



Agenda

Clark County Air Pollution Control Hearing Board

June 14, 2018 – 1:30 P.M.
Clark County Building Department
Presentation Room
4701 West Russell Road
Las Vegas, NV

Hearing Board Members

Daniel Sanders, Chair
Evan S. Wishengrad, Esq., Vice-Chair
Ryan L. Dennett, Esq.
Tom Foster, P.E.
William Kremer
Lauren Rosenblatt, Esq.
Craig Schweisinger

Deputy District Attorney

Catherine Jorgenson

Air Quality Staff

Marci Henson, Director 
Shibi Paul, Compliance & Enforcement Manager 
Sherrie Rogge, Administrative Secretary

- Items on the agenda may be taken out of order.
- The Air Pollution Control Hearing Board may combine two or more agenda items for consideration.
- The Air Pollution Control Hearing Board may remove an item from the agenda or delay discussion relating to an item on the agenda at any time.
- To request a copy of the supporting materials for an agenda item, please contact Sherrie Rogge at sherrie.rogge@clarkcounty.nv.gov or (702) 455-0354. Supporting materials are available for inspection at the Clark County Department of Air Quality office located at 4701 West Russell Road, Las Vegas, NV 89118 or on our website at: http://www.clarkcounty.nv.gov/AirQuality/compliance/Pages/Compliance_EnforcementNotices.aspx.

I. CALL TO ORDER

II. PUBLIC COMMENT

No action may be taken upon a matter raised under this item until the matter itself has been specifically included on an agenda. Public comments may be considered on specific agenda items. Please clearly state your name and address for the record. Speaking time will be limited to five (5) minutes per person.

III. CERTIFICATE OF APPRECIATION

Presentation of Certificate of Appreciation to Craig Schweisinger for six years of dedicated service as a member of the APC Hearing Board.

IV. APPROVAL OF MINUTES OF FEBRUARY 8, 2018 MEETING

Approval of February 8, 2018 meeting minutes
(For possible action)

**V. DISCUSSION ON PUBLIC NOTICE PROCEDURES FOR PERMITTING ACTIONS
(REQUESTED BY VICE CHAIR WISHENGRAD)**

**VI. INFORMATIONAL SESSION FROM AIR QUALITY WITH REGARDS TO
INFORMING AND EDUCATING THE PUBLIC ON AIR QUALITY REGULATORY
MATTERS AND THEIR OPTIONS FOR PARTICIPATION (REQUESTED BY BOARD
MEMBER ROSENBLATT)**

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

VIII. REPORT BY DEPARTMENT OF AIR QUALITY STAFF

General update

IX. PUBLIC COMMENT

No action may be taken upon a matter raised under this item until the matter itself has been specifically included on an agenda. Public comments may be considered on specific agenda items. Please clearly state your name and address for the record. Speaking time will be limited to five (5) minutes per person.

X. ADJOURNMENT

The Presentation Room is accessible to individuals with disabilities. With forty-eight (48) hour advanced request, a sign language interpreter may be made available by contacting (702) 455-0354 or TDD (702) 385-7486 or Nevada Relay toll-free (800) 326-6868, TT/TDD. Assistive listening devices are available upon request.

This notice and agenda was posted or caused to be posted at the following locations:

- Clark County Operations Center, West, 4701 W. Russell Road, Las Vegas, Nevada
- Las Vegas City Hall, 495 S. Main Street, Las Vegas, Nevada
- Henderson City Hall, 240 S. Water Street, Henderson, Nevada
- North Las Vegas City Hall 2250 Las Vegas Blvd. North Las Vegas, Nevada
- Boulder City, City Hall, 401 California Avenue, Boulder City, Nevada
- Mesquite City Hall, 10 E. Mesquite Boulevard, Mesquite, Nevada
- CC Government Center, 500 S. Grand Central Parkway, Las Vegas, Nevada



Minutes

Regular Meeting of the Clark County Air Pollution Control Hearing Board

February 8, 2018

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

I. CALL TO ORDER

Vice-Chair Evan Wishengrad, Esq. called the meeting of the Air Pollution Control Hearing Board to order at the hour of 1:30 p.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: Evan S. Wishengrad, Esq., Vice-Chair
Ryan L. Dennett, Esq.
Tom Foster, P.E. (recused from Item IV.A at 2:08 p.m.)
William Kremer
Lauren Rosenblatt, Esq.
Craig Schweisinger

ABSENT: Daniel Sanders, Chair (recused from Item IV.A)

LEGAL COUNSEL: Leslie A. Nielsen, Deputy District Attorney

DAQ STAFF: Marci Henson, Director (Attended part of the meeting only)
Shibi Paul, Compliance and Enforcement Manager
Pamela Thompson, Senior Secretary

II. PUBLIC COMMENT

Vice-Chair Wishengrad asked if there were any persons present in the audience wishing to be heard.

SPEAKER(S): Present

- Diane Henry, spoke regarding Item IV.A concerning the modeling data and air monitoring at Wells Cargo
- Julie Wignall, spoke regarding Item IV.A concerning air pollutants and revision of Wells Cargo's Synthetic Minor Source permit.
- Kathy Godges, spoke regarding Item IV.A concerning the poor air quality in the community, and the revision of Wells Cargo's Synthetic Minor Source permit.
- Marylou Abbruzzese, spoke regarding Item IV.A concerning the adolescents attending Spring Valley High School.
- Sue Adras, spoke regarding Item IV.A concerning the health of her children and family's long term residency.
- Chun Gu, spoke regarding Item IV.A concerning the effects of daily air pollutants and the expansion of Wells Cargo, Inc.'s Synthetic Minor Source permit.
- Dr. Johnny Chan, spoke regarding Item IV.A.1 concerning the noise, health, and possibility of asbestos.
- Jason Hunt, spoke regarding Item IV.A.1 concerning health matters, and that the concerns are taken seriously.

There being no other persons present in the audience wishing to be heard on any items listed on the agenda as posted, Vice-Chair Wishengrad closed the public comments.

