



**Washoe County Health District
Air Pollution Control Hearing Board
Meeting Minutes**

Members

Richard Harris, JD, PhD, Chair
Yvonne Downs, CEM, Vice Chair
Anthony Dimpel, P.E.
Paul Kaplan
Phil Schweber
Jim Kenney
Martin Breitmeyer

**Wednesday, February 16, 2022
6:00 p.m.**

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

1. Roll Call and Determination of Quorum

Mr. Harris called the meeting to order at 6:00 p.m.

The following members and staff were present:

Members Present: Richard Harris, JD, PhD
Yvonne Downs, CEM
Anthony Dimpel, PE
Paul Kaplan
Phil Schweber
Lee Squire

Members Absent: Martin Breitmeyer

Ms. Smith, Recording Secretary, verified a quorum was present.

Staff present: Francisco Vega, AQM Division Director
Josh Restori, Supervisor, Permitting & Compliance
Jeff Jeppson, Senior Air Quality Specialist
Janet Smith, CAP-OM, Administrative Secretary
Jessica Cabrales, Office Support Specialist

2. Pledge of Allegiance

Mr. Harris led the pledge to the flag.

3. Introduction of Board Members

The Hearing Board members introduced themselves, providing a brief synopsis of his/her professional background, advising whether his/her appointment was at-large or professional.

4. Public Comment

Mr. Harris opened the public comment period and asked if there was anyone present requesting an opportunity comment publicly. As there was no one wishing to speak, Mr. Harris closed the public comment period.

5. Nomination and Election of Chair

Mr. Harris called for any nominations for Chair of the Air Pollution Control Hearing Board. Mr. Squire nominated Mr. Harris as Chair. Ms. Downs seconded the nomination. There being no further nominations, nominations were closed. Mr. Squire moved that Mr. Harris be appointed as the Chair of the Air Pollution Control Hearing Board. Ms. Downs seconded the motion, which carried unanimously for approval.

6. Nomination and Election of Vice Chair

Mr. Harris called for nominations for Vice Chair of the Air Pollution Control Hearing Board. Mr. Harris nominated Ms. Downs as Vice Chair. Mr. Squire seconded the nomination. There being no further nominations, nominations were closed. Mr. Harris moved that Ms. Downs be appointed as the Vice Chair of the Air Pollution Control Hearing Board. Mr. Squire seconded the motion, which carried unanimously for approval.

7. Approval of Agenda

Mr. Harris called for approval of the agenda of the Air Pollution Control Hearing Board for February 16, 2022. Mr. Squire moved that the agenda be approved as presented. Ms. Downs seconded the motion which carried unanimously for approval.

8. Approval of Draft Minutes

Mr. Harris called for a motion to approve of the draft minutes of July 13, 2021. Mr. Squire moved that the minutes of the July 13, 2021, meeting of the Air Pollution Control Hearing Board be approved as received. Ms. Downs seconded the motion, which carried unanimously for approval.

9. Recommendation of Staff to Uphold Notice of Violation No. AQMV21-0047 with an associated administrative fine of \$1,000.00 issued to Sunstate Equipment Rental Co., LLC by the Air Quality Management Division and Appealed to the Air Pollution Control Hearing Board. (FOR POSSIBLE ACTION)

(See attached minutes)

10. Recommendation of Staff to Uphold Notice of Violation No. AQMV21-0049 with an associated administrative fine of \$1,000.00 issued to Q&D Construction by the Air Quality Management Division and Appealed to the Air Pollution Control Hearing Board. (FOR POSSIBLE ACTION)

(See attached minutes)

11. Recommendation of Staff to Uphold Notice of Violation No. AQMV21-0050 with an associated administrative fine of \$1,000.00 issued to Q&D Construction by the Air Quality Management Division and Appealed to the Air Pollution Control Hearing Board. (FOR POSSIBLE ACTION)
(See attached minutes)

12. Board Comment

As there were no Hearing Board member wishing to present comments, Mr. Harris closed the Board comment period.

13. Public Comment

Mr. Harris opened the public comment period and asked if there was anyone present requesting an opportunity to present a public comment. As there was no one wishing to speak, Mr. Harris closed the public comment period.

14. Adjournment

Mr. Harris adjourned the meeting at 7:45 p.m.

