



**APPROVED APC HEARING BOARD**  
**DATE:** August 4, 2021  
**BY:** Shelvia Krogge  
**Board Secretary**

## Minutes

### Regular Meeting of the Clark County Air Pollution Control Hearing Board

February 18, 2021

Clark County Building Services  
Presentation Room  
4701 West Russell Road  
Las Vegas, NV

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#### 1. OATHS OF OFFICE

- A. Lauren Rosenblatt (Lay Member)  
Term of Office: 11/3/2020 through 11/2/2023
- B. Ryan Dennett (Attorney Member)  
Term of Office: 11/3/2020 through 11/2/2023
- C. William Kremer (Lay Member)  
Term of Office: 11/3/2020 through 11/2/2023
- D. Troy Hildreth (Lay Member)  
Term of Office: 11/3/2020 through 11/2/2023

FINAL ACTION: Air Quality Supervisor Sutowska administered the oaths of office to Lauren Rosenblatt, Ryan Dennett, William Kremer and Troy Hildreth.

#### 2. CALL TO ORDER

Chair Sanders called the meeting of the Air Pollution Control Hearing Board to order at the hour of 9:40 a.m. A quorum was present and Affidavits of Posting of the agenda were provided as required by the Nevada Open Meeting Law. The Affidavits will be incorporated into the official record.

PRESENT: Daniel Sanders, Chair  
Elspeth Cordua  
Ryan L. Dennett, Esq.  
William Kremer  
Lauren Rosenblatt  
Tom Foster, P.E.

LEGAL COUNSEL: Catherine Jorgenson, Deputy District Attorney

DAQ STAFF: Marci Henson, Director  
Shibi Paul, Compliance and Enforcement Manager  
Anna Sutowska, Air Quality Supervisor  
Sherrie Rogge, Administrative Secretary

Chair Sanders announced that social distancing would be practiced during the meeting. Attendees were asked to keep the appropriate spacing of 6 feet away from each other. The use of masks or face coverings by all attendees during the meeting is required.

**3. PUBLIC COMMENT**

Chair Sanders asked if there were any persons present in the audience wishing to be heard. There being no one, Chair Sanders closed the public comments.

**4. ELECTION OF VICE-CHAIR**

New Term – 2/18/2021 through end of term (For possible action)

FINAL ACTION: It was moved by Board Member Sanders, seconded by Board Member Rosenblatt to elect Board Member Dennett to serve as Vice-Chair for the period of February 18, 2021 through November 2, 2023.

Motion carried by the following vote:

Voting Aye: Elspeth Cordua, Ryan Dennett, Tom Foster, Troy Hildreth, William Kremer, Lauren Rosenblatt, Danny Sanders  
Voting Nay: None  
Abstaining: None  
Absent: None

**5. APPROVAL OF MINUTES OF THE AUGUST 12, 2020 MEETING (For possible action)**

Chair Sanders called for comments, changes, or corrections to the August 12, 2020 minutes. Being none, he called for a motion.

FINAL ACTION: It was moved by Board Member Kremer, seconded by Board Member Foster that the subject minutes be approved.

Motion carried by the following vote:

Voting Aye: Elspeth Cordua, Ryan Dennett, Tom Foster, Troy Hildreth, William Kremer, Lauren Rosenblatt, Danny Sanders  
Voting Nay: None  
Abstaining: None  
Absent: None