III. APPROVAL OF MINUTES OF DECEMBER 14, 2017 MEETING

Board Action:

MOTION: Vice-Chair Wishengrad called for comments, changes, or corrections to the December 14, 2017 minutes.
BY: Board Member Schweisinger
SECOND: Board Member Foster
FINAL ACTION: Unanimous; the motion carried.

IV. BUSINESS ITEMS

Vice-Chair Wishengrad asked before moving into Items IV.A.1 and IV.A.2 for all parties involved to introduce themselves.

Board Member Foster stated he was recusing himself from participating in Items IV.A.1 and IV.A.2.

Board Member Rosenblatt stated for the record that she resides within two miles of the Wells Cargo's facility; however, she has no particular feelings about Wells Cargo or the subject matter of this proceeding and does not feel that is grounds to recuse herself. No one objected to her participation.

The following counsel were present:

- Deputy District Attorney Leslie Nielsen, for the Clark County Department of Air Quality (Air Quality)
- Carlos McDade, Esq. for Clark County School District (CCSD)
- Linda Bullen, Esq. for Wells Cargo, Inc. (Wells Cargo).

A. Appeal of Issuance of Synthetic Minor Source Permit to Wells Cargo, Inc. by Lori Headrick, Director, Environmental Services, Clark County School District

1. Department of Air Quality's Motion to Dismiss Appeal or to Exclude Certain Evidence

Ms. Nielsen summarized the Clark County Department of Air Quality Regulation (AQR) Section 7.10 which governs the appeals of issuance of permits giving the Board the power to affirm, modify or reverse the decision of Air Quality to issue the permit. The case law that governs the standard of review in this case is whether the Control Officer's decision was arbitrary and capricious showing abuse of discretion, and is not supported by substantial evidence. Ms. Nielsen added that the burden of proof is not on Air Quality, but with CCSD to show that the Control Officer's decision was arbitrary and capricious.

In support of Air Quality's motion to dismiss, Ms. Nielsen reiterated that when the Board signed the order setting a briefing schedule, the intent was to provide the Board everything they needed to make an informed decision, and give Air Quality and Wells Cargo the opportunity to have fair notice of what CCSD's grounds were for the appeal.

Ms. Nielsen listed all the arguments made by CCSD in its various filings as grounds for the appeal and argued for dismissal as follows:

- a. There were pollutants likely entering the high school as evidenced by their indoor air quality testing of VOCs and PM10.
- b. CCSD has 365 individuals with respiratory problems on campus. No causation was argued or shown.

Ms. Nielsen argued there is no requirement for Air Quality to regulate indoor air quality. AQR Section 12.1.5.1 states that the Control Officer may issue the permit only if the NAAQS are maintained. So, by enforcing that rule and requiring Wells Cargo to model its impacts, Air Quality is doing everything the law requires to protect the public's health.

- c. CCSD argued that particulate matter and HAPs exceed the NAAQS. Air Quality's response was there are no NAAQS for HAPs (hazardous air pollutants).

- d. CCSD argued that the air quality modeling was flawed, and that Air Quality failed to capture the stockpiles and the disturbed surfaces across the whole 142 acres or that Air Quality failed to capture all emissions. Air Quality provided an aerial photograph that depicted the stockpiles and disturbed surfaces did not exceed the permitted 51 acres, and that only 43 acres of disturbed surfaces were onsite. Air Quality also captured all the permitted emission units in the modeling.
- e. CCSD is seeking post-construction monitoring. Ms. Nielsen argued that Air Quality does not have the authority, based on its regulations, to impose post-construction monitoring.
- f. CCSD was concerned about the best available control technology known as BACT, to which Air Quality responded that Section 12.1 does not require it. BACT only applies to major sources. The AQR Section 90 series applies only to construction activity, not including stationary sources, and that there are three permit conditions in effect that would require stabilization of parking areas and other surfaces as described.
- g. For the first time in its reply brief, CCSD argued that the release heights were incorrectly modeled, citing to Appendix W. Ms. Nielsen stated she could not find any citation in Appendix W to support the argument made by CCSD, but it was suggested that the sources of emissions that were deep down in the pit should have been modeled down in the pit rather than at the surface. As argued and testimony would show there would be fewer emissions rather than more if it were modeled in that way.
- h. CCSD argued the background data used for the PM₁₀ and PM_{2.5} modeling was flawed. They cited the 1990 Draft EPA Manual, which Air Quality argued is not applicable to minor sources. It is only applicable to Prevention of Significant Deterioration (PSD) sources. The PSD sources to which the manual would apply have thresholds of 250 tons per year of criteria pollutants, therefore, the manual does not apply.
- i. CCSD argued that the unpaved roads and stabilized surfaces should have been modeled. Air Quality responded that there are no unpaved roads at Wells Cargo. All of the roads are paved.
- j. CCSD asked Air Quality to install a monitor at the Spring Valley High School, to provide the students, staff, and the teachers comfort about the air quality. Air Quality responded that it is the Board of County Commissioners alone who has the authority to decide what monitors to install around Clark County. Ms. Nielsen argued that the Air Pollution Control Hearing Board does not have the authority to order Air Quality, as part of Wells Cargo's permit, to install a monitor at the Spring Valley High School. Besides, the monitor would not provide the information CCSD wants because it would pick up the emissions from the school, which is a stationary source itself and has its own emissions.

Ms. Nielsen also pointed out that in CCSD's opposition to the motion to dismiss Air Quality received yesterday, CCSD used the term "concerns" five times. Air Quality understands their concerns, but there is nothing in Air Quality's rules that says that if neighbors are concerned, Air Quality can require post-construction monitoring.

CCSD asked Air Quality to consider whether the source is meeting the NAAQS for PM and HAPs. Ms. Nielsen reiterated that there are no NAAQS for HAPs. She argued the modeling data is clear leading to the conclusion that the NAAQS for PM_{10} and $PM_{2.5}$ have not been exceeded by the source's impacts; therefore, the issuance of the permit was appropriate.

