



APPROVED APC HEARING BOARD
DATE: August 2, 2023
BY: Sherrill Rogge
Board Secretary

Minutes

Regular Meeting of the Clark County Air Pollution Control Hearing Board

October 5, 2022

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

1. CALL TO ORDER

Chair Sanders called the meeting of the Air Pollution Control Hearing Board to order at the hour of 1:33 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: Daniel Sanders, Chair
Elspeth Cordua
Troy Hildreth
William Kremer
Lauren Rosenblatt

ABSENT: Ryan L. Dennett, Vice-Chair

LEGAL COUNSEL: Catherine Jorgenson, Deputy District Attorney

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

2. 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.

3. OATHS OF OFFICE

- A. Elspeth Cordua (Lay Member)
Term of Office: 9/21/2021 through 9/20/2024

FINAL ACTION: Air Quality Supervisor Sutowska administered the oath of office to Elspeth Cordua.

4. APPROVAL OF MINUTES OF THE APRIL 6, 2022 MEETING (For possible action)

Chair Sanders called for comments, changes, or corrections to the April 6, 2022 minutes. Being none, he called for a motion.

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

Motion carried by the following vote:

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

Air Quality Compliance and Enforcement Manager Shibi Paul brought the Board's attention to the report that was distributed highlighting the department's programmatic updates and sectional performance summaries for the period of January through August of this year. Mr. Paul asked the Board to review the report and if they had any questions to raise them when they are discussing emerging issues later in the meeting.

5. APPEAL OF HEARING OFFICER DECISION (For possible action)

- A. **ACAK IRREVOCABLE TRUST (DCOP #55113) – NOV #9683** – On July 21, 2022, the Hearing Officer found ACAK Irrevocable Trust in violation of Sections 94.14(a)(4), 94.14(d), and 94.13(a) and (b) of the AQRs for failure to fully implement Best Available Control Measures (BACM) resulting in a fugitive dust plume to cross a property line; for allowing soil to be tracked out greater than 50 feet in length onto a paved roadway; and for failing to employ BACM and comply with soil stabilization standards 24 hours a day, seven days a week, as identified by Senior Air Quality Specialist Andrew Kirk and Air Quality Specialist Damon Lindsay while performing complaint investigations on March 7 and 8, 2022 at the Lone Mtn. and Allen construction project, located at the northwest corner of Lone Mountain Road and Allen Lane, in Clark County Nevada. The Hearing Officer assessed a penalty amount of \$6,750.00. ACAK Irrevocable Trust did not appear for the hearing and appealed the Air Pollution Control Hearing Officer's Order.
(For possible action.)

Chair Sanders asked whether there was anyone present in the audience for the appeals of the hearing officer decisions for NOV #9683 issued to ACAK Irrevocable Trust, and NOV #9701, #9704 and #9709 issued to LVBD65, LLC. No representatives were present.

Deputy District Attorney Jorgenson suggested that the Board take a recess to allow the appellants additional time to arrive.

Chair Sanders stated this would be a good time for the Board to review the report that was provided and then called for a 10-minute recess at 1:38 p.m.

RECESS: 1:38 p.m.
RECONVENE: 1:50 p.m.

Chair Sanders called the meeting back to order and asked whether there was anyone present in the audience for the appeals of the hearing officer decisions for NOV #9683 issued to ACAK Irrevocable Trust, and NOV #9701, #9704 and #9709 issued to LVBD65, LLC. Seeing no one present, Chair Sanders stated that the Board would move forward with a decision on Agenda Item 5A.

Deputy District Attorney Jorgenson asked the Board to make a ruling that the appellant failed to appear, admit the NOV into the record, deny the appeal, find that the violations occurred, and assess the recommended penalty amount of \$6,750.

FINAL ACTION: It was moved by Board Member Sanders, seconded by Board Member Rosenblatt to find that the appellant failed to appear, admit NOV #9683 into the record at Air Quality's request, deny the appeal, find that the violations did occur, and assess the recommended penalty amount of \$6,750.00 for NOV #9683.

Motion carried by the following vote:

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

Deputy District Attorney Jorgenson requested that the Board take the following three appeals together (NOV #9701, #9704 and #9709) since it is the same permittee and the same project.