6. **APPEALS OF HEARING OFFICER DECISIONS (For possible action)**

A. **GYPSUM RESOURCES, LLC (Part 70 Source ID: 17286)**

**NOV #9412** – On September 17, 2020, the Hearing Officer found Gypsum Resources, LLC in violation of the Clark County Air Quality Regulations and Permit conditions for failing to report intermittent compliance in the 2018 and 2019 Annual Compliance Certification (ACC) Reports; for failing to report permit deviations in the 2nd Semi-annual Report for 2018, the 1st Semi-annual Report for 2019 and the 2nd Semi-annual Report for 2019, due by January 30, 2019, July 30, 2019, and January 30, 2020, respectively; for failing to provide at least seven days written notice to the Control Officer prior to replacing the continuous-duty diesel engines, EU: C01, C05 and C08; for replacing the continuous-duty diesel engine, EU: C07 with an engine rated at a higher horsepower without first obtaining an Authority to Construct (ATC) Permit from the Control Officer; for operating EUs: B02 and B03 throughout the entire Full Compliance Evaluation (FCE) period as unpaved haul roads when they were both permitted as paved; for exceeding the actual and potential emission limitations during the entire FCE period by operating EUs: B02 and B03 as unpaved haul roads; for exceeding the ANFO consumption limit of 75 tons per any consecutive 12-month period for 16 consecutive months; for exceeding the operational limit of 4,200 hours per any consecutive 12 month period for EU: C06 for 16 consecutive months; for exceeding the operational limit of 4,800 hours per any consecutive 12 month period for EU: C03 for 16 consecutive months; for failing to maintain moisture at a minimum of 1.5% in 40 weekly samples at six locations not controlled by baghouses; for failing to maintain moisture at a minimum of 2.5% in two weekly samples at one location for overburden operations; for failing to maintain and provide records for the continuous-duty diesel water pump (EU: C07) prior to its replacement; for conducting blasting operations during a Dust Advisory on April 2, 2019; for failing to take precautions and allowing fugitive dust emissions from the unpaved BLM Haul Road, EU: B01; for allowing haul trucks to exceed the speed limit of 15 mph on the unpaved BLM Haul Road, EU: B01; for failing to conduct and provide records of twice per day Method 22 Evaluations on all EUs, for eight instances; for failing to conduct and provide records of monthly baghouse inspections of the interior of CD: D01 and D02 for eight non-consecutive months, and an additional six months where the CD identification was not recorded; for failing to provide a Standard Operating Procedure for the purpose of maintenance for Baghouse #1, CD: D01, and Baghouse #2, CD: D02; for failing to conduct and provide records of weekly moisture testing; for failing to submit records of moisture test results with both 2019 semi-annual reports, due by July 30, 2019 and January 30, 2020; and for replacing the continuous-duty diesel engine, EU: C01 with an engine rated at a higher horsepower without first obtaining an ATC Permit from the Control Officer, as identified by Senior Air Quality Specialists Camon Liddell and Scott Rowsell during a FCE conducted on February 26, 2020 and by Scott Rowsell during an offsite partial compliance evaluation conducted on May 5, 2020 of the gypsum processing operation located at 8360 Nevada Highway 159, in Clark County, Nevada. The Hearing Officer assessed a penalty amount of \$294,600. Gypsum Resources appealed the Air Pollution Control Hearing Officer's Order. (For possible action)

Chair Sanders recused himself due to a possible conflict of interest and did not participate in this appeal.

Vice-Chair Dennett recused himself due to a possible conflict of interest and did not participate in this appeal.

Deputy District Attorney Jorgenson instructed the remaining board members that a Chair Pro Tem would need to be appointed for this item.

Board Member Rosenblatt volunteered to chair this portion of the meeting if the board was so inclined.

FINAL ACTION: It was moved by Board Member Foster, seconded by Board Member Kremer to appoint Board Member Rosenblatt to serve as Chair Pro Tem to hear the appeal of NOV #9412, Gypsum Resources, LLC.

Motion carried by the following vote:

Voting Aye: Elspeth Cordua, Tom Foster, Troy Hildreth, William Kremer, Lauren Rosenblatt  
Voting Nay: None  
Abstaining: None  
Absent: Ryan Dennett, Danny Sanders

Chair Pro Tem Rosenblatt called for a 5 minute recess.

RECESS: 9:45 a.m.  
RECONVENE: 9:47 a.m.

Chair Pro Tem Rosenblatt stated for the record that during the recess she received direction from staff on how to swear in the witnesses for the Gypsum appeal.

Chair Pro Tem Rosenblatt asked the representatives from Gypsum Resources LLC to approach the testimony table. Aubree Green and Morgan Fashtchi, General Counsel for Gypsum Resources, LLC, 8912 Spanish Ridge Ave., Suite 200, Las Vegas NV 89148, were sworn in.

DISCUSSION: Ms. Green and Ms. Fashtchi presented their case as to why this item should not be heard by the Hearing Board. They argued that the September 17, 2020 hearing resulting in an order including a penalty for violation of AQRs and permit conditions violated the automatic stay afforded by their Chapter 11 Bankruptcy Petition.

Deputy District Attorney Jorgenson responded that the police power exception to the automatic stay as described in 11 U.S.C. § 362(b)(4) applies to the matter before the BOARD and that the BOARD may consider and decide whether GYPSUM RESOURCES violated AQRs and permit conditions as alleged in NOV #9412 and, if so, assess a civil penalty as appropriate.

FINAL ACTION: It was moved by Board Member Kremer, seconded by Board Member Cordua that the automatic stay afforded by Gypsum Resources LLC Chapter 11 Bankruptcy Petition does not apply in this proceeding.

Motion carried by the following vote:

Voting Aye: Elspeth Cordua, Tom Foster, Troy Hildreth, William Kremer, Lauren Rosenblatt

Voting Nay: None

Abstaining: None

Absent: Ryan Dennett, Danny Sanders

Ms. Green stated for the record that in order to avoid a waiver of their bankruptcy stay, they will not be arguing the merits of NOV #9412.

Ms. Jorgensen stated that based on Gypsum's decision not to provide any defense to the merits of the Notice of Violation, the board will need to determine that the violations occurred and then assess the recommended penalty.

