

Staff Report
Board Meeting Date: September 28, 2023

DATE: September 8, 2023

TO: District Board of Health

FROM: Francisco Vega, P.E., Division Director
775-784-7200; fvega@nmph.org

SUBJECT: Business Impact Statement - 020 GENERAL PROVISIONS Regulation
Development
Review, discussion and possible adoption of the Business Impact Statement regarding proposed revisions to the Washoe County District Board of Health Regulations Governing Air Quality Management, CHAPTER 020 - GENERAL PROVISIONS with a finding that the revised regulations do not impose a direct and significant economic burden on a business; nor do the revised regulations directly restrict the formation, operation, or expansion of a business; and set a public hearing for possible adoption of the proposed revisions to the Regulations for October 26, 2023, at 1 PM.

SUMMARY

The Washoe County District Board of Health must adopt any revisions to the District Board of Health Regulations Governing Air Quality Management (Regulations). Per NRS 237, Business Impact Statements “must be considered by the governing body at its regular meeting next preceding any regular meeting held to adopt” the proposed revisions.

District Health Strategic Priorities supported by this item:

- 1. Healthy Lives:** Improve the health of our community by empowering individuals to live healthier lives.
- 2. Healthy Environment:** Create a healthier environment that allows people to safely enjoy everything Washoe County has to offer.
- 3. Local Culture of Health:** Lead a transformation in our community’s awareness, understanding, and appreciation of health resulting in direct action.

PREVIOUS ACTION

CHAPTER 020 of the Regulations was last revised on May 28, 2018, with the original adoption of the rule in effect on July 27, 1972.

BACKGROUND

CHAPTER 020 of the Regulations provides responsibilities for the District Board of Health, Air Pollution Control Hearing Board, and Control Officer. It also provides responsibilities of the regulated community including, but are not limited to: violation procedure, appeal procedure, penalties and fines, confidential information, sampling and testing, and upset conditions.

AIR QUALITY MANAGEMENT

1001 East Ninth Street, Building B-171, Reno, Nevada 89512

AQM Office: 775-784-7200 | Fax: 775-784-7225 | OurCleanAir.com

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This proposed rule revision was initiated as part of a Washoe County Air Quality Management Division (AQMD) commitment to U.S. Environmental Protection Agency (EPA) and Nevada Department of Environmental Protection (NDEP) to include language in regulation to satisfy the requirements of Section 110 (a)(2)(J) of the Clean Air Act (CAA). This section requires public notification for an exceedance of any Primary National Ambient Air Quality Standard (NAAQS). The AQMD currently provides notification to the community when an Emergency Episode is declared, however the regulation had not previously included notification for exceedance(s) of any annual NAAQS.

Other revisions included are, but are not limited to:

- Update formatting
- Clarify portions of the existing rule
 - Air Pollution Control Hearing Board (APCHB)
 - Remove language regarding initial establishment of the board.
 - Appeal Procedure
 - Updated language to reflect how appeals are currently managed.
 - Minor Violations
 - Revised to streamline implementation and introduce transparency in the definition of minor violations.
 - Testing and Reporting
- Additional regulation restructuring
 - Move sections from CHAPTER 030 including the following:
 - Stop Work Order
 - Permit Suspension and Revocation
 - Fees and Fee Schedules

Although the section pertaining to fees and fee schedules is being moved, no changes to the fees themselves or how the fees are implemented is proposed as part of this rule revision.

The following methods were used to provide notice of the proposed revisions, 30-day public comment period, and public workshop:

1. A press release was issued notifying the public of the proposed revisions and public workshop on August 3, 2023.
2. The press release and all related materials was posted on the AQMD website (OurCleanAir.com) on August 3, 2023.
3. The press release was e-mailed to all subscribers of the AQMD email subscription list on August 3, 2023.

A virtual public workshop was held August 23, 2023, at 1pm. The virtual workshop had attendance from nine external participants. Two public comments were received after the completion of the workshop.

Date: September 8, 2023

Subject: Business Impact Statement - 020 GENERAL PROVISIONS Regulation Development

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Attached to this staff report are the following:

1. Business Impact Statement
2. Press Release (August 3, 2023)
3. “As Proposed” and “As Adopted” versions of the revised rule
4. Public comments
5. Response to comments
6. Public workshop materials including:
 - a. Presentation
 - b. Attendance sheet

FISCAL IMPACT

There are no fiscal impacts resulting from the Board approving and adopting the Business Impact Statement.

RECOMMENDATION

Staff recommends the District Board of Health approve and adopt the Business Impact Statement for the proposed revisions to District Board of Health Regulations Governing Air Quality Management, CHAPTER 020 - GENERAL PROVISIONS, and set a public hearing for possible adoption of said revisions for October 26, 2023, at 1:00 pm.

POSSIBLE MOTION

Should the Board agree with staff’s recommendation, a possible motion would be:

“Move to approve and adopt the Business Impact Statement for the proposed revisions to the District Board of Health Regulations Governing Air Quality Management, CHAPTER 020 - GENERAL PROVISIONS. Further move to set a public hearing for possible adoption of the District Board of Health Regulations Governing Air Quality Management, CHAPTER 020 - GENERAL PROVISIONS for October 26, 2023, at 1:00 pm”.

BUSINESS IMPACT STATEMENT

The following business impact statement was prepared pursuant to NRS 237.090 to address the proposed impact of the revision to the DBOH Regulations Governing Air Quality Management, Section 020.000 (General Provisions)

1. The following constitutes a description of the manner in which comments were solicited from affected businesses and citizens, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary. *(List all trade association or owners and officers of businesses likely to be affected by the proposed rule that have been consulted).*

The Air Quality Management Division (AQMD) provided notice of a 30-day public comment period with the issuance of a press release on August 3, 2023. The public comment period was conducted between the dates of August 3, 2023, and September 2, 2023. The public comment period was additionally noticed by posting the information on the division website (OurCleanAir.com) and providing it to all subscribers to the AQMD email subscription list. In addition to the public comment period, a public workshop was conducted on August 23, 2023, in order to provide additional opportunities to provide input. All public comments received have been addressed and included in the revision submittal package to the DBOH.

The Association of General Contractors and the Nevada Petroleum Marketers Association were consulted during the development of the proposed rule revision. Both organizations attended the public workshop and were met with virtually and in-person during the public comment period. Among other concerns, comments from the groups centered around proposed revision to the definition of minor violations along with the timeframe of minor violation to major violation. Comments submitted by the organizations, along with AQMD responses, have been included in the DBOH packet.

The AQMD will be make all materials available for review two weeks prior to the September 28th DBOH meeting. Notice will be sent out via press release, AQMD email subscription list, and social media posts. All materials will be posted on the division website with hard copies available upon request.

2. The estimated economic effect of the proposed rule on businesses and citizens, including, without limitation, both adverse and beneficial effects, and both direct and indirect effects:

Adverse effects: No adverse effects.

Beneficial effects: The proposed rule will make the existing regulation clearer. The proposed rule adds clarity to the appeals process, Air Pollution Control Hearing Board (APCHB) maintenance, Minor Violations, Annual Emissions Reporting, Fees and Fee Schedules, and excess emissions. The proposed revisions also add "new" sections from existing regulation, CHAPTER 030. These sections include, Stop Work Order, Permit Suspension and Revocation, Fees and Fee Schedules, and portions of Testing and Reporting. Portions of these existing rules were modified to add additional clarity and transparency. Notably, Stop Work Orders and Permit Suspension and Revocation.

The addition of the public notification section will better inform the public of exceedances of the National Ambient Air Quality Standards (NAAQS). Although the Air Quality Management Division (AQMD) notifies the public of exceedances of hourly, 8-hour, or 24-hour NAAQS as required in PART 050.001 EMERGENCY EPISODE PLAN, the regulations do not require the AQMD to notify the public of exceedances of annual standards. The addition of this public notification for all NAAQS in this section will satisfy the commitment made to U.S. EPA Region 9 and NDEP to satisfy the requirements in Section 127 of the Clean Air Act.

Direct effects: Fines for first minor violation have been standardized to \$500 and second minor violation standardized to \$1000. This was to reduce confusion regarding minimum and maximum penalties in each category.

Indirect effects: N/A

3. The following constitutes a description of the methods the local government considered to reduce the impact of the proposed rule on businesses and citizens and a statement regarding whether any, and if so, which of these methods were used: (Include whether the following was considered: simplifying the proposed rule; establishing different standards of compliance for a business or citizen; and if applicable, modifying a fee or fine set forth in the rule so that business could pay a lower fee or fine).

There are no new fees or fee increases in the proposed rule revision. The proposed rule revision is intended to satisfy federal EPA requirements and streamline permitting expectations for the regulated community.

4. The governing body estimates the annual cost to the local government for enforcement of the proposed rule is:

There is no anticipated increase in annual cost.

5. The proposed rule provides for a new fee or increases, and existing fee and the total annual amount expected to be collected is:

There are no new fees or fee increases in the proposed rule revision.

6. The money generated by the new fee or increase in existing fee will be used by the local government to:

N/A

7. The proposed rule includes provisions that duplicate or are more stringent than federal, state or local standards regulating the same activity. The following explains when such duplicative or more stringent provisions are necessary:

The proposed rule follows the requirements set forth in Section 127 of the Clean Air Act which states:

Public notification

(a) Warning signs; television, radio, or press notices or information

Each State plan shall contain measures which will be effective to notify the public during any calendar (year) on a regular basis of instances or areas in which any national primary ambient air quality standard is exceeded or was exceeded during any portion of the preceding calendar year to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures which can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality. Such measures may include the posting of warning signs on interstate highway access points to metropolitan areas or television, radio, or press notices or information.

The current rules do not satisfy the requirements of Section 127 of the Clean Air Act.

8. The following constitutes an explanation of the reasons for the conclusions regarding the impact of the proposed rule on businesses:

There are no new fees or fee increases in the proposed rule revision. The proposed rule revision is intended to satisfy federal EPA requirements and streamline permitting expectations for the regulated community.

To the best of my knowledge or belief, the information contained in this statement is prepared properly and is accurate.

Kevin Dick, District Health Officer

Date

PUBLIC COMMENT REQUESTED FOR AIR QUALITY REGULATION REVISION

Aug 3, 2023

Aug. 3, 2023. Reno/Sparks, Nev. - The Washoe County Health District – Air Quality Management Division (AQMD) is requesting written public comment on its revisions to Washoe County District Board of Health Regulations Governing Air Quality Management Chapter 020 – General Provisions.

The revisions were initiated in response to a requirement placed on AQMD by the United States Environmental Protection Agency (EPA) and Nevada Department of Environmental Protection (NDEP). Washoe County's portion of the Nevada State Implementation Plan (SIP) does not satisfy the requirements of Section 127 of the Clean Air Act (CAA) which states that, "Each State plan shall contain measures which will be effective to notify the public during any calendar on a regular basis of instances or areas in which any national primary ambient air quality standard is exceeded or was exceeded during any portion of the preceding calendar year..." The AQMD had not previously included public notification for exceedance(s) of Annual Primary National Ambient Air Quality Standards.

The revisions address this deficiency along with updating the rule formatting, clarifying portions of the existing rule, and modifying the rule to include "new" sections from other sections of existing AQMD regulations.

Comments will be accepted until midnight on September 2, 2023, and may be submitted via e-mail to HealthAirQuality-Planning@washoecounty.gov. Comments may also be mailed or dropped off to the AQMD office at 1001 E. Ninth St. Reno, NV, 89512. All correspondence **must include** first and last name, mailing address, and contact information.

A public workshop will be held on August 23, 2023, at 1 PM. The public workshop will include a presentation regarding the changes made and an opportunity for questions. Public comments may be submitted at the meeting. All public comments will be encouraged to be submitted in writing at the time of the meeting. The meeting will be held virtually via Microsoft Teams and can be [joined by using the link here](#) (The meeting won't be active until Aug. 23, 2023 at 1 p.m.).

For more information regarding the Health District's Air Quality Efforts, visit the Air Quality Management Division's website at OurCleanAir.com.

1. Summary

| | |
|-------------------------|--------------------------------|
| Meeting title | 020 Revision - Public Workshop |
| Attended | 15 |
| Start time | 8/23/23, 12:46:07 PM |
| End time | 8/23/23, 1:19:00 PM |
| Meeting duration | 32m 54s |
| Average attendance time | 18m 9s |

2. Participants

| Name | First join | Last leave | In-meeting duration | Email | Participant ID (UPN) | Role |
|-----------------------|----------------------|---------------------|---------------------|----------------------------|-----------------------------|-----------|
| McMullen, Ben | 8/23/23, 12:53:10 PM | 8/23/23, 1:18:55 PM | 25m 44s | BMcMullen@nnph.org | BMcMullen@washoecounty.gov | Organizer |
| Schnieder, Brendan | 8/23/23, 12:54:31 PM | 8/23/23, 1:19:00 PM | 24m 29s | BSchnieder@nnph.org | BSchnieder@washoecounty.gov | Organizer |
| Petersen, Craig | 8/23/23, 12:54:45 PM | 8/23/23, 1:19:00 PM | 24m 14s | CPetersen@nnph.org | CPetersen@washoecounty.gov | Attendee |
| Gutman Dodson, Joelle | 8/23/23, 12:55:06 PM | 8/23/23, 1:18:55 PM | 23m 49s | JGutman@nnph.org | JGutman@washoecounty.gov | Attendee |
| McCarthy, Matthew | 8/23/23, 12:55:53 PM | 8/23/23, 1:18:46 PM | 22m 52s | MMcCarthy@nnph.org | MMcCarthy@washoecounty.gov | Attendee |
| Johnson Stacy | 8/23/23, 12:59:47 PM | 8/23/23, 1:18:52 PM | 19m 4s | stroy@polyglass.com | stroy@polyglass.com | Attendee |
| Daniel Simas | 8/23/23, 12:59:47 PM | 8/23/23, 1:18:41 PM | 18m 53s | Daniel.Simas@patagonia.com | Daniel.Simas@patagonia.com | Attendee |
| Sarah Collins | 8/23/23, 12:59:47 PM | 8/23/23, 1:18:49 PM | 19m 2s | sarah@i3publicaffairs.com | sarah@i3publicaffairs.com | Attendee |
| Vega, Francisco | 8/23/23, 1:00:23 PM | 8/23/23, 1:18:41 PM | 18m 17s | FVega@nnph.org | FVega@washoecounty.gov | Attendee |
| Ally Freitas | 8/23/23, 1:00:31 PM | 8/23/23, 1:18:51 PM | 18m 19s | AFreitas@teamues.com | AFreitas@teamues.com | Attendee |
| Tray Abney | 8/23/23, 1:00:34 PM | 8/23/23, 1:18:42 PM | 18m 8s | tray@abneytauchen.com | tray@abneytauchen.com | Attendee |
| Sarah C | 8/23/23, 1:03:46 PM | 8/23/23, 1:18:52 PM | 15m 5s | | | Attendee |
| Alexis Motarex | 8/23/23, 1:06:35 PM | 8/23/23, 1:18:44 PM | 12m 8s | AlexisM@NevadaAGC.org | alexism@nevadaagc.org | Attendee |
| Kat Olson | 8/23/23, 1:08:39 PM | 8/23/23, 1:17:47 PM | 9m 8s | katolson@unr.edu | katolson@unr.edu | Attendee |
| Safia (Guest) | 8/23/23, 1:15:40 PM | 8/23/23, 1:18:43 PM | 3m 3s | | | Attendee |

3. In-Meeting Activities

| Name | Join time | Leave time | Duration | Email | Role |
|-----------------------|----------------------|---------------------|----------|----------------------------|-----------|
| McMullen, Ben | 8/23/23, 12:53:10 PM | 8/23/23, 1:18:55 PM | 25m 44s | BMcMullen@nnph.org | Organizer |
| Schnieder, Brendan | 8/23/23, 12:54:31 PM | 8/23/23, 1:19:00 PM | 24m 29s | BSchnieder@nnph.org | Organizer |
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| Johnson Stacy | 8/23/23, 12:59:47 PM | 8/23/23, 1:18:52 PM | 19m 4s | stroy@polyglass.com | Attendee |
| Daniel Simas | 8/23/23, 12:59:47 PM | 8/23/23, 1:18:41 PM | 18m 53s | Daniel.Simas@patagonia.com | Attendee |
| Sarah Collins | 8/23/23, 12:59:47 PM | 8/23/23, 1:18:49 PM | 19m 2s | sarah@i3publicaffairs.com | Attendee |
| Vega, Francisco | 8/23/23, 1:00:23 PM | 8/23/23, 1:18:41 PM | 18m 17s | FVega@nnph.org | Attendee |
| Ally Freitas | 8/23/23, 1:00:31 PM | 8/23/23, 1:18:51 PM | 18m 19s | AFreitas@teamues.com | Attendee |
| Tray Abney | 8/23/23, 1:00:34 PM | 8/23/23, 1:18:42 PM | 18m 8s | tray@abneytauchen.com | Attendee |
| Sarah C | 8/23/23, 1:03:46 PM | 8/23/23, 1:18:52 PM | 15m 5s | | Attendee |
| Alexis Motarex | 8/23/23, 1:06:35 PM | 8/23/23, 1:18:44 PM | 12m 8s | AlexisM@NevadaAGC.org | Attendee |
| Kat Olson | 8/23/23, 1:08:39 PM | 8/23/23, 1:17:47 PM | 9m 8s | katolson@unr.edu | Attendee |
| Safia (Guest) | 8/23/23, 1:15:40 PM | 8/23/23, 1:18:43 PM | 3m 3s | | Attendee |

Proposed Revisions to District Board of Health Regulations Governing Air Quality Management Sections 020.000, 020.100, 020.200, 020.300

August 24, 2023

Ben McMullen
Air Quality Specialist

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1

020.000 General Provisions

- The current regulation provides responsibilities for the District Board of Health, Air Pollution Control Hearing Board, and Control Officer.
- Requirements of the regulated community included in this rule include, but are not limited to: violation procedure, appeal procedure, penalties and fines, confidential information, sampling and testing, and upset conditions.

