

Washoe County Health District Air Pollution Control Hearing Board Meeting Minutes

Members

Richard Harris, JD, PhD, Dr.
Yvonne Downs, CEM, Vice
Anthony Dimpel, PE
Paul Kaplan
Phil Schweber
Lee Squire

Thursday, April 12, 2023
6:00 p.m.

Washoe County Health District
WCHD Conference Rooms A & B
1001 East Ninth Street
Reno, NV 89512

1. Roll Call and Determination of Quorum.

Dr. Harris called the meeting to order at 6:01 p.m.

Board members present: Richard Harris, JD, PhD, Chair
Yvonne Downs, CEM, Vice Chair
Anthony Dimpel, PE
Paul Kaplan
Phil Schweber
Lee Squire

Board members absent: None.

Susy Valdespin, acting Recording Secretary, verified a quorum was present.

Staff present: Francisco Vega, Air Quality Management Division Director
Joshua Restori, Supervisor, Permitting and Compliance
Susy Valdespin, Administrative Assistant
Chaz Lehman, Deputy District Attorney Civil Division

2. Pledge of Allegiance.

Chair Harris led "The Pledge of Allegiance."

3. Ethics Law Announcement.

Chaz Lehman, Deputy District Attorney provided a verbal ethics law announcement.

4. Public Comment.

Chair Harris opened the public comment period.

Having no public comment, Chair Harris closed the public comment period.

5. Approval of Agenda.

April 12, 2023

Vice-chair Downs moved to approve the April 12, 2023, agenda. Lee Squire seconded the motion, which carried unanimously.

6. Approval of Draft Minutes.

October 13, 2022

Vice-chair Downs moved to approve the October 13, 2022, minutes as received. Lee Squire seconded the motion, which carried unanimously.

Staff and Appellants were sworn in by Ms. Valdespin, Recording Secretary.

7. Recommendation of Staff to Uphold Notice of Violation No. AQMV23-0002, issued on January 30, 2023, for failure to meet the requirements of Permit to Operate No. AAIR17-0002, with an associated administrative fine of \$1,000.00 issued to Q&D Construction, by the Air Quality Management Division and Appealed to the Air Pollution Control Hearing Board.

Chair Harris called staff to provide testimony on this case.

Prior to hearing testimony, Anthony Dimples recused himself from participating in the discussion and votes involving Q&D in NOV AQMV23-0002 due to his personal relation with Q&D.

Joshua Restori, supervisor of permitting and compliance for the Air Quality Management Division, provided testimony regarding the Issuance of Notice of Violation (NOV) No. AQMV23-0002 for failing to complete compliance testing of the Phase I vapor recovery system at their gasoline dispensing facility. This action is a minor violation of the District Board of Health Regulations Governing Air Quality Management (DBOH Regulations), specifically Section 040.080.C.1. Recommended Penalty: \$1,000.00.

Mr. Restori opened his presentation to questions from the Board.

Having no questions, Chair Harris called the appellant to provide testimony on behalf of Q&D Construction.

Witness, Matt Kenneson, Equipment Manager for Q&D Construction, testified on behalf of Q&D Construction., saying he was not disputing any responsibility for the permit. However, Mr. Kenneson appeared before the Board to voice his issue with the violation as he opined the permit was confusing as it contains different requirements. Mr. Kenneson concluded by stating that was not denying responsibility; however, he was asking for leniency on the fine.

Mr. Squire clarified that although the parameters were confusing, they were in arrears.

Mr. Kenneson affirmed.

Mr. Squire asked if they were presently up to date.

Mr. Kenneson continued to question about the permit due date as the testing date changed to September 7 and wondered if that should be the new testing date.

Mr. Restori replied by confirming Q&D to be in compliance and affirming that their new compliance required date would be September 7.

Mr. Squire asked if that would mean September 7, 2023, and September 7 in three years.

Mr. Restori confirmed.