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

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

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

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

Posting of Agenda; Location of Website:

Pursuant to NRS 241.020, and AB253 (effective May 31, 2021), this notice has been posted at the Washoe County Health District Building (1001 East Ninth Street, Building B, Reno, NV 89512) and electronically at the following locations:
Washoe County Health District Website <https://www.washoecounty.us/health>
State of Nevada Website: <https://notice.nv.gov>

How to Get Copies of Agenda and Support Materials: Supporting materials are available to the public at the Washoe County Health District located at 1001 E. 9th Street, in Reno, Nevada. The Administrative Secretary to the Air Pollution Control Hearing

Board is the person designated by the Washoe County Health District to respond to requests for supporting materials. The Administrative Secretary is located at the Washoe County Health District and may be reached by telephone at (775) 784-7200 or by email at AQMDAdmin@washoecounty.us. Supporting materials are also available at the Washoe County Health District Website www.washoecounty.gov/health pursuant to the requirements of NRS 241.020.

**CASE NO. 1325 – AS REVIEWED BEFORE THE AIR POLLUTION CONTROL
HEARING BOARD**

In Re: Appeal of SUNSTATE EQUIPMENT)
RENTAL COMPANY, LLC, for violation of)
Section 040.080 (Gasoline Transfer and)
Dispensing Facilities), Subsection C. (Standards))
1.d. (Gasoline Transfer into Stationary Storage)
Containers (Phase II)), of the Washoe County)
District Board of Health Regulations Governing)
Air Quality Management.)

At a hearing of the Air Pollution Control
Hearing Board at Wells Avenue and Ninth
Street, Reno, Nevada
February 16, 2022

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

ABSENT: Martin Breitmeyer

STAFF: Francisco Vega, PE, Division Director
Joshua Restori, Supervisor, Permitting and Compliance
Jeff Jeppson, Senior Air Quality Specialist
Janet Smith, CAP-OM, Administrative Secretary
Jessica Cabrales, Office Support Specialist

GENERAL COMMENTS

Mr. Harris advised the Hearing Board Staff recommends denial of the appeal of Sunstate Equipment Rental Company, LLC, Notice of Violation AQMV21-0047, Case No. 1325 issued for failure to maintain and operate a gasoline dispensing facility Phase I vapor control equipment in such a manner that present the release of vapors into the atmosphere. Mr. Harris advised this is a violation of Section 040.080 (Gasoline Transfer and Dispensing Facilities), Subsection C.1.d. (Gasoline Transfer into Stationary Storage Containers (Phase II)), of the Washoe County District Board of Health Regulations, with a recommended administrative fine in the amount of \$1,000.

Mr. Joshua Restori, Supervisor, Permitting and Compliance, being duly sworn, advised Staff recommends denial of the appeal of Sunstate Equipment Rental Co., LLC for AQMV 21-0047, Case No. 1325; and the levying of an administrative fine in the amount of \$1,000.

Mr. Restori briefly reviewed the Air Quality Management Division's authority to issue this Notice of Violation, is through the District Board of Health Regulations Governing Air Quality Management. Mr. Restori advised this violation is specific to Section 040.080 (Gasoline Transfer and Dispensing), Subsection C. (Standards), 1.d. (Gasoline Transfer into Stationary Storage Containers (Phase II)), of those Regulations.

Mr. Restori advised the purpose of this Section of the Regulations is to reduce and control the emission of VOCs (Volatile Organic Compounds) into the atmosphere from gasoline dispensing facilities through the sale and dispensing of gasoline. Mr. Restori stated these requirements pertain to all gasoline storage and dispensing facilities; that some facilities are exempt from the requirements of this Regulation; however, Sunstate Equipment Rental Company, LLC is not exempt.

Mr. Restori advised Subsection C. 1.d. (Phase I vapor recovery) of Section 040.080, is specific to the transfer of gasoline into stationary storage containers; that this Section of the Regulations stipulates: the vapor control equipment at the facility shall be maintained in such a way that the vapor control system meets the specifications set forth in this section at all times. Mr. Restori stated that any facility required to comply with these requirements to control vapors must maintain the equipment and operate it properly at all times. Mr. Restori stated this Section further delineates the parameters specific to the poppeted drybreak (vapor poppet) on the vapor return of the Phase I vapor recovery system.

Mr. Restori presented a diagram of an above ground storage tank, which is considered a Phase I vapor recovery system, delineating how gasoline is distributed to the tank. Mr. Restori advised the gasoline fill pipe has to be within a certain distance of the bottom of the tank to ensure that fill pipe is submerged. When the cap is removed from the fill adaptor the vapors would "only be to the surface area of the pipe itself." Mr. Restori stated the "seal itself would be the gas in the tank" for the fill pipe. Mr. Restori indicated where the vapor recovery adapter would be on the tank, advising "this is where the poppeted drybreak would be located."