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Purpose of Revision

- Washoe County Air Quality Management Division (AQMD) made a commitment to U.S. Environmental Protection Agency (EPA) and Nevada Department of Environmental Protection (NDEP) to include language in regulation to satisfy the requirements of Section 110 (a)(2)(J) of the Clean Air Act (CAA).
- This section requires public notification for an exceedance of any Primary National Ambient Air Quality Standard (NAAQS).
 - The AQMD currently provides notification to the community when an Emergency Episode is declared, however the regulation had not previously included notification for exceedance(s) of any annual NAAQS.

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Other Revisions

- Update the formatting to better organize the rule
 - Formatting to follow a new standard for rule development in AQMD
- Clarify portions of the existing rule
 - Notably APCHB, appeals, fines/penalties
- Adding “new” sections from other sections of existing regulations
 - These “new” sections come from Chapter 030 of our existing rules in preparation for a pending revision for Chapter 030

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Next Steps

- Public comment period ends: September 2, 2023, at 11:59 PM
- Business Impact Statement
 - District Board of Health (DBOH) Meeting: September 28, 2023
- Public Hearing and adoption of revised regulation
 - DBOH Meeting: October 26, 2023
- If adopted by the DBOH, the revision will be submitted to EPA and NDEP as a revision to the Washoe County portion of the Nevada State Implementation Plan in January 2024

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Public Comment

- All public comment is encouraged to be submitted in writing after this open microphone period. Any public comment during this meeting will be recorded and included in the submittal to DBOH, NDEP, and EPA.
- All public comment can be submitted in writing via e-mail to HealthAirQuality-Planning@washoecounty.gov. Comments may also be mailed or dropped off to the AQMD office at 1001 E. Ninth St. Reno, NV, 89512. All correspondence must include first and last name, mailing address, and contact information.

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EXPLANATION: Matter in: (1) *blue bold italics* is new language to be added to the existing rule; (2) ~~red strikethrough~~ is language to be deleted from the existing rule. It should be noted that this draft contains grammatical, minor spelling, and formatting edits to the published rule. These edits are not highlighted using the above rules. All substantive edits are captured using these formatting rules. A copy of the published rule will be included with this proposed rule for comparison.

CHAPTER 020 - GENERAL PROVISIONS

PART 020.000 - GENERAL PROVISIONS (*Revised 4/22/98, 8/26/04, 11/16/06, 5/28/18, 9/8/23*)(*Amended 4/88, 10/28/92, 10/20/93*)(*Adopted 10/24/90, 10/20/93*)

SECTION A - BOARD OF HEALTH

1. RESPONSIBILITY: The District Board of Health ~~of the Washoe County Health District~~, acting through the District Health Officer and ~~District Health Department~~ *Health District*, is hereby designated as the air pollution control agency of Washoe County, Nevada and shall exercise all the authority, jurisdiction, powers, (including the power to take all necessary action to secure to Washoe County the benefits of any federal or state legislation concerned with air pollution), and responsibilities that inure to the benefit, or are, or shall be conferred upon and binding upon, a local District Board of Health, pursuant to any of the provisions contained in CHAPTER 445B or any other Chapter of the Nevada Revised Statutes.
2. POWERS AND DUTIES: Pursuant to the powers and responsibilities that have inured to the benefit of the *District* Board of Health, said Board shall, without excluding any other powers, responsibilities, and authority conferred on said Board in the Nevada Revised Statutes, have the following powers and/or responsibilities:
 - a. To adopt and enforce rules and regulations to reduce the release into the atmosphere of any air contaminants originating within the territorial limits of the ~~Washoe County~~ Health District in order to achieve and maintain levels of air quality which will protect human health and safety, prevent injury to plant and animal life, prevent damage to property, and preserve visibility and scenic, aesthetic and historic value within said Health District.
 - b. To establish ambient air quality standards in accordance with law.
 - c. To make such determinations and issue such orders as may be necessary to implement the provisions of these regulations and to achieve air quality standards in accordance with law.
 - d. To institute proceedings to prevent continued violation of any order issued by the *District* Board of Health, Hearing Board, or Control Officer, and to enforce these regulations.
 - e. To require access to records relating to emissions which cause or contribute to air pollution.
 - f. To apply *for* and receive grants or other funds or gifts from public or private agencies.
 - g. To cooperate and contract with other governmental agencies including the State of Nevada, other states, and the federal government.
 - h. To conduct investigations, research, and technical studies consistent with the general purposes of the Nevada Revised Statutes.
 - i. To establish such emission control requirements, as may be necessary to prevent, abate, or control air pollution.
 - j. To require the *permitting or* registration of air pollution sources together with a description of the processes employed, fuels used, nature of emissions and other information considered necessary to evaluate the pollution potential of a source.
 - k. To prohibit, regulate or control, as specifically provided in CHAPTER ~~030.000 through 030.260~~ *030*, the installation, alteration, or establishment of any source capable of causing air pollution.
 - l. To issue or deny all requests or applications for a variance or waiver from any of the requirements of these regulations after due consideration of the recommendations of the Hearing Board and Control Officer.
 - m. To require the submission of preliminary plans and specifications and other information as the *District*

Board of Health deems necessary to process permits required by these regulations.

- n. To enter into and inspect, at any reasonable time, any premises containing an air contaminant source or a source under construction for **the** purposes of ascertaining the state of compliance with these regulations.
- o. To hold any hearing as authorized in Chapter 445**B** of the Nevada Revised Statutes.
- p. To review recommendations of the Hearing Board and to take such additional evidence as the **District** Board of Health deems necessary or to remand to the Hearing Board for such evidence as the **District** Board of Health may direct on any matters arising under these regulations.
- q. To require elimination of devices or practices which cannot be reasonably allowed without generation of undue amounts of contaminants.
- r. To specify the manner in which incinerators may be constructed and operated.
- s. To delegate all above powers, except paragraphs 020.000.A.2.a, b, f, o, and p to the Control Officer or his representatives as may be necessary to implement these regulations.
- t. To appoint by resolution, or other appropriate action of the **District** Board of Health, a Hearing Board consisting of seven (7) members who are not employees of the State of Nevada or any political subdivision of the State of Nevada, or which one (1) member must be an attorney admitted to practice law in the State of Nevada, or which one (1) member must be a professional engineer registered in the State of Nevada and one (1) member shall be licensed in Nevada as a general engineering contractor or a general building contractor as defined by NRS 624.215. All members of said Hearing Board shall be appointed to the terms as specified in ~~NRS 445.481~~ **NRS 445B.275**.
- u. To institute, in any court of competent jurisdiction, legal proceedings to compel compliance with these regulations and the Nevada Revised Statutes pertaining to the emission of air contaminants into the atmosphere within the territorial limits of the ~~Washoe County~~ Health District.

3. MODIFICATION OF REGULATIONS

- a. The **District** Board of Health may, in granting any petition for a variance or waiver of the requirements of these regulations, pursuant to the authority and restrictions contained in CHAPTER 445**B** of the Nevada Revised Statutes, impose appropriate conditions upon any applicant for said waiver or variance and may revoke the variance for failure of said applicant to comply therewith.

4. ACTIONS

- a. The **District** Board of Health may conduct any hearings and issue any orders respecting violations of these regulations, or any orders issued by the Control Officer, or take any other action authorized in Chapter 445**B** of the Nevada Revised Statutes.

5. DECISIONS

- a. All decisions and final orders of the **District** Board of Health shall become effective not less than thirty (30) days after they are issued, unless:
 - (1) A rehearing is granted by said Board, which will have the effect of staying the decision, order, or final action of said Board until a final decision, order, or final action is taken;
 - (2) It is determined that an emergency exists which justifies an earlier effective date, in which event the decision, order or action shall become effective at the time indicated by the Board.

6. INJUNCTIVE RELIEF

- a. Upon the failure or refusal of a person to comply with any order, decision, or other final action of the **District** Board of Health, pursuant to the authority conferred on said Board in CHAPTER 445**B** of the Nevada Revised Statutes, and action may be filed in the Second Judicial District Court of the State of Nevada to restrain and

enjoin such person or persons from engaging in further acts violating said order, decisions, or action. However, nothing contained herein shall restrict the right of the *District* Board of Health to seek appropriate injunctive relief prior to the entry of any formal order or decisions pursuant to this Section.

~~7. JUDICIAL REVIEW (Amended 10/20/93)~~

- ~~a. Any person aggrieved by any final decision, final permit action, order, or fine from the Board of Health, Hearing Board or Control Officer, pursuant to these regulations, is entitled to judicial review, as provided in NRS 233B.130. Any person intending to petition a district court for judicial review shall file a petition within 90 days after service of the final decision, notice of final permit action, order or imposition of a fine by either the District Board of Health, Hearing Board, or Control Officer from which such review is being requested.~~

7. ADOPTING, AMENDING REGULATIONS

- a. Before the adoption or amending of any regulation, the District Board of Health shall hold a public hearing. Notice of said hearing shall be given in any newspaper, qualified pursuant to the provisions of CHAPTER 238 of the Nevada Revised Statutes, once a week for three (3) weeks., ~~which notice shall specify with particularity the reasons and provide other informative details.~~

SECTION B - CONTROL OFFICER

1. POWERS AND DUTIES

- a. The Control Officer, or ~~his~~~~their~~ designated agent or representative, shall enforce the provisions of these regulations in ~~his~~~~their~~ name, or in the name of the ~~District~~ Board of Health, in any one or combination of the following ways:
 - (1) By issuing a written notice of violation, delivered personally or by registered or certified mail, to any person if reasonable cause exists to believe said person is violating these regulations.
 - (2) By issuing a warning to any person suspected of violating these regulations and by giving said person an opportunity to correct the cause of said violation prior to issuing a notice of violation or citation and referring the matter to the ~~District~~ Board of Health or proper prosecuting authority in the ~~Washoe County~~ Health District.
 - (3) By requesting the District Attorney of the County of Washoe, or other proper agency, person or prosecuting authority in the ~~Washoe County~~ Health District, to institute appropriate criminal, civil or administrative proceedings against the person or persons responsible for violation of any of these regulations.
 - (4) By requesting the ~~District~~ Board of Health to levy an appropriate administrative fine against any person found to have violated any of these regulations.
 - (5) By reviewing each variance to ascertain if the variance holder is meeting all provisions of the variance or dates set forth in the compliance schedule; if they are not met, the Control Officer may notify the variance holder personally or by registered or certified mail to this effect and may suspend or revoke any variances or reject any schedule of compliance involved with said infractions.
 - (6) By requesting the ~~District~~ Board of Health to institute all necessary and proper legal proceedings authorized by law to carry out the purposes of these regulations and purposes of CHAPTER 445B of the Nevada Revised Statutes, including injunctive relief.

2. INVESTIGATION OF SOURCES

- a. The Control Officer, or ~~his~~ ~~their~~ designated agent or representative, shall at any reasonable time require from any person in charge of or responsible for any source that is discharging or may discharge air contaminants into the atmosphere such information or analysis that will disclose the type or nature of control equipment that is or ought to be in use. In addition, the Control Officer may do the following:
 - (1) Require any information produced in accordance with ~~this section~~ ~~these regulations~~ to be certified by a professional engineer registered in the State of Nevada.
 - (2) Designate any authorized agent or employee of the ~~District Health Department of the Washoe County~~ Health District to make an independent study and report as to the nature, extent, quantity, and degree of air contaminants which are or may be discharged from any source. Said agent or employees shall have authority to inspect work practices and techniques of operation, any article, machine, equipment, contrivance, or structure necessary to make a complete study and report of such source.
 - (3) Enter any facility during any hour in which the facility is open for business, and review and copy any records required under the permit ~~to operate~~ or necessary to determine compliance with the terms of the permit.
- b. The Control Officer, or ~~his~~~~their~~ authorized agent or representative, shall, whenever ~~he has~~ ~~they have~~ reason to believe that an emission is occurring that is in violation of these regulations, require any person in charge of or responsible for any source of said emission to make or have made tests to determine the degree of emission of air contaminants from said source. In this connection, the Control Officer may do the following:
 - (1) Specify the testing methods to be used, if said methods are in accordance with good professional

- practice,
- (2) Observe all testing,
- (3) Require all tests to be conducted by reputable and qualified personnel, and
- (4) Require that ~~he~~ **the Control Officer** be given a copy of the test results in writing, signed by the person responsible for said test.

c. The Control Officer may conduct tests during business hours of emissions of air contaminants from any source to assure compliance. Upon request of the Control Officer the person responsible for the source to be tested shall provide necessary holes in stacks or ducts and scaffolding and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the degree of emission of air contaminants.

3. **PUBLIC NOTIFICATION**

- a. *The Control Officer will notify the public regularly of times or places in which any ambient air quality standard was exceeded during any portion of the preceding calendar year.*
- b. *The Control Officer will advise the public of the health hazards associated with exceedance of an ambient air quality standard.*
- c. *The Control Officer will seek to increase public awareness of:*
 - (1) *Measures that can be taken to prevent an ambient air quality standard from being exceeded.*
 - (2) *Ways in which the public can participate in regulatory and other efforts to improve air quality.*

SECTION C - AIR POLLUTION CONTROL HEARING BOARD

1. HEARING BOARD CREATION AND ORGANIZATION

- a. ~~The Air Pollution Control Hearing Board is hereby created and appointed pursuant to Section 445.481 of NRS.~~ *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:*

- (1) The Air Pollution Control Hearing Board consists of seven (7) members who are not employees of the state or any of its political subdivisions.
- (2) One (1) member of the Board shall be an attorney admitted to practice law in Nevada.
- (3) One (1) member shall be a professional engineer registered in Nevada.
- (4) One (1) member shall be licensed in Nevada as a general engineering contractor or a general building contractor as defined by NRS 624.215.