Ms. Jorgenson called Senior Air Quality Specialist Camon Liddell and Compliance and Enforcement Manager Shibi Paul as witnesses.

Mr. Liddell and Mr. Paul were sworn in by Chair Pro Tem Rosenblatt.

Following staff's presentation of the case, Chair Pro Tem Rosenblatt inquired of the appellant if they wished to make any statements or counter arguments about the merits of the Notice of Violation or the penalties to be assessed.

Ms. Green stated for the record that they were going to maintain that they are not going to argue the merits of the case because of the protection of the automatic stay.

Chair Pro Tem Rosenblatt opened the public hearing and asked if there were any persons present in the audience wishing to be heard on the matter.

SPEAKER(S): None.

There being no persons present in the audience wishing to be heard on the matter, Chair Pro Tem Rosenblatt closed the public hearing.

FINAL ACTION: It was moved by Board Member Foster, seconded by Board Member Kremer, to affirm the Hearing Officer Order in the matter of NOV #9412 finding the violations did occur.

Motion carried by the following vote:

Voting Aye: Elspeth Cordua, Tom Foster, Troy Hildreth, William Kremer, Lauren Rosenblatt

Voting Nay: None  
Abstaining: None  
Absent: Ryan Dennett, Danny Sanders

FINAL ACTION: It was moved by Board Member Cordua, seconded by Board Member Kremer to affirm the Hearing Officer Order in the matter of NOV #9412 assessing a penalty in the amount of \$294,600.

Motion carried by the following vote:

Voting Aye: Elspeth Cordua, Tom Foster, Troy Hildreth, William Kremer, Lauren Rosenblatt  
Voting Nay: None  
Abstaining: None  
Absent: Ryan Dennett, Danny Sanders

Chair Pro Tem Rosenblatt called for a 5 minute recess.

RECESS: 11:55 a.m.  
RECONVENE: 12:14 p.m.

Chair Sanders and Vice-Chair Dennett returned to the meeting at 12:14 p.m.

Chair Sanders called the meeting back to order.

**B. M.P. TRUST AND MICHAEL PERRY (Project #191086)**

NOV #9394 – On June 25, 2020, the Hearing Officer found M.P. Trust and Michael Perry in violation of 40 CFR 61, Subpart M, Parts 61.145(a), 61.145(b)(1), 61.145(b)(3)(i), 61.145(c)(8), 61.145(c)(6)(i), 61.150(a)(1)(iii) and 61.150(a)(1)(iv) (adopted by reference in Section 13.1 of the Air Quality Regulations) for failing to thoroughly inspect the Facility for the presence of asbestos-containing materials prior to conducting renovations activities; for failing to notify Air Quality 10 days prior to the removal of regulated asbestos-containing material (RACM) from the facility; for failing to have at least one onsite representative trained in the provisions of the National Emission Standards for Hazardous Air Pollutants asbestos regulations and the means of complying with them; for failing to adequately wet all removed RACM and ensure it remained wet; for failing to seal all asbestos-containing waste material in leak tight containers while wet; and for failing to label waste containers with warning labels, as identified during inspections by Air Quality Specialist Kevin Adoor beginning on November 15, 2019, at a facility operated by M.P. Trust and Michael Perry located at 1430 East Desert Inn Road, in Clark County, Nevada. An \$11,600 penalty was assessed. M.P. Trust and Michael Perry appealed the Air Pollution Control Hearing Officer’s Order. (For possible action)

**C. M.P. TRUST AND MICHAEL PERRY (Project #201010)**

NOV #9409 – On June 25, 2020, the Hearing Officer found M.P. Trust and Michael Perry in violation of 40 CFR 61, Subpart M, Parts 61.145(b)(1), 61.145(b)(3)(i), 61.145(c)(1), 61.145(c)(6)(i), 61.145(c)(8), and 61.150(a)(1)(iii) (adopted by reference in Section 13.1 of



the Air Quality Regulations) for failing to notify Air Quality 10 working days prior to the removal of regulated asbestos-containing material (RACM) from the facility in quantities greater than 160 square feet and/or 35 cubic feet; for failing to remove all RACM from the Facility prior to renovation; for failing to adequately wet all removed RACM and ensure it remained wet; for failing to have at least one onsite representative trained in the provisions of the National Emission Standards for Hazardous Air Pollutants asbestos regulations and the means of complying with them; and for failing to seal all asbestos-containing waste material in leak tight containers while wet, as identified by Air Quality Specialist Kevin Adoor while performing a routine patrol on February 11, 2020 at an apartment building located at 1430 East Desert Inn Road, in Clark County, Nevada. A \$22,500 penalty was assessed. M.P. Trust and Michael Perry appealed the Air Pollution Control Hearing Officer's Order. (For possible action)

Chair Sanders announced that Items 6B and 6C would be heard at the same time since it is the same appellant; however, any action taken would be done separately.

