, because we can't get the help in
12 our own neighborhood.

13 What I have is, I have cement companies,
14 hiring trains, trains that load petrochemical
15 companies onto trucks. I have got petrochemical
16 companies, tank farms, and you, in fact, approved
17 two air permits, one for 50,000 tons of volatile
18 organic compounds, and one for 75,000 tons of
19 volatile organic compounds. I've got a metal
20 shredding company. I have got other companies that
21 are major polluters in the area. Two Superfund
22 sites in my neighborhood. I look to the south, I
23 see two cement companies. I look straight in front
24 of me, I see Conservancy Oil. I see some
25 nonpermitting facilities that are emitting a lot of

1 volatile organic compounds.

2 I need your help. I need you to go on
3 ahead and grant a hearing. You have the authority
4 to do this. You can help us. We're not asking for
5 people to pay millions of dollars for a permit.
6 What we're asking is that you just look at the
7 overall cumulative impacts that are impacting people
8 like myself. The neighbors next door -- three in
9 the household that got cancer. People up the
10 street, three houses down, that died of cancer, two
11 of them. We're just asking you to address these
12 particular types of issues. Help us. And all we're
13 asking for is a hearing. All the little ins and
14 outs, we can negotiate that. We don't want to
15 dilute the plan where we eliminate everything that's
16 going to harm us. But what we want is a fair shot.
17 That's all we're asking for.

18 BOARD MEMBER UPSON: Thank you, Mr.
19 Abeyta.

20 MS. ABEYTA: Good evening, Madam Chair and
21 the Air Board. My name is Esther Abeyta. I'm a
22 resident of San Jose Community. I'm here tonight to
23 ask you to take compassion and grace upon my
24 community and grant us a hearing to discuss the
25 cumulative impact, cumulative air impact, to be

1 included in the permitting process.

2 For the last two years I have learned that
3 my community of San Jose has suffered from emissions
4 that include volatile organic compounds, diesel,
5 particulate matter, PM-10, PM-2.5, dust from cement
6 plants, idling trains, petroleum chemical storage
7 facilities offloading trains, metal shredding
8 companies, chemical-producing companies, all these
9 companies in one community. That's my community of
10 San Jose. We are 1 percent of the residents of the
11 City of Albuquerque, but we have 28 percent of the
12 industry in my neighborhood.

13 Why is cumulative impact so important to
14 me? Because a few years ago we had a health impact
15 assessment done and the health impact assessment
16 showed what was going on in my community. I had a
17 choice after reading that health impact assessment.
18 My choice was either I ignore the statistic data
19 that talks about what was happening in my community,
20 I put blinders on, or I did something about it. And
21 that's the stand that I took.

22 I wanted to make a better life for the
23 people that live in my community. It hurts for me
24 to walk into my neighborhood, stand in front of a
25 company, smell that odor, and see children play

1 there. That is disheartening. It hurts. Because
2 in my school of East San Jose, we have 600 kids; 58
3 kids of our school have asthma. Why is that? It's
4 because of where we live. Many people in my
5 community do not distinguish that what's making them
6 sick is the industry.

7 My family has been in this community for
8 over 70 years. I grew up and I never realized many
9 of my friends' mothers died of cancer when I was
10 young. And today we all talk about it. Is it
11 because where we lived? And that was so sad, to see
12 many of my friends grow up without mothers. I don't
13 want to see that continue to happen today in my
14 neighborhood.

15 That is why I'm so concerned about
16 cumulative impact, because when we go up against the
17 air permit, they only look to see what the company
18 is producing out of. They do not take into
19 consideration the industries that we have around us.

20 So what I want to ask you tonight is -- my
21 question to you: How much tons and tons of volatile
22 organic compounds and particulate matter will it
23 take, that our families in the community of San Jose
24 must endure before the industry and the
25 decision-makers realize our families in San Jose now

1 are getting sick and dying.

2 You guys talk about the cost to do
3 testing. We did that testing for a whole year
4 study. It cost us about \$150 to send each sample to
5 a company to analyze for us. I'm glad we were able
6 to do that because now I know exactly what we're
7 breathing in my community, what is making the people
8 in my community sick.

9 So I ask today, what is important here?

10 The value of (unintelligible) or the value of the
11 dignity of a human life? So please grant us, give
12 us that opportunity, to present our case, to assess
13 why cumulative impact analysis is very important for
14 poor and low-income communities like San Jose and
15 Mountain View. Thank you.

16 BOARD MEMBER UPSON: Thank you,
17 Ms. Abeyta.

18 MR. MOORE: Good evening, committee
19 members. My name is Richard Moore. I'm here
20 tonight representing two organizations. One is the
21 Environmental Justice Health Alliance for Chemical
22 Policy Reform, which is a coalition of grass roots
23 organizations that are working on environmental and
24 economic justice issues, one that we're here
25 speaking about this evening.

1 The second is Los Jardines Arenas
2 Institute, The Gardens Institute, and that's an
3 organization, community-based organization, that's
4 located in the South Valley of Albuquerque.

5 I just wanted to in my brief comments say
6 to the committee this evening that again, this is
7 not the first time that we've been in front of the
8 Air Quality Board. For those of you that don't know
9 our work, we've been working on environmental
10 justice issues since 1969. And based on that, many
11 of the issues that have been impacting our
12 neighborhoods and our communities have been
13 specifically air issues. But there has been a
14 series of other ones to go along with that also.

15 Tonight we're not debating one way or the
16 other what the prevalence is in regard to what's
17 being presented. Your job this evening is to
18 protect the health and well-being of our
19 communities. We believe that that's one of your
20 charges. And based upon that, then, we're here and
21 you're here to decide, in fact, whether we should
22 have the right to have a hearing to express our
23 opinions, to testify in terms of the health impacts,
24 to talk about the cumulative impact, the
25 disproportionate impact that many of our communities

1 in Bernalillo County are being impacted by.

2 So again, we're here, we ask you when this
3 decision is made to keep in mind the same thing that
4 we have expressed to the governor and to the
5 president of the United States. How many of our
6 children have to continue to be sick? How many of
7 our sisters and brothers, family members, our
8 neighbors, and our residents, have to die before
9 agencies do something about the problems that are
10 impacting our communities?

11 So tonight we ask you that question. Do
12 we need to continue to be sick and die in order for
13 you all, as this Board, or the air quality agency,
14 to do something about the problems that we're being
15 impacted by? So very clearly, then, you have a lot
16 of responsibility in your hands. And we would hope
17 that if the same things were happening in your
18 community, that you would be here tonight testifying
19 in this microphone. Like in many of our cases, you
20 have given us one minute and a half to testify.

21 So I thank the Chair for allowing the time
22 to be extended. But what I will say, based upon
23 that, is: It is an injustice for us to have put up
24 with what we are putting up with as long as we have,
25 and then to be told that we only have one minute and

1 a half to speak. I'm saying that with respect to
2 the Chair, with respect to all of you. We have come
3 in front of committees, we have come in front of
4 agencies, we've testified, testified, testified.
5 We've been experimented with. We've done surveys.
6 We've done petitions, and we've done many other
7 things.

8 So again, then, we ask you, as we go
9 today, how many of us have to die or continue to be
10 sick before this Board does something about it? So
11 on behalf of our organization, Los Jardines
12 Institute, the Environmental Justice Health Alliance
13 for Chemical Policy Reform, we ask you to make the
14 right decision this evening and that's to bear us
15 the right to have a hearing to discuss these issues.

16 Thank you very much for your time.

17 BOARD MEMBER UPSON: Thank you, Mr. Moore.

18 MS. DOLAN: Madam Chair, members of the
19 Board, my name is Diane Dolan. I'm staff to City
20 Counselor Isaac Benton and I'm here tonight on his
21 behalf to read a letter into the record that was
22 submitted earlier this evening in writing.

23 "Madam Chair, I write regarding certain
24 rule amendments proposed for consideration by the
25 Albuquerque-Bernalillo County Air Quality Control

1 Board relating to cumulative air quality impact. I
2 understand that there is significant opposition to
3 these proposed regulations from some members of the
4 business community and others. Issues relating to
5 cumulative air quality impacts are of great
6 importance to the overall environmental health of
7 our community, which can also have economic
8 development implications. As I understand the
9 process for adoption of air quality regulations, the
10 Board must first determine whether or not to hold a
11 public hearing on a proposed regulatory change
12 before considering the merits of the proposal. I
13 urge you and the members of the
14 Albuquerque-Bernalillo County Air Quality Control
15 Board to hold a hearing on these proposed cumulative
16 impact regulations. Regardless of the Board's
17 ultimate action on this proposal, this issue is
18 deserving of a public hearing, so that the Board may
19 be presented with reasons why these regulations are
20 so important, as well as information that may help
21 the Board understand and balance any potential
22 economic or other impacts. Please schedule and hold
23 a public hearing on this proposal. Thank you."

24 BOARD MEMBER UPSON: Thank you.

25 MS. GARCIA: Good evening, Madam Chair and

1 members of the Board. My name is Jacque Garcia. I
2 am the coordinator for the Bernalillo County Place
3 Matters Team, no relation to Bernalillo County
4 government. We are nonprofit.

5 I want to stand here today and support of
6 SWOP, the petition, and ultimately the health and
7 well-being of residents in Bernalillo County and
8 Albuquerque for various reasons.

9 There have been studies that have been
10 conducted that look at the potential health impacts
11 and environmental exposures and pollutants on
12 communities already burdened by heavy industries.
13 Back in 2011, the Bernalillo County Place Matters
14 team conducted a health impact assessment, also
15 known as HIA. This HIA was conducted with a
16 recycling facility. They were requesting a special
17 use permit to build in the area. However, the
18 community, along with other partners, found that
19 there were potential negative health outcomes that
20 were going to be caused by the diesel exposure.
21 This exposure could contribute to cancer and deaths
22 from chronic diseases such as heart attacks and
23 asthma.

24 I want to also say that while the Place
25 Matters report that you all have been referring

1 to -- which I imagine looks like this -- may not
2 have specifically mentioned air pollution, it did
3 say contaminated air. If I look at the -- pardon
4 me. There is a report done in California by the
5 California Environmental Protection Agency that
6 looks at the scientific effects of cumulative
7 impacts. Here are some of the associations of
8 disease and pollutants.

9 BOARD MEMBER UPSON: Ms. Garcia, I think
10 you're getting into the merits of the case.

11 MS. GARCIA: This will be my last comment.
12 Particulate air pollution strongly associated with
13 cardiovascular disease and stroke, respiratory
14 disease, and mortality, infant mortality. So today
15 I stand on behalf of the Bernalillo County Place
16 Matters team to urge you to provide a hearing for
17 this matter. Thank you.