- B. LVBD65, LLC (DCOP #54715) – NOV #9701** – On July 21, 2022, the Hearing Officer found LVBD65, LLC in violation of Sections 94.14(a)(4), 94.14(a)(3), and 94.13(a) and (b) of the AQRs for failure to fully implement Best Available Control Measures (BACM) resulting in a fugitive dust plume to cross a property line; for failing to fully implement BACM resulting in a fugitive dust plume to extend more than 100 feet; and for failing to employ BACM and comply with soil stabilization standards 24 hours a day, seven days a week, as identified by Air Quality Specialist Allan Gutierrez, Senior Air Quality Specialist Katrinka Byers, and Air Quality Supervisor David Dean while performing a complaint investigation during a Dust Advisory period on April 11, 2022, a complaint investigation during a Construction Notice period on April 12, 2022, follow-up inspections on April 13, 14 and 15, 2022, a follow-up inspection during a Dust Advisory on April 16, 2022, and a follow-up inspection during a Construction Notice period

on April 18, 2022 at the LVBD65 LLC-1 construction project, located at the southwest corner of Las Vegas Boulevard and Warm Springs Road, in Clark County, Nevada. The Hearing Officer assessed a penalty amount of \$17,000.00. LVBD65, LLC did not appear for the hearing and appealed the Air Pollution Control Hearing Officer's Order.
(For possible action.)

- C. LVBD65, LLC (DCOP #54715) – NOV #9704** – On July 21, 2022, the Hearing Officer found LVBD65, LLC in violation of Sections 94.14(a)(4), 94.13(a) and (b), and 94.14(d) of the AQRs for failure to fully implement Best Available Control Measures (BACM) resulting in a fugitive dust plume to cross a property line; for failing to employ BACM and comply with soil stabilization standards 24 hours a day, seven days a week; and for allowing trackout more than 50 feet on a paved surface, as identified by Air Quality Specialist Allan Gutierrez and Senior Air Quality Specialist Katrinka Byers while performing a complaint investigation during a Construction Notice period on April 19, 2022, a complaint investigation during a Construction Notice period on April 21, 2022, a follow-up inspection during a Construction Notice period on April 22, 2022, and follow-up inspections on April 20, 25 and 26, 2022, at the LVBD65 LLC-1 construction project, located at the southwest corner of Las Vegas Boulevard and Warm Springs Road, in Clark County, Nevada. The Hearing Officer assessed a penalty amount of \$13,750.00. LVBD65, LLC did not appear for the hearing and appealed the Air Pollution Control Hearing Officer's Order.
(For possible action.)

- D. LVBD65, LLC (DCOP #54715) – NOV #9709** – On July 21, 2022, the Hearing Officer found LVBD65, LLC in violation of Sections 94.14(d) and 94.13(a) and (b) of the AQRs for allowing trackout more than 50 feet on a paved surface; and for failing to employ Best Available Control Measures (BACM) and comply with soil stabilization standards 24 hours a day, seven days a week, as identified by Air Quality Specialists Allan Gutierrez and Mike Englehart, and Senior Air Quality Specialist Katrinka Byers while performing follow-up inspections on April 27, 29, 30, 2022 and May 2 and 4, 2022, and an inspection during a Construction Notice period on April 28, 2022, at the LVBD65 LLC-1 construction project, located at the southwest corner of Las Vegas Boulevard and Warm Springs Road, in Clark County, Nevada. The Hearing Officer assessed a penalty amount of \$10,750.00. LVBD65, LLC did not appear for the hearing and appealed the Air Pollution Control Hearing Officer's Order.
(For possible action.)

Deputy District Attorney Jorgenson requested that the Board make a ruling that the appellant failed to appear; approve three administrative changes to include 1) replacing Exhibit T in NOV #9701 with a new copy because the original had the inspector notes cut off, 2) reflecting April 20, 2022 instead of April 21, 2022 for Exhibit J in the Table of Contents for NOV #9704; and 3) reflecting the correct inspector who took photograph 11 in Exhibit C of NOV #9709 as Michael Englehart instead of Katrinka Byers; submit the NOVs on the record, deny the appeals, find that the violations occurred, and assess the recommended penalty amounts of \$17,000 for NOV #9701, \$13,750 for NOV #9704 and \$10,750 for NOV #9709.

Chair Sanders agreed, but first asked whether any of the Board members had questions.

DISCUSSION: Board member Rosenblatt asked whether the penalty reflected the number of violations that occurred and whether it was higher because they had so many violations issued.

Ms. Jorgenson called on Anna Sutowska to provide testimony on how the penalties were calculated for these cases.

Anna Sutowska, Air Quality Supervisor, was sworn in by Chair Sanders.

Ms. Sutowska responded to questions by Ms. Jorgenson and by the board regarding the penalty calculation table and how aggravating factors work for prior NOV's. For these three cases the prior NOV's were not considered because they had not yet been adjudicated.

Board member Kremer asked Administrative Secretary Sherrie Rogge to play video #3 from April 21, 2022 in NOV #9704. Mr. Kremer commented on how egregious the violation was.

Ms. Rosenblatt then asked about a day in one of the NOV's when an inspector had been onsite and had directed someone to attend a training class. She inquired as to the kind of training Air Quality offers when violations are observed and the cost for such training.