Mr. Restori stated, "when a distributor arrives to fill the tank the distributor would remove the vapor cap, place the hose into the adaptor at which time the vapors would be captured by the

hose and flow back into the truck which is a self-contained system.” Mr. Restori stated the collected vapors would be deposited at the Tank Farm in Sparks. Mr. Restori stated the poppeted drybreak valve is vital for when the tank is sitting idle and when gas is being pumped into it. Mr. Restori presented a diagram of the poppeted drybreak vapor adaptor delineating how the poppeted drybreak vapor adaptor functions when the storage tank is idle and when it is being filled.

Mr. Restori advised on June 1, 2021, an annual compliance evaluation was conducted by Air Quality Staff at Sunstate Equipment Rental Company, located at 750 Rock Boulevard. Mr. Restori advised at that time the Senior Air Quality Specialist noted the vapor adaptor poppet valve was wedged open with a wire (a photograph of the vapor poppet (primary seal), was submitted for the record). Mr. Restori advised the vapor adaptor cap was not covering the vapor adaptor (secondary seal) and was “sitting on top of the gas tank;” during the inspection the appellant removed the wire and replaced the vapor adaptor cap, which corrected the violation.

Mr. Restori advised that when Staff have observed these types of violations it is “usually because the delivery drivers are either not arriving with the correct equipment to collect the vapors; or not arriving with the proper hose, or laziness.” Mr. Restori stated the drivers “will then jam something in the vapor adaptor poppet valve to allow the vapors to escape as the tank is being filled.” Mr. Restori stated this may not be the reason for this situation; however, it is a common practice observed by Staff.

Mr. Restori displayed a picture of the poppet drybreak being held open by the wire with the cap sitting off to the side. Mr. Restori advised the poppeted drybreak is the primary seal with the cap being a secondary seal.

Mr. Restori stated the containment of VOC vapors into the atmosphere is critical as currently Washoe County is on the verge of exceeding the threshold of the Federal National Ambient Air Quality Standards (NAAQS) for Ozone, for which VOCs are a major contributing factor. Mr. Restori stated capturing VOCs to prevent the release into the atmosphere is extremely vital to the airshed and the Air Quality Management Division and that Staff takes this very seriously.

Mr. Restori advised that the question specific to the violation is whether the appellant was maintaining and operating the Phase I vapor control equipment consistent in such a manner that prevents the release of vapors to the atmosphere, pursuant to the requirements of Section C.1. Standards for Gasoline Transfer into Stationary Storage Containers (Phase I Vapor Recovery). Mr. Restori advised that the appellant was not.

Mr. Restori stated this is a violation of both County and Federal Regulations.

Mr. Restori advised this is a minor violation of the Regulations, that Staff is recommending the appeal of Sunstate Equipment Rental Company be denied, and that the violation be upheld with a recommended levying of a \$1,000 administrative fine. Mr. Restori stated these facilities are inspected on an annual basis; therefore, it is not known how long this wire had been in the poppeted drybreak, releasing VOCs into the atmosphere. Mr. Restori stated it is the consensus of Staff that this constituted the issuance of a Notice of Violation rather than a written warning.

In response to Mr. Squire regarding Staff conducting annual inspections of gasoline facilities, Mr. Restori advised the Air Quality Management Division only has staffing to conduct inspections on an annual basis. Mr. Restori advised Section 040.080, Subsection C.1.d. is specific to gasoline dispensing facilities, specifically Gasoline Transfer into Stationary Storage Containers (Phase I).

In response to Mr. Dimpel regarding the condition of the equipment and previous violations, Mr. Restori advised the equipment was not damaged and was functional; that to his knowledge there have been no previous violations at this facility.

In response to Mr. Squire regarding the wire being utilized to hold the valve open, Mr. Restori stated that it was intentionally placed in the popped drybreak.

In response to Ms. Downs regarding Staff testifying that, these types of violations are “typically from the delivery truck operators because of the lack of proper piping;” Mr. Restori stated it can be for several reasons: improper piping, improper adaptor, or operators who don’t want to adhere to the requirements. Mr. Restori stated there are some contentions that a tank can be filled faster if the vapors are not being recovered and that there are a few reasons why this could occur.

In response to Mr. Schweber regarding how often fuel is delivered to Sunstate Equipment and when the last delivery was, Mr. Restori advised he could not answer that question.

Mr. Dimpel questioned the fine matrix; the compliance history; whether the fine should be reduced to zero; and if there was another violation, would the fine matrix be “used as a multiplier” regarding the compliance history of this facility?

In response to Mr. Dimpel, Mr. Restori stated upholding the violation is separate from the penalty and that should there be a future violation, the compliance history would be included.