Chair Sanders asked the representatives for M.P. Trust and Michael Perry to approach the testimony table. Michael Perry, M.P. Trust (address not provided) and Jodi Jorjorian (address not provided) were present. Chair Sanders inquired of Ms. Jorjorian if she was General Counsel for Mr. Perry. Ms. Jorjorian stated that she was not an attorney, but a good friend of Mr. Perry's as well as being a civil engineer and had a good understanding of the case. Chair Sanders confirmed with Mr. Perry that he was in agreement of having Ms. Jorjorian speak on his behalf for these two cases. Mr. Perry confirmed that Ms. Jorjorian was speaking on his behalf today. Ms. Jorjorian and Mr. Perry were sworn in.

DISCUSSION: Ms. Jorjorian presented their case on behalf of Mr. Perry in regards to NOV #9394 and NOV #9409. Mr. Perry responded to questions by the board.

Ms. Jorgensen called on Air Quality Specialist Kevin Adoor and Air Quality Supervisor Anna Sutowska for questioning.

Mr. Adoor and Ms. Sutowska were sworn in by Chair Sanders.

Ms. Jorgenson presented Air Quality's case pertaining to the appeal of NOV #9394 and NOV #9409.

Chair Sanders opened the public hearing for both items and asked if there were any persons present in the audience wishing to be heard on the matter.

SPEAKER(S): None.

There being no persons present in the audience wishing to be heard on the matter, Chair Sanders closed the public hearing.

FINAL ACTION 6B: It was moved by Board Member Rosenblatt, seconded by Board Member Kremer to affirm the Hearing Officer Order in the matter of NOV #9394 finding the violations did occur.

Motion carried by the following vote:

Voting Aye: Elspeth Cordua, Ryan Dennett, Tom Foster, Troy Hildreth, William Kremer,  
Lauren Rosenblatt, Danny Sanders  
Voting Nay: None  
Abstaining: None  
Absent: None

FINAL ACTION 6B: It was moved by Board Member Rosenblatt, seconded by Board Member Dennett to modify the Hearing Officer Order in the matter of NOV #9394 reducing the assessed penalty from \$11,600 to \$10,100.

Motion failed by the following vote:

Voting Aye: Ryan Dennett, Lauren Rosenblatt  
Voting Nay: Elspeth Cordua, Tom Foster, Troy Hildreth, William Kremer, Danny Sanders  
Abstaining: None  
Absent: None

FINAL ACTION 6B: It was moved by Board Member Sanders, seconded by Board Member Foster to affirm the Hearing Officer Order in the matter of NOV #9394 assessing a penalty in the amount of \$11,600.

Motion carried by the following vote:

Voting Aye: Elspeth Cordua, Tom Foster, Troy Hildreth, William Kremer, Lauren Rosenblatt, Danny Sanders  
Voting Nay: Ryan Dennett  
Abstaining: None  
Absent: None

Chair Sanders called for a 10 minute recess.

RECESS: 2:40 p.m.  
RECONVENE: 2:53 p.m.

Chair Sanders called the meeting back to order.

FINAL ACTION 6C: It was moved by Board Member Kremer, seconded by Board Member Foster to affirm the Hearing Officer Order in the matter of NOV #9409 finding the violations did occur.

Motion carried by the following vote:

Voting Aye: Elspeth Cordua, Ryan Dennett, Tom Foster, Troy Hildreth, William Kremer,  
Lauren Rosenblatt, Danny Sanders



Voting Nay: None  
Abstaining: None  
Absent: None

FINAL ACTION 6C: It was moved by Board Member Dennett, seconded by Board Member Rosenblatt to modify the Hearing Officer Order in the matter of NOV #9409 reducing the assessed penalty from \$22,500 to \$16,875 because of a reduction on the willfulness aggravation factor from 100% to 50%. This change in the reduction of the aggravation factor applies to this case only and there should be no precedential effect on any fines, aggravating factors or other future actions of staff or the board.

Motion carried by the following vote:

Voting Aye: Ryan Dennett, Tom Foster, William Kremer, Lauren Rosenblatt, Danny Sanders  
Voting Nay: Elspeth Cordua, Troy Hildreth  
Abstaining: None  
Absent: None

**D. IDENTIFY EMERGING ISSUES TO BE DISCUSSED BY THE BOARD AT FUTURE MEETINGS**

There were no items identified by the Board.

**E. PUBLIC COMMENT**

Chair Sanders asked if there were any persons present in the audience wishing to be heard. There being no one, Chair Sanders closed the public comments.

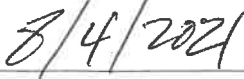
**F. ADJOURNMENT**

Being no further business, Chair Sanders adjourned the meeting at 3:53 p.m.

Approved:



\_\_\_\_\_  
Daniel Sanders, Chair



\_\_\_\_\_  
Date