Ms. Nielsen argued that unless any CCSD witness was able to testify to a reasonable degree of scientific certainty that the NAAQS were exceeded, any other testimony would be irrelevant. The conclusions in the modeling, with respect to PM_{10} is that the 150 tons per year total [sic] was not exceeded and the applicable $PM_{2.5}$ total was not exceeded. Unless they had testimony that they were able to establish a NAAQS exceedance, saying they are concerned is inadequate.

Ms. Nielsen asked the Board to grant Air Quality's motion to dismiss based on all of the legal arguments made; or have the Board decide what they would like to hear in terms of testimony and which of the arguments can be dismissed.

Vice-Chair Wishengrad stated that Ms. Bullen, on behalf of her client, has a joinder and asked to hear her statement.

Adding to Ms. Nielsen's extensive comments, Ms. Bullen added Wells Cargo concurred with Air Quality on all of these points, in particular, that the burden is on CCSD. Ms. Bullen suggested that there is nothing in the evidence upon which the Board could make a finding that the Control Officer's decision on the permit was arbitrary and capricious. Ms. Bullen also added Wells Cargo filed the joinder when they still thought Dr. Chen might be testifying. So in the absence of that potential testimony, she cannot conceive of how CCSD could possibly meet its burden.

Vice-Chair Wishengrad asked, before we get to CCSD's response, if the Board had any questions. Hearing none, Vice-Chair Wishengrad moved on to CCSD.

Mr. McDade stated that Air Quality has responded to a lot of the issues. However, he argued the extensive modeling does not account for all the hazardous air pollutants that could be in the VOCs that come from asphalt operations, specifically 40CFR, Subpart LLLL, and 40CFR, Subpart AAAAAA, dealing with the asphalt processing, hot mix processing. Mr. McDade added there is no actual testing of the pollution that comes off of the Wells Cargo facility. Mr. McDade asked for the motion to dismiss to be denied and to be given the opportunity to present CCSD's arguments before the Board to determine if the VOCs were adequately addressed in the modeling and what the remedy should be if warranted. Mr. McDade disagreed

with Ms. Nielsen and stated that in the rules, it does allow the Board to modify a permit if it so chooses.

Vice-Chair Wishengrad told Mr. McDade, although the Board has the authority to modify the permit they still need to act and modify within the rules and regulations of Air Quality. Vice-Chair Wishengrad also reiterated that what Ms. Nielsen was saying was that the rules and regulations do not allow for Air Quality to require ongoing testing of this sort, but Mr. McDade's argument is that they can.

Vice-Chair Wishengrad opened it up for any questions for Mr. McDade.

Ms. Rosenblatt asked whether the question of fact is that the limits were exceeded, or is the question of fact whether the model was accurate enough in terms of establishing what the pollutant level was showing.

Mr. McDade responded that the hearing is to determine whether or not the permit was issued properly, and because there is no monitoring of Wells Cargo, CCSD cannot prove whether hazardous air pollutants and VOCs were exceeded. Therefore, they have to rely on the very complicated and complex mathematical formula in the modeling to determine or predict whether or not Wells Cargo's plant operations would create an exceedance. And since CCSD is asserting that certain regulations were not cited in the model, predictions for exceedances cannot be determined.

Ms. Rosenblatt asked CCSD if they were prepared to speak more at length about the underlying permit decision and challenge the modeling today, and Mr. McDade replied yes.

Mr. Dennett asked Mr. McDade if he was prepared to concede or dispute any of the 12 items Ms. Nielsen enumerated, and Mr. McDade responded that there were items that he was prepared to withdraw from consideration. Mr. McDade waived the objection in regards to the release heights not being modeled correctly.

CCSD waived the argument about BACT, but not about the pavement, because they did not believe that the site is all paved.

Ms. Nielsen restated argument #b was about the 365 individuals with respiratory problems on Spring Valley High School campus, which she was just acknowledging the concern and fact not that it is an argument that supports monitoring. Ms. Nielsen suggested that CCSD may be willing to waive argument regarding the code violations and land use approvals, and Mr. McDade agreed. Ms. Nielsen also asked if they wanted to waive argument #j above regarding Air Quality installing a monitor at Spring Valley High School. However, Mr. McDade wanted to continue with argument #j.

Vice-Chair Wishengrad reiterated that Mr. McDade stated that he believes the Board has the authority to make that a condition, and Mr. McDade replied yes.

Vice-Chair Wishengrad asked if Ms. Nielsen had any other responses. Ms. Nielsen was concerned that the citations to the federal regulations which Mr. McDade clarified were 40 CFR 63, Subpart LLLL, and 40 CFR 63, Subpart AAAAAAA was new information that was not included in previous briefs. However, Ms. Nielsen stated that DAQ will testify to this point as well as the other pending points.

Ms. Bullen had nothing to add to the arguments regarding the motion to dismiss or to exclude certain evidence.

Vice-Chair Wishengrad asked Wells Cargo about its operating hours. Mr. Scarlett provided the hours of operation as Monday through Friday, 7:00 to 4:00 during the winter months, earlier start time in the summer, and outside of those hours when necessary to meet contractual obligations. They typically do not operate during the holidays. Mr. Wishengrad questioned the correlation between CCSD's indoor air quality test results and the operations of the Wells Cargo facility. Mr. McDade responded that the school also has minimal staff during the holidays.

Ms. Rosenblatt asked Mr. McDade if CCSD participated in the public comment period. Mr. McDade responded that they were not notified of the public comment period. Vice-Chair Wishengrad does not believe that is an issue barring CCSD's appeal.

The Hearing Board denied Air Quality's motion to dismiss the appeal and specifically Air Quality's argument that CCSD lacked standing to appeal the revised permit.

2. Hearing

Mr. McDade called Tamathy Larnerd, the principal of Spring Valley High school, to testify. Mr. Larnerd stated that the school has 2,334 students enrolled and 168 staff members employed at this time. In addition, parents and other people frequently visit the school. Vice-Chair Wishengrad interjected to ask what relevance this has to the case. Mr. McDade responded that it is an argument with regards to the modeling which takes into account residences where people aren't home during the day. Ms. Nielsen objected to Mr. McDade testifying as an expert witness. Mr. Schweisinger asked Mr. Larnerd what needs to be fixed. Mr. Larnerd stated that 366 students suffer with reported respiratory issues. He asked that Wells not be allowed to expand. Ms. Nielsen and Ms. Bullen had no cross-examination.