~~b. Three (3) members shall be appointed for a term of one (1) year.~~

~~c. Three (3) members shall be appointed for a term of two (2) years.~~

~~d. One (1) member shall be appointed for a term of three (3) years.~~

- b. Each ~~succeeding~~ term shall be for a period of three (3) years.
- c. The Hearing Board shall select a chair~~man~~, vice-chair~~man~~, and such other officers as it deems necessary. Officers of the Board shall serve at ~~it's~~ *the* pleasure *of the Hearing Board*.
- d. A majority of the members of the *Hearing* Board constitutes a quorum and a majority of those present must concur in any decision.
- e. Subject to the approval of the District Board of Health, the *Hearing* Board may adopt a manual of procedure to govern its operation.
- f. Any member appointed by the District Board of Health may be removed for cause upon majority vote of the total membership of the District Board *of Health*. If the District Board of Health determines after hearing that cause for removal exists, it shall remove the member and appoint a member with appropriate qualifications to fill the unexpired term of the member removed. Cause for removal includes:

- (1) Unjustified absence from more than two (2) consecutive meetings of the Air Pollution Control Hearing Board.
- (2) Failure to adhere strictly to the provisions contained in these regulations.

2. HEARING BOARD JURISDICTION

- a. Any person may bring an appeal to the Hearing Board, if said person has been aggrieved in any of the following ways:
 - (1) By the issuance, denial, suspension, or revocation of any permit required by these regulations.
 - (2) Whenever the Control Officer, or ~~his~~ *their* authorized representative, has issued, modified, or rescinded any order, or suspended or revoked any variance.
 - (3) By the issuance of a Notice of Violation, either with or without a contained order.
 - (4) Whenever the Control Officer rejects or requires additional information or testing before approval of any application or Environmental Impact Assessment or study.
 - (5) By the imposition or amendment of any condition in conjunction with the issuance, renewal, or modification of ~~a Permit to Operate~~ *any permit required by these regulations*.
- b. The Hearing Board may also receive evidence and make appropriate recommendations to the *District* Board of Health on any matter referred to said Hearing Board by the Control Officer, the *District* Board of Health, or as provided for in the Nevada Revised Statutes.
- c. All petitions for variances authorized or permitted under these regulations shall first be considered by the

Hearing Board, which shall make appropriate recommendations on such petitions to the **District** Board of Health.

- d. After receiving evidence and conducting a hearing as to all proper matters brought before the Hearing Board as provided in these regulations, said **Hearing** Board shall forward its findings and recommendations to the **District** Board of Health for final decision, except in cases of the renewal of a variance, in which event the findings and recommendations of the Hearing Board shall constitute "final action" under these regulations.

3. APPEAL PROCEDURE

- a. All appeals to the Hearing Board shall be initiated by the filing of a ~~petition~~ **written notice of appeal**. ~~on forms prepared by the Control Officer within ten (10) days after the person bringing the appeal has received any order or Notice of Violation issued by the Control Officer or his authorized representative or has had any permit as required by these regulations issued, denied renewed, suspended, or revoked.~~ All other requested matters to be heard by the Hearing Board shall be initiated in writing and served or delivered on the Chair**man** of the Hearing Board. ~~The Hearing Board shall meet within sixty (60) days after the receipt of any petition or service of any written request on the Chairman of the Hearing Board for the purpose of conducting a hearing and receiving evidence. In connection with any appeal or other matter before the Hearing Board, the following shall apply:~~ **The Notice of Appeal Must:**

- (1) **Be received by the department within 10 days of receiving any order or Notice of Violation issued by the Control Officer or their authorized representative, has had any permit as required by these regulations issued, denied renewed, suspended, or revoked, or other action taken by the Control Officer described in paragraph 020.000.C.2..**
- (2) **Specify the reason(s) for appealing the order. The Notice must have an original signature by the responsible official 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.**

- b. **Except as provided in paragraph 020.100.C.1, the Hearing Board shall meet within sixty (60) days, after the receipt of any appeal or service of any written request on the Chair of the Hearing Board for the purpose of conducting a hearing and receiving evidence. The Chair or their authorized representative shall specify the time and place for the Hearing Board Meeting. In connection with any appeal or other matter before the Hearing Board, the following shall apply:**

- (1) The Chair**man** or Vice-Chair**man** of the Hearing Board may issue subpoenas to compel attendance of any person at any hearing in connection with any appeal or other matter being considered by the Hearing Board and may require the production of books, records, and other documents and materials at the hearing.
- (2) The Chair**man** ~~or~~, Vice-Chair**man**, **or authorized representative** of the Hearing Board shall administer oaths to all persons appearing at and testifying before the Board, and any **Hearing** Board member may examine witnesses at any hearing before the **Hearing** Board.
- (3) **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.**
- (4) **The parties shall present their cases through the sworn testimony of witnesses and exhibits, with the department proceeding first.**
- (5) All decisions and recommendations along with the transcripts and evidence of any hearing conducted by the Hearing Board shall be transmitted to the Chair**man** of the District Board of Health and shall be included in the records of the **District** Board of Health after the ~~Board~~ **District Board of Health** reaches a final decision on any matter referred by the Hearing Board.
- (6) The Hearing Board may provide by rule the manner in which an appeal can be taken from the recommendation of the Hearing Board to the **District** Board of Health, upon approval by the **District** Board of Health.

4. JUDICIAL REVIEW

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

5. VARIANCE PROCEDURE

- a. All sources, both new and existing, must operate or plan to operate in compliance with these regulations. If immediate compliance is not possible, a variance must be obtained prior to operations of the source from the District Board of Health, in accordance with the following procedures:
 - (1) The owner, operator, or any person responsible for any source of air contaminants, or any person who desires to establish such a source, shall petition the Hearing Board for a variance from these regulations upon forms for this purpose ~~available in the office of the Control Officer~~ *provided by the Health District.*
 - (2) If an existing source requires lengthy or extensive remodeling to come into compliance, a Schedule of Compliance must be submitted to the Hearing Board stating interim and final compliance dates.
 - (3) Each petition for a variance from these regulations shall include such information as the Control Officer, Hearing Board, or *District* Board of Health deems necessary to facilitate the equitable and speedy determination of the matter presented to the Hearing Board. In addition to any other stipulations that may be required by these regulations all petitions for variances from these regulations shall state briefly the following:
 - (a) The sections of these regulations from which the variance is sought.
 - (b) A brief summary of the facts indicating why compliance with said section or sections is not possible.
 - (c) If possible, the period of time for which the variance is sought.
 - (d) The requirements which the petitioner is able to meet and the date on which said petitioner can comply with such requirements (Schedule of Compliance).
- b. The Hearing Board may recommend a variance only if, after a hearing on due and proper notice, it finds from a preponderance of evidence that:
 - (1) The emissions occurring or proposed to occur do not endanger or tends to endanger the health or safety of persons living in the ~~Washoe County~~ *jurisdiction of the* Health District; and
 - (2) Compliance with these regulations would produce serious hardship on the petitioner without equal or greater benefits to the public; and
 - (3) Owners of the property in the general vicinity of the proposed emission would not be adversely affected by the emissions.
- c. Nothing contained herein shall prevent the Hearing Board from recommending a variance with appropriate conditions imposed on the petitioner or applicant, together with a recommendation that any variance issued be revoked upon noncompliance with said conditions or time schedules.
- d. The Hearing Board may renew a variance previously granted by the District Board of Health only under circumstances and upon conditions which justified its original granting. Applications for any renewal of a variance from these regulations must be made at least sixty (60) days prior to expiration of variance to be renewed, and the Hearing Board shall give public notice of the application. If a protest is filed with the Hearing Board against the renewal, the Hearing Board shall hold a public hearing and shall not renew the variance unless it makes specific written findings of the acts which justify the renewal.

6. VARIANCE LIMITATIONS

- a. In addition to any other limitations and conditions contained in these regulations, the Hearing Board shall

not recommend the issuance of any variance, except in accordance with the following limitations:

- (1) If the variance is requested because no practical means is known or available for prevention, abatement, or control of the air pollution involved, the Hearing Board shall recommend the issuance of a variance only until such means become known and available.
- (2) If the variance is requested because compliance with these regulations will require measures which, because of extent or cost, must be spread over a period of time, the Hearing Board may only recommend a variance after receiving an acceptable schedule of compliance, containing both interim and completion dates or may specify these dates themselves.
- (3) The Hearing Board shall not recommend or issue a variance for any period of time to exceed one (1) year.
- (4) The Hearing Board shall review at least once each year any variance granted in accordance with paragraphs (1) and (2) above in order to determine whether practical measures to control air contaminants have become available or required steps for compliance with the variance have been taken. (Also see paragraph 020.000.B.1.)
- (5) Before renewal of any variance the Hearing Board shall obtain from the Control Officer **or their authorized representative** the status of the present variance and may only renew a variance if all provisions and dates have been met.
- (6) Nothing contained herein shall be construed to entitle any person requesting a variance to obtain a recommendation from the Hearing Board as to the granting or renewal of a variance as a matter of right.
- (7) If a variance is requested which will allow a source to emit air pollutants into the atmosphere such that the National Ambient Air Quality Standards may not be attained or maintained, the Hearing Board shall not recommend that such a variance be permitted beyond the earliest applicable date, specified in the approved State Implementation Plan, for the attainment of the applicable National Ambient Air Quality Standard.
- (8) No variance may be issued to violate any applicable requirement, terms or requirements of the Clean Air Act or regulations published in 40 CFR.

SECTION D - CONFIDENTIAL INFORMATION

1. As used in this section "confidential information" means information or records which:
 - a. Relate to dollar amounts of production or sales; or
 - b. Relate to process or production unique to the owner or operation; or
 - c. Contain other proprietary data which, if disclosed, would tend to affect adversely the competitive position of the owner or operator.
2. Information which cannot be certified as confidential includes:
 - a. The emission data concerning any air contaminant which has an ambient air quality standard or emission standard or which has been designated as a hazardous air pollutant by the United States Environmental Protection Agency.
 - b. The air pollution source operating permit, including the original application, any compliance plan, monitoring report, or schedule and variance.
 - c. The existence and disposition of any past citations, fines, or written warnings.
3. Any information received by the Hearing Board or the Control Officer which is certified in writing to be confidential by the owner or operator disclosing it, and is verified and approved *in writing* as confidential by the *recipient* ~~must~~ ~~director of the local air pollution control agency may~~, unless the owner expressly agrees to its publication availability to the public, be used only:
 - a. In the administration or formulation of air pollution controls;
 - b. In compiling or publishing analyses or summaries relating to the condition of the outdoor atmosphere which do not identify any owner or operator, or reveal any confidential information;
 - c. In complying with federal statutes, rules, and regulations.
4. This section does not prohibit the use of confidential information in prosecution for the violation of any air pollution control statute, ordinance, or regulation. Any certification, if not otherwise designated as confidential pursuant to ~~subsection C of this regulation~~ *paragraph 020.000.D.3*, shall be made public.
5. A person who discloses or knowingly uses confidential information in violation of this section is guilty of a misdemeanor and shall be liable in tort for any damages which may result from such disclosure or use.

SECTION E—SAMPLING AND TESTING

1. ~~In addition to any other testing requirements provided for in these regulations, the Control Officer or the **District** Board of Health may require any person to conduct or make arrangements to conduct testing of any source to determine compliance with these regulations. In the event such testing is required, the Control Officer may do any of the following:~~
 - a. ~~Witness all tests as required by this section.~~
 - b. ~~Determine whether or not generally recognized methods of measurement have been used to determine the quantity of emissions from the source being tested and if not additional testing may be required.~~
 - c. ~~Determine the point or points at or within the source where testing shall be done, to determine the actual discharge into the atmosphere.~~
 - d. ~~Make any modifications or adjustments in the testing requirements so as to be compatible with specific sampling conditions or needs as shown by good practice, judgement and experience.~~
 - e. ~~Require the cost of any testing to be paid by the owner or person responsible for any source of air contaminants.~~
 - f. ~~Require additional tests of any source of air contaminants tested in accordance with this section, provided such separate or additional tests shall be conducted on behalf of the **District** Board of Health and at said Board's expense.~~
 - g. ~~Require in writing the construction or creation of sampling holes, safe scaffolding and related facilities, to be provided at the expense of the owner or person responsible for any source of air contaminants being tested in accordance with this section.~~
 - h. ~~Require the owner or person responsible for any source of any air contaminants being tested pursuant to this section to provide a suitable power source to the point of testing, so that sampling instruments can be operated as required.~~
 - i. ~~All information gathered during any testing operation conducted pursuant to this section will be provided to both the Control Officer, **their authorized agent or representative**, or the **District** Board of Health and the person or persons who own or control or are responsible for any source of air contaminants that are tested pursuant to this section. All such information obtained pursuant to any testing required under this section will be treated as confidential in accordance with the requirements of Section 020.055 of these regulations.~~

SECTION E – TECHNICAL REPORTS AND FEES

1. The Control Officer may distribute copies of any documents, circulars, reports on technical work, and other reports prepared by the Control Officer, and any other information upon request by other governmental agencies or individuals or persons or groups requesting copies of same. The Control Officer may charge a fee for all such material not to exceed the cost of preparation and distribution of such documents. All monies collected pursuant to this section shall be deposited in the office of the County Treasurer. All such released information must not be considered confidential as outlined in [SECTION 020.000.D](#). ~~Section 020.055~~.

REVISED DRAFT
September 8, 2023

SECTION F – CIRCUMVENTION

1. It is unlawful for any person to build, erect, install, or use or cause to be built, erected, installed or use, any article, machine, equipment or other contrivance, or source, which conceals an emission or release of air contaminants into the atmosphere which would otherwise constitute a violation of these regulations. Nothing contained herein shall apply to cases in which the only violation is a violation of **PART**Section 040.055 of these regulations.