Ms. Downs stated it is her understanding that the owner/operator of these facilities are required to be present when the tanks are being filled. She would question if this occurred in this instance.

In response to Ms. Downs, Mr. Restori stated he is unaware if the owner/operator was present when the tanks were filled when the wire was placed in the popped drybreak.

Mr. Eric Fischer, Plant Manager, Sunstate Equipment Rental Company, being duly sworn, stated that Mr. Restori presented an accurate accounting of what occurred during the inspection of June 1, 2021.

Mr. Fischer stated Sunstate Equipment has been in operation in more than twenty-five (25) states for more than forty (40) years. Mr. Fischer stated Sunstate Equipment, “takes their responsibility to heart,” and that Sunstate, “has a division devoted to compliance and forward thinking about reducing its carbon footprint and maintaining a clean operation.” Mr. Fischer stated, Sunstate

Equipment Rental has “operated locally for more than seven (7) years “without a single blemish on their record until the inspection in June 2021.”

Mr. Fischer stated, that as Mr. Restori indicated, the open valve was immediately identified and rectified on the same day as the inspection. Mr. Fischer stated that, “while Sunstate was not the ‘cause’ of the issue, Sunstate does take responsibility for what occurred.” Mr. Fischer stated that in the interim, Sunstate has implemented procedures to ensure such an incident never occurs again. Mr. Fischer stated Sunstate currently inspects the fuel tanks daily and that his staff reports to him if everything is “an all clear, or if a problem has been found.” Mr. Fischer stated this routine “has now become muscle memory for himself and his yard staff.” Mr. Fischer stated due to this incident, Sunstate has nationally revised its hazard identification reporting format whereby daily fuel tank and yard inspections are being performed consistently throughout Sunstate within all branches and operations.

Mr. Fischer stated, as he previously indicated, Sunstate does not dispute the infraction, nor its accountability, which Sunstate takes very seriously, not only at a local level, but as a national company. Mr. Fischer stated Sunstate Equipment has demonstrated its ability to “respond and ensure this will never occur again”; that the violation was immediately addressed and rectified. Mr. Fischer stated Sunstate has a “deep commitment” in demonstrating its willingness in being an enthusiastic civic partner to the local community, the County and State governments in preserving the Truckee Meadows Basin. Mr. Fischer requested the Hearing Board consider “amending the fine” based upon Sunstate’s immediate and thorough response to correct this situation.

In response to Mr. Squire regarding the maintaining of daily inspection logs, Mr. Fischer stated Sunstate is maintaining logs of these daily tank and yard inspections. Mr. Fischer stated the local Sunstate only receives gasoline every seventy to eighty (70-80) days and that the distributor to the facility is Golden Gate Petroleum.

In response to Mr. Dimpel regarding the most recent gasoline delivery prior to the inspection of June 1, 2021, Mr. Fischer advised that the delivery was the week prior to the inspection. Mr. Fischer stated he contacted Golden Gate Petroleum regarding the wire being inserted into the poppet and the cap being left off and he was advised that the delivery driver had been working since 4:00 a.m. and made this delivery at 4:30 pm; the driver had been working for more than twelve (12) hours and was exhausted. Mr. Fischer stated that this error had not been detected during the weekly inspections of the yard.

In response to Mr. Harris regarding discussing any corrective action with the supplier, Mr. Fischer stated his management team conferred with the owner/operator of Golden Gate Petroleum and received assurance that this mistake “would never happen again.” Mr. Fischer stated there have been approximately half a dozen deliveries since this incident and there hasn’t been another issue. Mr. Fischer stated that he has, or one of his staff members have, observed these deliveries. Mr. Fischer stated in the discussion that Golden Gate Petroleum offered to pay the fine and that Sunstate has a good working relationship with Golden Gate, both locally and nationally. Mr. Fischer stated this is the first issue Sunstate has had with Golden Gate.

In response to Mr. Squire, regarding: “someone always being present when gasoline is being off-loaded,” Mr. Fischer stated he, or one of his staff, is present to observe the delivery.

Ms. Downs stated that in her experience with fuel dispensing facilities, she is aware there are daily, weekly, monthly, and annual inspections occurring; that Mr. Fischer indicated since the issuance of the violation Sunstate is now conducting daily inspections. Ms. Downs stated she would question why daily inspections weren’t being performed prior to the issuance of the Notice of Violation?

In response to Ms. Downs, Mr. Fischer stated it is company policy to conduct hybrid inspections; that at this location he would perform daily yard inspections; however, “it never occurred to him to check the valves and caps on the tanks; that it never factored into the daily operations.”