Mr. McDade called Ms. Headrick, Director of Environmental Services for CCSD, to testify. She briefly described her experience and her specific role at CCSD. She was asked by the principal at Spring Valley High School to determine whether they had any indoor air quality issues. She described her investigation which included a visual inspection and real-time data gathered by her department's indoor air quality monitoring equipment used to monitor

particulate matter of different sizes and VOCs. The results from fall of 2016 didn't show any cause for concern. However, noticing the Wells Cargo facility across the street from the school, she asked Air Quality for a copy of their Air Quality permit at which point she was informed of the modification that was being made. Since Wells Cargo is a source of air pollutants, Ms. Headrick decided to keep assessing the situation. Although her team performed indoor and outdoor air quality testing in November of 2017 using the school's air quality monitoring equipment, the data was not collected.

Ms. Headrick reiterated that she would like Air Quality to install special purpose monitoring equipment at a place agreed upon by all three parties to monitor the air pollutant emissions coming from the Wells Cargo facility. And then, she would like Wells Cargo to slow down their operations, in accordance with the results of Air Quality's monitoring equipment. Ms. Headrick quoted AQR Section 4, Subsection 4.5 as the regulation which gives Air Quality the authority to require any applicant to do any study of the emissions from their site/operation. Ms. Headrick also cited three regulations which were not included in Air Quality's Technical Source Document for Wells Cargo's permit modification: 40 CFR 63 Subpart LLLLLL for hazardous asphalt processing, 40 CFR 63 Subpart AAAAAA for asphalt processing, and 40 CFR 60 Subpart UU for the NSPS ambient air quality standard for asphalt processing. She further stated that by failing to include these regulations in their applicability determination, Air Quality did not determine the health impacts of the modified permit because real-time NESHAPs emissions monitoring from operations at the Wells Cargo facility was not performed. The modeling that was performed did not address the Hazardous Air Pollutants, specifically the VOCs nor did it address the fugitive dust emissions from unpaved and paved roads at Wells Cargo's facility.

During her testimony, Ms. Headrick also wanted to discuss the thermal oxidizer that was installed to control odor from the asphalt plant. However, Ms. Nielsen objected to the testimony in light of the fact that the revised permit which included the odor control system was not the issued permit CCSD was appealing. Vice-Chair Wishengrad sustained the objection.

During Ms. Nielsen's cross-examination of Ms. Headrick, Ms. Nielsen requested clarification as to what modification to Wells Cargo's permit CCSD is asking of the Board. She understood that Mr. McDade was not withdrawing the District's request for a monitor at the Spring Valley High School. Ms. Headrick stated that CCSD is requesting a special purpose monitor located at the Wells Cargo facility to test for actual air emissions. And, if an exceedance is noticed that Wells Cargo will adjust their operations to eliminate environmental health impacts. In response to questioning what regulation or rule allows Air Quality to require a monitor and subsequent modification to their operation, Ms. Headrick responded that NESHAPs is the rule that doesn't allow sources to exceed emissions.

Vice-Chair Wishengrad understood Ms. Headrick's concerns. However, given the regulations that Air Quality operates under today as approved by the Board of County Commissioners, the Board cannot impose that upon one source permittee.

Mr. McDade referred to AQR Section 25 as the regulation that allows the Control Officer to require ongoing testing. Vice-Chair Wishengrad stated that this regulation is not applicable with the terms of ongoing testing for which CCSD is asking. Vice-Chair Wishengrad added that the regulation only addresses if there is an upset, breakdown, or malfunction which causes emissions. Then the source would need to determine if they are in compliance, or not and report it to Air Quality accordingly. Ms. Nielsen stated staff will testify with respect to Section 25.

In cross-examination of Ms. Headrick, Ms. Bullen asked if CCSD still had the monitor and did they expect it to be repaired, and Ms. Headrick replied yes. When asked which regulation refers to the dust on paved and unpaved roads not being modeled, Ms. Headrick did not have it with her. Ms. Headrick agreed with Ms. Bullen that if it was determined the three CFR citations do not, in fact, apply to the facility, then the NESHAPs argument fails as well.

Ms. Rosenblatt asked Ms. Headrick if installing monitoring equipment was part of proving or completing the application process or part of the result of getting the permit when she completed minor source permits on behalf of clients, and Ms. Headrick stated it was not required.

Ms. Nielsen called Trent Scarlett, of Wells Cargo, to testify. Ms. Nielsen asked whether the haul roads were all paved as of today as required by Permit condition p [AQR 12.1.4.1(c)&(f) and 12.1.7(a)(VAEL)] which states that the Permittee shall limit the vehicle miles traveled (VMT) by haul trucks on paved roads to 40,000 miles per any consecutive 12 months. Mr. Scarlett replied that they were all paved.

Ms. Nielsen then called Ted Lendis, Permitting Supervisor with Air Quality, who stated he was responsible for ensuring the accuracy and completeness of this permit before presenting it as a proposed final document. The initial application proposed the installation of an additional hot mix asphalt plant. Mr. Lendis stated that AQR Section 12.1 and applicable federal regulations are the rules that govern the revision of a minor source permit. Ms. Nielsen asked Mr. Lendis about the applicability of the three specific citations to the CFRs that Ms. Headrick referenced: 40 CFR 63 Subpart LLLLL, 40 CFR 63 Subpart AAAAAAA, and 40 CFR 60 Subpart UU. Mr. Lendis responded that the first citation only applies to major sources, the second citation applies to liquid asphalt, and the third citation applies to mineral handling and storage facilities for liquid asphalt. None of these citations apply to the Wells Cargo facility. 40 CFR 63, Subpart CCCCC is the only NESHAPs regulation mentioned earlier that applies to the source. This regulation for gasoline dispensing along with 40 CFR 60, Subpart I for the hot mix asphalt plant and 40 CFR 60, Subpart OOO for mineral processing were referenced in the permit and in the technical support document (TSD).