REVISED DRAFT
September 8, 2023

SECTION L - EMERGENCY UPSET, BREAKDOWN OR SCHEDULED MAINTENANCE (Amended 10/20/93)

1. Emergency Upset or Breakdown Conditions

- a. ~~It is a violation of these regulations for any person to operate any facility or equipment so that the emissions from such facility or equipment is in excess of any limits set by a valid permit to Operate or by these regulations. Upon determination or notification that excess emissions are occurring the Control Officer shall order the immediate cessation of operations unless it is his determination that such emissions are of a minor breakdown condition. In order to be considered an emergency upset or breakdown condition the following requirements must be met:~~
- ~~(1) The occurrence must arise from sudden and reasonably unforeseeable events beyond the control of the permittee, including Acts of God, which situation requires immediate corrective action to restore normal operations. The excess emissions must occur as an unavoidable result of such an occurrence and must not result from inappropriate operation, operator error, improperly designed equipment, neglect or improper maintenance procedures.~~
 - ~~(2) The occurrence has been reported to the Control Officer as soon as reasonably possible, but in no case more than two (2) hours after the occurrence or within 2 hours of opening on the next business day if the incident occurs during off hours. The notice shall include a description of the emergency and steps taken to mitigate and correct the situation; and~~
 - ~~(3) Repairs are to be made with maximum reasonable effort, including use of off shift labor, overtime, or work periods of non-operations; and~~
 - ~~(4) A written report must be submitted to the Control Officer within fifteen (15) days of such upset, breakdown or scheduled maintenance containing sufficient information to enable the Control Officer to determine the seriousness of the excess emissions. The submission must be properly signed and include as a minimum:
 - ~~(a) The identity of the stack and other emission points where the excess emissions occurred.~~
 - ~~(b) The estimated magnitude of the excess emissions expressed in opacity or in the units of the applicable emission limitation and operating data or methods used in estimating the magnitude of the excess emissions.~~
 - ~~(c) The time and duration of the excess emissions.~~
 - ~~(d) The identity of the equipment causing the excess emissions or any other cause or causes.~~
 - ~~(e) If the excess emissions were the result of a malfunction, steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of the malfunctions.~~
 - ~~(f) The steps taken to limit the excess emissions.~~
 - ~~(g) Documentation that the equipment or processes were at all times properly maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions.~~~~

2. Scheduled Maintenance

- a. ~~Increased emissions that occur as a result of scheduled maintenance operations and do not violate any applicable requirement or federally enforceable permit condition, may be allowed by the Control Officer if it is determined that no significant risk to public health or any public nuisance will occur.~~
- b. ~~The occurrence, and expected duration, must be reported to the Control Officer at least two business days before the scheduled maintenance begins, and the maintenance must be performed during times specified by the Control Officer as favorable for atmospheric ventilation.~~

SECTION M – EXCESS EMISSIONS (Amended 10/20/93)

1. ~~The Control Officer shall determine from the submission of data and information required in Section 020.075 that no enforcement action is required if:
 - a. ~~The excess emissions did not occur from intentional acts, inappropriate operation, operator error, improperly designed equipment, neglect or improper maintenance procedures;~~
 - b. ~~All reasonable steps were taken, or are being taken in an expeditious manner, to correct the condition leading to the excess emission;~~
 - c. ~~All the requirements specified in 020.075 Part A sections 1 through 4, inclusive, have been satisfied and all required information has been submitted; and~~
 - d. ~~For any source holding a Part 70 permit, the violation is related to a technology based standard established in that permit.~~~~
2. ~~The burden of proof for any emergency upset or breakdown shall be on the permittee. If the owner or operator misrepresents facts or fails to disclose facts with prior knowledge, the Control Officer shall deem that the period of excess emissions is a violation subject to enforcement action.~~
3. ~~Nothing in this section limits the obligation of the owner or operator of a source to attain and maintain the Ambient Air Quality Standards or the authority of the Control Officer to institute actions under **SECTIONS 113 or 303** of the Act or any section of these regulations.~~

REVISED DRAFT
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SECTION G – SEVERABILITY

1. If any provision of these regulations or the application thereof to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to this end the provisions of these regulations are declared to be severable.

REVISED DRAFT
September 8, 2023

EXPLANATION: Matter in: (1) *blue bold italics* is new language to be added to the existing rule; (2) ~~red strikethrough~~ is language to be deleted from the existing rule. It should be noted that this draft contains grammatical, minor spelling, and formatting edits to the published rule. These edits are not highlighted using the above rules. All substantive edits are captured using these formatting rules. A copy of the published rule will be included with this proposed rule for comparison.

CHAPTER 020 - GENERAL PROVISIONS

PART 020.100 - VIOLATIONS OF REGULATIONS AND PENALTIES

SECTION A - VIOLATION OF REGULATIONS AND PENALTIES

1. VIOLATION OF REGULATIONS

- a. In determining whether a violation of these regulations has been committed, whether the violation was intentional or inadvertent is immaterial and does not constitute cause for dismissal of the case by the Hearing Board or *District* Board of Health. However, either board may consider whether the violation was intentional or inadvertent in determining the amount of the penalty to be imposed.

2. NOTICE OF VIOLATION

- a. Whenever the Control Officer or ~~his~~*their* authorized agent or representative has a reasonable cause to believe that any section of these regulations for the prevention, abatement or control of air pollution has been violated, ~~he~~ *the Control Officer* shall cause written notice to be served upon the person or persons responsible for the alleged violations.
- b. The notice shall specify:
 - (1) The section or sections of these regulations alleged to be violated.
 - (2) The facts alleged to constitute the violation.
 - (3) Appeal procedure including any time limitations.
- c. The notice may include an order to take corrective action within a reasonable time, which shall be specified. Such an order becomes final unless, within ten (10) days after service of the notice, a person named in the order requests a hearing before the Hearing Board.
- d. With or without the issuance of an order pursuant to ~~Subsection C-~~*paragraph 020.100.A.2.c.*:
 - (1) The Control Officer or their authorized agent or representative may notify the person or persons responsible for the alleged violation to appear before the Hearing Board at a specified time and place; or
 - (2) The Hearing Board may initiate proceedings for recovery of the appropriate penalty set forth in ~~Section D3- Of these regulations~~ *paragraph 020.100.A.3.*
- e. Nothing in this section prevents the Hearing Board or the Control Officer or their authorized agent or representative from making efforts to obtain voluntary compliance through warning, conference, or other appropriate means.

3. CIVIL FINES AND PENALTIES

- a. Except as provided in ~~Subsections b. and c-~~*paragraphs 020.100.A.3.b. and c.,* a violation of any section

of these regulations constitutes a major violation. ~~Any violation of a permit condition shall be a major violation as specified in Section 030.2175 of these regulations. Failure to comply with any condition of a permit constitutes a violation.~~

- b. Any person who commits a major violation of any section of these regulations, other than **SECTIONS 020.050 and 020.055-paragraph 020.100.A.5 and SECTION 020.000.D.**, is guilty of a civil offense and may be required to pay an administrative fine of not more than \$10,000.00 *per day per violation*. Each day of violation constitutes a separate offense. The District Board of Health may establish a compliance schedule as a part of any civil finding either in lieu of, or in addition to, monetary penalties. Any fines assessed may be held in abeyance pending fulfillment of any compliance schedule.
- c. ~~Any violation of Sections 040.030, 040.035, 040.040(A), 040.050, 040.051, 040.055, 040.080, or 050.001 of these regulations constitutes a minor violation unless the violation occurs on more than two (2) occasions during a period of twelve (12) consecutive months. In that event, the third (3rd) and any subsequent violations constitute major violations. Violations of PARTS 040.030 (Dust Control), 040.035 (Open Burning), 040.040 (Fire Set for Training), 040.050 (Incinerator Emission), 040.051 (Wood-Burning Devices), 040.055 (Odorous Emissions), 040.080 (Gasoline Transfer and Dispensing Facilities), 040.200 (Diesel Engine Idling) or 050.001 (Emergency Episode Plan) of these regulations constitutes a minor violation unless there are three or more violations of any one of those PARTS by a person or entity, occurring within a period of twelve (12) consecutive months. All minor violations become major violations upon the occurrence of the third violation of the same PART within a period of twelve (12) consecutive months.~~
 - (1) *The first offense of a minor violation shall result in an administrative fine of \$500.*
 - (2) *The second offense of a minor violation shall result in an administrative fine of \$1,000.*
 - (3) *Administrative non-compliance of the PARTS described in this paragraph (i.e. incomplete Dust Log, On Site Permit missing) shall constitute a warning. Any further administrative non-compliance with conditions of the PARTS described in this paragraph may constitute a violation.*

~~d. The following fines shall be levied for minor violations of these regulations:~~

| | First Violation | Second Violation |
|---|---|--|
| Section 040.030 (Dust Control) | | |
| A. Violation of Dust Permit Condition(s) | not less than 100 not more than 250 | not less than 250 not more than 750 |
| B. Visual Emission Violation | not less than 500 not more than 1000 | not less than 1000 not more than 2500 |
| Section 040.035 (Open Fires) | not more than 500 | not less than 500 not more than 1000 |
| Subsection A of Section 040.040 (Fire Training) | not more than 500 | not less than 500 not more than 1000 |
| Section 040.050 (Incinerator Emission) | not more than 1000 | not less than 1000 not more than 2000 |

| | | |
|---|-------------------------------|--|
| Section 040.051 (Certified Woodstoves) | not more than 500 | not less than 500 not more than 1000 |
| Section 040.055 (Odors) | not more than 1000 | not less than 1000 not more than 2000 |
| Section 040.080 (Gasoline Transfer) | not more than 1000 | not less than 1000 not more than 2000 |
| Section 040.200 (Diesel Idling) | not more than 500 | not less than 500 not more than 1000 |
| Section 050.001 (Emergency Episode) | not more than 1000 | not less than 1000 not more than 2000 |

- d. Administrative fines shall be levied by appropriate action of the District Board of Health and recorded in its official minutes. The evidence or information on which the District Board of Health bases its action may include any one or more of the following:
- (1) The recommendation of the Control Officer, *or their authorized agent or representative*, based on any Notice of Violation served on any person in accordance with these regulations if that person has not appeared or requested a hearing before the Hearing Board.
 - (2) The recommendation of the Hearing Board, based on its findings in connection with any appeal or other matter referred to the ~~Board~~ *District Board of Health* in accordance with these regulations.
 - (3) Evidence presented before the District Board of Health by any person, public official, or representative of the District Board of Health ~~or District Health Department~~, provided the person charged with violating any of these regulations has received reasonable notice (at least twenty (20) days in advance) of the hearing at which such evidence is to be presented and is provided an opportunity to present evidence in his defense at the hearing.
- e. Unless the *District* Board of Health bases its decision on the recommendations and/or findings of the Control Officer, *their authorized agent or representative*, or the Hearing Board as set forth in ~~Paragraphs (1) and (2) of Subsection e. paragraphs 020.100.A.3.d.(1) and (2)~~, the ~~Board~~ *District Board of Health* shall base its decision as to whether a violation of these regulations has occurred on the evidence presented before the ~~Board~~ *District Board of Health* pursuant to ~~Paragraph (3) of that subsection paragraph 020.100.A.3.d.(3)~~. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Documentary evidence may be received in the form of authenticated copies or excerpts if the original is not readily available and, on request, parties shall be given an opportunity to compare the copy with the original. Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though such matter was not covered in the direct examination, impeach any witness regardless of which party first was called to testify and rebut the evidence against ~~him~~ *them*. The *District* Board of Health may take notice of judicially cognizable facts and/or recognized technical or scientific facts within the ~~Board's~~ *District Board of Health's* specialized knowledge. All decisions of the *District* Board of Health respecting administrative fines shall be in writing or notice of the ~~Board's~~ *District Board of Health's* decision shall be forwarded to the aggrieved party at ~~his~~ *their* last known mailing address.
- f. ~~If any person served with a Notice of Violation in accordance with these regulations is charged with committing a minor violation, he may voluntarily waive his right to appear before the Hearing Board and remit to the District Health Department within ten (10) days after service of the Notice of Violation an amount in accordance with the minimum prescribed for such violation set forth in Subsection D made payable to the~~

~~Washoe County District Health Department. All other fines shall be levied by formal action of the District Board of Health. The Control Officer may suspend, deny, or revoke any or all permits of a person who has failed to pay any fine that has been levied by the District Board of Health.~~

- f. In those cases where it is determined by the District Board of Health that a violation of the Regulations has occurred, the ~~Board~~ **District Board of Health**, at its discretion, may choose to waive the fine for a first violation, levy any fine providing it does not exceed the appropriate range limitation, require use of other mitigation methods or schedules of compliance and, in emergency situations, require a ~~Sstop Wwork Oorder~~ to be issued and/or any other combination of remedies to bring about compliance with the regulations.
- g. All administrative fines collected by the District Board of Health pursuant to this section shall be deposited in the school district fund of Washoe County.
- h. All monetary fines assessed pursuant to violations of PARTS 030.105 or 030.107 for improper asbestos containing material removal, shall be for an amount greater than the estimated savings obtained by the illegal removal.

~~4.—CRIMINAL FINES AND PENALTIES~~

~~a.—As required under NRS 445.401 to 445.526, inclusive, or NRS 445.546 to 445.601, inclusive or any regulations adopted pursuant to those provisions, any person who knowingly commits the action described below, shall pay a fine of not more than \$10,000:~~

- ~~(1) Makes any false statement, representation, or certification; or~~
- ~~(2) Falsifies, tampers with, renders inaccurate, or fails to install any required monitoring device or method;~~
- ~~or~~
- ~~(3) Alters, conceals, fails to file, or maintain any required document; or~~
- ~~(4) Fails to pay any fee; or~~
- ~~(5) Violates any applicable requirement; or~~
- ~~(6) Violates the terms or conditions of any permit.~~

~~b.—Each day of violation of the provisions of subsection A constitutes a separate offense.~~

4. INJUNCTIVE RELIEF

- a. In addition to any remedy at law hereunder, the Control Officer may apply to a court of competent jurisdiction for any other equitable and injunctive relief to enforce compliance with, or to restrain violation of any provisions of these regulations or to any regulation or rule made and adopted pursuant thereto.

5. INTERFERENCE WITH PERFORMANCE OF DUTY

- a. No person shall refuse entry or access to any authorized representative of the District Board of Health, upon presentation of appropriate credential, who requests entry to inspect any property, premises or place on or at which an air contaminant source is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with these regulations. No person shall obstruct, hamper or interfere with any such inspection. If entry is refused, or prior to attempting to enter, such officer may apply to any magistrate for a search warrant. The magistrate shall issue the warrant if he believes from the supporting affidavit or affidavits that there is probable cause to believe that a source of air contaminant exists or is being constructed or operated on the premises to be searched.

SECTION B - STOP WORK ORDER (SUSPENSION)

1. *A stop work order may be issued at any time by the Control Officer upon his or her determination that there has been a violation with any of the provisions of these regulations, any applicable requirement, or any condition of the permit with the potential to impact public health.*
2. *A person served with a stop work order:*
 - a. *Shall immediately stop all activities specified in the stop work order.*
 - b. *May apply to the Control Officer for its revocation at any time, setting forth the facts upon which they believe that the reasons for the issuance of the stop work order no longer exist.*
 - c. *May apply to the Hearing Board for its revocation at any time, setting forth the facts upon which they believe that the reasons for the issuance of the stop work order no longer exist.*
3. *Revocation Procedure: Any person aggrieved by the issuance of a stop work order may appeal to the Control Officer for its revocation, setting forth the reasons the stop work order is no longer valid. If the Control Officer finds that the reasons for the issuance of the stop work order no longer exist, the Control Officer shall, within twenty (24) hours after the receipt of an appeal, withdraw the order in writing. If the Control Officer finds that the reasons for the issuance of the stop work order still exist, or that other reasons exist for continuing a stop work order in effect, the Control Officer shall, within twenty (24) hours after the receipt of an appeal, serve a written statement of their reasons for so finding.*
4. *Appeal Procedure: Any person aggrieved by the issuance or affirmance of a stop work order may appeal to the Hearing Board to review the actions of the Control Officer or their representative in issuing the stop work order. An appeal to the Hearing Board does not vacate the effect of the stop work order. A stop work order may only be removed or vacated by the Control Officer, the District Board of Health, or court action.*

REVISED
September 2013

SECTION C - PERMIT SUSPENSION OR REVOCATION

- 1. Permits or authorizations are subject to suspension or revocation for violation of these regulations. If the Control Officer determines that a permittee is in violation or has had two (2) or more written violations in a 365-day period, they may serve upon the permittee, at the address given on the application, through personal service or certified mail, a notice of suspension or revocation, setting forth in detail the violations charged. The suspension or revocation becomes final and effective ten (10) days after service of the written notice and the permit shall thereupon be surrendered to the Control Officer unless the permittee files an appeal with the Hearing Board, in writing, within ten (10) days of receipt of the notice of suspension or revocation pending the decision of the District Board of Health. The Hearing Board shall meet to hear the appeal no later than thirty (30) days after receiving the appeal.*
- 2. If a permit or authorization is suspended, reinstatement may be accomplished by submitting to the Control Officer sufficient evidence for him to determine if the reason for which the permit was suspended has been corrected.*
- 3. If a permit or authorization is revoked, all fees paid shall be forfeited. Reinstatement of a revoked permit or authorization must be accompanied by a new application and payment of the appropriate fee. In such cases, the date of the reinstatement becomes the issuance date.*
- 4. If the Control Officer determines that the emissions or operations of a source represent a hazard to public health, or an imminent risk to public welfare, an emergency closure order or an emergency suspension of the permit or authorization may be issued. The Control Officer's decision shall be based upon the best medical and scientific information available at the time. The operator of any source so ordered shall cease all emissions as soon as safely practicable, and shall not resume operations until the cause of the hazard or risk has been eliminated, and the Control Officer approves of the resumption of operations. An emergency closure order issued under these regulations may be immediately appealed to the District Board of Health, and the Board shall provide the opportunity for a hearing within three (3) working days after receiving the appeal. If no hearing is provided within that time, the operator may immediately seek judicial review of the suspension order.*
- 5. A permit or authorization may be suspended if the permittee fails to pay administrative fines levied for violations of these regulations. The suspension becomes effective 45 days after the District Board of Health has upheld the fine and may not be appealed. The permit will be reinstated only after any and all administrative fines have been paid in full.*