Ms. Downs asked Mr. Kenneson if he understood that the permit refers to the regulations as it is not all inclusive.

Mr. Kenneson affirmed and added that he was aware that his company fell behind.

Ms. Downs asked Mr. Kenneson the amount of leniency he was seeking.

Mr. Kenneson stated he was unaware of the process but wondered if the company could be met in the middle of the fine.

Having no additional comments, Chair Harris closed the hearing and advised the Board of the three possible recommendations.

Chair Harris recognized Mr. Kenneson's acknowledgement of the problem and efforts to fix it and stated he doesn't foresee a violation happening again and opined the fine amount should be lowered to \$500.00.

Mr. Squire affirmed and made note that fines increase with repeated offenses.

Mr. Schweber asked if the reduction in fines could be made contingent upon compliance over the next two years.

Mr. Squire stated that Mr. Schweber's request would have to be a three-year process, as Q&D just completed their testing in September.

Ms. Downs shared that there are other companies that administer the testing.

Chair Harris asked DDA Lehman for advice on how to proceed with a suspended fine.

DDA Lehman stated he was unaware how the enforcement mechanism would be implemented and added that this Board was a recommending Board that goes to the District Board of Health.

Mr. Squire sought clarification by suggesting the fine could be upheld for \$500 at this meeting but enforced to the full extent if the offense is repeated.

Mr. Vega reported that any future non-compliances would be compounded, so the present action will be taken into account in future actions.

Mr. Squire moved to uphold NOV No. AQM23-0002 with a recommended penalty of \$500.00. Mr. Kaplan seconded the motion, which carried unanimously.

Chair Harris advised Mr. Kenneson that Q&D Construction Company had the right to appeal to the District Board of Health.

8. Recommendation of Staff to Uphold Notice of Violation No. AQMV23-0005, issued on February 24, 2023, for failure to comply with the provisions of Permit to Operate No. AAIR16-0722, with an associated administrative fine of \$10,000.00 issued to Rilite Aggregate Company, by the Air Quality Management Division and Appealed to the Air Pollution Control Hearing Board.

Chair Harris called staff to provide testimony on this case.

Josh Restori, Air Quality Supervisor, provided a presentation regarding the Issuance of Notice of Violation (NOV) No. AQMV23-0005 for failure to comply with the visible fugitive dust emissions not to exceed a period or periods of accumulating more than 5 minutes in any hour. This action is a minor violation of the District Board of Health Regulations Governing Air Quality Management (DBOH Regulations), specifically Section 040.030.C.2. Recommended Penalty: \$10,000.00. Mr. Restori included a video as further evidence of the stated violation.

Mr. Squire asked if the solution was as simple as using adequate water.

Mr. Restori affirmed that was the opinion of Air Quality Management Division.

Mr. Squire asked for an exact location.

Mr. Restori informed it was the Damonte Ranch area.

Mr. Restori stated prior history in the case was important and continued to discuss history which included previous violations. Mr. Restori concluded by noting the efforts that have been made to work with this company to implement solutions.

Mr. Squire asked if this was a repeat offender case.

Mr. Restori responded that we would leave that decision to the Board.

Mr. Dimpel asked why the violation in this case was rooted in method 22.

Mr. Restori explained that method 22 is rooted in the dust control regulations locally in an effort to bring the area back into attainment for the particular matter standard at the time.

Mr. Dimpel continued to ask if visible emission for this case meant anything more than 0%.

Mr. Restori affirmed.

Mr. Squire asked what had been done to stop this violation from happening.

Mr. Restori deferred to the appellant for a specific response; however, he added that complaints are investigated as they are made but not all result in compliance issues.

Mr. Dimpel commented that dusting is a problem in the community and continued to compare method 22 vs method 9 and stated that severity of the emission does come in to play

and in this case it's just existent.

Mr. Restori reported that the regulation does call out for specific dust generating activities such as mining, construction, and like activities.