Mr. Lendis also described the difference between NESHAPs and NSPS. Mr. Lendis stated that the method used to quantify emissions from processing equipment and activities in an aggregate and hot mix asphalt plant is to apply emission factors and production rates, applying any sort of control efficiencies, material throughputs, and control measures on top of that.

Shortly after Wells Cargo filed their application, Marci Henson, Director of Air Quality, required Wells Cargo to perform source impacts or a modeling analysis since there were concerns raised by the citizens that the proposed asphalt plant would cause excess emissions falling outside of the health standards. This had never before been required of a minor source under the current regulation. Because Wells Cargo could not demonstrate that they could pass the modeling analysis, they requested to use AP-42 emission factors set by EPA instead of Air Quality defaults used at the time. Air Quality required them to demonstrate that the AP-42 emission factors were more representative with performance testing. Wells Cargo failed the demonstration so Air Quality imposed emission factors between the AP-42 and the DAQ default values based on the results of the performance testing. Wells Cargo also made adjustments to their material throughputs, removed their generators, and paved their haul roads.

Air Quality received public comments during the 30-day comment period and heard testimony during the public hearing. However, Air Quality failed to provide the Notice to CCSD, so no CCSD representative provided any comments or spoke at the public hearing in opposition to issuance of the revised permit. On December 1, 2017, Air Quality issued the Revised Permit deemed to be a significant revision under AQR Section 12.1.6(a)(7) which does not require monitoring to establish actual emissions.

In preparation for the hearing, Mr. Lendis reviewed the analyses and TSD and discovered that a correction was needed in the total increase of PM_{2.5} due to the revision. After the correction was made, the emissions did increase, but continued to be below the significance level.

Mr. Lendis explained the difference between VOCs and HAPs. Some HAPs are a subset of VOCs. Mr. Lendis also explained AQR Section 25. An operator is required to disclose to Air Quality any upsets or malfunctions that would cause excess emissions.

During the examination of Mr. Lendis by Ms. Bullen, Mr. Lendis stated that all permit holders are required by Section 25 to report upsets and breakdowns, including those that do not have on-site monitoring.

During cross-examination, Mr. McDade called on Mr. Lendis to explain how HAPs were addressed in the permit. Mr. Lendis explained that AP 42 is used to calculate the potential to emit for HAPs in the permit and establish that they are below the major source threshold. The total HAPs, if combined, must be less than 25 tons per year and Wells Cargo's HAPs emissions were less than 25 tons per year. Mr. Lendis also stated that no ambient air testing was performed to determine what actual emissions were coming off Wells Cargo's site. Air Quality uses emission factors which represent the rate at which an activity emits a specific pollutant, to calculate the potential emissions coming from that activity. Mr. Lendis explained that a synthetic minor source permittee has the potential to operate as a major source, but the operator takes limitations to stay synthetically below the major source threshold. These permits are scrutinized more because they have the ability to operate as a major source. To demonstrate compliance with the permit restrictions, the operator is required to keep records of material throughputs and total production. Daily inspections must be performed by Wells Cargo personnel. The records must be subject to review upon inspection. The source is also required to submit annual reports.

Ms. Nielsen called Paul Fransioli, Senior Monitor Technician with Air Quality, to testify. Mr. Fransioli briefly described his experience and role with Air Quality. Ms. Nielsen asked Mr. Fransioli to describe what is in Exhibit C. Mr. Fransioli explained that it was a 2017 annual "wind rose" showing wind speed and direction summary for the Paul Meyer site which is approximately a mile south of the Wells Cargo facility. It depicts that 61 percent of the time, the wind speeds are less than 4 miles an hour. The prevailing winds are from the south and the southwest except in the wintertime, when the winds are more often from the north.

Ms. Nielsen called Yousaf Hameed, Monitoring Supervisor with Air Quality, to testify. Mr. Hameed briefly described his experience and role with Air Quality as responsible for overseeing the Air Quality monitoring network for Clark County. Through his testimony, Mr. Hameed explained that Air Quality has an annual monitoring network plan which includes network coverage throughout Clark County, siting of the monitors, start-up and shut-down of monitors, and the meeting or exceeding of federal requirements. The plan is approved by the Board of County Commissioners as well as the EPA. The purpose of the monitoring network is to measure air quality in Clark County and use the data to determine countywide compliance with the National Ambient Air Quality Standards which are health-based standards. Mr. Hameed went on to describe what the EPA's siting requirements are for monitors of PM₁₀ and PM_{2.5}. These include distance from the road, probe height, and no direct impact from any one particular source. The network is not and should not, by federal regulation, be used to determine NAAQS exceedances from an individual stationary source. The public does have an opportunity to comment on the annual monitoring network plan. No comments were received for the plan approved on June 6, 2017 by the Board of County Commissioners who makes the ultimate decision on the design of the monitoring network.

Ms. Nielsen asked Mr. Hameed about the request from CCSD to locate a monitor in the vicinity of Spring Valley High School to monitor exceedances from the Wells Cargo facility. Mr. Hameed explained that is not the purpose of locating monitors at school sites. The purpose is that the monitors are representative of the area, meet federal requirements, and are free of charge because the location is county-owned or government-owned.

During Ms. Bullen's examination of Mr. Hameed, he reiterated that the intent of the monitoring equipment network is not for the monitoring of an individual permittee's emissions.

In the cross-examination of Mr. Hameed by Mr. McDade, Mr. McDade asked whether the monitors monitor HAPs to which Mr. Hameed replied no.

