

**SECTION 7: AIR POLLUTION CONTROL HEARING BOARD
AND HEARING OFFICER**

7.1 Appointments

(a) Hearing Officer

- (1) The Clark County Board of County Commissioners (BCC), in accordance with Chapter 2.68 of the Clark County Code, may appoint Hearing Officers from a list of qualified applicants, prepared by the department, that meet the following criteria:
 - (A) An individual appointed as a Hearing Officer shall not be an employee of the state of Nevada or any of its political subdivisions.
 - (B) Hearing Officer(s) shall have a working knowledge of air quality issues, arbitration, law, and/or engineering.
 - (C) A Hearing Officer will be an independent contractor who serves at the pleasure of the BCC.
 - (D) When multiple Hearing Officers have been appointed, each one shall make decisions independently.

(b) Air Pollution Control Hearing Board (Hearing Board)

- (1) In accordance with Chapter 445B.275 of the Nevada Revised Statutes, (NRS 445B.275) the Hearing Board shall consist of seven members selected from a list of qualified applicants submitted by the department that meet the following criteria:
 - (A) Members cannot be employees of the state of Nevada or any of its political subdivisions.
 - (B) One member must be an attorney admitted to practice law in Nevada.
 - (C) One member must be a professional engineer licensed in Nevada.
 - (D) One member must be licensed in Nevada as a general engineering or building contractor, as defined in NRS 624.215.
 - (E) Hearing Board members shall serve a term of three years.

- (F) Hearing Board members will serve at the pleasure of the BCC.
- (G) Hearing Board members shall have a working knowledge of air quality issues, arbitration, law, and/or engineering.
- (H) The Hearing Board shall select a Chair, Vice-chair, and any other officers it deems necessary.
- (I) Four members of the Hearing Board must be present to hold a hearing, and a majority of those present must concur in any decision when they sit en banc. At the request of the Control Officer a panel of three or more members may conduct hearings.
- (J) The Chair shall preside over the hearing and make all procedural rulings. Rulings are subject to appeal before the Hearing Board and may be reversed by a majority vote of the members considering the matter.
- (K) All Hearing Board public hearings shall comply with the requirements of the Nevada Open Meeting Laws.

7.2 Ethical Service

- (a) The Hearing Officer and members of the Hearing Board shall not conduct or participate in any hearing or decision in which they or any of the following persons has a direct or substantial financial interest: spouse; brother; sister; child; parent; in-laws; and parents of business associates. The Hearing Officer shall not participate in a hearing concerning any business with which the officer is negotiating, or has an arrangement or understanding concerning, possible partnership or employment. Any actual or potential interest shall be disclosed prior to the hearing.
- (b) A Hearing Officer and members of the Hearing Board may vote upon or consider a matter if the accruing benefit or detriment resulting from the decision, either individually or as a member of a general business profession, occupation or group, is not greater than that of any other member of the general business, profession, occupation or group.
- (c) A Hearing Officer and members of the Hearing Board shall not vote upon, consider, or advocate the passage or failure of, but may otherwise participate in the consideration of a matter in which a reasonably objective observer might conclude that independent judgment would be materially affected by:
 - (1) Acceptance of a gift or loan;

- (2) Pecuniary interest; or
- (3) A private commitment to the interest of others.
- (d) If a member of the Hearing Board declares an intent to abstain from voting because of the requirements of Section 7.2(a), the necessary quorum and votes necessary to act upon the matter at hand shall be reduced as though the abstaining member were not on the Hearing Board.
- (e) If a Hearing Officer declares an intent to abstain from rendering a decision because of the requirements of Section 7.2(a), the scheduled hearing will be forwarded to a second Hearing Officer. If there are no qualified Hearing Officer(s), then the matter will be referred to the Hearing Board to take action on the item as the reviewing administrative body.