Witnesses, Chris Benna, President and Joseph Vietti, Manager appeared for Rilite Aggregate Company. Mr. Benna testified that Rilite requested to have a meeting with Air Quality Manager at the pit and discussed method 9 and method 22 to determine the standard that Rilite was being held to. He continued to report that after that meeting, they felt they understood the method that would be used with the different work Rilite performs. However, he opined that the immediate violation is a contradiction to that understanding as the equipment on the video was a crushing plant, which he understood fell under method 9. Mr. Benna added details regarding the method that was used to substantiate the violation and opined it was erroneous according to method 9.

Mr. Benna reported that they have been in business for 57 years locally and have never had as many complaints as they do now with the new housing developments happening around them. Mr. Benna reported that his company has always worked with the County and have collaborated to prevent dusting problems, despite the cost. Mr. Benna concluded by stating that they are living up to the regulations set forth by the County, but he opined the County should live up to the same regulations, which meant selecting the correct method and in the immediate case he opined method 9 should be implemented.

Mr. Squire asked Mr. Benna if the housing development is close to his business location.

Mr. Benna affirmed they are on their property line.

Mr. Squire stated he understood method 22 to address moving vehicles and method 9 addressed stationery subjective crushers.

Mr. Benna stated that was Rilite's impression.

Mr. Dimpel reported method 22 relates to an emission period and method 9 relates to the opacity of the visible emissions. He asked Washoe County for correction if he was wrong in understanding that the method was was not tied to a source but rather the measurement. He opined that it is difficult to comply with method 22 while you're crushing big rocks.

Mr. Squire opined that rock is compressed dust, but in this case, he asked if the dust came from a moving vehicle or a crusher.

Mr. Benna confirmed the dust came from a crusher.

Mr. Dimpel shared that his view was that regulations were enforced properly; however, regulations are difficult to comply with as written.

Ms. Downs reported she understood the different between the methods as she operated a crusher and noted that EPA fines could be added to this violation without prior notification.

Chair Harris asked if there was anything that could be done to eliminate dust emissions.

Mr. Brenna expressed his company has implemented a variety of methods to prevent dust emissions.

Mr. Squire asked how liquification would affect the company's work.

Mr. Brenna stated if the material is too wet it cannot be put through the plant, as it sticks. He added that they have explored the DustBoss. Mr. Vietti provided details on the performance of the DustBoss.

Mr. Squire asked how the costs of liquification compared to the cost of the fines.

Mr. Vietti stated the equipment could range about \$30 to \$60,000.

Mr. Brenna affirmed they spare no expense in an attempt to comply with Washoe County; however, he opined that in this case the wrong method was implemented to cite the violation. He added that there would be visible dust every day as it is in the material that is being handled.

Ms. Downs referred to the permit and reported it was clear to her that the company had to comply with both method 9 and method 22, simultaneously.

Mr. Brenna continued to reiterate that he understood method 9 to apply to specific equipment.

Ms. Downs added that from the video it appeared that it was not the crusher that was causing the emission but rather the bucket that was picking up the rock.

Mr. Vietti affirmed the emission was from the crusher and continue to provide some insight as to the operations of the equipment.

Ms. Downs asked if Mr. Vietti could identify the location of the crusher in the picture provided with the packet.

Mr. Vietti complied with the request and identified the equipment. Mr. Vietti continued to guide the Board to the permit and highlighted the definitions in the regulations to corroborate their understanding of the method that would be used to enforce compliance. Additionally, he reported that method 9 requires certification and Rilite has been following method 9 strictly for years. Mr. Vietti shared the form with all the required information to perform a method 9 test with the Board.

Mr. Squire asked how long they had been in the area.

Mr. Brenna reported Rilite has been in the same area for 57 years.

Mr. Schweber asked how often they conducted the method 9 test.

Mr. Vietti stated those tests are only conducted when the parameters of a plant are changed.