Ms. Nielsen called on Vasant Rajagopalan, Air Quality Modeler with Air Quality, to testify. Mr. Rajagopalan briefly described his experience and role with Air Quality as reviewing and conducting air quality modeling for stationary source permitting. He received direction from the Director of Air Quality to perform a modeling analysis for the Wells Cargo facility when the department received Wells Cargo's permitting action. He explained, in detail, how this source was modeled. AERMOD is the preferred EPA model used for the dispersion modeling analysis. The inputs are the emission units, the receptor network to find concentrations of the impacts of the facility, terrain information, and meteorological information based on five years of data. The results, based on the impacts from the model at each receptor location, was that the facility was

below the NAAQS for each of the pollutants. Some assumptions to consider when performing the dispersion modeling is the methodology that consultants provide since there are different methods to represent sources and the option to pick various meteorological data. In the case of Wells Cargo's modeling, Mr. Rajagopalan considered the consultant's methodology appropriate and used the five-year meteorological data set from McCarran which is used for all minor and major sources. Mr. Rajagopalan stated that the AERMOD model provides the most conservative results and he is not aware of any other minor source that has been required by Air Quality to model its impacts for NAAQS exceedances. Mr. Rajagopalan stated with a reasonable degree of scientific certainty that there will be no NAAQS exceedance from the Wells Cargo facility based on his modeling analysis.

In early 2017 Mr. Rajagopalan also performed toxics modeling associated with the Wells Cargo site using EPA's HEM 3 (Human Exposure Model). He modeled two scenarios, one to represent the existing facility and one to represent the future facility after the permit revision. The results for cancer risk, non-cancer hazard index for different organs, and acute exposure concentration all determined that the facility is not of concern. Based on the modeling, the Hazardous Air Pollutants emitted from the facility after the permit revision was 3.6 tons per year. AP 42 factors were used in this analysis and the modeling was peer reviewed by Dr. Jing Feng, Chief Biostatistician with the Office of Epidemiology at the Southern Nevada Health District who did not find any defects in the modeling.

Mr. Rajagopalan also testified that the models calculate the concentrations assuming that somebody is home 24 hours a day.

Mr. Rajagopalan explained that there are no NAAQS for VOCs. VOCs are a precursor to ozone which does have a NAAQS. Ozone modeling is only required for major sources or PSD sources. Mr. Rajagopalan explained in detail how to correlate VOCs to ozone. Although the modeling is not required, Mr. Rajagopalan followed EPA's Model Emissions Rate for Precursors (MERPs) Guidance Document to determine that the Wells Cargo facility is not considered a significant source of ozone to warrant any modeling.

During cross-examination of Mr. Rajagopalan by Mr. McDade, Mr. Rajagopalan explained that the monitoring station referenced in the PM₁₀ modeling exhibit was a mile away from the source, that the emissions sources are represented as the red dots and labels in red in the exhibits, and that the receptors shown in the model are the locations where the concentrations of pollutants are computed. When asked, Mr. Rajagopalan stated that VOCs and HAPs do have permitting thresholds limits and that the toxic modeling included individual HAPs.

Ms. Nielsen called on Michael Sword, Planning Manager with Air Quality, to testify. Mr. Sword briefly described his 21 years of experience and role with Air Quality. Mr. Sword explained that NAAQS include only six criteria pollutants: carbon monoxide, nitrogen dioxide, sulfur dioxide, lead, ozone, and PM. There are no NAAQS for VOCs or for HAPs. Although VOCs are a precursor for ozone, the valley is NO_x-limited indicating VOCs are of minimal concern in the creation of ozone. Mr. Sword explained that the county has been in attainment for PM₁₀ since 2014 and has been in attainment for PM_{2.5} since the standard was created in 1997. Air Quality's monitoring network demonstrates NAAQS compliance by measuring the air pollution in the air.

PM_{2.5} is only an issue in the lower part of the valley in the winter during an inversion where the air gets trapped by a stable environment (no winds).

Mr. Sword then explained that a neighborhood scale monitor is good for up to approximately 2.5 miles. Because the Paul Meyer monitor is approximately a mile from Spring Valley High School, it is very representative of that site's background concentrations. In regards to placing PM₁₀ and PM_{2.5} monitors at Spring Valley High School, the school's impact would be investigated first if exceedances occurred. Air Quality has never installed equipment to monitor a specific stationary source.

In regards to the indoor air monitoring that was performed in Spring Valley High School, Mr. Sword stated that the results are ambiguous. No causal link may be established between the results and the Wells Cargo facility because the results just show a maximum concentration of VOCs and PM, but they do not speciate what those VOCs are. Also, since a flame ionization detector was used, it could be picking up compounds that are not VOCs because it will pick up anything with an odor. The indoor PM₁₀ reading which was instantaneous and not 24-hour based was 54 micrograms per cubic meter, far below the EPA outdoor air standard of 155 micrograms per cubic meter.

During cross-examination of Mr. Sword by Mr. McDade, Mr. Sword explained that NESHAPs are emission limits for hazardous air pollutants that apply to permitting actions only. The Paul Meyer monitor does not measure VOCs nor HAPs. Mr. Sword also reiterated that Air Quality only deals with outdoor air issues, not indoor air quality issues. OSHA regulates indoor air quality. Mr. Sword also explained that a special purpose monitor is a monitor that would be used for less than two years to investigate a scientific question or to assess a specific issue.

During further examination of Mr. Sword by Ms. Nielsen, Mr. Sword stated that special purpose monitors are not used to monitor individual stationary sources. There is an objective that does monitor stationary sources, but it is not a special purpose monitor.

During further cross-examination of Mr. Sword by Mr. McDade, Mr. Sword explained that there are monitors that are used for source specific monitoring, but those are not the special purpose monitors.

Ms. Nielsen called Shibi Paul, Compliance and Enforcement Manager with Air Quality, to testify. Mr. Paul testified to the enforcement actions that have been taken against Wells Cargo since 2011 and the complaint investigation process. The first notice of violation for nuisance odors was issued in December 2016. Another six were issued in 2017. Five were included in a settlement agreement where Wells Cargo agreed to install an odor control system. Mr. Paul also described Air Quality's after-hours surveillance program that was started in June of 2017 to monitor various stationary sources across the valley.

During examination of Mr. Paul by Ms. Bullen, Mr. Paul testified that between 2015 and present, 248 complaints were received from neighbors about Wells Cargo and seven odor complaints were substantiated.