18 BOARD MEMBER UPSON: Thank you,
19 Ms. Garcia.

20 Is there anyone else who wants to speak?

21 MR. SCHRADER: My name is Don Schrader.
22 Do any of you live in San Jose or Mountain View?
23 Where would you stand tonight if you did? If you --
24 if your beloved grandmother with heart disease lived
25 there, how would you vote? If your ten-year old

1 niece with asthma lived there, where would you
2 stand? Would you move there if the poisons in the
3 air were the only deciding factor? Where would you
4 stand if your best friend, a cancer survivor, lived
5 there?

6 Your vote can mean health or misery, life
7 or earlier death for many people. Would such toxic
8 pollution be allowed at the Country Club? Tanoan?
9 UNM? Four Hills?

10 Are you a pawn of rich companies, or do
11 you have the conscience and backbone to stand up for
12 the health of thousands of people? What if your
13 home were less than a block from diesel engines
14 idling up to three days at a time? I would not want
15 a diesel engine idling three hours near my home.
16 The air poison suffered in San Jose and Mountain
17 View would not -- would not -- be tolerated in a
18 mostly Anglo upper-income community.

19 BOARD MEMBER UPSON: Thank you,
20 Mr. Schrader.

21 MS. LUCERO: Thank you. My name is Laura
22 Lucero. My address is 1323 15th Street, Northwest.
23 And I also sat on the EJ task force and I have
24 served my neighborhood, the Sawmill Community
25 neighborhood, on the Board, but I speak as a

1 representative only of myself tonight, and only on
2 the one issue of whether there should be a hearing,
3 not on the merits. The two points I'd like to make
4 is that there's another part of Albuquerque that
5 cares very much about this issue, the Sawmill.

6 When I moved into the Sawmill Neighborhood
7 20 years ago, my neighbors were suffering and
8 laboring under the Duke City lumber pollution, and
9 so I sympathize and identify with some of the issues
10 that have been raised this evening. And this
11 impacts many other neighborhoods in Albuquerque.

12 The second point I want to raise, and I
13 want to thank Mr. Jantz for laying out the one, two,
14 three questions that he was asking you to answer,
15 and he suggested that if you can answer "yes," there
16 should be a hearing.

17 I would only add to that that if you can
18 answer "maybe," you should have a hearing. Because
19 you should be siding on and erring on the side of
20 the public interest, and a hearing on the merits is
21 a way to show that you're siding on the public
22 interest. Thank you.

23 BOARD MEMBER UPSON: Thank you,
24 Ms. Lucero.

25 Is there anyone else? Thank you. I think

1 we'll take a ten-minute break. Long enough? So
2 we'll reconvene at quarter of. Thank you.

3 (Recess from 7:34 p.m. to 7:53 p.m.)

4 BOARD MEMBER UPSON: We're convening the
5 meeting at 7:53. Next we'll hear from Carol Parker,
6 representing the Environmental Health Department.
7 Ms. Parker will have up to ten minutes, and then
8 we'll have the Association of Commerce and Industry,
9 and they will also have up to ten minutes. Thank
10 you.

11 MS. PARKER: Thank you, Madam Chair, Madam
12 Hearing Officer, and members of the Board. My name
13 is Carol Parker. I represent the Air Quality
14 Program from the Environmental Health Department.
15 We're here tonight to respond to a petition offered
16 by the Southwest Organizing Project.

17 First to get it settled at the front end,
18 the statutes and the ordinances are quite clear that
19 the Board has discretion whether to hold a hearing.
20 The Board can consider information that it deems
21 relevant to whether it should hold a hearing. The
22 statutes and the ordinances say that any person may
23 propose regulations. It is up to the Board to
24 determine whether. And Mr. Jantz suggested that the
25 standard ought to be: Is there a problem? Is there

1 jurisdiction? And has a solution been proposed?

2 I would submit that unless the problem has
3 a tie to air pollution, the Board should not go to a
4 hearing. And we will show that it does not.

5 To begin with, the Albuquerque area air
6 quality meets all EPA health-based standards. It is
7 backed up by a robust 24/7 monitoring network whose
8 data is quality-checked. Scientific data that I
9 will get into in more detail tells us that air
10 quality does not contribute to poor health outcomes,
11 and the proposed rule will not produce better health
12 outcomes.

13 I want to say for the benefit of the
14 audience and perhaps some of the newer Board
15 members, just to get a definition out of the way,
16 the term "Bernalillo County" can be confusing,
17 because people think you're talking about only the
18 unincorporated area. Albuquerque excludes
19 Bernalillo County unincorporated area. So I'm going
20 to use "Albuquerque area" to mean the entire extent
21 of the Air Board's jurisdiction.

22 The major point I want to address is that
23 the Air Quality Program conducted a community scale
24 air toxic monitoring study. I will get into some
25 more detail, but no significant health risks were

1 identified. The proposed rule is extraordinarily
2 burdensome and the environmental conclusions in the
3 Place Matters study are analytically flawed and do
4 not provide a basis for going to hearing on the
5 proposed rule.

6 The community scale air toxic study was
7 conducted between 2007 and 2009. It was a
8 systematic study of 80 toxic air pollutants in the
9 Albuquerque area conducted over 18 months. Three
10 sites were monitored: The South Valley, which was
11 Mountain View Community Center; the North Valley, on
12 north Second Street; and at Del Norte High School.
13 We used EPA-approved methods and a half-million
14 dollar grant from EPA that only partially funded
15 that study. That grant did not cover staff and it
16 did not cover infrastructure.

17 The results showed that of the 80 toxic
18 air pollutants that were monitored, only 17 were
19 found in amounts that -- I'm sorry, only 17 were
20 found regularly. None of the amounts that were
21 found were found at levels that would be expected to
22 pose a significant risk to public health.

23 Importantly, for the Place Matters study, the
24 pollution profile at the three different sites was
25 quite similar. So there was not a disparate air

1 pollution impact in one community or another. The
2 profile was typical of traffic emissions, not
3 industrial emissions, and this is important because
4 while it is true in the abstract that air pollution
5 can cause very significant health impacts if it's
6 bad enough, in the Albuquerque area, our air quality
7 is actually quite good. So the proposed rule and
8 its burdensome monitoring is not necessary.

9 Because the air toxic study cost the
10 program half a million dollars, the program has some
11 basis to expect that monitoring for over 1,000
12 pollutants -- which is what this rule requests --
13 would cost each applicant more than half a million
14 dollars just to apply for an air permit. Remember
15 that area permits are not just obtained by industry.
16 They're obtained by some of our schools. They're
17 obtained by the University. They're obtained by
18 some medical and dental facilities, dry cleaners,
19 commercial laundries, hospitals, as well as larger
20 entities.

21 The proposed monitoring is unnecessary
22 because we have this scientific evidence. We went
23 out and looked for toxic air pollutants, and didn't
24 find significant health risks, because Albuquerque
25 had good air quality.

1 The proposed rule is burdensome to the
2 program. The petition says that applicants are
3 going -- or emitters of air population are going to
4 have to do this study. In fact, the rule actually
5 provides, as Mr. Jantz admitted, that the Board or
6 the department would cause this study to be done,
7 and the applicant can be charged for the cost, but
8 that still means that because you have 100 to 150
9 permits every year, you'd have 100 to 150 reports of
10 1,000 different pollutants to review every year. If
11 you didn't do it to someone's liking, you could be
12 sued in district court, and the district court judge
13 could decide to award attorneys' fees against the
14 department. This is a rule that creates demands on
15 resources that would be prohibitive for both the
16 department as well as the applicant.

17 I'd like to turn to the Place Matters
18 study, which Mr. Jantz characterized as supporting
19 the proposed rule. In fact, it does not. It did
20 identify that health outcomes differ across
21 Bernalillo County. It identified that some areas
22 have shorter or longer life expectancies. Some
23 areas have a lower or a higher percentage of
24 low-birth-weight infants. And those are important
25 differences in health outcomes that reasonable

1 people would want to attend to.

2 The two best predictors of those poor
3 health outcomes, according to the Place Matters
4 study, was the level of educational attainment and
5 poverty. Other community-level risk factors that
6 the Place Matters study identified as potential
7 contributors: Violent crime rates, foreclosure
8 rates, unemployment rates, and percentage of
9 overcrowded households. You might say, "Well,
10 what's the connection to air pollution?" and that's
11 what I'm going to address next.

12 The Place Matters study then went on, and
13 this is where the Air Program disagrees with the
14 conclusions in the Place Matters study. They used a
15 category they called environmental hazards. And
16 environmental hazards lumped together disparate
17 environmentally regulated sites affecting land, air,
18 and water.

19 Well, just being regulated doesn't mean
20 you're a hazard. Facilities are regulated to
21 protect the public from unregulated operation and a
22 lot goes into deciding how those regulations should
23 work so that they should protect the public.

24 It is scientifically unsound to cast this
25 wide net and say that everything that's

1 environmentally regulated is, therefore, an
2 environmental hazard. That simply is not true. And
3 to give you an example, one of the things that was
4 included as an environmental hazard was a hospital.
5 Well, a hospital may be environmentally regulated,
6 but I don't think most of us think of them as
7 hazards.

8 And when you look at the definition of
9 Superfund site in the Place Matters study, it refers
10 to a place that's been abandoned, that's
11 uncontrolled, that hazardous waste is there, and
12 that it might be affecting people's health. That's
13 true. It's a true generic definition of Superfund
14 site. It's not a true characterization of any
15 industry Superfund sites in Bernalillo County, all
16 of which are uncontrolled and none of which present
17 a hazard to the public.

18 The Place Matters study does not show
19 cause and effect. It didn't tie air pollution to
20 the disparate health outcomes it found. It doesn't
21 distinguish between causes and correlations. An
22 historically important example is relating to air
23 quality, and that's London air quality in 1850s.
24 London in the 1850s had really bad air quality, but
25 not because of the reasons we expect, because no one

1 had invented a sewer system yet and there were
2 millions of people living there. Everybody was
3 persuaded and convinced that because they had
4 really, really, really bad air, that they must have
5 the health outcomes of dying of cholera as a result.

6 Well, when a scientist came forward and
7 said, "Look, I have studied this, and I think it's
8 related to water," nobody believed him. So instead,
9 they adopted an ordinance -- may I go on, Madam
10 Chair?

11 BOARD MEMBER UPSON: Yes.

12 MS. PARKER: They adopted ordinances
13 saying people have to go air out their rooms. And
14 people kept dying of cholera. And it wasn't until
15 they followed the science and they started attending
16 to the fact that they should shut down the Broad
17 Street pump, and when they did, cholera diminished.

18 So it's important for us to follow the
19 science. The science is the only thing we can base
20 our decisions on, and in this case, we've done an
21 air toxic study that is, as best as we know how,
22 scientifically valid, that demonstrates there are
23 not significant health risks as a result of the air
24 pollution in the Albuquerque area.