7.3 Procedures – Hearing Officer

- (a) The Control Officer shall specify the time and place for each hearing in accordance with Section 4.3(d).
- (b) All affected parties shall be notified of a Hearing Officer hearing no less than five days before the date is set.
- (c) The Hearing Officer shall consider cases with:
 - (1) Non-contested facts and penalties.
 - (2) Non-contested facts and contested penalties.
 - (3) Contested facts and penalties.
- (d) A Hearing Officer shall affirm, modify or reject:
 - (1) The alleged violation of the AQRs.
 - (2) The recommended administrative penalty.
 - (3) Any appealed Control Officer Order to take corrective action.
- (e) A written order of the Hearing Officer shall be final 10 days after its receipt by all affected parties unless the respondent or Control Officer appeals the decision to the Hearing Board. The Notice of Appeal of a Hearing Officer Order must:
 - (1) Be received by the department within 10 days of receipt of the Hearing Officer's decision.

- (2) Be on a form provided by the department, to include an original signature (no copies) and reason(s) for the appeal. Form must be mailed or delivered to the department front desk.
- (3) Include the applicable fee (AQR 18.12).

7.4 Procedures – Air Pollution Control Hearing Board

- (a) The Hearing Board shall be convened at the request of the Control Officer to consider appeals of Hearing Officer Orders and Control Officer permitting determinations, as specified in Section 7.3(e).
- (b) The Hearing Board shall consider Petitions of Appeals for:
 - (1) Hearing Officer Orders
 - (2) Control Officer's permit determinations.
- (c) The Hearing Board shall affirm, modify or rescind appealed:
 - (1) Hearing Officer Orders.
 - (2) Control Officer's permit determinations.
 - (3) Terms and conditions of a permit issued by the Control Officer.
- (d) A written order of the Hearing Board shall be final 10 days after receipt by all parties.

7.5 Appeals to Hearing Board

- (a) An aggrieved party may file a written Notice of Appeal to the Hearing Board within 10 days of the date of the department's notice of action, except as otherwise provided by law. The applicable filing fee must accompany the Notice of Appeal.
- (b) The Notice of Appeal must:
 - (1) Be received by the department within 10 days of receipt of the Hearing Officer's decision.
 - (2) Specify the reason(s) for appealing the order. The Notice must have an original signature and include the appropriate fee.
 - (3) Be on a form provided by the department, including original signature (no copies). Form must be mailed or delivered to the department front desk.

- (4) Include the applicable fee (AQR 18.12).
- (c) An aggrieved party may appeal:
 - (1) The issuance, denial, renewal, modification, revision, suspension, or revocation of an operating permit.
 - (2) The issuance, modification or rescission of any other order.
- (d) The Control Officer shall determine the time and manner in which appeals are taken to the Hearing Board.
- (e) The Hearing Board shall decide all appeals, and may order the affirmation, modification, or reversal of any action taken by a Hearing Officer that is a subject of appeal.
- (f) Appeals of Hearing Officer Order shall be heard “de novo” (i.e., from the beginning), with testimony and exhibits presented and the appeal conducted in the same manner as before the Hearing Officer.
- (g) Any rehearing of a matter previously before the Hearing Board must be based upon a mistake of fact or misapplication of the law made by the Hearing Board, or the Hearing Board not completely disposing of the matter before it.

7.6 Procedures—Hearing Officer Meetings

- (a) General
 - (1) The Control Officer shall notify the person(s) responsible for an alleged violation they must appear before the Hearing Officer.
 - (2) The Control Officer shall determine the time and manner in which cases and appealed corrective action orders are presented before the Hearing Officer, in accordance with Section 4.3.
 - (3) All testimony shall be given under oath and recorded verbatim (by human or electronic means). Upon request, the department shall provide a transcript at the expense of the requesting party.
- (b) The department may make an opening statement briefly describing the nature of the case, after which the cited party may briefly state the nature of any defense.
- (c) The parties shall present their cases through the sworn testimony of witnesses and exhibits, with the department proceeding first.