Mr. Schweber continued to asked if the quality of the material impacts the results.

Mr. Vietti stated they are required to conduct a method 9 when the equipment is moved, but it is not the only time Rilite conducts the test. He reported constant observations are in place.

Mr. Schweber asked if visible emissions from a crusher would trigger a method 9.

Mr. Vietti reported it could, but Rilite handles any visible dust immediately by changing the process.

Mr. Schweber asked about Rilite's the internal compliance program as it related to the permit.

Mr. Vietti referred to the video and stated changes were made once they became aware of the problem.

Mr. Brenna stated they accepted responsibility on the other two violations but determined that Washoe County used the wrong method in NOV AQMV23-0005.

Mr. Squire asked if they believed to be in compliance the majority of the time

Mr. Brenna stated that if they were measured under method 22, 24 hours a day, Rilite would not be in compliance all the time.

Mr. Squire asked how they would stay in compliance.

Mr. Brenna reported that it would not be possible to stay in compliance if they are going to be held to a method 22. He continued to report that Rilite has a reclamation plan to live up to.

Mr. Dimpel stated that it is difficult to comply with method 22, in addition to the other challenges that Rilite is facing.

Mr. Brenna reported that efforts were made by his company to alert future homeowners of the existence of the company and the work that is performed.

Mr. Restori continued to clarify some of the concerns that were voiced by the appellant and some members of the Board. He stated that one thing to keep in mind was that these regulations are put in place to maintain attainment for the particular matter standard.

Chair Harris noted that this was one of the most difficult situations he had encountered in nearly seven years on the Board. He stated that he considered Rilite Aggregate Company to be a benefit to the community.

Mr. Squire expressed he was torn for a decision.

Ms. Downs expressed maintaining attainment with the EPA is important.

Mr. Squire asked if there a way to improve.

Mr. Brenna stated they could always do better and reiterated that Rilite is looking at equipment that addresses this situation. He continued to affirm that Mr. Restori and him did not have an adversarial relationship. Mr. Brenna stated that de did not consider fines the cost of doing business.

Mr. Squire stated his concern was trying to find a decision that benefits everyone.

Mr. Schweber stated that he was swayed by the argument that the County has to remain in compliance with the particular matter standard plan and added that given the report that was provided, he opined the Board should be strict with compliance.

Mr. Brenna stated that Rilite is asking to conduct a method 9 test.

Mr. Dimpel stated that the way the permit is written the method is irrelevant. He opined that as the regulations are written, performing a method 9 wouldn't change anything in the violation.

Mr. Restori replied that a determination of compliance cannot be made with just having a method 9 within a permit.

Mr. Dimpel opined that Air Quality is tasked with enforcing something where compliance is almost impossible without unreasonable expense.

A discussion was had about the process of compliance and whether the regulation could be modified by the Washoe County. Mr. Restori affirmed that prior approval would be necessary to make changes to the regulations as they are part of the State Implementation Plan.

Mr. Dimpel expressed that \$10,000 is excessive.

Chair Harris felt there wasn't a good answer for this violation and continue to explore the variety of solutions and wondered if there was a definite answer to this case.

Mr. Restori replied by stating that this standard is applied for every crushing and screen plant in Washoe County and for every dust control permit. Additionally, he expressed confidence in the work the inspectors perform at the sites and trusted their findings.

Mr. Squire reiterated the need to stay in compliance with the code.

Chair Harris advised the Board of the three possible recommendations.

Mr. Squire suggested a reduction of the penalty to \$5,000.00.

Mr. Dimpel offered an alternative at \$2,500.00 and confirmed that if future violations happen, the multipliers will remain.

Mr. Squire moved to uphold NOV No. AQM23-0005 and reduce the penalty to \$5,000.00. Ms. Downs seconded the motion, which did not carry with 4 nays to 2 ayes. Motion was denied.