25 So we ask the Board to deny the petition.

1 The two biggest predictors of poor health outcomes
2 in the Place Matters study were lack of educational
3 attainment and poverty. The air toxic study
4 demonstrates that there is not a problem that will
5 be solved by a rule on the air pollution. The
6 proposed rule is, therefore, unnecessary and will
7 not solve the problem that has been proposed. And
8 holding a hearing to adopt a proposed rule will not
9 improve the public health, yet tragically, it could
10 worsen it, because it is an economic impact. And if
11 that happens, then to the extent that poor health
12 outcomes are due to poverty, it could worsen it.
13 And so we respectfully ask that you deny a hearing
14 for the petition.

15 BOARD MEMBER UPSON: Thank you, Ms.
16 Parker.

17 Let's take questions from the Board.
18 Dr. Goldstein.

19 BOARD MEMBER GOLDSTEIN: You and the ACI
20 lean heavily on the air toxic study in 2009 --

21 MS. PARKER: Yes.

22 BOARD MEMBER GOLDSTEIN: -- which showed
23 that all the air pollutants that were found were
24 found to be at healthy levels. In other words, they
25 did not exceed a certain threshold which was held to

1 be harmful to health.

2 MS. PARKER: Correct.

3 BOARD MEMBER GOLDSTEIN: But isn't the
4 premise of the whole cumulative impact theory that
5 multiple substances which individually may be at, in
6 quotes, "healthy levels" in combination are not
7 healthy, and that they pose health risks that you
8 wouldn't get -- or you wouldn't find just by looking
9 at the individual substances? How do you respond to
10 that?

11 MS. PARKER: Madam Chair, Member
12 Goldstein, the fact is that unless you have a
13 standard, for example, a combination that says,
14 "Benzene in combination with this or that, this
15 amount of benzene, this amount of PM-2.5 and this
16 amount of some other toxic pollutants in combination
17 have some kind of synergistic effect."

18 Unless you know that, unless you know what
19 you're looking for, you don't have anything to tie
20 the data that will be generated by this rule to any
21 particular health outcome. You'll generate lots and
22 lots of data, but if you monitor for 1,000 different
23 pollutants, every monitoring event that you do will
24 give you different numbers, and you will have no way
25 of connecting that to particular health outcomes.

1 You don't have any health standards for many of
2 these pollutants, even individually. So you'll get
3 numbers, but if you get a number like 6 and you
4 don't have a health standard, well, you don't know
5 if 6 is really serious, insignificant, or something
6 in between.

7 BOARD MEMBER GOLDSTEIN: I recognize that
8 standards may not have been established yet, but
9 suppose there is scientific evidence that certain
10 combinations of pollutants are particularly harmful.
11 Would you say then that there might be some validity
12 in the cumulative impact approach?

13 MS. PARKER: I think in that case, we
14 would expect the EPA would want to step in and act,
15 so that there could be -- you know, EPA has a much
16 bigger budget to do the toxicology to determine what
17 the levels are that should be set so that when we
18 consider a permit, we can evaluate those questions.
19 We're really at a serious disadvantage to tackle
20 that problem by just going out and gathering a lot
21 of data without knowing what we're looking for. It
22 needs a much more scientific toxicological-based
23 approach driven by a toxicologist, not driven by
24 just collecting numbers and seeing what we get.

25 BOARD MEMBER UPSON: Member Deichmann?

1 BOARD MEMBER DEICHMANN: Madam Chair,
2 Ms. Parker, I'd like to follow up on Dr. Goldstein.
3 I think that raises the recurring concern I have
4 about relying on EPA in general as being the
5 standard by which to -- obviously, that's what we've
6 got statutorily or regulatorywise, but at the same
7 time, what you just said underlines the deficiency
8 in our knowledge of the impacts of these
9 combinations. And so just because we don't have a
10 standard and we don't understand those from a
11 regulatory standpoint doesn't mean it doesn't
12 happen. And it seems like if we continually rely on
13 the fallback that, well, we don't have a standard
14 for the synergistic effects of these compounds, and
15 so there's nothing to be done about it, then we
16 don't make any progress. And I wonder if we need
17 something to actually drive the process to start
18 looking at these things more seriously, because
19 ultimately, you know, from a biological standpoint
20 that's where most things happen, is in synergy. So
21 I don't know. That's more of a comment, I guess.
22 But I'd like your response.

23 MS. PARKER: Madam Chairwoman, Member
24 Deichmann, when the Clean Air Act was first passed,
25 one of the central requirements of the Clean Air Act

1 was a requirement, because at that time there was no
2 PM-10 standard, there were no criteria pollutants,
3 it was all brand-new. And Congress directed the EPA
4 to start doing some research on certain areas. And
5 that research over the decades has brought us to
6 where we are today. It has developed tremendous
7 improvements in our air quality.

8 Now, without a doubt, there are always
9 things that we can be researching and looking at.
10 But if there is a scientific combination of
11 pollutants that is to be found, that is a
12 scientifically driven inquiry, and it's not
13 appropriate to say to applicants for air permits to
14 go out and do the research. That's not what
15 Congress did from the very beginning. They said,
16 "We should fund research. We should look at
17 important areas of scientific inquiry. We should
18 try to get to the bottom of these recurring
19 problems."

20 And over time we have developed standards,
21 and some of those standards over the years have been
22 lowered as we gained new knowledge and new
23 understanding. But the scientific muscle, if you
24 will, that's necessary to answer those kinds of
25 questions is not something that's going to come out

1 of the proposed rule.

2 BOARD MEMBER DEICHMANN: I understand
3 that, and I'm personally not an advocate or would
4 not be an advocate of that onus being placed on an
5 applicant. So that's clearly not where I'm going.
6 I'm going at the reliance on EPA is saying, "Well,
7 you know, we used EPA, you know, standards and
8 procedures and such and so, there's not a problem.
9 And so all you people don't need to worry about it,
10 because, you know, EPA says it's okay."

11 Well, EPA has -- there's a list of
12 pesticides and chemicals out there that -- you know,
13 10,000 that EPA has not even evaluated yet, even
14 though by law they were supposed to have by now. So
15 I just am arguing with the reliance on EPA standards
16 as being protective of the public health.

17 And so I don't know where that goes, but
18 I'm just saying, don't use that on me, because I'm
19 not convinced that just because the toxic study was
20 done should mean that the concerns that we've heard
21 so far are invalid, because I have just heard them
22 too long by now.

23 MS. PARKER: Thank you, Member Deichmann.

24 BOARD MEMBER UPSON: Ms. Parker, do you
25 know if the community toxic study looked

1 specifically at the San Jose community or the
2 Sawmill area, or some of the other districts that
3 have been here tonight?

4 MS. PARKER: One of the monitoring
5 stations was at the Mountain View Community Center.

6 BOARD MEMBER UPSON: And do you know how
7 those data compared to the other areas?

8 MS. PARKER: "Other areas" meaning --

9 BOARD MEMBER UPSON: The Del Norte High
10 School or --

11 MS. PARKER: I know the profiles were
12 similar. And Fabian Macias is here if you would
13 like to hear from him in more detail. But I know
14 the profiles were quite similar between the three
15 different monitoring stations.

16 BOARD MEMBER UPSON: Thank you. Would you
17 like to comment, Mr. Macias?

18 MR. MACIAS: Madam Chair, members of the
19 Board, that air toxic study that we did, we were
20 actually -- when we were doing the siting and
21 working with EPA on this, we knew that the toxics
22 were heavier than air and were going to settle, so
23 we wanted to find the lowest areas. And so that's
24 why we selected the North Valley site and also the
25 South Valley site. And then also Del Norte as a

1 reference site because Del Norte is actually a very
2 robust station that's there.

3 And so when we were working and getting
4 that data, they all showed very similar results and
5 when the contractor, which is Desert Research
6 Institute out of the University of Nevada, who does
7 work for EPA and does toxic studies for EPA --
8 they're the ones that came up and found that the
9 levels were all similar and they were below -- there
10 was -- basically they stated the risk level was low
11 to none.

12 BOARD MEMBER UPSON: Thank you.

13 BOARD MEMBER CURRAN: I have another
14 question. Sorry. When you did the air toxic study,
15 what type of outreach and community publicity did
16 you do to inform the community that you were doing
17 this and then again of the results from this study?

18 MR. MACIAS: Actually we had brought it to
19 the Board to let them know we were doing this. We
20 had secured the money through the community scale
21 toxics grants. We notified the Board, and I think
22 Member Deichmann was the Chair at the time, I think,
23 and so we came over here and presented what we were
24 doing and the money that we had received, and gave a
25 very high-level overview of the project.

1 BOARD MEMBER CURRAN: I also remember -- I
2 was an active member in the audience at that time --
3 that there may have also been a presentation at one
4 of the locations?

5 MR. MACIAS: That's right. Yes, we
6 actually did a presentation. I think it was down in
7 the South Valley, and so we actually had an Air
8 Board meeting down there, and we presented some of
9 the results there, and then followed that up on -- I
10 think it was December 9th of 2009, Dr. Ilias
11 Kavouras from Desert Research came and gave this
12 Board a presentation on his findings and stood here
13 and answered questions.

14 I would like to say something about
15 setting standards. Part of EPA's process is an
16 integrated science assessment, and those integrated
17 science assessments -- it's not just the doctors and
18 the scientists at EPA. They take into consideration
19 the work that's done in research, the research in
20 academia, and they take in a whole lot of
21 information from a lot of very smart people just
22 like you all, and then they conduct a series of
23 hearings. And during that science assessment they
24 integrate all that information. Then they take that
25 information, whether -- and it's the latest and

1 greatest science. So if the latest and greatest
2 science has cumulative impact, then it would be
3 considered in those proceedings.

4 BOARD MEMBER UPSON: Other questions?

5 BOARD MEMBER GRACE: Aside from the fact
6 that the profiles were similar, was there anything
7 noteworthy about the study? You know, flag, red
8 flag, something that --

9 MR. MACIAS: There were no red flags, but
10 what was interesting -- and I think all of you folks
11 here in this audience -- we are a community
12 dominated by vehicle emissions. We drive all over
13 the place. I don't know how much money I spend in
14 gas a month, but I'm a culprit of that, too. And
15 that's what the results showed. They showed that
16 all three sites were impacted by vehicle emissions.

17 BOARD MEMBER UPSON: Any other questions?

18 BOARD MEMBER CUDNEY-BLACK: I have a
19 question. It seems to me that with respect to the
20 nexus of air, we do consider cumulative impacts in
21 certain circumstances, but only in the nexus of air.
22 Has it been envisioned, in the Environment
23 Department, looking at cumulative impacts of
24 combined nexi all at once, as part of just the
25 general department-wide study?