- (d) The Hearing Officer may inquire of any witness following any segment of testimony.
- (e) Each party may conduct direct examination of its own witnesses and cross-examination of the other party's witnesses.
- (f) Exhibits will be presented to the other party before a request for admission is made to the Hearing Officer. Strict adherence to the technical rules of evidence is not required, but the Hearing Officer reserves the right to exclude irrelevant, immaterial, or unduly repetitious testimony or other evidence.
- (g) Each party may present a closing summary, after which the Hearing Officer shall either find that a violation has occurred and impose a penalty, or find that no violation has occurred.
- (h) Hearings Pursuant to Notices of Violation
 - (1) Non-contested cases:
 - (A) When the Control Officer and cited party have agreed on the facts and penalty submitted to the Hearing Officer, the Hearing Officer may approve the non-contested agenda item and impose the agreed-upon penalty.
 - (B) If the Hearing Officer rejects the non-contested agenda item, the Notice of Violation shall be removed from the non-contested agenda and, unless good cause otherwise exists, set for a hearing before the same Hearing Officer at a subsequent meeting.
 - (2) Non-contested facts and contested penalties:
 - (A) When the Control Officer and cited party agree on facts submitted to the Hearing Officer but disagree on the penalty, the Control Officer shall place the Notice of Violation on the contested agenda before the Hearing Officer.
 - (B) The Hearing Officer shall consider the supporting reasons and recommendations presented by both parties and impose a penalty.
 - (3) Contested facts and penalties:
 - (A) When the Control Officer and cited party disagree on the facts and the penalty, the Control Officer shall place a Notice of Violation on the contested agenda before the Hearing Officer.

- (B) The Hearing Officer shall consider the supporting reasons and recommendations presented by both parties and shall either determine a violation has occurred and levy an appropriate penalty, or determine that no violation has occurred.

7.7 Procedures—Air Pollution Control Hearing Board Meeting

- (a) The Control Officer shall specify the time and place for each Hearing Board Meeting.
- (b) The Chair of the Hearing Board shall call the meeting to order if a quorum is present.
- (c) The minutes of the previous Hearing Board meeting shall be presented for approval, disapproval, or modification.
- (d) Department staff shall report on relevant matters and recent developments relating to air quality.
- (e) Legal counsel for the Hearing Board shall report on relevant matters.
- (f) The Hearing Board shall consider relevant matters, including but not limited to appeals from orders issued by the Hearing Officer(s) and/or the appeal of the Control Officer's final action on an operating permit.
- (g) Except for appeals of Hearing Officer Orders, the Hearing Board shall conduct itself according to the administrative procedures set forth in NRS 223(B) and/or any special procedures the Hearing Board has adopted. If the Administrative Procedures Act set forth in NRS 233(B) or special procedures do not apply, the Hearing Board shall use *Robert's Rules of Order*.
- (h) The public shall be allowed to participate at Hearing Board meetings.

7.8 Procedures—Public Hearings

- (a) The Control Officer shall specify the time and place for each Public Hearing.
- (b) All testimony given before the Hearing Board shall be given under oath and recorded verbatim (by human or electronic means). Upon request, the Chair shall provide for a transcript at the expense of the requesting party.
- (c) The Hearing Board shall hear presentations by staff and the applicant, and then testimony by the public.
- (d) The applicant may present rebuttal testimony, after which the Chair shall close the public meeting.

- (e) The Hearing Board shall make its decision following discussion and a majority of those present must concur in any decision.

7.9 Judicial Review

Any person aggrieved by an order or decision of the Hearing Board may seek judicial review in accordance with the law.

History: Amended: September 3, 1981; July 8, 1985; April 23, 1987; November 18, 1993; May 26, 1994; December 19, 1996; April 24, 1997; December 21, 2000; June 3, 2003; July 1, 2004; December 17 2019; January 21, 2020.