Mr. Fischer presented a copy of Sunstate Equipment’s weekly hazardous materials storage area inspection checklist, advising that the last portion of the third one requires a check of “all vapor adapters and covers/access points to ensure all are closed and not propped open.” Mr. Fischer stated this is a new requirement of Sunstate Equipment’s inspection checklist, which was added after the issuance of this citation.

Mr. Restori advised Staff has provided copies of these inspections reports in the Hearing Board members’ packets.

In response to Mr. Harris regarding Sunstate Equipment Rental’s appeal when the company has acknowledged the violation did occur; and that Sunstate was responsible, Mr. Fisher stated, the appeal is specific to the recommended fine. Mr. Fischer stated Sunstate is requesting reconsideration of the recommended \$1,000 based upon the violation being immediately corrected and Sunstate’s corrective efforts to address this situation to ensure such a violation will not occur again.

MOTION

Mr. Harris closed the public portion of the hearing; advising there are three (3) recommendations which the Board may consider: 1) uphold the Notice of Violation and the recommended fine of \$1,000; 2) dismiss the Notice of Violation; or 3) uphold the recommendation to deny the appeal and levy a different administrative fine amount, including levying no fine.

Mr. Squire stated everyone present is well aware of what a fire can do in this area to a single family or an entire community; that he “sees it every day.” when a situation is “overlooked” or when there is some type of neglect. Mr. Squire stated, due to the volatile nature of what could have occurred in this situation this violation “was extremely bad.”

Mr. Squire stated that he would move the Hearing Board deny the appeal, upholding the violation and recommending the levying an administrative fine in the amount of \$1,000.

Mr. Schweber seconded the motion.

In the discussion that followed. Mr. Dimpel stated he would support upholding the Notice of Violation with a reduction in the amount of the recommended fine. Mr. Dimpel stated the Notice of Violation precipitated corrective action; that Sunstate Equipment Rental Company has implemented revisions to its safety protocols nationally. Mr. Dimpel stated upholding the Notice of Violation with a reduced fine would ensure the violation “doesn’t go away,” as should another violation occur, this violation would remain on record for consideration in a future penalty.

Mr. Harris called for the vote. The motion failed with Mr. Squire, Mr. Schweber, and Mr. Harris voting “aye”; and Ms. Downs, Mr. Kaplan and Mr. Dimpel voting “no.”

Mr. Dimpel moved that the Hearing Board deny the appeal, upholding the violation and recommending the administrative fine be reduced to zero.

Ms. Downs seconded the motion.

The motion lost with Mr. Dimpel and Ms. Downs voting “aye”; and Mr. Kaplan, Mr. Squire, Mr. Schweber, and Mr. Harris voting “no.”

Mr. Squire moved that the Hearing Board deny the appeal of Sunstate Equipment Rental Company, LLC, upholding the Notice of Violation No. AQMV21-0047, Case No. 1325, and levying a recommended administrative fine in the amount of \$500.00.

The motion was seconded by Mr. Schweber and carried unanimously for approval.

Ms. Smith, Recording Secretary, advised Mr. Fischer that the Hearing Board is a recommending body only; that the recommendation of the Hearing Board will be forwarded to the District Board of Health for a final review and action.

**CASE NO. 1321 – AS REVIEWED BEFORE THE AIR POLLUTION CONTROL
HEARING BOARD**

In Re: Appeal of Q&D Construction, for)
violation of Section 040.030 (Dust Control),)
Subsection E (Compliance and Records))
2.a. (Record Keeping), of the Washoe County)
District Board of Health Regulations Governing)
Air Quality Management.)

At a hearing of the Air Pollution Control
Hearing Board at Wells Avenue and Ninth
Street, Reno, Nevada
February 16, 2022

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

ABSENT: Martin Breitmeyer

STAFF: Francisco Vega, PE, Division Director
Joshua Restori, Supervisor, Permitting and Compliance
Jeff Jeppson, Senior Air Quality Specialist
Janet Smith, CAP-OM, Administrative Secretary
Jessica Cabrales, Office Support Specialist

GENERAL COMMENTS

Mr. Harris advised the Hearing Board Staff recommends denial of the appeal of Q&D Construction, Notice of Violation AQMV21-0049 and AQMV21-0050, Case No. 1321 issued for failure to comply with the requirements of Section 040.030 (Dust Control), Subsection E.2.a.; (Compliance and Records – Record Keeping) of the Washoe County District Board of Health Regulations, with recommended administrative fines in the amount of \$1,000 for each violation.