1 MS. PARKER: And excuse me, Madam Chair
2 and Member Cudney-Black. You mention Environment
3 Department. Are you meaning NMED or the
4 Environmental Health Department?

5 BOARD MEMBER CUDNEY-BLACK: Environmental
6 Health, Albuquerque.

7 MS. PARKER: I'm not aware, unless Mary
8 Lou Leonard would like to address that.

9 MS. LEONARD: Chairman Upson and Member
10 Cudney-Black, the Albuquerque Environmental Health
11 Department only has regulatory authority over air
12 quality. We don't have regulatory authority over
13 water, soils, and that type of thing. I see where
14 you're going. It would have to be in tandem with
15 the New Mexico Environment Department.

16 BOARD MEMBER UPSON: Thank you, Director
17 Leonard.

18 Anybody else? Thank you.

19 So now we have Ms. Beverlee McClure from
20 the Association of Commerce and Industry.

21 MS. McCLURE: Madam Chair, members of the
22 Board, thank you for having me today. I'm Beverlee
23 McClure, the president of the Association of
24 Commerce and Industry. We service a statewide
25 chamber of commerce and we represent employers, both

1 large and small. More important, what we do is we
2 work on good policy, and we work on policy that has
3 balance between creating and retaining jobs and a
4 policy that also works with the environment. We
5 also recognize that employers are here because they
6 choose to be here, and those employers that choose
7 to be here are good stewards and are good stewards
8 of the environment.

9 We also support policy that makes good
10 sense, and this policy for this hearing, this
11 recommended proposal, doesn't make sense to us.
12 First of all, you just heard that it doesn't even
13 address the current -- in the complaint that you
14 heard -- the current sources of what people believe
15 are to be the air contaminants.

16 Also, it's going to have a profound
17 negative impact on our economy. That's really
18 hurtful right now in Albuquerque because after over
19 40 months of job decline, we are finally beginning
20 to put people back to work, but only at a .9 percent
21 level year over year. We haven't even hit 1
22 percent. We have only just now started to put
23 people back to work in the state. Combine that with
24 the fact that the federal government did not extend
25 the unemployment benefits in the federal budget and

1 you're going to find a significant impact on the
2 people in this area.

3 So here we have an already fragile
4 economy. We need to keep employers that are here --
5 encourage them to expand. We need to recruit new
6 employers, yet we're going to be faced with holding
7 a hearing for a proposal that not only doesn't
8 address the issues that are being talked about, but
9 doesn't help those needing to work, to help their
10 families -- doesn't help put them back to work.

11 Also, a public policy like this is going
12 to set a poor example and show that we're not going
13 to be open for business, and it's going to begin to
14 again cause a loss and spiral of job loss.

15 If you look at that, according to the
16 Place Matters study, what that study said is that
17 poverty is one of the prime predictors of poor
18 health. And what we would submit is that continued
19 loss of jobs is going to increase poverty. So
20 again, this public hearing is really going to add to
21 the impact that we're trying to prevent.

22 I'm going to turn it over now for the rest
23 of our time to Bill Scott. He is a shareholder of
24 Modrall, Sperling. He's also the chair of our
25 environment committee. He's going to discuss the

1 legalities of this petition. Thank you.

2 MR. SCOTT: Madam Chair, members of the
3 Board, let me be clear. We're asking that the Board
4 deny a hearing on this particular proposal. But
5 we're not saying that there should be no hearing or
6 no action by this Board concerning the complaints
7 you have heard from citizens tonight. We're simply
8 saying that this proposal -- to have every single
9 permit within Bernalillo County, regardless of
10 whether it's for a small emergency backup generator
11 or a gravel crusher or a major manufacturing
12 facility -- has to go through 12 months of
13 monitoring, incur tens to maybe hundreds of
14 thousands of dollars in expense, run the risk of
15 having the permit denied on a vague standard of an
16 unfair impact and run the risk of citizen suits
17 against that entity trying to get a permit after
18 that ordeal. We think that this is a flawed idea.
19 Mr. Jantz referred to it as a back-of-the-envelope
20 idea throughout, that he didn't even expect some of
21 the provisions in the regulation to be adopted by
22 this Board.

23 If they want to come back with a better
24 formulated proposal or something clearer, then maybe
25 a hearing is appropriate, or if this Board wants to

1 conduct some investigation or direct further study
2 be done in these impacted areas to evaluate air
3 quality in those areas, that may be an appropriate
4 solution, as well.

5 What I want to address in my remaining
6 time are the issues of the Board's authority to
7 entertain this proposal. Mr. Grantham aptly pointed
8 out the significant problem with one of the key
9 provisions in the statute that Southwest Organizing
10 Project relies on. That's the section that says
11 that an existing source can be required to do
12 various things, including gathering data on its
13 emissions.

14 That provision in the statute doesn't
15 broadly authorize this Board to require prospective
16 applicants to gather information on every other
17 source in the surrounding area or to undertake the
18 intense active investigation that they're asking
19 this Board to impose. That's a creature of statute.
20 This Board's authority is limited to what the
21 statute specifically authorizes the Board to
22 undertake. What they're asking you to do is not
23 authorized by the language of the statute.

24 Mr. Jantz referred to the issue of the
25 stringency. In doing that, he omitted a provision

1 of the statute. The statutory section that he
2 relied on, 72 -- or 74-2-5(C) talks about the
3 Board's ability to implement regulations to protect
4 visibility in class 1 areas, to prevent significant
5 deterioration of air quality -- which is the
6 provision he left out -- and to achieve national
7 ambient air quality standards in nonattainment
8 areas.

9 The proposal here would impose a
10 requirement to undertake this extensive monitoring,
11 cumulative evaluation, et cetera, as part of
12 permitting process, which is far more stringent than
13 any permitting requirement for PSD under the federal
14 regulations. Imposing that requirement is more
15 stringent than federal requirements, and is contrary
16 to the statute. The Board lacks authority to impose
17 that condition.

18 The statute also has a problem in that it
19 suffers from being void from vagueness. The way
20 that their proposal is structured, you conduct this
21 extensive evaluation to then determine whether there
22 is a detrimental impact. That's evaluated by the
23 term of whether there is an unfair impact. There's
24 no standard by which you can measure unfair.
25 Mr. Jantz says, "Well, that's not a problem because

1 the regulation doesn't contemplate denying a
2 permit."

3 But section 20.11.72(8)(B)(6) of their
4 proposed regulation specifically says that you have
5 to consider, among other alternatives, denying the
6 permit application. And they want to build in a
7 citizen supervision that says that if someone is
8 unsatisfied with the Board's decision, they can
9 bring suit to enforce the requirements of the act,
10 which would include having the permit denied because
11 they didn't like the way this investigation was
12 conducted.

13 So denial of the permit clearly is part of
14 the program that they have implemented in their
15 regulation as drafted.

16 In other contexts, courts have struck down
17 environmental regulations that talk about emissions
18 that result in, quote, undesirable levels or in
19 detrimental levels of pollution because those
20 standards are vague. They're not something that
21 puts the regulated community on notice of what is
22 prohibited conduct, nor does it provide a clear
23 standard by which the Board or the regulators can
24 measure and enforce the act. It simply is a
25 subjective ad hoc determination that violates

1 fundamental notions of due process.

2 The proposed regulation, as I mentioned,
3 asks this Board to impose a private right of action,
4 allowing any citizen to bring a suit in state
5 district court to enforce the terms of this
6 regulation. That's plainly beyond the scope of any
7 authority that this Board has under the Air Quality
8 Act. The Air Quality Act does not contain a
9 provision authorizing citizen suit. There is
10 nothing in the section of the statute authorizing
11 this Board to adopt regulations that says that the
12 Board is empowered to create a private right of
13 action that an individual can bring in state
14 district court. There is simply no basis in law for
15 this Board to go that far. You'd be violating the
16 mandate of the Air Quality Control Act, and that
17 would be subject to reversal by a court.

18 I see that I'm nearing the end of my time.
19 There are other points that we have raised in our
20 filing which I won't detail here. Let me just hit
21 on some of the practical concerns and considerations
22 to elaborate on what the City pointed out.

23 The burden of this proposal is very
24 significant. As the information from Minnesota
25 reflects, costs for the studies they conduct there,

1 which are not as detailed or as onerous as what
2 they're proposing, are at least \$100,000 each. It's
3 likely going to be many multiples of that by the
4 time you have to look at finding monitoring sources,
5 siting them appropriately according to EPA
6 standards, purchasing those monitoring stations,
7 maintaining them over the course of 12 months,
8 hiring experts to not only evaluate that data but
9 then to look at the public health impacts. The
10 costs to an applicant are in the hundreds of
11 thousands of dollars. You add to that an additional
12 12 months to the permitting timeline, the burden of
13 just trying to get a permit, when you could go to
14 another state and get a permit by rule in some
15 instances immediately, or get it within 60 or 90
16 days, makes it completely deleterious to economic
17 development in this state. No one would want to
18 come into Bernalillo County and try to establish a
19 business operation under those circumstances.

20 The information from Minnesota also
21 indicates that staff there was spending between 250
22 and 540 hours per year per study evaluating these
23 studies. Well, if you have 100 to 150 studies a
24 year, you're talking about 25,000 or 50,000
25 man-hours of time in the agency devoted to trying to

1 digest this massive amount of information. There's
2 simply not the manpower available in the agency to
3 handle that, nor is there a means for this Board to
4 impose fees or taxes or something to provide the
5 infrastructure for the Board or the agency to handle
6 that kind of a work load.

7 So on balance, we would ask this Board to
8 deny the proposal. As I say, if there is a
9 better-formulated proposal that can be brought up
10 later, maybe hearing is appropriate there, or some
11 investigation by this Board and this agency to
12 evaluate the specific concerns raised by these
13 citizens, that may be an appropriate solution, as
14 well. Thank you.

15 BOARD MEMBER UPSON: Thank you. Questions
16 from the Board? Member Deichmann.

17 BOARD MEMBER DEICHMANN: Thank you, Madam
18 Chair. As always, a very thorough critique, and I
19 appreciate your evaluation. I'm torn on this
20 because, as you rightfully point out, there are
21 issues that should be addressed and we've dealt with
22 those in the past. And I have concerns about the
23 quality of what's been proposed, what we've been
24 hearing from both parties on the merits -- not the
25 merits. Well, whatever we want to call it. The

1 fact is, there is an issue out there. Whether this
2 is the right avenue to address it or not is
3 debatable.

4 So my question to you is: Based on your
5 introductory and concluding remarks, do you see a
6 way of bringing parties together to actually come up
7 with a workable solution to this problem?