CHAPTER 020 - GENERAL PROVISIONS

PART 020.200 - FEES AND FEE SCHEDULES

SECTION A - FEES AND FEE SCHEDULES

1. **BUILDING PLAN REVIEW.** The fee for reviewing and processing of building plans is as set by the District Board of Health.
2. **AIR QUALITY APPLICATIONS.** The fee for processing an air quality source permit or authorization application is as set by the District Board of Health. Separate fees for emission sources requiring Part 70 Permits, shall be set by the District Board of Health.
3. **GENERAL SOURCE PERMITTING.** The fee for processing an air quality general source permit or authorization application is as set by the District Board of Health.
4. **ANNUAL ADMINISTRATIVE, EMISSION, AND EQUIPMENT.** Sources issued a permit or authorization shall pay an annual administrative, emission, and/or equipment fee as set by the District Board of Health. The full annual administrative, emission, and/or equipment fee must be paid no later than 30 days after the Control Officer or their designated representative has invoiced the fee.
5. **AIR TOXICS.** Any source which emits more than one ton per year of Hazardous Air Pollutants shall be assessed an annual fee set by the District Board of Health. For sources also currently requiring operating permits, the fees will be assessed concurrently with those fees.
6. **ASBESTOS.** Persons performing asbestos removal operations under the requirements of the National Emission Standards for Hazardous Air Pollutants (NESHAP) is as set by the District Board of Health. All inspection fees will be assessed at the time of NESHAP notification.
7. **WOOD-BURNING DEVICE.** The fee for processing a wood-burning device permit, registration, and/or authorization is as set by the District Board of Health.
8. **DUST CONTROL PLAN.** Fees for the processing of dust control applications is as set by the District Board of Health for projects where the area disturbed equals or exceeds one acre.
9. **PRESCRIBED BURNING.** The fee for processing a prescribed burn permit, registration, and/or authorization is as set by the District Board of Health.
10. **LATE PERMIT FEE ASSESSMENT.** The owner or operator of a source who does not submit the annual administrative, emission, and/or equipment fee by the specified due date may be assessed a late penalty in the amount of 25 percent (25%) of the amount of the total fee due. The late fee must be paid in addition to the annual fee.
11. **ANNUAL ADJUSTMENT.** Fees shall be adjusted annually by an amount equal to the Federal Consumer Price Index unless the District Board of Health takes action otherwise. This increase shall be made before the beginning of each fiscal year.

EXPLANATION: Matter in: (1) *blue bold italics* is new language to be added to the existing rule; (2) ~~red strikethrough~~ is language to be deleted from the existing rule. It should be noted that this draft contains grammatical, minor spelling, and formatting edits to the published rule. These edits are not highlighted using the above rules. All substantive edits are captured using these formatting rules. A copy of the published rule will be included with this proposed rule for comparison.

CHAPTER 020 - GENERAL PROVISIONS

PART 020.300 - TESTING AND REPORTING

SECTION A - SAMPLING AND TESTING

1. In addition to any other testing requirements provided for in these regulations, the Control Officer or the District Board of Health may require any person to conduct or make arrangements to conduct testing of any source to determine compliance with these regulations. In the event such testing is required, the Control Officer may do any of the following:
 - a. Witness all tests as required by this section.
 - b. Determine whether or not generally recognized methods of measurement have been used to determine the quantity of emissions from the source being tested and if not additional testing may be required.
 - c. Determine the point or points at or within the source where testing shall be done, to determine the actual discharge into the atmosphere.
 - d. Make any modifications or adjustments in the testing requirements so as to be compatible with specific sampling conditions or needs as shown by good practice, judgement and experience.
 - e. Require the cost of any testing to be paid by the owner or person responsible for any source of air contaminants.
 - f. Require additional tests of any source of air contaminants tested in accordance with this section, provided such separate or additional tests shall be conducted on behalf of the District Board of Health and at said Board's expense.
 - g. Require in writing the construction or creation of sampling holes, safe scaffolding and related facilities, to be provided at the expense of the owner or person responsible for any source of air contaminants being tested in accordance with this section.
 - h. Require the owner or person responsible for any source of any air contaminants being tested pursuant to this section to provide a suitable power source to the point of testing, so that sampling instruments can be operated as required.
 - i. All information gathered during any testing operation conducted pursuant to this section will be provided to ~~both~~ the Control Officer, *their authorized agent or representative*, or the *District* Board of Health and the person or persons who own or control or are responsible for any source of air contaminants that are tested pursuant to this section. ~~All such information obtained pursuant to any testing required under this Section will be treated as confidential in accordance with the requirements of Section 020.055 of these regulations.~~

SECTION B - TESTING

1. EXCESS EMISSIONS: SCHEDULED MAINTENANCE, TESTING OR REPAIRS; NOTIFICATION OF CONTROL OFFICER; MALFUNCTION, UPSET, START-UP, SHUTDOWN OR HUMAN ERROR.

- a. *Scheduled maintenance, testing, or repairs which may result in excess emissions of regulated air pollutants prohibited by this regulation and/or permit terms and conditions must be approved in advance in writing by the Control Officer and performed during a time designated by the Control Officer as being favorable for atmospheric ventilation.*
- b. *Each owner or operator shall notify the Control Officer of the proposed time and expected duration at least 30 days before any scheduled maintenance or testing which may result in excess emissions of regulated air pollutants prohibited in this regulation. The scheduled maintenance or testing must not be conducted unless the scheduled maintenance or testing is approved in writing by the Control Officer.*
- c. *Each owner or operator shall notify the Control Officer of the proposed time and expected duration at least 24 hours before any scheduled repairs which may result in excess emissions of regulated air pollutants prohibited by this regulation and/or permit terms and conditions. The scheduled repairs must not be conducted unless the scheduled repairs are approved in writing by the Control Officer.*
- d. *Each owner or operator shall notify the Control Officer of any deviations from the requirements of a permit or these regulations within 15 calendar days. The report to the Control Officer shall include the probable cause of all deviations and any action taken to correct the deviations.*
- e. *Each owner or operator shall notify the Control Officer of any excess emissions within 24 hours after any malfunction or upset of the process equipment, or equipment for controlling pollution, or during start-up or shutdown of that equipment.*
- f. *Each owner or operator shall provide the Control Officer, within 15 days after any malfunction, upset, start-up, shutdown or human error which results in excess emissions, sufficient information to quantify the excess emissions. The information must include at least the following:*
 - (1) *The identity of the stack or other point of emission, or both, where the excess emissions occurred.*
 - (2) *The estimated magnitude of the excess emissions expressed in opacity, or in the units of the applicable limitation on emissions, and the operating data and methods used in estimating the magnitude of the excess emissions.*
 - (3) *The time and duration of the excess emissions.*
 - (4) *The identity of the equipment causing the excess emissions.*
 - (5) *If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of the malfunction.*
 - (6) *The steps taken to limit the excess emissions.*
 - (7) *Documentation that the equipment for controlling air pollution, process equipment or processes were at all times maintained and operated, to a maximum extent practicable, in a manner consistent with good practice for minimizing emissions.*
- g. *Each owner or operator shall ensure that any notification or related information submitted to the Control Officer pursuant to this section is provided in a format specified by the Control Officer.*
- h. *Nothing in this section limits the authority of the Control Officer to institute actions under Sections 113 and 303 of the Act or to exercise his or her authority under these regulations.*

SECTION C - ANNUAL EMISSIONS REPORTING

1. *Any owner or operator subject to the provisions of these regulations shall submit yearly reports including, but not limited to, throughput, production, fuel consumption, hours of operation, and emissions. These reports will be submitted to the Control Officer for all emission units/systems specified on the permit. The completed report must be submitted to the Control Officer no later than March 31 annually for the preceding calendar year.*
 - a. *A statement indicating whether all information contained in the annual emissions report is accurate and true.*

REVISED DRAFT
September 8, 2023

CHAPTER 020 - GENERAL PROVISIONS

PART 020.000 - GENERAL PROVISIONS (Revised 4/22/98, 8/26/04, 11/16/06, 5/28/18, 9/8/23)(Amended 4/88, 10/28/92, 10/20/93)(Adopted 10/24/90, 10/20/93)

SECTION A - BOARD OF HEALTH

1. **RESPONSIBILITY:** The District Board of Health, acting through the District Health Officer and Health District, is hereby designated as the air pollution control agency of Washoe County, Nevada and shall exercise all the authority, jurisdiction, powers, (including the power to take all necessary action to secure to Washoe County the benefits of any federal or state legislation concerned with air pollution), and responsibilities that inure to the benefit, or are, or shall be conferred upon and binding upon, a local District Board of Health, pursuant to any of the provisions contained in Chapter 445B or any other Chapter of the Nevada Revised Statutes.
2. **POWERS AND DUTIES:** Pursuant to the powers and responsibilities that have inured to the benefit of the District Board of Health, said Board shall, without excluding any other powers, responsibilities, and authority conferred on said Board in the Nevada Revised Statutes, have the following powers and/or responsibilities:
 - a. To adopt and enforce rules and regulations to reduce the release into the atmosphere of any air contaminants originating within the territorial limits of the Health District in order to achieve and maintain levels of air quality which will protect human health and safety, prevent injury to plant and animal life, prevent damage to property, and preserve visibility and scenic, aesthetic and historic value within said Health District.
 - b. To establish ambient air quality standards in accordance with law.
 - c. To make such determinations and issue such orders as may be necessary to implement the provisions of these regulations and to achieve air quality standards in accordance with law.
 - d. To institute proceedings to prevent continued violation of any order issued by the District Board of Health, Hearing Board, or Control Officer, and to enforce these regulations.
 - e. To require access to records relating to emissions which cause or contribute to air pollution.
 - f. To apply for and receive grants or other funds or gifts from public or private agencies.
 - g. To cooperate and contract with other governmental agencies including the State of Nevada, other states, and the federal government.
 - h. To conduct investigations, research, and technical studies consistent with the general purposes of the Nevada Revised Statutes.
 - i. To establish such emission control requirements, as may be necessary to prevent, abate, or control air pollution.
 - j. To require the permitting or registration of air pollution sources together with a description of the processes employed, fuels used, nature of emissions and other information considered necessary to evaluate the pollution potential of a source.
 - k. To prohibit, regulate or control, as specifically provided in CHAPTER 030, the installation, alteration, or establishment of any source capable of causing air pollution.
 - l. To issue or deny all requests or applications for a variance or waiver from any of the requirements of these regulations after due consideration of the recommendations of the Hearing Board and Control Officer.
 - m. To require the submission of preliminary plans and specifications and other information as the District Board of Health deems necessary to process permits required by these regulations.
 - n. To enter into and inspect, at any reasonable time, any premises containing an air contaminant source or a source under construction for the purpose of ascertaining the state of compliance with these regulations.
 - o. To hold any hearing as authorized in Chapter 445B of the Nevada Revised Statutes.
 - p. To review recommendations of the Hearing Board and to take such additional evidence as the District Board of Health deems necessary or to remand to the Hearing Board for such evidence as the District Board of Health may direct on any matters arising under these regulations.
 - q. To require elimination of devices or practices which cannot be reasonably allowed without generation of undue amounts of contaminants.

- r. To specify the manner in which incinerators may be constructed and operated.
- s. To delegate all above powers, except paragraphs 020.000.A.2.a, b, f, o, and p to the Control Officer or his representatives as may be necessary to implement these regulations.
- t. To appoint by resolution, or other appropriate action of the Board of Health, a Hearing Board consisting of seven (7) members who are not employees of the State of Nevada or any political subdivision of the State of Nevada, or which one (1) member must be an attorney admitted to practice law in the State of Nevada, or which one (1) member must be a professional engineer registered in the State of Nevada and one (1) member shall be licensed in Nevada as a general engineering contractor or a general building contractor as defined by NRS 624.215. All members of said Hearing Board shall be appointed to the terms as specified in NRS 445B.275.
- u. To institute, in any court of competent jurisdiction, legal proceedings to compel compliance with these regulations and the Nevada Revised Statutes pertaining to the emission of air contaminants into the atmosphere within the territorial limits of the Health District.

3. MODIFICATION OF REGULATIONS

- a. The District Board of Health may, in granting any petition for a variance or waiver of the requirements of these regulations, pursuant to the authority and restrictions contained in Chapter 445B of the Nevada Revised Statutes, impose appropriate conditions upon any applicant for said waiver or variance and may revoke the variance for failure of said applicant to comply therewith.

4. ACTIONS

- a. The District Board of Health may conduct any hearings and issue any orders respecting violations of these regulations, or any orders issued by the Control Officer, or take any other action authorized in Chapter 445B of the Nevada Revised Statutes.

5. DECISIONS

- a. All decisions and final orders of the District Board of Health shall become effective not less than thirty (30) days after they are issued, unless:
 - (1) A rehearing is granted by said Board, which will have the effect of staying the decision, order, or final action of said Board until a final decision, order, or final action is taken.
 - (2) It is determined that an emergency exists which justifies an earlier effective date, in which event the decision, order or action shall become effective at the time indicated by the Board.

6. INJUNCTIVE RELIEF

- a. Upon the failure or refusal of a person to comply with any order, decision, or other final action of the District Board of Health, pursuant to the authority conferred on said Board in Chapter 445B of the Nevada Revised Statutes, an action may be filed in the Second Judicial District Court of the State of Nevada to restrain and enjoin such person or persons from engaging in further acts violating said order, decisions, or action. However, nothing contained herein shall restrict the right of the District Board of Health to seek appropriate injunctive relief prior to the entry of any formal order or decisions pursuant to this Section.

7. ADOPTING, AMENDING REGULATIONS

- a. Before the adoption or amending of any regulation, the District Board of Health shall hold a public hearing. Notice of said hearing shall be given in any newspaper, qualified pursuant to the provisions of Chapter 238 of the Nevada Revised Statutes, once a week for three (3) weeks.

SECTION B - CONTROL OFFICER

1. POWERS AND DUTIES

- a. The Control Officer, or their designated agent or representative, shall enforce the provisions of these regulations in their name, or in the name of the District Board of Health, in any one or combination of the following ways:
 - (1) By issuing a written notice of violation, delivered personally or by registered or certified mail, to any person if reasonable cause exists to believe said person is violating these regulations.
 - (2) By issuing a warning to any person suspected of violating these regulations and by giving said person an opportunity to correct the cause of said violation prior to issuing a notice of violation or citation and referring the matter to the District Board of Health or proper prosecuting authority in the Health District.
 - (3) By requesting the District Attorney of the County of Washoe, or other proper agency, person or prosecuting authority in the Health District, to institute appropriate criminal, civil or administrative proceedings against the person or persons responsible for violation of any of these regulations.
 - (4) By requesting the District Board of Health to levy an appropriate administrative fine against any person found to have violated any of these regulations.
 - (5) By reviewing each variance to ascertain if the variance holder is meeting all provisions of the variance or dates set forth in the compliance schedule; if they are not met, the Control Officer may notify the variance holder personally or by registered or certified mail to this effect and may suspend or revoke any variances or reject any schedule of compliance involved with said infractions.
 - (6) By requesting the District Board of Health to institute all necessary and proper legal proceedings authorized by law to carry out the purposes of these regulations and purposes of Chapter 445B of the Nevada Revised Statutes, including injunctive relief.