Mr. Dimpel advised Q&D Construction is a client of the company of which he is Vice President; and have provided professional services to Q&D for this location; therefore, he will be recusing himself from these proceedings and any deliberations.

Mr. Joshua Restori, Supervisor, Permitting and Compliance, being duly sworn, advised Staff recommends denial of the appeal of Q&D Construction, for AQMV 21-0049, Case No. 1321, Section 040.030 (Dust Control), Subsection E.2.a.(1), (Record Keeping). Mr. Restori advised the Citation was issued for failure to maintain a copy of the Dust Control Permit (APCP20-0232); on-site of the construction project to be available to any subcontractor or AQMD Inspector for review upon request. Mr. Restori advised AQMV21-0050 was issued for violation of Section 040.030 (Dust Control), Subsection E.2.a.(2) (Record Keeping) for failure to maintain the logbook of all dust control operations as required per the conditions of Dust Control Permit (APCP20-0232). Mr. Restori advised this is the Flying J Inc., project located at Robb Drive and I-80. Mr. Restori advised Staff recommends the levying of an administrative fine in the amount of \$1,000 for each violation.

Mr. Restori briefly reviewed the Air Quality Management Division's authority to issue this Notice of Violation, is through the District Board of Health Regulations Governing Air Quality Management. Mr. Restori briefly reviewed the parameters of Section 040.030 (Dust Control) of the Regulations, advising the Dust Control Permit is to serve "as a guide" to the contractor; and is considered a contract for the permittee to remain in compliance with the District Board of Health Regulations.

Mr. Restori advised the purpose of this section of the Regulations is to limit particulate matter emissions being released into the ambient air from any property, operations or activities that may serve as a fugitive dust source. Mr. Restori advised the effect of this Regulation is to minimize the impact on human activities due to the amount of PM10 being emitted into the ambient air, through the implementation of measures to prevent, reduce or mitigate particulate matter emissions.

Mr. Restori displayed aerial maps depicting the location and the permitted acreage of this project Mr. Restori presented a video, which was taken by the AQMD Inspector, advising the video was taken on June 1, 2021, during a routine inspection of the dust control project. Mr. Restori advised, as the video depicts there was fugitive dust being generated from the project; that subsequently the Air Quality Specialist completed a compliance evaluation, which is when it was determined the Dust Control Permit was not onsite at the project location as required by Section 040.030, Subsection E 2.a.(1). Mr. Restori advised Section 040.030 (Dust Control), Subsection C 3. (Dust Control Permit Requirements) stipulates the elements of a Dust Control Permit: The Dust Control Permit shall describe all control measures to be implemented before, after and while conducting

any dust generating activity, including weekends, after work hours and on holidays. Mr. Restori reiterated the Dust Control Permit functions as a guide and a contract for the permittee to remain in compliance with the District Board of Health Regulations.

Mr. Restori advised Q&D Construction was issued a Notice of Violation for failure to control the fugitive dust emissions on June 1, 2021; however, Q&D Construction did not appeal the fugitive dust emission violation.

Mr. Restori advised the subject violations, which were appealed, were issued specific to Subsection E.2.a.(1); and E.2.a.(2) (Record Keeping), of Section 040.030 (Dust Control) of the Regulations; that these violations were issued, during the compliance evaluation, which was conducted based upon the initial fugitive dust observed by the Inspector.

Mr. Restori advised Condition No. 11 of APCP20-0232, stipulates: a logbook of all dust control operations, containing all information as required by the Control Officer in the standard “Washoe County Dust Control Log” must be maintained on a daily basis. Mr. Restori further advised the logbook shall be kept at the project site and made available to the District’s representatives upon request. Mr. Restori advised Condition No. 8 is specific to the Compliance and Records requirement delineated in Section 040.030, Subsection E.2.a.(2) which stipulates: Any person who conducts dust generating activities subsection to Subsection C.3 of this Rule shall maintain daily records demonstrating compliance with Section C of this Rule. Mr. Restori stated, “Daily Records shall be made available to the Control Officer immediately upon request.”

Mr. Restori presented a copy of the Washoe County Dust Control Permit Log, which functions as a required guide and tool for the permittee to remain in compliance with the District Board of Health Regulations and the conditions of the Dust Control Permit.

Mr. Restori advised the question specific to the violation is “was the appellant maintaining the Dust Control Permit and the Dust Control Logs onsite at the specific jobsite, to be able to provide both the Dust Control Permit and the Dust Control Logs to the Control Officer immediately upon request pursuant to Section 040.030, Subsection E.2.a.(1) and E.2.a.(2) (Record Keeping); that the appellant was not.