8 MR. SCOTT: Madam Chair, Member Deichmann,
9 that is a very good question. I think what we've
10 heard from folks this evening is, there is something
11 of a data gap or at least a perceived data gap. And
12 barring gathering of that data, I don't know that
13 there's much that parties could discuss that would
14 be in the abstract. Getting that information may be
15 requiring another toxic study or more detailed
16 analysis of the specific area of concern to gather
17 information that then could form the basis for some
18 discussions about: Are there appropriate regulatory
19 changes that could be made at that point, might make
20 some sense.

21 But in terms of having the parties sit
22 down now to try to hash out a regulation that would
23 address the very specific neighborhood-related
24 concerns that we've heard about this evening, I
25 think that would be really very much in the

1 abstract; and trying to craft a regulation that
2 would be neighborhood-specific would be, I think,
3 very difficult to do to make that withstand a
4 challenge after the fact, because it would be
5 area-specific as opposed to a broader application
6 designed to address pollution generally throughout
7 the agency's area of jurisdiction.

8 BOARD MEMBER DEICHMANN: I have got to
9 think about some alternatives, but thank you.

10 BOARD MEMBER UPSON: Anybody else?
11 Mr. Grantham.

12 MR. GRANTHAM: Mr. Scott, I'm just trying
13 to understand your argument on one of the bases of
14 how the proposed regulation exceeds the authority of
15 the act, and in 74-2-5(C) that you talked about, and
16 talked about pertaining to prevention of significant
17 deterioration and pertaining to nonattainment areas.
18 And so I'm trying to see exactly how that's
19 applicable to those regulations. Is it your
20 argument that anything that addresses a criteria
21 pollutant necessarily falls under either the
22 category of prevention of deterioration or
23 pertaining to nonattainment, and therefore falls
24 under the stringency requirement of this act? I
25 mean, is there a way to regulate criteria pollutants

1 that is not subject to that stringency requirement?

2 MR. SCOTT: Madam Chair, Mr. Grantham, a
3 very good question. The argument is that what they
4 are asking to be done regulatorily is to impose a
5 requirement that would apply to every single
6 category of permit that would come before the
7 agency. So whether it's a minor source or a major
8 PSD facility, every one of those would have to
9 undergo 12 months of monitoring, preparation of a
10 cumulative impact study. For PSD permitting
11 purposes under the federal act, if you go to NMED,
12 you don't have to prepare that cumulative impact
13 analysis. So what they are imposing is a permitting
14 requirement that is more stringent than what is
15 required under the federal law for PSD purposes.

16 With respect to nonattainment, we're not
17 in nonattainment presently, but to the extent
18 they're imposing this requirement, if for some
19 reason we became nonattainment and this obligation
20 were in place to conduct that analysis, then yes,
21 your analysis on that aspect of it was correct.

22 MR. GRANTHAM: So I think what I'm hearing
23 from that is that there's no way, in your opinion,
24 to regulate a criteria pollutant that wouldn't fall
25 under any of those two categories?

1 MR. SCOTT: No. You could establish a
2 standard that is no more stringent than federal
3 standards but comparable to federal standards for a
4 criteria pollutant, and you would have to comply
5 with that for any permitting purposes, including
6 PSD. In terms of -- to the extent that you adopt a
7 standard that is required to be applied across the
8 Board on every permitting scheme, then yes, you may
9 run afoul of this provision, which is what they're
10 trying to do here. But if you establish some other
11 criteria that maybe isn't tied specifically to
12 permit issuance, that limits some other aspect, then
13 you might be able to regulate in that fashion.

14 MR. GRANTHAM: Okay. Thank you.

15 BOARD MEMBER UPSON: Thank you. Anybody
16 else? Okay. Thank you.

17 MR. SCOTT: Thank you.

18 BOARD MEMBER UPSON: So are there members
19 of the audience that would like to provide comments
20 opposing the petition? Please stick to the time
21 limit and have comments that have not already been
22 made.

23 MR. MICKELSON: Thank you, Madam Chair.
24 My name is Roger Mickelson, and I have some
25 experience with the quality of (unintelligible)

1 about fuel spills, but not particularly air quality.

2 But I'd like to simplify this at least from a
3 citizen's perspective, taxpayer.

4 Is there a problem? Yes. Life
5 expectancy. But what's the cause? That's a very
6 complex answer, and I think that this approach to
7 air quality is an emotional oversimplification.
8 There are many things that need to be done and I
9 don't disregard that at all. I don't think this is
10 the solution, to hold a hearing or even to continue
11 this with the Air Quality Board. This is a matter
12 for other venues.

13 And let me call this thing the air quality
14 monitoring proliferation program. We've heard about
15 the cost. I won't reiterate those. So where is the
16 solution? I say where, not what. There are
17 well-established plans and standards for land use
18 and air quality, and those are based on scientific
19 principles. They're based on well-established
20 standards and practices in other communities, and we
21 have such things as the comprehensive plan, zoning
22 codes, sector plans, environmental standards,
23 regulations, rules, the whole business. Those are
24 out there. If those are inadequate, they should be
25 corrected wherever they take place.

1 So let's not drag this into an air quality
2 discussion. This is not deserving of your time. I
3 don't think this is really where the solution lies
4 for these people who do need a solution, but let's
5 get it to the right place. So get the experts out
6 there who are already enforcing the rules -- make
7 them enforce the rules. But let's find a solution
8 elsewhere. Thank you.

9 BOARD MEMBER UPSON: Thank you,
10 Mr. Mickelson.

11 MR. TRUJILLO: Good evening, Madam Chair
12 and Board members. I am Anthony Trujillo. And I'm
13 representing two organizations this evening: The
14 City Small Business Regulatory Advisory Commission
15 and the Albuquerque Hispano Chamber of Commerce. I
16 am Chair of the SPRAC, and a board member of the
17 Hispano chamber. My daytime job is owner of a small
18 minority-owned business headquartered here in
19 Albuquerque.

20 The SPRAC is chartered with looking at
21 existing or potential regulations or ordinances that
22 adversely impact small business. The Hispano
23 Chamber promotes Hispanic and other business in our
24 community, plus economic development.

25 As detailed in our letter to the Board,

1 the proposed rule creates an unrealistic economic
2 burden on the small business community and would
3 create a significant economic disturbance in our
4 county and our city. Madam Chair and Board members,
5 on behalf of the Small Business Regulatory Advisory
6 Commission and the Hispano Chamber, we respectfully
7 request that you deny a public hearing on this
8 petition tonight. Thank you very much.

9 BOARD MEMBER UPSON: Thank you,
10 Mr. Trujillo.

11 MR. HARTMAN: Madam Chairman, Board
12 members, I'm Roger Hartman. I live in Albuquerque,
13 and I'm here speaking just for myself. I won't talk
14 about things that have already been covered. But to
15 quantify this a little bit, a five-mile radius, if
16 you remember your geometry, that's a little bit over
17 78 and a half square miles. The City of
18 Albuquerque, according to one website I looked at,
19 is about 190 square miles. So this is 40 percent of
20 the area of the City of Albuquerque.

21 Speaking as a now-retired engineer but
22 with some fair amount of experience in data
23 analysis, it's going to be next to impossible in
24 analyzing something over 40 percent of the city of
25 Albuquerque, to attribute anything to any particular

1 source. It just doesn't happen.

2 Now, we've heard some very heartfelt and
3 compelling testimony here tonight from residents,
4 and I don't know what the right venue is for that to
5 be heard. I don't know if this is the right venue
6 or not. I think it should be heard. But I think
7 this proposed rule tars everything with one very
8 expensive brush. I think it would be a job-killer.
9 We're already in bad economic straits. Let's not
10 make it worse. Let's not ignore the issue. Is
11 there a better way to do things? Very likely. Is
12 it this way? I don't think so. Thank you.

13 BOARD MEMBER UPSON: Thank you,
14 Mr. Hartman.

15 MS. REIN: Madam Chair, members of the
16 Board, my name is Cheryl Rein. I work for the City
17 of Albuquerque in Economic Development. Gary
18 Oppedahl, who is traveling today, trying to bring
19 jobs and money to the City, has asked me to read
20 this letter on his behalf.

21 "As the director of the Economic
22 Development Department of the City of Albuquerque, I
23 would like to express strong concerns regarding the
24 petition to require review and consideration of the
25 cumulative air impact.

1 "The Economic Development Department works
2 to create, diversify, and enhance job growth and
3 promote business development and stability here in
4 the city. Economic development is vital. It is
5 essential to the health, safety, and welfare of
6 Albuquerqueans, because economic growth broadens and
7 strengthens state and local tax bases and provides
8 meaningful employment opportunities, thereby
9 enhancing the quality of life.

10 "Albuquerque is recovering from recession.
11 The Economic Development Department must be able to
12 continue to stimulate investment and job
13 opportunities and the retention of sustainable
14 existing employment for the general welfare of the
15 inhabitants of the city. This is not at the expense
16 of community health and well-being. It is a most
17 crucial element for the community viability.

18 "The actions requested by this petition
19 would detract greatly from moving the city forward.
20 The petitioners are asking this Board to consider a
21 petition that would require every small business
22 seeking an applicant for an air permit, even the
23 most minor air permit source such as a generator, to
24 collect extreme amounts of data as a condition to
25 issuing that air permit. No other city or state

1 anywhere in the United States has this type of
2 regulatory barrier. We are convinced that holding a
3 public hearing on this wholly unreasonable request
4 would significantly hinder existing local companies
5 looking to expand and would send the wrong message
6 to commerce considering relocating to our city.
7 Therefore, I respectfully request that you decide
8 tonight to deny the Southwest Organizing petition."
9 Thank you.

10 BOARD MEMBER UPSON: Thank you, Ms. Rein.

11 MR. GARRETT: Madam Chair, I'm Ted Garrett
12 and I represent Garrett Development Corporation and
13 Western Albuquerque Land Holdings, which I will call
14 WALH. But Garrett Development Corporation is the
15 asset manager for WALH, which owns 53,000 acres on
16 the west side of Albuquerque. Garrett Development
17 Corporation and WALH respectfully request that the
18 Air Quality Board deny the petition in Title 20,
19 chapter 11 of the New Mexico administrative code.

20 The petition claims to be interested in
21 approving quality of life in low-income and minority
22 neighbors when, in fact, its mandates would
23 eliminate new jobs and services by driving new and
24 expanding business opportunities out of the city and
25 county, at the same time making recruiting new

1 corporations impossible. Improving existing
2 properties would require a new air permit and
3 compliance with the new mandate would lead to the
4 deterioration of Albuquerque's existing housing,
5 schools, neighborhoods and infrastructure for all of
6 its citizens.