2. INVESTIGATION OF SOURCES

- a. The Control Officer, or their designated agent or representative, shall at any reasonable time require from any person in charge of or responsible for any source that is discharging or may discharge air contaminants into the atmosphere such information or analysis that will disclose the type or nature of control equipment that is or ought to be in use. In addition, the Control Officer may do the following:
 - (1) Require any information produced in accordance with these regulations to be certified by a professional engineer registered in the State of Nevada.
 - (2) Designate any authorized agent or employee of the Health District to make an independent study and report as to the nature, extent, quantity, and degree of air contaminants which are or may be discharged from any source. Said agent or employees shall have authority to inspect work practices and techniques of operation, any article, machine, equipment, contrivance, or structure necessary to make a complete study and report of such source.
 - (3) Enter any facility during any hour in which the facility is open for business, and review and copy any records required under the permit or necessary to determine compliance with the terms of the permit.
- b. The Control Officer, or their authorized agent or representative, shall, whenever they have reason to believe that an emission is occurring that is in violation of these regulations require any person in charge of or responsible for any source of said emission to make or have made tests to determine the degree of emission of air contaminants from said source. In this connection, the Control Officer may do the following:
 - (1) Specify the testing methods to be used, if said methods are in accordance with good professional practice,
 - (2) Observe all testing,
 - (3) Require all tests to be conducted by reputable and qualified personnel, and
 - (4) Require that the Control Officer be given a copy of the test results in writing, signed by the person responsible for said test.

- c. The Control Officer may conduct tests during business hours of emissions of air contaminants from any source to assure compliance. Upon request of the Control Officer the person responsible for the source to be tested shall provide necessary holes in stacks or ducts and scaffolding and such other safe and proper sampling and testing facilities, exclusive of instruments and sensing devices, as may be necessary for proper determination of the degree of emission of air contaminants.

3. PUBLIC NOTIFICATION

- a. The Control Officer will notify the public regularly of times or places in which any ambient air quality standard was exceeded during any portion of the preceding calendar year.
- b. The Control Officer will advise the public of the health hazards associated with exceedance of an ambient air quality standard.
- c. The Control Officer will seek to increase public awareness of:
 - (1) Measures that can be taken to prevent an ambient air quality standard from being exceeded.
 - (2) Ways in which the public can participate in regulatory and other efforts to improve air quality.

SECTION C - AIR POLLUTION CONTROL HEARING BOARD

1. HEARING BOARD CREATION AND ORGANIZATION

- a. 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:
 - (1) The Air Pollution Control Hearing Board consists of seven (7) members who are not employees of the state or any of its political subdivisions.
 - (2) One (1) member of the Board shall be an attorney admitted to practice law in Nevada.
 - (3) One (1) member shall be a professional engineer registered in Nevada.
 - (4) One (1) member shall be licensed in Nevada as a general engineering contractor or a general building contractor as defined by NRS 624.215.
- b. Each term shall be for a period of three (3) years.
- c. The Hearing Board shall select a chair, vice-chair, and such other officers as it deems necessary. Officers of the Board shall serve at the pleasure of the Hearing Board.
- d. A majority of the members of the Hearing Board constitutes a quorum and a majority of those present must concur in any decision.
- e. Subject to the approval of the District Board of Health, the Hearing Board may adopt a manual of procedure to govern its operation.
- f. Any member appointed by the District Board of Health may be removed for cause upon majority vote of the total membership of the District Board of Health. If the District Board of Health determines after hearing that cause for removal exists, it shall remove the member and appoint a member with appropriate qualifications to fill the unexpired term of the member removed. Cause for removal includes:
 - (1) Unjustified absence from more than two (2) consecutive meetings of the Air Pollution Control Hearing Board.
 - (2) Failure to adhere strictly to the provisions contained in these regulations.

2. HEARING BOARD JURISDICTION

- a. Any person may bring an appeal to the Hearing Board, if said person has been aggrieved in any of the following ways:
 - (1) By the issuance, denial, suspension, or revocation of any permit required by these regulations.
 - (2) Whenever the Control Officer, or their authorized representative, has issued, modified, or rescinded any order, or suspended or revoked any variance.
 - (3) By the issuance of a Notice of Violation, either with or without a contained order.
 - (4) Whenever the Control Officer rejects or requires additional information or testing before approval of any application or Environmental Impact Assessment or study.
 - (5) By the imposition or amendment of any condition in conjunction with the issuance, renewal, or modification of any permit required by these regulations.
- b. The Hearing Board may also receive evidence and make appropriate recommendations to the District Board of Health on any matter referred to said Hearing Board by the Control Officer, the District Board of Health, or as provided for in the Nevada Revised Statutes.
- c. All petitions for variances authorized or permitted under these regulations shall first be considered by the Hearing Board, which shall make appropriate recommendations on such petitions to the District Board of Health.
- d. After receiving evidence and conducting a hearing as to all proper matters brought before the Hearing Board as provided in these regulations, said Hearing Board shall forward its findings and recommendations to the District Board of Health for final decision, except in cases of the renewal of a variance, in which event the findings and recommendations of the Hearing Board shall constitute "final action" under these regulations.

3. APPEAL PROCEDURE

- a. All appeals to the Hearing Board shall be initiated by the filing of a written notice of appeal. All other requested matters to be heard by the Hearing Board shall be initiated in writing and served or delivered on the Chair of the Hearing Board. The Notice of Appeal Must:
 - (1) Be received by the department within 10 days of receiving any order or Notice of Violation issued by the Control Officer or his authorized representative, has had any permit as required by these regulations issued, denied renewed, suspended, or revoked, or other action taken by the Control Officer described in paragraph 020.000.C.2.
 - (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 provided by the department, including original signature (no copies). Form must be mailed or delivered to the department front desk.
- b. Except as provided in paragraph 020.100.C.1., the Hearing Board shall meet within sixty (60) days after the receipt of any appeal or service of any written request on the Chair of the Hearing Board for the purpose of conducting a hearing and receiving evidence. The Chair or their authorized representative shall specify the time and place for the Hearing Board Meeting. In connection with any appeal or other matter before the Hearing Board, the following shall apply:
 - (1) The Chair or Vice-Chair of the Hearing Board may issue subpoenas to compel attendance of any person at any hearing in connection with any appeal or other matter being considered by the Hearing Board and may require the production of books, records and other documents and materials at the hearing.
 - (2) The Chair, Vice-Chair, or authorized representative of the Hearing Board shall administer oaths to all persons appearing at and testifying before the Board, and any Board member may examine witnesses at any hearing before the Board.
 - (3) 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.
 - (4) The parties shall present their cases through the sworn testimony of witnesses and exhibits, with the department proceeding first.
 - (5) All decisions and recommendations along with the transcripts and evidence of any hearing conducted by the Hearing Board shall be transmitted to the Chair of the District Board of Health and shall be included in the records of the District Board of Health after the District Board of Health reaches a final decision on any matter referred by the Hearing Board.
 - (6) The Hearing Board may provide by rule the manner in which an appeal can be taken from the recommendation of the Hearing Board to the District Board of Health, upon approval by the District Board of Health.

4. JUDICIAL REVIEW

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

5. VARIANCE PROCEDURE

- a. All sources, both new and existing, must operate or plan to operate in compliance with these regulations. If immediate compliance is not possible, a variance must be obtained prior to operations of the source from the District Board of Health, in accordance with the following procedures:
 - (1) The owner, operator, or any person responsible for any source of air contaminants, or any person who desires to establish such a source, shall petition the Hearing Board for a variance from these regulations upon forms for this purpose provided by the Health District.
 - (2) If an existing source requires lengthy or extensive remodeling to come into compliance, a Schedule of

Compliance must be submitted to the Hearing Board stating interim and final compliance dates.

- (3) Each petition for a variance from these regulations shall include such information as the Control Officer, Hearing Board, or District Board of Health deems necessary to facilitate the equitable and speedy determination of the matter presented to the Hearing Board. In addition to any other stipulations that may be required by these regulations all petitions for variances from these regulations shall state briefly the following:
 - (a) The sections of these regulations from which the variance is sought.
 - (b) A brief summary of the facts indicating why compliance with said section or sections is not possible.
 - (c) If possible, the period of time for which the variance is sought.
 - (d) The requirements which the petitioner is able to meet and the date on which said petitioner can comply with such requirements (Schedule of Compliance).
- b. The Hearing Board may recommend a variance only if, after a hearing on due and proper notice, it finds from a preponderance of evidence that:
 - (1) The emissions occurring or proposed to occur do not endanger or tends to endanger the health or safety of persons living in the jurisdiction of the Health District; and
 - (2) Compliance with these regulations would produce serious hardship on the petitioner without equal or greater benefits to the public; and
 - (3) Owners of the property in the general vicinity of the proposed emission would not be adversely affected by the emissions.
- c. Nothing contained herein shall prevent the Hearing Board from recommending a variance with appropriate conditions imposed on the petitioner or applicant, together with a recommendation that any variance issued be revoked upon noncompliance with said conditions or time schedules.
- d. The Hearing Board may renew a variance previously granted by the District Board of Health only under circumstances and upon conditions which justified its original granting. Applications for any renewal of a variance from these regulations must be made at least sixty (60) days prior to expiration of variance to be renewed, and the Hearing Board shall give public notice of the application. If a protest is filed with the Hearing Board against the renewal, the Hearing Board shall hold a public hearing and shall not renew the variance unless it makes specific written findings of the acts which justify the renewal.

6. VARIANCE LIMITATIONS

- a. In addition to any other limitations and conditions contained in these regulations, the Hearing Board shall not recommend the issuance of any variance, except in accordance with the following limitations:
 - (1) If the variance is requested because no practical means is known or available for prevention, abatement, or control of the air pollution involved, the Hearing Board shall recommend the issuance of a variance only until such means become known and available.
 - (2) If the variance is requested because compliance with these regulations will require measures which, because of extent or cost, must be spread over a period of time, the Hearing Board may only recommend a variance after receiving an acceptable schedule of compliance, containing both interim and completion dates or may specify these dates themselves.
 - (3) The Hearing Board shall not recommend or issue a variance for any period of time to exceed one (1) year.
 - (4) The Hearing Board shall review at least once each year any variance granted in accordance with paragraphs (1) and (2) above in order to determine whether practical measures to control air contaminants have become available or required steps for compliance with the variance have been taken. (Also see paragraph 020.000.B.1.)
 - (5) Before renewal of any variance the Hearing Board shall obtain from the Control Officer or their authorized representative the status of the present variance and may only renew a variance if all provisions and dates

have been met.

- (6) Nothing contained herein shall be construed to entitle any person requesting a variance to obtain a recommendation from the Hearing Board as to the granting or renewal of a variance as a matter of right.
- (7) If a variance is requested which will allow a source to emit air pollutants into the atmosphere such that the National Ambient Air Quality Standards may not be attained or maintained, the Hearing Board shall not recommend that such a variance be permitted beyond the earliest applicable date, specified in the approved State Implementation Plan, for the attainment of the applicable National Ambient Air Quality Standard.
- (8) No variance may be issued to violate any applicable requirement, terms or requirements of the Clean Air Act or regulations published in 40 CFR.

PROPOSED DRAFT
September 8, 2023

SECTION D - CONFIDENTIAL INFORMATION

1. As used in this section "confidential information" means information or records which:
 - a. Relate to dollar amounts of production or sales; or
 - b. Relate to process or production unique to the owner or operation; or
 - c. Contain other proprietary data which, if disclosed, would tend to affect adversely the competitive position of the owner or operator.
2. Information which cannot be certified as confidential includes:
 - a. The emission data concerning any air contaminant which has an ambient air quality standard or emission standard or which has been designated as a hazardous air pollutant by the United States Environmental Protection Agency.
 - b. The air pollution source operating permit, including the original application, any compliance plan, monitoring report, or schedule and variance.
 - c. The existence and disposition of any past citations, fines, or written warnings.
3. Any information received by the Hearing Board or the Control Officer which is certified in writing to be confidential by the owner or operator disclosing it, and is verified and approved in writing as confidential by the recipient must, unless the owner expressly agrees to its publication availability to the public, be used only:
 - a. In the administration or formulation of air pollution controls;
 - b. In compiling or publishing analyses or summaries relating to the condition of the outdoor atmosphere which do not identify any owner or operator, or reveal any confidential information;
 - c. In complying with federal statutes, rules, and regulations.
4. This section does not prohibit the use of confidential information in prosecution for the violation of any air pollution control statute, ordinance, or regulation. Any certification, if not otherwise designated as confidential pursuant to paragraph 020.000.D.3. shall be made public.
5. A person who discloses or knowingly uses confidential information in violation of this section is guilty of a misdemeanor and shall be liable in tort for any damages which may result from such disclosure or use.

SECTION E - TECHNICAL REPORTS AND FEES

1. The Control Officer may distribute copies of any documents, circulars, reports on technical work, and other reports prepared by the Control Officer, and any other information upon request by other governmental agencies or individuals or persons or groups requesting copies of same. The Control Officer may charge a fee for all such material not to exceed the cost of preparation and distribution of such documents. All monies collected pursuant to this Section shall be deposited in the office of the County Treasurer. All such released information must not be considered confidential as outlined in SECTION 020.000.D.

PROPOSED DRAFT
September 8, 2023

SECTION F - CIRCUMVENTION

1. It is unlawful for any person to build, erect, install, or use or cause to be built, erected, installed or use, any article, machine, equipment or other contrivance, or source, which conceals an emission or release of air contaminants into the atmosphere which would otherwise constitute a violation of these regulations. Nothing contained herein shall apply to cases in which the only violation is a violation of PART 040.055 of these regulations.

PROPOSED DRAFT
September 8, 2023

SECTION G - SEVERABILITY

1. If any provision of these regulations or the application thereof to any person or circumstance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the other provisions or applications of these regulations which can be given effect without the invalid provision or application, and to this end the provisions of these regulations are declared to be severable.

PROPOSED DRAFT
September 8, 2023

CHAPTER 020 - GENERAL PROVISIONS

PART 020.100 - VIOLATIONS OF REGULATIONS AND PENALTIES

SECTION A - VIOLATION OF REGULATIONS AND PENALTIES

1. VIOLATION OF REGULATIONS

- a. In determining whether a violation of these regulations has been committed, whether the violation was intentional or inadvertent is immaterial and does not constitute cause for dismissal of the case by the Hearing Board or District Board of Health. However, either board may consider whether the violation was intentional or inadvertent in determining the amount of the penalty to be imposed.

2. NOTICE OF VIOLATION

- a. Whenever the Control Officer or their authorized agent or representative has a reasonable cause to believe that any section of these regulations for the prevention, abatement or control of air pollution has been violated, the Control Officer shall cause written notice to be served upon the person or persons responsible for the alleged violations.
- b. The notice shall specify:
 - (1) The section or sections of these regulations alleged to be violated.
 - (2) The facts alleged to constitute the violation.
 - (3) Appeal procedure including any time limitations.
- c. The notice may include an order to take corrective action within a reasonable time, which shall be specified. Such an order becomes final unless, within ten (10) days after service of the notice, a person named in the order requests a hearing before the Hearing Board.
- d. With or without the issuance of an order pursuant to paragraph 020.100.A.2.c:
 - (1) The Control Officer or their authorized agent or representative may notify the person or persons responsible for the alleged violation to appear before the Hearing Board at a specified time and place; or
 - (2) The Hearing Board may initiate proceedings for recovery of the appropriate penalty set forth in paragraph 020.100.A.3.
- e. Nothing in this section prevents the Hearing Board or the Control Officer or their authorized agent or representative from making efforts to obtain voluntary compliance through warning, conference, or other appropriate means.