Vice-Chair Wishengrad asked Mr. Paul whether out of 248 complaints that have already been reviewed and analyzed by enforcement that only seven were substantiated. Mr. Paul explained that multiple complaints on the same day will be included in one investigation report and one notice of violation.

During cross-examination of Mr. Paul by Mr. McDade, Mr. Paul explained the inspection process and how the inspector verifies throughput limits and operational limits using Wells Cargo's records.

During further examination of Mr. Paul by Ms. Nielsen, Mr. Paul explained AQR Section 43 for substantiating an odor complaint. He stated that the inspector must respond to the complaint within two hours, and once on-site must verify odor detection 15 minutes apart within the next hour.

Vice-Chair Wishengrad asked whether out of the 248 complaints some could not be substantiated because Air Quality couldn't respond within two hours. Mr. Paul explained that unsubstantiated complaints may include instances where the inspector does not detect an odor in the vicinity or when the inspector cannot respond in two hours because the complaint was received overnight or over the weekend.

During further cross-examination of Mr. Paul by Mr. McDade, Mr. Paul stated that the 248 complaints included odor and dust only.

Vice-Chair Wishengrad asked whether Ms. Nielsen had any other witnesses to which she responded no. When asked, Ms. Bullen stated that Wells Cargo did not intend to call any witnesses. When asked, Mr. McDade stated that he did not have any rebuttal witnesses.

Vice-Chair Wishengrad asked Mr. McDade for any closing remarks.

Mr. McDade maintains that there is not enough information on the health impacts of the Wells Cargo facility. He stated that the CFRs explained by Ms. Headrick could be applied and requested that a monitor be ordered.

Vice-Chair Wishengrad asked Ms. Nielsen for her closing remarks.

Ms. Nielsen maintains that Air Quality would be outside of their right to request that a post-construction monitor be installed at the Wells Cargo facility, the modeling demonstration was appropriate, and CCSD did not show anything with regards to the modeling that suggests a NAAQS exceedance or violation of other rules. The control officer's action in issuing the permit was not arbitrary nor capricious.

Vice-Chair Wishengrad asked Ms. Bullen for her closing remarks.

Ms. Bullen maintains that CCSD has not presented any evidence that there were flaws in the modeling nor that the control officer was arbitrary and capricious in granting the permit requested. The three CFRs that the school district determined were not in the permit, did not apply in Wells Cargo's case, and the haul roads from where alleged dust was coming were, in fact, paved.

Mr. McDade rebutted Ms. Nielsen and Ms. Bullen's arguments by referencing Section 4.5, the ability to require tests for certain specific categories that are set out in that section.

Vice-Chair Wishengrad closed the argument section of the appeal.

Board Action:

MOTION: Vice-Chair Wishengrad called for a denial of the appeal and upholding of the permit.
BY: Board Member Schweisinger
SECOND: Board Member Rosenblatt
FINAL ACTION: Unanimous; the motion carried.

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

Vice-Chair Wishengrad asked if there were any issues to be discussed.

Board Action:

MOTION: Have a discussion on public notice for permitting actions.
BY: Vice-Chair Wishengrad, although not sure if Item V warranted a motion.
SECOND: Board Member Schweisinger

Board Member Rosenblatt would like to have a discussion about the methods Air Quality uses for educating the public on when it is appropriate to intervene, or what processes are available to them for concerns like ones expressed during the hearing.

FINAL ACTION: Future agenda items are as follows:

- Discussion on public notice for permitting actions.
- Informational session from Air Quality with regards to informing and educating public, and their options.

VI. REPORT BY DEPARTMENT OF AIR QUALITY STAFF

There was no report by staff.

VII. PUBLIC COMMENT

Vice-Chair Wishengrad asked if there were any persons present in the audience wishing to be heard.

SPEAKER(S): Present

- Diane Henry, inquired about public notification and again commented about Wells Cargo's expansion.

VIII. ADJOURNMENT

Being no further business, Vice-Chair Wishengrad adjourned the meeting at 7:35 p.m.

Approved:

Evan S. Wishengrad, Esq., Vice-Chair

Date

DRAFT



Department of Air Quality

Informational Session to the

Clark County Air Pollution
Control Hearing Board

Thursday June 14, 2018

Public Notice Procedures for Permitting Actions

Thursday June 14, 2018



Public Participation Requirements for Minor Stationary Source Actions

- Detailed in AQR Section 12.1 [Approved by the BCC on 3-18-2014]
- When is Public Notice Required for **Minor Source** Permitting Actions? [AQR 12.1.3.(a)(1)]
 - For a new source with potential emissions that exceeds certain amounts (E.g.- 50 tons/year of CO or 15 tons/year of PM10)
 - For a new source Located within 1,000 ft of a school, hospital or residential area;
 - For a significant permit revision with a significant increase in potential emissions

Public Participation Requirements for Major Stationary Sources

- Detailed in AQR Sections 12.2, 12.3, 12.4 & 12.5 – [Approved by the BCC on 3-18-2014]
- For **Major Source** Operating Permits [AQR 12.5.2.17]:
 - The Control Officer shall provide for public notice, comment, and an opportunity for a hearing on:
 - Initial permit Issuance, significant revisions, reopenings for cause, and renewals
- For **Major Source** Authority to Construct (ATC) Permits:
 - Notice is Required for all ATC permits issued under AQR 12.2, 12.3 & 12.4
[AQRs 12.2.16.1(c) & 2, 12.3.8, 12.4.3.2(a)(3)]


Public Notice Process

The Control Officer shall publish the Notice:

- ▶ In a newspaper of general circulation; and
- ▶ On the Department's website (for 30 days)

The Control Officer shall also send the Notice to the applicant and to officials/agencies having jurisdiction of the source location

Public Notices for Permitting

 **Air Quality Permitting**

Permitting Public Notices

CIRCLE K STORE INC, SOURCE ID 17957
4840 West Hacienda Avenue
Las Vegas, Nevada 89118

[Notice of Proposed Action](#)
[Proposed Permit](#)
[Proposed Technical Support Document](#)