7 The Association of Commerce and Industry
8 has prepared a response in opposition to amending
9 the New Mexico Administrative Code which we believe
10 is well-substantiated and addresses the legal sides
11 of this issue. ACI's position also addresses the
12 negative economic impacts of the proposed
13 regulations, and we strongly urge you to consider
14 their official challenge to the petition. Garrett
15 Development Corporation and WALH's goal is to
16 provide new jobs and economic growth for the
17 Albuquerque community, allowing quality life
18 environment for its citizens to work, play, and
19 raise their families. WALH is currently investing
20 significant capital for public infrastructure to
21 increase Albuquerque's opportunity to attract
22 quality companies that will provide quality
23 employment and growth for its current and future
24 citizens, our children and grandchildren. For the
25 benefit of all of our citizens of Albuquerque and

1 Bernalillo County, we urge the Board to deny the
2 petition to amend. Thank you.

3 BOARD MEMBER UPSON: Thank you,
4 Mr. Garrett.

5 MR. BROWNING: Good evening, Madam Chair.
6 Members of the Board, my name is Kirk Browning. I
7 actually didn't have any comments prepared, but made
8 a few notes in my phone, so I'll look at my notes in
9 my phone.

10 I might mention, you probably read in the
11 paper that we're the hole in the doughnut. Texas is
12 growing at 5 percent, Colorado's 3 to 5 percent,
13 Arizona is 5 percent plus. We're barely over zero
14 percent. We're the hole in the doughnut
15 economically in the southwestern United States.

16 Anything you approve regarding this
17 petition will hurt recruiting, job recruiting. I
18 don't mean to repeat what other people have said,
19 but it's really hard. When companies are looking at
20 us presently right now and we might pass something
21 that will hamper them, they may make the decision
22 not to relocate here. If this becomes public -- I
23 urge you to make a very quick decision.

24 Regarding the 12 months, we do deal with a
25 lot of different companies. I'm speaking for myself

1 and Titan Development. No company is going to spend
2 12 months collecting data. They're going to go
3 somewhere else in the state.

4 The last thing I'll mention is, I have got
5 two daughters in college, 21 and 19 years old. One
6 will be graduating in May, and we talk about how we
7 keep losing the millennials from the Albuquerque
8 area. The state of New Mexico lost population for
9 the first time last year. I have two data points to
10 say they will not return to Albuquerque, not because
11 they don't enjoy it, they don't love it, they don't
12 love their family. The opportunities don't exist
13 here. This is a business-killer, a job-killer, and
14 it's all about creating jobs. I encourage you to
15 deny this petition. Thank you.

16 BOARD MEMBER UPSON: Thank you, Mr.
17 Browning.

18 MS. ANDERSON: Madam Chair, Board members,
19 my name is Lynne Anderson. I'm the president of
20 NAIOP Commercial Real Estate Development
21 Association. The proposed petition would be a major
22 hurdle to a wide range of commercial developments
23 due to both added exorbitant costs and time issues.
24 Although the petition claims to be interested in
25 improving the quality of life in low-income and

1 minority neighborhoods, its proposed mandates would,
2 in fact, eliminate jobs and services by driving new
3 and expanding businesses out of the city and the
4 county. They would also create a disincentive to
5 improve existing properties, since many remodels
6 trigger the need for a new air permit, thereby
7 requiring conformance with the new mandate. These
8 requested mandates would not only hurt low-income
9 and minority neighborhoods, they will severely
10 damage the economic viability of the city and the
11 county as a whole. Thank you.

12 BOARD MEMBER UPSON: Thank you,
13 Ms. Anderson.

14 MR. SILVERMAN: My name is Paul Silverman.
15 I'm a member of the executive committee of the
16 Greater Albuquerque Chamber of Commerce, chairman of
17 our transportation committee, and probably more
18 importantly, I spent ten years sitting in the seats
19 that you all are sitting in, back at the time when
20 we actually had really bad air in Albuquerque, and
21 I'm very proud of the fact that we're now the eighth
22 cleanest city in the country with regard to our
23 clean air.

24 I'm going to read you a little bit of our
25 letter that we sent to you, the Chamber sent to you,

1 on March 6th. The Chamber is a membership
2 organization made up of 3,100 local businesses,
3 mostly small businesses, that in turn employ over
4 70,000 people in our community.

5 The Chamber is adamant about improving the
6 quality of life, improving the economic environment
7 within the community, and strongly requests you to
8 turn this down.

9 Now, I'd like to take a minute or two to
10 talk to you about my listening to this testimony. I
11 went into Air Board member status and could not help
12 but put myself in your place. And I'd like to say
13 that Mr. Jantz put down the criteria for which you
14 should make a decision, and that was, one, if
15 there's a problem; if there's authority; and if
16 there's a solution, then you have an obligation to
17 hold a hearing.

18 And I will tell you that he lost on all
19 three counts. So your decision tonight, while
20 dealing with a very, very difficult problem -- and
21 I'll tell you that actually, I remember, 1996, yeah,
22 we heard this same case. And it has been a problem,
23 as has been stated by one of the folks from the
24 neighborhoods, that has existed since they have been
25 working on it, since 1969. And it keeps coming back

1 here. But it has not been determined to be an air
2 quality problem. It is a public health problem.
3 And from that perspective, it needs to be dealt with
4 in that manner.

5 One of the other things that I was really
6 proud of tonight is the professionalism and the
7 quality of the staff that you have. My experience,
8 I'm in the real estate development business, I work
9 with public entities all over the place. And I will
10 tell you that this group of people is the most
11 professional, has the most expertise, approaches
12 things in the most scientific manner, and they sat
13 up here and told you exactly what the scientific
14 case was, told you that you really don't have
15 authority -- and as a former Board member, I'll tell
16 you, I agree with them completely -- and the
17 solution that has been presented -- and this is,
18 again, me sitting there listening to it as a Board
19 member -- is so draconian with regard to the rest of
20 the community that it would be like someone else
21 preparing a regulation and saying, "Well, wherever
22 you have bad air or where people think that they
23 have bad air, then the requirement is that they move
24 to the east mountains."

25 I mean, you know, that is exactly the

1 dichotomy of what's being presented and the
2 draconian results that it will have on our economy.
3 So I hope you all will do the right thing. I hope
4 you will take Mr. Jantz up on his challenge that if
5 there's a demonstrated problem, if there's
6 authority, and if there's a reasonable solution,
7 then you should hold a hearing. I will tell you
8 that's not the case, and so your decision tonight,
9 even though it's a very difficult problem, should be
10 quite easy to you. Thank you for your time.

11 BOARD MEMBER UPSON: Thank you,
12 Mr. Silverman.

13 MR. BAILEY: Madam Chair, Board members,
14 my name is Bret Bailey. I'm here on behalf of the
15 Home Builders Association of Central New Mexico and
16 its 600 member companies. We ask that you deny the
17 request by the Southwest Organizing Project
18 concerning the petition to amend Title 20, Chapter
19 11, of the Administrative Code.

20 I think it would be difficult to debate
21 the merits of this petition as it stands today
22 because it is not developed enough to adequately
23 review all the issues that have been brought up
24 tonight in testimony. Our association is in
25 agreement with the position put forth by the

1 Association of Commerce and industry and the
2 response in opposition to this petition, and we hope
3 that you will consider our perspective, as well.

4 Thank you.

5 BOARD MEMBER UPSON: Thank you.

6 MR. HERSHBERGER: Madam Chairman, members
7 of the Board, my name is Vern Hershberger. I'm here
8 tonight just representing myself and my family. I
9 just wanted to try to encourage you to do the brave
10 thing, the best thing for Albuquerque, and deny this
11 petition. Figure you were somebody at Tesla. If
12 you see in the newspaper tomorrow that the Air Board
13 decided they wanted to go forward to a hearing,
14 might that influence Albuquerque's place in the
15 finals list? You bet it will.

16 Isn't the timing pretty interesting that
17 we're having this hearing tonight when we're one of
18 the contenders for that? Could be a potentially
19 huge boom for this area, economically. Man, if I
20 was somebody in Las Vegas, I'd sure want to try to
21 convince this Board to go to hearing, so it would
22 more likely come to Las Vegas than Albuquerque.

23 But you have that opportunity, to show
24 that you understand the issues, you understand the
25 consequences of your decision, and you also

1 understand that Albuquerque needs jobs.

2 And I would say, as a person that
3 understands environmental health, that the diet the
4 people have is certainly a lot more of an influence
5 than the air quality, especially the great air
6 quality that we have in Albuquerque, because of the
7 great job of the staff that you guys have. Like it
8 was mentioned, Albuquerque has the eighth best air
9 quality of a major metropolitan area, so if you go
10 to this kind of draconian extreme to adopt a
11 petition like this with such good air quality, with
12 so much at stake economically, just think about --
13 you know, your name is on all these boards here and
14 the vote that you make will be remembered, so we
15 hope you make the right vote. Thank you.

16 BOARD MEMBER UPSON: Thank you, Mr.
17 Hershberger.

18 MR. MEECH: Madam Chairman and Board, my
19 name is Walter Meech. And one of the things that
20 they mentioned is whether anybody lived in that area
21 of the South Valley, or whatever. And my wife
22 actually grew up down there. My parents -- my
23 in-laws actually grew up down there, and they're 80
24 years old. So I know that the health down there is
25 dependent on certain areas, but my mother-in-law

1 taught at Mountain View Elementary for 40 years, my
2 sister-in-law taught for 25 years, and my daughter
3 actually teaches there. She's been there for two
4 years.

5 And I wouldn't have a problem with any of
6 them down there that -- you know, I don't see that
7 the health issue -- I know that they're healthy,
8 they've never had any health problems in their life.

9 And so to comment that, you know, you
10 would never move down there because you know it's
11 unsafe -- I don't see that. And you have had
12 studies in reference to what they refer to, the
13 study from 2007, 2009, that states that the air was
14 no different there than it was in the North Valley
15 or at Del Norte, and that cars are more of the
16 problem that we have than anything else. And they
17 do modeling in reference to any permitting that is
18 required for air quality, and that modeling is a
19 study that they do, and it's 24 hours, 365 days that
20 they do this modeling to see if it is in compliance
21 with what they do.

22 And I'm sure this Air Quality Board -- and
23 what they do is, they're very diligent in reference
24 to studying it and making sure that they are in
25 compliance with everything that they do before they

1 have.

2 The laws are there already. You have
3 everything in place. I don't see putting anything
4 else more stringent than what you have. So my
5 feeling is that you need to deny this permit and
6 this public hearing and move on with what is out
7 there. Thank you.

8 BOARD MEMBER UPSON: Thank you, Mr. Meech.

9 MS. UPSON: Thank you, Madam Chair and
10 Board members. My name is Mona Upson, and I'm here
11 representing Wagner Equipment, specifically Wagner
12 Power Systems.