3. CIVIL FINES AND PENALTIES

- a. Except as provided in paragraphs 020.100.A.3.b. and c., a violation of any section of these regulations constitutes a major violation. Failure to comply with any condition of an operating permit constitutes a violation.
- b. Any person who commits a major violation of any section of these regulations, other than paragraph 020.100.A.5. and SECTION 020.000.D., is guilty of a civil offense and may be required to pay an administrative fine of not more than \$10,000.00 per day per violation. Each day of violation constitutes a separate offense. The District Board of Health may establish a compliance schedule as a part of any civil

finding either in lieu of, or in addition to, monetary penalties. Any fines assessed may be held in abeyance pending fulfillment of any compliance schedule.

- c. Violations of PARTS 040.030 (Dust Control), 040.035 (Open Burning), 040.040 (Fire Set for Training), 040.050 (Incinerator Emission), 040.051 (Wood-Burning Devices), 040.055 (Odorous Emissions), 040.080 (Gasoline Transfer and Dispensing Facilities), 040.200 (Diesel Engine Idling) or 050.001 (Emergency Episode Plan) of these regulations constitutes a minor violation unless there are three or more violations of any one of those PARTS by a person or entity, occurring within a period of twelve (12) consecutive months. All minor violations become major violations upon the occurrence of the third violation of the same PART within a period of twelve (12) consecutive months.

- (1) The first offense of a minor violation shall result in an administrative fine of \$500.
- (2) The second offense of a minor violation shall result in an administrative fine of \$1,000.
- (3) Administrative non-compliance of the PARTS described in this paragraph (i.e. incomplete Dust Log, on site permit missing) shall constitute a warning. Any further administrative non-compliance with conditions of the PARTS described in this paragraph may constitute a violation.

- d. Administrative fines shall be levied by appropriate action of the District Board of Health and recorded in its official minutes. The evidence or information on which the District Board of Health bases its action may include any one or more of the following:

- (1) The recommendation of the Control Officer, or their authorized agent or representative, based on any Notice of Violation served on any person in accordance with these regulations if that person has not appeared or requested a hearing before the Hearing Board.
- (2) The recommendation of the Hearing Board, based on its findings in connection with any appeal or other matter referred to the District Board of Health in accordance with these regulations.
- (3) Evidence presented before the District Board of Health by any person, public official, or representative of the District Board of Health, provided the person charged with violating any of these regulations has received reasonable notice (at least twenty (20) days in advance) of the hearing at which such evidence is to be presented and is provided an opportunity to present evidence in his defense at the hearing.

- e. Unless the District Board of Health bases its decision on the recommendations and/or findings of the Control Officer, their authorized agent or representative, or the Hearing Board as set forth in paragraphs 020.000.A.3.d.(1) and (2), the District Board of Health shall base its decision as to whether a violation of these regulations has occurred on the evidence presented before the District Board of Health pursuant to paragraph 020.100.A.3.d.(3). Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. Documentary evidence may be received in the form of authenticated copies or excerpts if the original is not readily available and, on request, parties shall be given an opportunity to compare the copy with the original. Each party may call and examine witnesses, introduce exhibits, cross-examine opposing witnesses on any matter relevant to the issues even though such matter was not covered in the direct examination, impeach any witness regardless of which party first was called to testify and rebut the evidence against them. The District Board of Health may take notice of judicially cognizable facts and/or recognized technical or scientific facts within the District Board of Health's specialized knowledge. All decisions of the District Board of Health respecting administrative fines shall be in writing or notice of the District Board of Health's decision shall be forwarded to the aggrieved party at their last known mailing address.

- f. In those cases where it is determined by the District Board of Health that a violation of the Regulations has occurred, the District Board of Health, at its discretion, may choose to waive the fine for a first violation, levy any fine providing it does not exceed the appropriate range limitation, require use of other mitigation methods or schedules of compliance and, in emergency situations, require a stop work order to be issued and/or any other combination of remedies to bring about compliance with the regulations.

- g. All administrative fines collected by the District Board of Health pursuant to this section shall be deposited in the school district fund of Washoe County.

- h. All monetary fines assessed pursuant to violations of PARTS 030.105 or 030.107 for improper asbestos containing material removal, shall be for an amount greater than the estimated savings obtained by the illegal removal.

4. INJUNCTIVE RELIEF

- a. In addition to any remedy at law hereunder, the Control Officer may apply to a court of competent jurisdiction for any other equitable and injunctive relief to enforce compliance with, or to restrain violation of any provisions of these regulations or to any regulation or rule made and adopted pursuant thereto.

5. INTERFERENCE WITH PERFORMANCE OF DUTY

- a. No person shall refuse entry or access to any authorized representative of the District Board of Health, upon presentation of appropriate credential, who requests entry to inspect any property, premises or place on or at which an air contaminant source is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with these regulations. No person shall obstruct, hamper or interfere with any such inspection. If entry is refused, or prior to attempting to enter, such officer may apply to any magistrate for a search warrant. The magistrate shall issue the warrant if he believes from the supporting affidavit or affidavits that there is probable cause to believe that a source of air contaminant exists or is being constructed or operated on the premises to be searched.

PROPOSED PART 030
September 8, 2010

SECTION B - STOP WORK ORDER

1. A stop work order may be issued at any time by the Control Officer upon his or her determination that there has been a violation with any of the provisions of these regulations, any applicable requirement, or any condition of the permit with the potential to impact public health.
2. A person served with a stop work order:
 - a. Shall immediately stop all activities specified in the stop work order.
 - b. May apply to the Control Officer for its revocation at any time, setting forth the facts upon which they believe that the reasons for the issuance of the stop work order no longer exist.
 - c. May apply to the Hearing Board for its revocation at any time, setting forth the facts upon which they believe that the reasons for the issuance of the stop work order no longer exist.
3. Revocation Procedure: Any person aggrieved by the issuance of a stop work order may apply to the Control Officer for its revocation, setting forth the reasons the stop work order is no longer valid. The Control Officer must take final action on an application for the revocation of a stop work order within 24-hours after the receipt of an application. If the Control Officer finds that the reasons for the issuance of the stop work order no longer exist, the Control Officer shall withdraw the order promptly. If the Control Officer finds that the reasons for the issuance of the stop work order still exist, or that other reasons exist for continuing a stop work order in effect, the Control Officer shall, within 24 hours, serve a written statement of their reasons for so finding.
4. Appeal Procedure: Any person aggrieved by the issuance or affirmance of a stop work order may appeal to the Hearing Board to review the actions of the Control Officer or their authorize representative in issuing the stop work order. An appeal to the Hearing Board does not vacate the effect of the stop work order. A stop work order may only be removed or vacated by the Control Officer, the District Board of Health, or court action.

SECTION C - PERMIT SUSPENSION OR REVOCATION

1. Permits or authorizations are subject to suspension or revocation for violation of these regulations. If the Control Officer determines that a permittee is in violation or has had two (2) or more written violations in a 365-day period, they may serve upon the permittee, at the address given on the application, through personal service or certified mail, a notice of suspension or revocation, setting forth in detail the violations charged. The suspension or revocation becomes final and effective ten (10) days after service of the written notice and the permit shall thereupon be surrendered to the Control Officer unless the permittee files with the Hearing Board, in writing, within ten (10) days of receipt of the notice of suspension or revocation pending the decision of the District Board of Health. The Hearing Board shall meet to hear the appeal no later than thirty (30) days after receiving the appeal.
2. If a permit or authorization is suspended, reinstatement may be accomplished by submitting to the Control Officer sufficient evidence for him to determine if the reason for which the permit was suspended has been corrected.
3. If a permit or authorization is revoked, all fees paid shall be forfeited. Reinstatement of a revoked permit or authorization must be accompanied by a new application and payment of the appropriate fee. In such cases, the date of the reinstatement becomes the issuance date.
4. If the Control Officer determines that the emissions or operations of a source represent a hazard to public health, or an imminent risk to public welfare, an emergency closure order or an emergency suspension of the permit or authorization may be issued. The Control Officer's decision shall be based upon the best medical and scientific information available at the time. The operator of any source so ordered shall cease all emissions as soon as safely practicable, and shall not resume operations until the cause of the hazard or risk has been eliminated, and the Control Officer approves of the resumption of operations. An emergency closure order issued under these regulations may be immediately appealed to the District Board of Health, and the Board shall provide the opportunity for a hearing within three (3) working days after receiving the appeal. If no hearing is provided within that time, the operator may immediately seek judicial review of the suspension order.
5. A permit or authorization may be suspended if the permittee fails to pay administrative fines levied for violations of these regulations. The suspension becomes effective 45 days after the District Board of Health has upheld the fine and may not be appealed. The permit will be reinstated only after any and all administrative fines have been paid in full.

CHAPTER 020 - GENERAL PROVISIONS

PART 020.200 - FEES AND FEE SCHEDULES

SECTION A - FEES AND FEE SCHEDULES

1. BUILDING PLAN REVIEW. The fee for reviewing and processing of building plans is as set by the District Board of Health.
2. AIR QUALITY APPLICATIONS. The fee for processing an air quality source permit or authorization application is as set by the District Board of Health. Separate fees for emission sources requiring Part 70 Permits, shall be set by the District Board of Health.
3. GENERAL SOURCE PERMITTING. The fee for processing an air quality general source permit or authorization application is as set by the District Board of Health.
4. ANNUAL ADMINISTRATIVE, EMISSION, AND EQUIPMENT. Sources issued a permit or authorization shall pay an annual administrative, emission, and/or equipment fee as set by the District Board of Health. The full annual administrative, emission, and/or equipment fee must be paid no later than 30 days after the Control Officer or their designated representative has invoiced the fee.
5. AIR TOXICS. Any source which emits more than one ton per year of Hazardous Air Pollutants shall be assessed an annual fee set by the District Board of Health. For sources also currently requiring operating permits, the fees will be assessed concurrently with those fees.
6. ASBESTOS. Persons performing asbestos removal operations under the requirements of the National Emission Standards for Hazardous Air Pollutants (NESHAP) is as set by the District Board of Health. All inspection fees will be assessed at the time of NESHAP notification.
7. WOOD-BURNING DEVICE. The fee for processing a wood-burning device permit, registration, and/or authorization is as set by the District Board of Health.
8. DUST CONTROL PLAN. Fees for the processing of dust control applications is as set by the District Board of Health for projects where the area disturbed equals or exceeds one acre.
9. PRESCRIBED BURNING. The fee for processing a prescribed burn permit, registration, and/or authorization is as set by the District Board of Health.
10. LATE PERMIT FEE ASSESSMENT. The owner or operator of a source who does not submit the annual administrative, emission, and/or equipment fee by the specified due date may be assessed a late penalty in the amount of 25 percent (25%) of the amount of the total fee due. The late fee must be paid in addition to the annual fee.
11. ANNUAL ADJUSTMENT. Fees shall be adjusted annually by an amount equal to the Federal Consumer Price Index unless the District Board of Health takes action otherwise. This increase shall be made before the beginning of each fiscal year.

CHAPTER 020 - GENERAL PROVISIONS

PART 020.300 - TESTING AND REPORTING

SECTION A - SAMPLING AND TESTING

1. In addition to any other testing requirements provided for in these regulations, the Control Officer or the District Board of Health may require any person to conduct or make arrangements to conduct testing of any source to determine compliance with these regulations. In the event such testing is required, the Control Officer may do any of the following:
 - a. Witness all tests as required by this section.
 - b. Determine whether or not generally recognized methods of measurement have been used to determine the quantity of emissions from the source being tested and if not additional testing may be required.
 - c. Determine the point or points at or within the source where testing shall be done, to determine the actual discharge into the atmosphere.
 - d. Make any modifications or adjustments in the testing requirements so as to be compatible with specific sampling conditions or needs as shown by good practice, judgement and experience.
 - e. Require the cost of any testing to be paid by the owner or person responsible for any source of air contaminants.
 - f. Require additional tests of any source of air contaminants tested in accordance with this section, provided such separate or additional tests shall be conducted on behalf of the District Board of Health and at said Board's expense.
 - g. Require in writing the construction or creation of sampling holes, safe scaffolding and related facilities, to be provided at the expense of the owner or person responsible for any source of air contaminants being tested in accordance with this section.
 - h. Require the owner or person responsible for any source of any air contaminants being tested pursuant to this section to provide a suitable power source to the point of testing, so that sampling instruments can be operated as required.
 - i. All information gathered during any testing operation conducted pursuant to this section will be provided to both the Control Officer, their authorized agent or representative, or the District Board of Health and the person or persons who own or control or are responsible for any source of air contaminants that are tested pursuant to this section.

SECTION B - TESTING

1. EXCESS EMISSIONS: SCHEDULED MAINTENANCE, TESTING OR REPAIRS; NOTIFICATION OF CONTROL OFFICER; MALFUNCTION, UPSET, START-UP, SHUTDOWN OR HUMAN ERROR.
 - a. Scheduled maintenance, testing, or repairs which may result in excess emissions of regulated air pollutants prohibited by this regulation and/or permit terms and conditions must be approved in advance in writing by the *Control Officer* and performed during a time designated by the *Control Officer* as being favorable for atmospheric ventilation.
 - b. Each owner or operator shall notify the *Control Officer* of the proposed time and expected duration at least 30 days before any scheduled maintenance or testing which may result in excess emissions of regulated air pollutants prohibited in this regulation. The scheduled maintenance or testing must not be conducted unless the scheduled maintenance or testing is approved in writing by the *Control Officer*.
 - c. Each owner or operator shall notify the *Control Officer* of the proposed time and expected duration at least 24 hours before any scheduled repairs which may result in excess emissions of regulated air pollutants prohibited by this regulation and/or permit terms and conditions. The scheduled repairs must not be conducted unless the scheduled repairs are approved in writing by the *Control Officer*.
 - d. Each owner or operator shall notify the *Control Officer* of any deviations from the requirements of a permit or these regulations within 15 calendar days. The report to the *Control Officer* shall include the probable cause of all deviations and any action taken to correct the deviations.
 - e. Each owner or operator shall notify the *Control Officer* of any excess emissions within 24 hours after any malfunction or upset of the process equipment, or equipment for controlling pollution, or during start-up or shutdown of that equipment.
 - f. Each owner or operator shall provide the *Control Officer*, within 15 days after any malfunction, upset, start-up, shutdown or human error which results in excess emissions, sufficient information to quantify the excess emissions. The information must include at least the following:
 - (1) The identity of the stack or other point of emission, or both, where the excess emissions occurred.
 - (2) The estimated magnitude of the excess emissions expressed in opacity, or in the units of the applicable limitation on emissions, and the operating data and methods used in estimating the magnitude of the excess emissions.
 - (3) The time and duration of the excess emissions.
 - (4) The identity of the equipment causing the excess emissions.
 - (5) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of the malfunction.
 - (6) The steps taken to limit the excess emissions.
 - (7) Documentation that the equipment for controlling air pollution, process equipment or processes were at all times maintained and operated, to a maximum extent practicable, in a manner consistent with good practice for minimizing emissions.
 - g. Each owner or operator shall ensure that any notification or related information submitted to the *Control Officer* pursuant to this section is provided in a format specified by the *Control Officer*.
 - h. Nothing in this section limits the authority of the *Control Officer* to institute actions under Sections 113 and 303 of the Act or to exercise his or her authority under these regulations.

SECTION C - ANNUAL EMISSIONS REPORTING

1. Any owner or operator subject to the provisions of these regulations shall submit yearly reports including, but not limited to, throughput, production, fuel consumption, hours of operation, and emissions. These reports will be submitted to the Control Officer for all emission units/systems specified on the permit. The completed report must be submitted to the Control Officer no later than March 31 annually for the preceding calendar year.
 - a. A statement indicating whether all information contained in the annual emissions report is accurate and true.