Mr. Restori stated this is a violation of both County and Federal Regulations.

In response to Ms. Downs regarding Q&D Construction having a Permit, Mr. Restori advised Q&D Construction does have Dust Control Permits for this project, which remain valid. Mr. Restori advised at the time of the inspection neither the Dust Control Permit nor the Dust Log for the project were on-site.

In response to Mr. Kaplan regarding the brevity of the video, Mr. Restori stated there is a second video, which is approximately fifteen (15) minutes in length. Mr. Restori stated the procedural requirements, as established in Section 040.030 (Dust Control), in accordance with Method 22, stipulate any five (5) minute period of exceedance, in any one-hour, constitutes a violation of the standard. Mr. Restori stated the video substantiates the Method 22 determination in issuing a Notice of Violation for fugitive dust emissions; however, documenting the Method 22 with video

or photograph is not a requirement for issuing a Notice of Violation for fugitive dust emissions.

Mr. Kaplan stated the reason he questioned the shorter video is that there are intermittent times of water trucks “moving in and out” of a project; that should an Inspector “catch it just right” where it “might appear” dust control wasn’t being addressed. Mr. Kaplan stated, “there is a difference between a fifteen (15) minute duration as compared to one of five (5) minutes and thirty (30) seconds.” Mr. Kaplan stated he understands the current challenges in the area’s skilled labor force. Mr. Kaplan stated Q&D Construction is a well-managed operation.

Mr. Restori stated, when a member of Staff observes a situation which would affect the area’s air quality and have negative health impacts, this will result in a complete compliance investigation. Mr. Restori advised that “that was what occurred in this instance.” Mr. Restori stated, it was during the complete compliance investigation it was noted that neither the Dust Control Permit nor the Dust Control Log were onsite at this project location. Mr. Restori reiterated, as he advised, both are in direct violation of County Regulations. Mr. Restori advised, had the project site “been completely saturated; and Staff noted neither the Dust Control Permit nor the Dust Control Log were onsite, Staff would probably have issued a written warning rather than issuing the Notice of Violation.” Mr. Restori reiterated the Dust Control Permit, and the Dust Control Logs are a component of ensuring the permittee remains in compliance in controlling dust emissions into the ambient air.

In response to Mr. Harris regarding a third Notice of Violation being issued to Q&D Construction for this site, Mr. Restori advised Q&D Construction was cited for failure to control fugitive dust emissions. Mr. Restori advised Q&D did not file an appeal regarding that NOV; that the appeals are specific to the two (2) Record Keeping violations.

Ms. Downs stated she is aware it is a Federal and State requirement for those records to be onsite; that further, an agency can be more stringent than the Federal and State requirements; however, an agency’s requirements cannot be less stringent.

In response to Ms. Downs regarding the AQM Division mandating then minimum of these requirements, Mr. Restori advised those requirements are incorporated into the District’s State Implementation Plan (SIP), which delineates the measures that will be implemented to either obtain or remain in compliance with Federal Standards.

Mr. Jeff Bean, representing Q&D Construction, being duly sworn, stated, he has watched both videos; and the videos do indicate what occurred on the project site the day the Citations were issued; therefore, Q&D did not appeal the Citation for fugitive dust. Mr. Bean stated Mr. Kelly will provide the Hearing Board with the events specific to the Dust Control Permit and the Dust Control Log.

Mr. Bean stated Q&D Construction is a very mobile company; that at a few sites Q&D will set up a portable office; however, most projects are operated “out of trucks as the foremans have multiple jobs to oversee.” Mr. Bean stated, “the various permits and documentation are generally kept in the pickup(s); that at this job site there had been a recent change in foremen. Mr. Bean stated it is the consensus of Q&D that this is not technically a violation; that is more of a clerical mistake.

Mr. Bean stated because of the issuance of these violations, Q&D is investigating alternatives specific to the record keeping requirements to ensure this type of violation does not occur again.

In response to Ms. Downs regarding the maintaining of Q&D's Safety Data Sheets (SDS), Mr. Bean advised Q&D has contracted with the company to manage the SDSs; that those reports are on-line, and are updated automatically.

Ms. Downs stated, in compliance with State requirements, her company always maintained these mandated records in each vehicle in which employees drove; that the logs were also maintained this way.

Mr. Bean stated Q&D's SDS's, and logs were also maintained in company vehicles such as Ms. Downs described.

Mr. Harris stated "this is clearly a violation, as is the next one regarding the Dust Control Logs"; that he would question what measures Q&D will implement to ensure these types of violations do not occur again?