Mr. Dimpel moved to uphold NOV No. AQM23-0005 and reduce the penalty to \$2,500.00. Mr. Kaplan seconded the motion, which carried by 5 ayes to 1 nay.

9. Board Comment.

Chair Harris called for comments from the Board.

Mr. Squire commented something needed to be done.

Having no additional Board comments, Chair Harris closed the Board Comment period.

10. Public Comment.

Chair Harris opened the public comment period.

Having no public comment, Chair Harris closed the public comment period.

11. ADJOURNMENT.

Vice-chair Downs moved to adjourn the meeting. Mr. Squire seconded the motion, which carried unanimously.

Chair Harris adjourned the meeting at 7:49 p.m.

Possible Changes to Agenda Order and Timing: Items on the agenda may be taken out of order, combined with other items, withdrawn from the agenda, moved to the agenda of another later meeting; moved to or from the Consent section, or they may be voted on in a block. Items with a specific time designation will not be heard prior to the stated time, but may be heard later. Items listed in the Consent section of the agenda are voted on as a block and will not be read or considered separately unless withdrawn from the Consent agenda.

Special Accommodations: The Air Pollution Control Hearing Board Meetings are accessible to the disabled. Disabled members of the public who require special accommodations or assistance at the meeting are requested to notify Administrative Health Services in writing at the Washoe County Health District, 1001 E. 9th Street, Building B-171, Reno, NV 89512, or by calling 775-784-7201, 24 hours prior to the meeting.

Public Comment: Reasonable efforts will be made to hear all public comment during the meeting. During the “Public Comment” items, emails may be submitted pertaining to any matter either on or off the agenda, to include items to be heard on consent. For the remainder of the agenda, public comment emails will only be heard during items that are not marked FOR POSSIBLE ACTION. All public comment should be addressed to the Air Pollution Control Hearing Board and not an individual member. The Hearing Board asks that your comments are expressed in a courteous manner. All public comment is limited to three minutes per person. Unused time may not be reserved by the speaker nor allocated to another speaker.

Response to Public Comment: The Air Pollution Control Hearing Board can only deliberate or take action on a matter if it has been listed on an agenda properly posted prior to the meeting. During the public comment period, speakers may address matters listed or not listed on the published agenda. The *Open Meeting Law* does not expressly prohibit responses to public comments by the Air Pollution Control Hearing Board. However, responses from the Air Pollution Control Hearing Board members to specific items presented during public comment, which are not listed as agenda items could become deliberation on a matter without notice to the public. On the advice of legal counsel and to ensure the public has notice of all matters the Air Pollution Control Hearing Board will consider, Board members may choose not to respond to public comments, except to correct factual inaccuracies, ask for Health District staff action or to ask that a matter be listed on a future agenda. The Air Pollution Control Hearing Board may do this either during the public comment item or during the following item: “Board Comment – Hearing Board Member’s announcements, reports and updates, request for information or topics for future agendas. (No discussion among Board Members will take place on the item)”

Posting of Agenda; Location of Website:

Pursuant to NRS 241.020, and AB253 (effective May 31, 2021), this notice has been posted at the Washoe County Health District Building (1001 East Ninth Street, Building B, Reno, NV 89512) and electronically at the following locations:

Washoe County Health District Website <https://www.washoecounty.us/health>

State of Nevada Website: <https://notice.nv.gov>

How to Get Copies of Agenda and Support Materials: Supporting materials are available to the public at the Washoe County Health District located at 1001 E. 9th Street, in Reno, Nevada. The Administrative Secretary to the Air Pollution Control Hearing Board is the person designated by the Washoe County Health District to respond to requests for supporting materials. The Administrative Secretary is located at the Washoe County Health District and may be reached by telephone at (775) 784-7200 or by email at AQMDAdmin@washoecounty.us. Supporting materials are also available at the Washoe County Health District Website www.washoecounty.gov/health pursuant to the requirements of NRS 241.020.