PROPOSED DRAFT
September 8, 2023

**Air Quality Management Division
Public Comment Form**

Contact Information:

Name _____

Address _____

Phone _____

E-Mail _____

How did you hear about this?

- E-mail
- AQMD Website
- Social Media/Press Release
- Word of mouth
- Other

Public Comment:



Nevada Chapter

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September 1, 2023

Francisco Vega
Director, Air Quality Management Division
Washoe County Health District
1001 E. Ninth St. Bldg. B
Reno, NV 89512

Via Electronic Mail

Mr. Vega,

Thank you for meeting with members of the Associated General Contractors (AGC) on Friday, August 25, to discuss proposed changes to Chapter 20 of the Washoe County Health District Regulations. We appreciate your willingness to address our concerns and your insight into the process.

Our primary concerns are specific to Part 020.100 of the draft regulation. The only clarification required in Part 020.000 of the draft regulation is in Section C, Subsection 3b should be amended to read "The Hearing Board shall meet within sixty (60) days after the receipt of any appeal or service of any written request on the Chair of the Hearing Board for the purpose of conducting a hearing and receiving evidence, *except as described in Part 020.100 Section C Subsection 1.*" (emphasis added)

Modifications to Section 020.100 should include, in Section A, Subsection 3b, proposed language states "Failure to comply with any condition of an operating permit constitutes a violation." As we discussed during our meeting, we propose amending the language to state, "Any administrative non-compliance of an operating permit (i.e. incomplete Dust Log, On Site Permit missing) shall constitute a warning. Failure to comply with two warnings shall constitute a violation. Any substantive failure to comply with conditions of an operating permit shall constitute a violation."

Secondly, Section A, Subsection 3c states "All minor violations become major violations upon the occurrence of the third violation of the same section within a period of 60 consecutive months." We recommend amending the proposed regulation to state, "All minor violations for a temporary permit for minor disturbances become major violations upon the occurrence of the third violation of the same section within a period of 12 consecutive months. For permittees of a major disturbance site, minor violations become major violations upon the third occurrence of the same section within a period of 60 consecutive months." It is our opinion that this will ensure opportunities to inspect facilities within the five-year window for permanent locations, and treat temporary permits for dust control appropriately.

Mr. Francisco Vega
Page 2
September 1, 2023

Section A, Subsection 4 should be deleted in its entirety to ensure consistency with NRS 445B.640 and to minimize confusion with other sections of the draft regulation.

Section B, Subsection 2 should be amended to state, "A Stop Work Order may be issued at any time by the Control Officer upon his or her determination that there has been a violation ***with the potential to impact public health.***" (emphasis added)

Lastly, Section C, Subsection 5 of the proposed amendment states "A permit or authorization will be automatically suspended if the permittee committed five (5) or more violations of these regulations in a 365-day period." We recommend changing the word "will" to "may" to allow for the discretion of the investigators and supervisors to determine if the violations warrant a suspension of the permit. As we discussed, not all violations are substantive and may not warrant an automatic suspension of the permit.

Thank you for your attention to this matter. We appreciate your willingness to work with industry and address our concerns.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



Craig Madole
Chief Executive Officer



NEVADA PETROLEUM MARKETERS & CONVENIENCE STORE ASSOCIATION

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 - Jim Kuraisa.....1982/83
 - * Clair Haycock.....1981/82
 - * Archie Lani.....1980/81
 - * Cort Bishop.....1979/80
 - * Archie Lani.....1978/79
- *Deceased

September 1, 2023

Francisco Vega, PE, MBA
Director
Air Quality Management Division
1001 E. Ninth St. Bldg. B
Reno NV 89511

Sent Via Email

Dear Mr. Vega,

The following is a cursory review of proposed changes to Washoe County Air Quality Regulations by members of the Nevada Petroleum Marketers and Convenience Store Association.

It is our opinion after participating in one workshop and a meeting with AQMD senior staff that these proposed regulations revisions are written in such a manor that removes and or reduce discretionary authority of staff, hearing officers and boards including the commission in an attempt to avoid litigation by the regulated community.

Chapter 20 – General Provisions

020.000 – General Provisions

020.000 Section D (3): Our members believe the wording is unclear and confusing:

The owner/operator certifies information submitted is confidential and disclosing it would cause harm to the business. Then the recipient must verify and approve in writing the information as confidential. How is this done? Is the recipient qualified to make such a determination? Therefore, unless the recipient states the information is not confidential it will remain confidential unless authorized by the owner to release unless conditions a, b, and c occur.

020.100 – Violations of Regulations & Penalties

Section A3(a,b &c) Section A is entirely up to board discretion and overreaching the “shall’s” will remove all discretionary power from hearing boards, thus one size fits all. AQMD knows from

from experience who the air quality bad actors are, and violation regulations and penalties should be written in such a manor that violations escalate in penalty severity. By replacing “shall” with “may” AQMD staff and hearing panels may determine the severity, circumstances and intent of the violation.

“The first offense of a minor violation ~~shall~~ **may** result in...”

“The Second offense of a minor violation ~~shall~~ **may** result in...”

“shall pay a fine of not more than \$10,000 per day per violation...”

To read as, “... **may** pay a fine of not more than \$10,000 per day...”

While **Section A3(d-g)** does provide some discretion to staff and hearing panels it remains vague and lacks specificity in our members opinion. Listed below are examples:

“A stop work order may be issued at any time by the Control Officer upon his or her determination that there has been a violation of any of the provisions of these regulations, any applicable requirement or any condition of the permit...”

As written the control officer/designee is given unbridled discretion and authority to issue SWOs. Our members should be able to rely on specific criteria be used and known in advance by the regulated community so that business planning and actions can be taken to reduce or eliminate the chance a SWO would be issued.

In our opinion, changing the time frame for two minor violations with the third minor violation becoming a major violation in a 12-month period, to a 60-month period, is too onerous for gasoline station operators. Gasoline stations currently operate with stringent pollution prevention controls which are often very complicated with many mechanical parts and software driven monitoring components. Even with the utmost of diligent inspections, testing and monitoring, it is very likely that three minor violations would occur with a 60-month (5 year) period versus a 12-month (1 year) period.

We ask that the **12-month period** remain in place. We also request that AQMD and representative of the ‘permittees’ of gasoline stations work together to define “minor” violations.

Section B & C -Stop Work and or Permit Suspension: We request clarification on the verbiage in **Section B (1)** where it states, “if at any time PRIOR to issuing a permit of authorization, the Control Officer determines that the proposed construction, installation, operation, alteration, or establishment of a Stop Work order.” At what point in time can the Control Officer issue a Stop Work order?

We request that **Section C(5) – SUSPENSION OF PERMIT FOR REPEATED VIOLATIONS** be eliminated in its entirety. Automatic suspension of a permit is too onerous.

20.200 – Fees & Fee Schedules

Section A(10 & 11) – (10) - Change **be** assessed to **may** be assessed a late penalty in the amount of 25%. Subsection 11: Remove “shall” and replace with “may” increase.

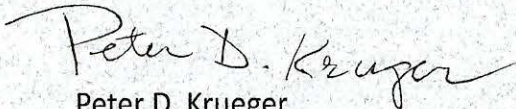
Government similar to business should justify cost increases to their customers. For the DBOH to have authority to increase fees tied to an undefined CPI index is wrong. Like fuel tax indexing this provision would remove all accountability from elected officials

020.300 – Testing & Reporting – No specific changes to recommend at this time but we reserve the right to provide suggested changes in the future.

Thank you for your attention to these recommendations by the members of our state association.

If you have any questions please contact me at peter@fuelingnevada.com or 775-721-6888.

Sincerely,



Peter D. Krueger

State Executive

Nevada Petroleum Marketers and Convenience Store Association

Comments from First Commentor:

Comment 1: Our primary concerns are specific to Part 020.100 of the draft regulation. The only clarification required in Part 020.000 of the draft regulation is in Section C, Subsection 3b should be amended to read "The Hearing Board shall meet within sixty (60) days after the receipt of any appeal or service of any written request on the Chair of the Hearing Board for the purpose of conducting a hearing and receiving evidence, *except as described in Part 020.100 Section C Subsection 1.*" (emphasis added)

AQMD Response: The AQMD has reviewed the comment and in an effort to add clarity and transparency, the AQMD will look to incorporate the comment into the revised regulation.

Comment 2: Modifications to Section 020.100 should include, in Section A, Subsection 3b, proposed language states "Failure to comply with any condition of an operating permit constitutes a violation." As we discussed during our meeting, we propose amending the language to state, "Any administrative non-compliance of an operating permit (i.e. incomplete Dust Log, On Site Permit missing) shall constitute a warning. Failure to comply with two warnings shall constitute a violation. Any substantive failure to comply with conditions of an operating permit shall constitute a violation."

AQMD Response: The AQMD has reviewed the comment and in an effort to add clarity and transparency, the AQMD will look to incorporate the comment into the revised regulation. Specifically, the AQMD has modified the revised rule language to require a warning for any initial administrative non-compliance.

Comment 3: Secondly, Section A, Subsection 3c states "All minor violations become major violations upon the occurrence of the third violation of the same section within a period of 60 consecutive months." We recommend amending the proposed regulation to state, "All minor violations for a temporary permit for minor disturbances become major violations upon the occurrence of the third violation of the same section within a period of 12 consecutive months. For permittees of a major disturbance site, minor violations become major violations upon the third occurrence of the same section within a period of 60 consecutive months." It is our opinion that this will ensure opportunities to inspect facilities within the five-year window for permanent locations, and treat temporary permits for dust control appropriately.

AQMD Response: The AQMD has reviewed the comment and in an effort to add clarity and transparency, the AQMD will look to incorporate the comment into the revised regulation. Specifically, the AQMD will keep current regulatory requirements regarding the number of minor violations prior to the issuance of a major violation.

Comment 4: Section A, Subsection 4 should be deleted in its entirety to ensure consistency with NRS 445B.640 and to minimize confusion with other sections of the draft regulation.

AQMD Response: The AQMD has reviewed the comment and in an effort to add clarity and transparency, the AQMD has removed the language.

Comment 5: Section B, Subsection 2 should be amended to state, "A Stop Work Order may be issued at any time by the Control Officer upon his or her determination that there has been a violation with the potential to impact public health." (emphasis added)

AQMD Response: The AQMD has reviewed the comment and in an effort to add clarity and transparency, the AQMD has revised the proposed language to include impacts to public health.

Comment 6: Lastly, Section C, Subsection 5 of the proposed amendment states "A permit or authorization will be automatically suspended if the permittee committed five (5) or more violations of these regulations in a 365-day period." We recommend changing the word "will" to "may" to allow for the discretion of the investigators and supervisors to determine if the violations warrant a suspension of the permit. As we discussed, not all violations are substantive and may not warrant an automatic suspension of the permit.

AQMD Response: The language described in the comment has been removed from the proposed revision to Chapter 020.

Comments from Second Commentor:

Comment 1: 020.000 Section D (3): Our members believe the wording is unclear and confusing:

The owner/operator certifies information submitted is confidential and disclosing it would cause harm to the business. Then the recipient must verify and approve in writing the information as confidential. How is this done? Is the recipient qualified to make such a determination? Therefore, unless the recipient states the information is not confidential it will remain confidential unless authorized by the owner to release unless conditions a, b, and c occur.

AQMD Response: The language in the referenced section is not proposed to be revised at this time and is consistent with Nevada Revised Statute (NRS) 445B.570.

Comment 2: 020.100, Section A3(a,b &c) Section A: is entirely up to board discretion and overreaching the "shall's" will remove all discretionary power from hearing boards, thus one size fits all. AQMD knows from experience who the air quality bad actors are, and violation regulations and penalties should be written in such a manner that violations escalate in penalty severity. By replacing "shall" with "may" AQMD staff and hearing panels may determine the severity, circumstances and intent of the violation.

- "The first offense of a minor violation ~~shall~~ **may** result in ... "
- "The second offense of a minor violation ~~shall~~ **may** result in ... "
- "shall pay a fine of not more. than \$10,000 per day per violation ... " To read as, "... may pay a fine of not more than \$10,000 per day ... "

AQMD Response: The AQMD has reviewed the comment and in an effort to add clarity and objectivity to air quality enforcement, the AQMD is recommending to retain the proposed language.

Comment 3: While Section A3(d-g) does provide some discretion to staff and hearing panels it remains vague and lacks specificity in our members' opinion. Listed below are examples:

- "A stop work order may be issued at any time by the Control Officer upon his or her determination that there has been a violation of any of the provisions of these regulations, any applicable requirement or any condition of the permit..."
- As written the control officer/designee is given unbridled discretion and authority to issue SWOs. Our members should be able to rely on specific criteria be used and known in advance by the regulated community so that business planning and actions can be taken to reduce or eliminate the chance a SWO would be issued.

AQMD Response: The proposed language regarding "Stop Work Order" in SECTION 020.100.B, has been revised to state "A stop work order may be issued at any time by the Control Officer upon his or her determination that there has been a violation with any of the provisions of these regulations, any applicable requirement, or any condition of the permit with the potential to impact public health". The change to the proposed revision has been made in an effort to provide clarity and transparency for the regulated community. In addition, any person aggrieved by the issuance of a stop work order may appeal the decision to the Control Officer or the Air Pollution Control Hearing Board.

Comment 4: In our opinion, changing the time frame for two minor violations with the third minor violation becoming a major violation in a 12-month period, to a 60-month period, is too onerous for gasoline station operators. Gasoline stations currently operate with stringent pollution prevention controls which are often very complicated with many mechanical parts and software driven monitoring components. Even with the utmost of diligent inspections, testing and monitoring, it is very likely that three minor violations would occur with a 60-month (5 year) period versus a 12-month (1 year) period.

- We ask that the 12-month period remain in place. We also request that AQMD and representative of the 'permittees' of gasoline stations work together to define "minor" violations.

AQMD Response: The AQMD has reviewed the comment and in an effort to add clarity and transparency, the AQMD will look to incorporate the comment into the revised regulation. Specifically, the AQMD will keep current regulatory requirements regarding the number of minor violations prior to the issuance of a major violation.

Comment 5: 020.100, Section B & C -Stop Work and or Permit Suspension: We request clarification on the verbiage in Section B (1) where it states, "if at any time PRIOR to issuing a permit of authorization, the Control Officer determines that the proposed construction, installation, operation, alteration, or establishment of a Stop Work order." At what point in time can the Control Officer issue a Stop Work order?

AQMD Response: Please refer to the response to comment provide under Comment #3 above.

Comment 6: We request that Section C(5) SUSPENSION OF PERMIT FOR REPEATED VIOLATIONS be eliminated in its entirety. Automatic suspension of a permit is too onerous.

AQMD Response: This language has been removed.

Comment 7: 020.200, Section A(10 & 11)-(10) - Change be assessed to may be assessed a late penalty in the amount of 25%. Subsection 11: Remove "shall" and replace with "may" increase.

AQMD Response: The AQMD is not proposing to change any of its current fees or fee structure under this proposed revision. With that understanding, the AQMD has reviewed the comment and in an effort to add clarity and transparency, the AQMD will look to incorporate the comment into the revised regulation.

Comment 8: 020.200, Paragraph 11: Subsection 11: Remove "shall" and replace with "may" increase.

- Government similar to business should justify cost increases to their customers. For the DBOH to have authority to increase fees tied to an undefined CPI index is wrong. Like fuel tax indexing this provision would remove all accountability from elected officials.

AQMD Response: The AQMD is not proposing to change any of its current fees or fee structure under this proposed revision. With that understanding, the AQMD will revise the proposed language to reflect the current process.