13 I just wanted to talk about the stand-by
14 generators for just a brief moment. Our customers
15 already have to go through an air quality permitting
16 process. They have to go through a 30-day waiting
17 period. They submit their paperwork. They have to
18 wait 30 days and it goes through a 45-day public
19 hearing notice. So there are things in place.
20 Equipment are tested at the factory to meet the
21 standards. We've given all the data to the City,
22 they evaluate it. They have to be tested onsite to
23 meet your standards. We're already held to a
24 standard.

25 So by adding that 12-month monitoring,

1 it's going to push them away. We're not going to
2 have the hospitals, the schools, the fire
3 department, all the businesses that we really need
4 for our economy. So I request that you deny this
5 petition. Thank you.

6 BOARD MEMBER UPSON: Thank you, Ms. Upson.
7 All the Upsons are related in this country.

8 Anybody else? Thank you.

9 The next step is to have a motion from
10 someone on the Board, either in favor or opposed to
11 the petition. It may then be seconded and then
12 we'll have more discussion on it. Is anyone willing
13 to propose a motion?

14 MR. JANTZ: Madam Chair, my response?

15 BOARD MEMBER UPSON: Response.

16 MR. JANTZ: May I have a few minutes for
17 rebuttal?

18 BOARD MEMBER UPSON: Of course. My
19 mistake.

20 MR. JANTZ: Thank you, Madam Chair,
21 members of the Board. In respect for the late hour,
22 I'll be as brief as humanly possible.

23 I want to talk about Ms. Parker's comments
24 first. She talked a lot about the specifics of the
25 air toxic study. She dismissed out of hand the

1 Place Matters study. You know, all that was very
2 interesting, but I think for purposes of the
3 decision tonight, it's also pretty irrelevant.

4 Ms. Parker, to my knowledge, isn't a scientist.

5 There's no way to evaluate whether her critique of
6 the Place Matters study is worthwhile. It would be
7 the same if I stood up here and said, "Well, our
8 three monitoring stations in the air risk assessment
9 study an adequate number of monitoring stations to
10 generate statistically significant data."

11 Was the process to monitor the data done
12 properly? Is the use of risk analysis appropriate,
13 rather than relying on actual epidemiological data?

14 All that stuff are valid questions, but they're
15 coming from me, a lawyer, and they go to the merits
16 of the case which would be more specifically
17 addressed by various epidemiological and air
18 modeling specialists, not a couple of lawyers.

19 Second of all, Ms. Parker's argument seems
20 to suggest with respect to the air toxics study that
21 a regulated facility is necessarily a safe facility.

22 Now, while a regulated facility may be required to
23 adhere to certain air contaminant standards, what we
24 don't know is what happens when those regulated air
25 contaminants interact with other air contaminants at

1 regulated facilities down the road. And I think
2 it's important to note that even if we're to take
3 everything in the air toxic study as true, and the
4 profile for pollutants is mostly based on traffic,
5 the purpose of the proposed rule would be to see
6 what the impacts of those sorts of pollution,
7 traffic pollution, would have combined with the
8 pollution from permitted facility. So I think to
9 that extent, Ms. Parker's critique was misplaced.

10 Second of all, or thirdly of all, both Ms.
11 Parker and Mr. Scott took issue with citizen
12 supervision. Again, the Air Quality Control Act
13 doesn't prohibit specifically citizen supervision.
14 In fact, the Clean Air Act actually allows them, it
15 has a citizen supervision provision in it. So this
16 would be entirely consistent with the Clean Air Act,
17 and specifically prohibited by the Air Quality
18 Control Act.

19 With respect to Mr. Scott's comments, I
20 want to address two things. First of all, nowhere
21 does the air ordinance, the proposed ordinance,
22 contemplate denial of permits based on cumulative
23 impacts. That's just absolutely not true. Just
24 because the word "deny" appears in the ordinance
25 doesn't mean that the ordinance would give the

1 division authority to deny a permit based on
2 cumulative impacts or forced cumulative impacts.
3 What the ordinance says is that it has to -- the
4 division and maybe -- or the Board has to consider
5 the impacts of various scenarios, mitigation
6 scenarios, including a scenario where there would be
7 no pollution from that particular source at all.
8 It's much akin to the NEPA analysis of no action.

9 So for example, the US Forest Service
10 takes the position that it has no legal authority to
11 deny mining permits under the 1872 Mining Act, yet
12 it still has to consider a no-action alternative
13 under NEPA. So I think that this would be a similar
14 situation, as we've contemplated it.

15 And with respect to the Minnesota data or
16 information that Mr. Scott provided with the ACI
17 response to the petition application, what I noticed
18 and what struck me from that information was that
19 the Minnesota regulatory agency was able to cut its
20 costs in half over the course of one year. This has
21 been a two-year -- data for two years, half over a
22 period of one year. So as the learning curve -- the
23 division becomes more proficient in regulating this
24 and enacting this ordinance, enforcing the
25 ordinance, the costs will come down.

1 Finally, I just want to note that a lot of
2 people spoke about now is not the right time, this
3 isn't the right forum. The folks out there who
4 spoke have been told that for years. Everybody's
5 passing the buck. Somebody has to start addressing
6 this problem. Even if it's only a partial solution,
7 it should start here and it should start now. Thank
8 you.

9 BOARD MEMBER UPSON: Thank you.

10 Do you all need a break or do you want to
11 move right into the motion and discussion? Keep
12 going?

13 MR. GRANTHAM: Before you ask for a
14 motion, I thought it might be appropriate for me to
15 make some comments on this recurring issue about how
16 you make the decision and whether or not the merits
17 are to be considered at this stage.

18 And I agree with what both Mr. Jantz and
19 Ms. Parker said. Mr. Jantz said that there's not
20 really a clear line on where the merits start in
21 this proceeding or something to that effect. So I
22 wanted to read a quote from a recent opinion of the
23 New Mexico Supreme Court, which is on point. It
24 says -- this is the New Energy Economy versus Vanzi,
25 2012. When a rule is proposed, EIB and WTC have

1 discretion on whether to hold a hearing on the
2 proposed rule. It cites statutory provisions. This
3 discretion is significant because EIB could have
4 decided not to hear any of these proposed rules for
5 any reason.

6 So basically what that says is the Board
7 has very broad discretion. I think the flip side of
8 that is they could have decided to hear the petition
9 for any reason. But in any case, the Board has a
10 lot of discretion there. I think what is clear is
11 that, you know, tonight is not the time to decide
12 whether the Place Matters decision report is
13 accurate or not to reaching a final conclusion on
14 any matters of fact that have been bandied about.

15 So given that, what's not so clear is:
16 How do you proceed without making any findings of
17 fact? And I think Mr. Jantz kind of alluded to that
18 maybe you don't reach the merits on any of these
19 issues. Kind of using the three-part framework of
20 whether there's a problem, whether there's
21 authority, and whether there's a solution, you know,
22 I would say you could -- if the Board thinks there
23 is enough here to indicate that there is a problem,
24 but doesn't think that there is authority, or, in
25 the alternative, that there's a solution, that would

1 be a reason for denial of the petition. So I mean,
2 I guess you could, to the extent possible, accept
3 all the facts presented at face value from both
4 sides and say, given all those, accepting those as
5 true, accepting that there is a problem, accepting
6 that the regulation would be burdensome, do we think
7 it's worth going to hearing? Do we need to hear
8 more on that? Or do we have enough here to make
9 that decision?

10 So I'm not sure that that enlightens
11 things, but I think that the bottom line is that the
12 Board has pretty unfettered discretion for any
13 reason to either grant or deny the request for a
14 hearing.

15 I would say that the Board should state
16 its reason. The individual members should state
17 their reasons for why they're voting the way they
18 are, in the interests of transparency, creating a
19 record.

20 And I don't know if Ms. Orth has anything
21 to add to that or detract from it, or correct. And
22 I'll try to answer any questions if there are any.
23 Otherwise, please proceed to deliberations and take
24 questions as they come up.

25 **BOARD MEMBER UPSON: Mr. Deichmann.**

1 BOARD MEMBER DEICHMANN: Mr. Grantham,
2 question on the third criterion. If we were to
3 evaluate if this is a solution, isn't that looking
4 at the merits?

5 MR. GRANTHAM: Well, I guess the question
6 would be: Is it close enough to a solution? In the
7 Board's opinion, is what has been proposed in its
8 current form a solution, or is it close enough to a
9 solution that it could be -- with modifications that
10 are made in the hearing process, it could serve as a
11 solution? Or is it so far from what the Board
12 believes is a solution that it's not even worth
13 going to hearing to determine that?

14 BOARD MEMBER DEICHMANN: You know, Madam
15 Chair, Mr. Grantham, yeah, that's the conundrum I
16 have, because I can envision some changes to at
17 least make it workable. But you know, if it would
18 be major surgery -- but I happen to think that there
19 are -- there's a problem there. I was just stating
20 to Mr. Grantham that I'm struggling whether the
21 proposed solution is amenable to some sort of
22 modification to make it acceptable or whether it's
23 just, you know, going to take more than using the
24 capacity of this Board to undertake. So I think
25 that's pretty much what my sense is.

1 MR. GRANTHAM: I guess one consideration
2 there is if the rule in the process of the hearing
3 changes so much that the notice would not be
4 adequate, that somebody would not have had notice
5 based on what the proposed rule was, that it would
6 ever have gone in that direction and therefore,
7 didn't have an opportunity to participate.

8 BOARD MEMBER DEICHMANN: Yeah, that makes
9 sense. Thank you.

10 BOARD MEMBER UPSON: Mr. Grantham, do you
11 have any other comments about what we heard tonight,
12 how it might impact our decision-making?

13 MR. GRANTHAM: Not in general, unless
14 there are questions, no.

15 MS. ORTH: I'm sorry, just a follow-up on
16 Mr. Grantham's very last statement. Noticed
17 problems can generally be remedied. What would not
18 be susceptible to remedy would be if a Board member
19 acted as a coauthor, if you will, on a rule that he
20 was then passing judgment on as a Board member. So
21 I would only caution you that you're looking at a
22 petition that was presented. That's the petition
23 you're looking at, and that's the petition you have
24 to act on.

25 BOARD MEMBER DEICHMANN: Thank you.

1 BOARD MEMBER UPSON: All right. Is there
2 a motion?

3 BOARD MEMBER CURRAN: I make a motion. I
4 move to deny the request for the hearing in petition
5 number 2014-1 hearing on the merits of the petition
6 to amend Title 20, Chapter 11 of the New Mexico
7 Administrative Code to require review and
8 consideration of the cumulative air impacts.

9 BOARD MEMBER GRACE: Second.

10 BOARD MEMBER UPSON: The motion has been
11 made by Commissioner Curran, seconded by Member
12 Grace. It is now open for discussion.