SIERRA READY MIX LLC, SOURCE ID 15791
4.7 Miles South of Prison Road near Jean, NV
Jean, Nevada 89019

[Notice of Proposed Action](#)
[Proposed Permit](#)
[Proposed Technical Support Document](#)

Public Notice Process

The Notice shall contain:

- Application details, location of the relevant documents, type and quantity of emissions, contact information to obtain information, Control Officer's determination of approval, opportunity for comment and hearing etc.
- 30 Days to submit written comments
- Any person may petition the Control Officer for a hearing during the comment period
- The Control Officer may hold a hearing between 30-70 days after the Notice

EPA Changes Public Notice Provisions

In October 2016, EPA Revised the Public Notice Provisions for Clean Air Act Permitting Programs [81 FR 71613]:

- The final rule removed the mandatory requirement to publish public notices in newspapers for permitting actions
- Allowed e-notice (on the website) as an option with e-access to the permit during comment period
- Allowed state and local air agencies to revise their rules to reflect the change
- Air Quality is currently in the process of revising the minor source rule (AQR 12.1) with this change



Proposal to Enhance Public Participation

Air Quality will develop and implement a 'LIST SERV' feature that include:

- ▶ A website feature that allows interested persons to sign-up for various notifications and alerts issued by Air Quality
- ▶ Ability to choose from different categories
- ▶ Will maintain separate email lists for each categories

Proposal to Enhance Public Participation

- Once signed-up, individuals will receive email notifications on:
 - Public notices on permitting actions,
 - Air Quality advisories and alerts,
 - Construction notices,
 - Reminders on regulatory deadlines, and
 - Workshops and training opportunities
- Implementation by January 2019.



Planning

Criteria Pollutants

- o Carbon Monoxide (CO) - attainment/maintenance
- o Ozone (O₃)
 - 1997 Ozone NAAQS is maintenance
 - EPA had vacated this NAAQS based on the lower 2008 standard. However, the courts reversed the EPA action for areas still in maintenance.
 - This resulted in a complete and immediate stoppage of federal funds to new RTP/TIP updates in areas with road projects that exceeded the motor vehicle emissions (MVE) budgets for conformity. Las Vegas and the RTC is one of these areas.
 - We are currently remodeling the MVE budgets and assuming we can get a useful result will be completing a SIP process for the MVE budget in October 2018.
 - EPA has petitioned the courts to reconsider the conformity element to allow a grace period.
 - EPA is also working on a guidance related to the court decision
 - 2008 NAAQS is attainment
 - 2015 NAAQS is non-attainment only for Las Vegas Valley based on 2015, 2016, & 2017 data
- o PM₁₀ - attainment/maintenance
- o PM_{2.5} — attainment
- o Nitrogen dioxide (NO₂) – attainment
- o Sulfur dioxide (SO₂)—attainment
- o Lead (Pb) - attainment

Monitoring

- Implemented 2018 Annual Monitoring Network Plan
 - o Stations located in neighbourhoods to assess exposure levels to the general population.
 - o Three new sites are scheduled to open by the end of the year. The new sites will be located in the SW, SE, and NE portions of the valley.
 - o Network also characterizes pollution transported into Clark County and background levels natural to Clark County.

Update

Clark County Air Pollution Control Hearing Board
Thursday, 14 June 2018



CLARK COUNTY • DEPARTMENT OF AIR QUALITY
4701 W. Russell Road Suite 200 • Las Vegas, NV 89118-2231
(702) 455-5942 • Fax (702) 383-9994
Marci Henson Director

Stationary Source Permits

- 235 permits issued (Jan – June)
- 224 permits issued on time (95%)
- 1066 active operating permits
- 93% completed action items from LEAN Sigma Six (2016) – 6 remaining out of 91
- New processes include (highlights):
 - Online permitting application and emissions tool for mineral processing operations and engines
 - New application worksheets – PDF fillable, more complete information, and instructions (about 75% complete)
 - New permit formats – more user friendly format focusing on customer needs
 - New policy to meet face-to-face with new permit holders before issuance
 - New policy to work more closely with Compliance to catch permit issues
 - New process to screen applications before accepting – save time and improve efficiency for staff and customers

Dust Permits and Vacant Land

- Issued 1,179 dust permits from January 2018 through May 2018; averaged 7.2 days to issue a dust permit
- Conducted 1,997 inspections from January 2018 through May 2018

Compliance & Enforcement

- Conducted 181 stationary source inspections from January 2018 through May
- Responded to 411 complaints from January 2018 through May 2018
- Issued 16 construction Notices of Violation (NOVs)
- Issued 2 vacant land NOVs
- Issued 19 stationary source NOVs (including 3 for nuisance odors)
- Issued 7 asbestos NOVs
- Assessed \$1,166,400 in penalties from January 2018 through 6/8/2018
 - \$931,700 has not yet been adjudicated

Small Business Assistance Program

- Responded to 892 requests for assistance; 628 for permitting assistance and 265 for compliance assistance for the past six months; on track with request for 2017.
- Revised and updated the program Frequently Asked Questions page on the Small Business Assistance Website.
- Continuing to proactively contact stationary source permittees nearing the time for renewing their permits to offer assistance with their permit renewal.

Update

Clark County Air Pollution Control Hearing Board

Thursday, 14 June 2018



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-
- SBAP worked with the Permitting Division to send links to the SBAP webpages to all sources with new or revised permits to access forms and daily inspection recordkeeping sheets.
 - Began translating and distributing brochures and fliers for stationary source permittees in Spanish and in Korean languages.
 - Organized and implemented centralized training for major chains of gasoline dispensing facilities.
 - Continuing to attend Hearing Officer Meetings to offer compliance assistance to stationary source permittees that continue to have compliance related issue to bring them into compliance with the air quality regulations.
 - SBAP personnel are visiting non-permitted sources that are subject to federal regulations to offer assistance to remind them to maintain appropriate records.
 - SBAP has initiated working with compliance staff to be trained about asbestos abatement to be able to better assist small businesses.
 - SBAP personnel are accompanying compliance inspectors, as time allows, to become more aware of issues and more capable to assist small businesses.