Ms. Jorgenson called on Allan Gutierrez for questioning.

Allan Gutierrez, Air Quality Specialist II, was sworn in by Chair Sanders.

Mr. Gutierrez responded to questions by Ms. Jorgenson and by the board in regards to who is required to attend dust class, what happens if an individual doesn't attend class once directed to do so by the inspector, the cost of attending class and what happens when an inspector goes out to a site and observes additional violations.

Chair Sanders reminded the Board that they do have the ability to increase penalties.

Ms. Jorgenson requested the Board assess the recommended penalties as the cases were not presented in full.

FINAL ACTION: It was moved by Board Member Sanders, seconded by Board Member Cordua to find that the appellant failed to appear; approve the administrative change to replace Exhibit T in NOV #9701 with a new copy because the original had the inspector notes cut off; at Air Quality's request, admit the NOV into the record; deny the appeal; find that the violations did occur; and assess the recommended penalty amount of \$17,000.00 for NOV #9701.

Motion carried by the following vote:

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

FINAL ACTION: It was moved by Board Member Sanders, seconded by Board Member Cordua to find that the appellant failed to appear; approve the administrative change to reflect April 20, 2022 instead of April 21, 2022 on Exhibit J in the Table of Contents for NOV #9704; at Air Quality's request, admit the NOV into the record; deny the appeal; find that the violations did occur; and assess the recommended penalty amount of \$13,750.00 for NOV #9704.

Motion carried by the following vote:

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

FINAL ACTION: It was moved by Board Member Sanders, seconded by Board Member Cordua to find that the appellant failed to appear; approve the administrative change to reflect the correct inspector who took photograph 11 in Exhibit C of NOV #9709 was Michael Englehart and not Katrinka Byers; at Air Quality's request, admit the NOV into the record; deny the appeal; find that the violations did occur; and assess the recommended penalty amount of \$10,750.00 for NOV #9709.

Motion carried by the following vote:

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

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

Chair Sanders asked if anyone had questions for staff about the report highlighting the department's programmatic updates and sectional performance summaries covering January through August of this year that had been distributed at the beginning of the meeting.

Board Member Rosenblatt asked whether she could have some more details on two items in the Office of Sustainability section.

Compliance and Enforcement Manager Shibi Paul responded that the Office of Sustainability is a separate division of the Department of Environment and Sustainability and that he would not be able to answer those questions since he is in the Division of Air Quality, and unfortunately, a representative of the Office of Sustainability was not in attendance at the meeting.

Ms. Rosenblatt then asked about the ozone nonattainment designation and whether the area of nonattainment was by the airport.

Board Member Kremer stated that cars through tourism coming into Las Vegas definitely have an impact.

Mr. Paul explained that the transportation of vehicles coming into Clark County has contributed to ozone exceedances and hence the moderate nonattainment designation, and that several monitors throughout the Las Vegas Valley exceeded the ozone limits over the past three years. Now that the EPA designated Clark County in moderate nonattainment for ozone, Air Quality must respond by submitting a state implementation plan (SIP) to the EPA that will include, among other things, a plan to demonstrate a potential 15% reductions/Reasonable Further Progress (RFP) of ozone precursor emissions through the implementation of various emissions reduction programs. One of the items that Air Quality will be looking into is reformulated gasoline which is something that California has already implemented. Reformulated gas has less VOC emissions potential. Consumer products and Graphic Arts industry are some additional areas that Air Quality will be evaluating for potential emission reductions.

Ms. Rosenblatt asked how moderate nonattainment would affect Clark County financially.

Mr. Paul stated that Nevada could, under certain circumstances, potentially lose federal highway funding in the future if the SIP is disapproved. However, Air Quality is already working on the revised SIP to demonstrate to the EPA that we are actively seeking solutions.

Board Member Hildreth asked which monitor exceeded PM₁₀ for the 2019-2021 time period.

Mr. Paul did not have the answer to that but would get it for Mr. Hildreth from the Monitoring Section of Air Quality.

There were no emerging issues identified by the Board.

7. PUBLIC COMMENT

Chair Sanders stated that he did not open and close the agenda items for the appeals. He asked Ms. Jorgenson whether he needed to re-open them for public comment.

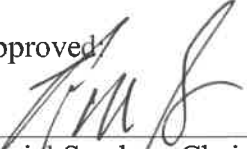
Mr. Jorgenson stated that the public comment period does not apply to appeals of Hearing Officer Decisions as per Air Quality Regulation Section 7.

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.

8. ADJOURNMENT

Being no further business, Chair Sanders adjourned the meeting at 2:25 p.m.

Approved:



Daniel Sanders, Chair

Date



8/2/2023