13 BOARD MEMBER CURRAN: I'd like to just
14 first state my reasoning for my motion to deny the
15 hearing. I agree that there are concerns from the
16 citizens. I think just your presence here shows
17 that there is concern. I have had involvement in
18 the Board for many years. I was a member of the
19 audience for many years before I became a member of
20 the Board. And I remember several issues coming up
21 similar to this. I remember the toxic study come
22 up. I remember the presentation from the Place
23 Matters study. I remember the presentation there,
24 as well. So I do feel that there is a concern, and
25 I do appreciate you coming and voicing that concern.

1 As far as the authority, I feel like we're
2 questionable on where that authority lies. I know
3 that you have been given the same statement of maybe
4 this isn't an Air Board issue, maybe it's a zoning,
5 maybe it's a planning. And again, I don't know that
6 the authority lies singly with the Air Board.

7 Then with the solution, looking at the
8 solution that was presented, I don't agree that that
9 is a good solution at this point. I think that
10 there could be some modifications to it to make a
11 solution that could fit business needs as far as
12 being able to grow business, and as well as
13 community needs for being involved in that, and
14 having a voice and having an opinion. I don't
15 believe that that type of change can be made in
16 floor amendments to the proposed rule. I believe
17 that if there were changes, they would be
18 substantial and that it would require an additional
19 notice so that all parties who may not currently be
20 interested in the proposed rule would have time to
21 look at the rule and then comment on it and be a
22 party involved.

23 That's my reasoning for requesting that we
24 deny the request for a hearing.

25 BOARD MEMBER CUDNEY-BLACK: I am also in

1 favor of denying the request for hearing. I also
2 agree that the cumulative impact, the need for
3 study, is very important as evidenced over years
4 that I have heard about this issue, as well as the
5 obvious passion that audience members have for this
6 topic.

7 But I am also not convinced that this is
8 solely an air quality issue. Air quality does take
9 into account cumulative impact with respect to
10 certain new permits, but I think what is being
11 requested is larger than an air quality cumulative
12 impact study. So this may be something that is part
13 of a larger study, although I haven't heard anyone
14 articulate exactly what form that should take.

15 I very much like the idea of coming back
16 with a modified regulation which addresses this
17 which doesn't put the entire burden of the study
18 onto a single permit application, and perhaps
19 something that's based on something that is already
20 done successfully in other jurisdictions who have
21 similar problems. Albuquerque isn't normally an
22 area with an environmental justice issue. So that's
23 why I'm in favor of denying the hearing. Thank you.

24 BOARD MEMBER GOLDSTEIN: I'm in opposition
25 to the motion, meaning that I am in support of the

1 petition. I think that this is a discussion that
2 has to take place, and even members of the business
3 community acknowledge that we have a problem with
4 environmental justice, but everybody seems to say
5 this isn't the right time and this isn't the right
6 venue. And to which I would ask, well, then, when
7 and where? To deny this hearing amounts to just
8 kicking the can down the road, which has been going
9 on for decades and decades. And we may not solve
10 the problem here, but at least we can have the
11 discussion and get people talking about it and
12 thinking about it. So I am voting against this
13 motion.

14 BOARD MEMBER UPSON: Thank you.
15 Commissioner Grace.

16 BOARD MEMBER GRACE: Nobody really wants
17 to deny the hearing because, I mean, free speech is
18 a basic right. But when you look at the petition
19 and the fact that it provides for an undue burden
20 and maybe even an impossible burden to meet by
21 businesses, landowners, then the petition can't go
22 forward the way it is.

23 And that's one of the ways I look at this.
24 And honestly, the quality of the petition -- I think
25 someone's back-of-the-envelope estimates of economic

1 impact lends itself to a circus rather than a
2 hearing that's the principle.

3 I think a petition that basically
4 regurgitates California regulations and standards is
5 not for New Mexico, and because of the quality of
6 the petition I think you have to deny the petition.
7 If somebody wants to go back and make your petition
8 more defensible and of higher quality, then maybe
9 that's the time to look at it. But this particular
10 petition, to me, is -- honestly, I was shocked at
11 the quality of it and the incompleteness of it.

12 And lastly, I think one of the actions
13 this Board can take is to provide a resolution to
14 the City of Albuquerque, City Council, and County
15 government that says you need to go to these
16 particular neighborhoods that are identified in
17 these census tracts and relook at planning, zoning,
18 and land use, because the Air Quality Board doesn't
19 have the authority to look at that. We have a set
20 of regulations we have to look at, and those are the
21 rules that we operate under.

22 The problems that I have seen for the last
23 ten years is a land use/zoning issue and because
24 your elected officials maybe don't have the gumption
25 to deal with them, and you're bringing these issues

1 here, that directly affects jobs and commerce and
2 small businesses and large business, doesn't make
3 sense to me. That's the reason I'm voting to deny
4 the petition.

5 BOARD MEMBER UPSON: Thank you, Mr. Grace.
6 Member Deichmann.

7 BOARD MEMBER DEICHMANN: Madam Chair, I'm
8 sliding toward voting in favor of the motion, not
9 because I don't believe there's a problem. I just
10 don't believe that this is the solution to the
11 problem. Member Grace alludes to the history that
12 we both lived, and the same issues that we discussed
13 eight years ago. It's a zoning issue. It's a land
14 use issue. And I was struck by the irony of the
15 very honest concern by the business community about
16 wanting to grow the economy, which we all, I think,
17 do, and yet with the current zoning situation that
18 we have, it will only continue to contribute to the
19 existing problems because the construction industry,
20 in terms of material processing and fuel and such,
21 is all concentrated there, because it's zoning.
22 It's unfortunate -- not accident, but an unfortunate
23 part of history that brought M1 zoning and
24 residential zoning right next to each other, which
25 you have right there in the Mountain View area.

1 There was an effort a number of years ago
2 to establish a new sector plan. Ms. Painter alluded
3 to that. And that was killed politically. And my
4 recollection was that the business community helped
5 kill that. You know, I'm not saying it was not for
6 good reasons or not. Where I'm going is that I
7 think the business community finally needs to start
8 participating in this whole issue, this whole
9 problem, to find a solution to it, because you know,
10 I have been here now, with a two-year hiatus, eight
11 years, and it's the same thing over and over again.
12 And I'm not having to live that day-to-day, but a
13 lot of people are, and you have heard the passion
14 from those people. And I respect that. I also
15 respect the concerns that if we were to hear this,
16 that would be a tremendous negative message to
17 anybody wanting to start locating, and the fact that
18 such a rulemaking process would go on for some time,
19 that could put everybody's, you know, decisions on
20 hold that were trying to, you know, establish work.

21 So I don't take any of this lightly, and
22 it's quite a painful dilemma. But I think that if
23 the quality of the petition had been better
24 presented -- not presented, but thought out, and not
25 quite as draconian, as I think it is -- I think I

1 heard other members say -- I may have come about a
2 different way. But as it is, I'm going to have to
3 vote for the motion.

4 BOARD MEMBER UPSON: Thank you.

5 BOARD MEMBER STOVER: I sympathize with
6 the petitioners. I grew up in the South Valley, so
7 I have been hearing about these problems for years,
8 as well. But I don't think this is the answer. I
9 think there should be some answer that's more
10 specific to your neighborhood, not the entire city.
11 I think that probably the talk about the zoning and
12 planning is accurate, and so I'll be supporting the
13 motion. That's all.

14 BOARD MEMBER UPSON: Thank you. So in
15 terms of disclosure, I'm a doctor, physician, as is
16 Dr. Goldstein. I'm active in the National American
17 Thoracic Society, and the focus of the society this
18 year is on promoting health equality and eliminating
19 disparities. So I'm familiar with the arguments and
20 it's something, you know, I think for all of us near
21 and dear to our hearts.

22 I'm also on the Environmental Health
23 Committee, nationally, and last year crafted the air
24 quality policy briefing for the American Thoracic
25 Society. So it's also been a challenge for me to

1 separate the merits of some of the things we've
2 heard from whether or not we want to have a hearing
3 that's not based on the merits.

4 It's I think also unfortunate that we seem
5 to have a fairly clear division between the
6 community, the residential community and the
7 business community. And I think that's, you know,
8 the nature of the petition. I don't think it means
9 that either one is inherently opposed to the other
10 group. It's just that the way the petition is drawn
11 up, that's how it's falling out. And I agree that I
12 don't think -- I think there's a problem. I think
13 the fact that so many of you are here tonight shows
14 us that. It shows us that there's at least a
15 perception that the air quality in some areas is not
16 as good.

17 And there are many reasons for the
18 difference in life expectancy. There's also an
19 increasing field showing that discrimination and
20 stigmatization impact health quality and we're
21 seeing that also, that even the decision I'm making
22 tonight can negatively impact health equality by
23 perpetuating a sense of discrimination and stigma.

24 So I don't think any of us take this
25 decision lightly. We recognize there's a problem.

1 And I agree that I don't think this is the solution.
2 I hope that some other petition can be drawn up and
3 presented to us. Maybe some collaboration with some
4 public health officials at the University, or even
5 nationally. This is an area where you have some
6 data -- you know, I would love to have heard the
7 bucket data. And maybe that can be used to find out
8 what the real problems are and to find a workable
9 solution, something that could be brought to this
10 Board that we could really act on and really try to
11 make a difference.

12 And I hope you know we don't dismiss your
13 concerns, and we believe you. We agree there's a
14 problem, just don't think that this petition is a
15 workable solution. And so I'll also be voting for
16 the motion.

17 So I think we've heard from everybody. So
18 I'll call for a vote, all in favor of the motion to
19 deny the petition, say, "Aye." Opposed?

20 BOARD MEMBER GOLDSTEIN: No.

21 BOARD MEMBER UPSON: One opposed and no
22 abstentions. So the motion to deny the petition
23 passes with a vote of six to one. Thank you. Now
24 we're going to go into executive session.

25 (The proceedings pursuant to Item #4

1 concluded at 9:32 p.m.)

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1 STATE OF NEW MEXICO)
) ss
2 COUNTY OF BERNALILLO)
3

4 REPORTER'S CERTIFICATE

5 I, Mary Abernathy Seal, New Mexico
Certified Shorthand Reporter, DO HEREBY CERTIFY that
6 I did administer the oath to the witness(es) herein
prior to the taking of this hearing; that I did
7 thereafter report in stenographic shorthand the
testimony set forth herein, and the foregoing is a
8 true and correct transcription of the proceeding had
upon the taking of this hearing.

9
10 I FURTHER CERTIFY that I am neither
employed by nor related to any of the parties or
attorneys in this case, and that I have no interest
11 whatsoever in the final disposition of this case in
any court.

12
13 _____
14 Mary Abernathy Seal
BEAN & ASSOCIATES, INC.
15 NM Certified Court Reporter #69
License expires: 12/31/14

16
17
18 (9614K) MAS
Date taken: March 12, 2014
Proofread by: KW

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