In response to Mr. Harris, Mr. Bean advised Q&D is implementing FYI trainings and investigating other programs that will work with Q&D's systems. Mr. Bean stated in the interim Q&D will "have to be more diligent." Mr. Bean stated Mr. Kelly is the foreman of this project; that Mr. Kelly is the one who will be responsible for ensuring that Q&D is in compliance with the requirements of the permits; that "Mr. Kelly is very aware of his responsibilities."

Mr. Shannon Kelly, Foreman of the Flying J Inc., project, being duly sworn, advised he is the new foreman for this project; that he understands he is the one responsible for this project. Mr. Kelly delineated what had occurred on June 1, 2021, advising he is the one responsible for the maintenance of the Daily Dust Control Logs. Mr. Shannon stated he was reviewing the Dust Control Logs and had taken them with him to update, and to ensure the project was in compliance, which is why the Logs were not on-site at this project. Mr. Shannon stated, he is the new Foreman for a number of projects; that he was traveling from one project to another when he had inadvertently removed the Dust Control Permit from the site. Mr. Kelly stated he was "only ten (10) minutes from the project when AQMD Staff conducted the inspection that resulted in the issuance of the Citations."

In response to Mr. Squire regarding how often these types of violations occur, Mr. Shannon stated this does not occur often; that he has been far more diligent regarding the status of paperwork for the various projects.

In response to Mr. Harris regarding the administrative fine that Staff had recommended for the fugitive dust emission violations, Mr. Restori advised, per the Regulations, fugitive dust emissions are minor violations. Mr. Restori advised Staff had recommended a \$1,000 administrative fine for each of the three (3) Citations issued to Q&D Construction.

In response to Mr. Schweber regarding "the location of the Dust Control Permit; and the Dust Control Logs today," Mr. Kelly advised that both are on-site of the project.

MOTION

Mr. Harris closed the public portion of the hearing; advising there are three (3) recommendations which the Board may consider: 1) uphold the Notice of Violation and the recommended fine of \$1,000 each for the violations; 2) dismiss the Notice of Violation; or 3) uphold the recommendation to deny the appeal and levy a different administrative fine amount, including levying no fine.

Mr. Squire stated, as Mr. Bean advised, Q&D Construction is “an incredibly high functioning Company which should be able to determine a solution to this situation.” Mr. Squire stated his comment to the representatives of Q&D Construction would be “to get it together” to ensure these types of situations do not occur again.

Mr. Schweber stated, in his opinion, the Dust Control Permit is a “more static document that has been issued with a specific timeline; that it does not really change; and serves as a guide for what is being done; that it is more of a clerical document.” Mr. Schweber stated, however, the Dust Control Logs “are more of a living document”; that the Logs have to be continually updated each and every time the water trucks water the project. Mr. Schweber stated, “it is far more important in terms of the quality and ensuring compliance” with the Dust Control Permit. Mr. Schweber stated, he would question how the Log could be maintained “offsite with no one in control” of it, as it needs to be continually updated?

In response to Mr. Schweber, Mr. Restori stated he concurs with Mr. Schweber, the Dust Control Permit is a guide to remain in compliance. Mr. Restori reviewed the Dust Control Log, which is provided in the Dust Control Permit documentation; that the Hearing Board members

Mr. Squire stated, the issue is then, “who is responsible for maintaining the Dust Control Log,” if the Log is not onsite and is “ten (10) minutes away.”

Mr. Kelly stated he was receiving email updates specific to the Dust Control Logs; that he drives by his projects several times per day.

Mr. Harris stated there will be two (2) separate motions; that one will be specific to the failure to have the Dust Control Permit onsite; and the second will be failure to have the Dust Control Logs onsite.

Mr. Harris called for the motion regarding Notice of Violation No. AQMV21-0049, Case No. 1321, specific to failure to have the Dust Control Permit No. APCP20-0232, onsite at the project as required per Section 040.030 (Dust Control), Subsection E.2.a.(1), of the Regulations.

Mr. Dimpel reiterated he would recuse himself from the vote, due to his company’s affiliation with Q&D Construction for this project.

Ms. Downs moved that the Hearing Board deny the appeal of Q&D Construction, upholding the Notice of Violation No. AQMV21-0049, Case No. 1321, and recommending no fine be levied.

Mr. Squire seconded the motion. The motion carried, with Ms. Downs, Mr. Squire, and Mr. Harris voting aye”; Mr. Kaplan and Mr. Schweber voting “no”; and Mr. Dimple being recused.

Mr. Harris called for the motion regarding Notice of Violation No. AQMV21-0050, Case No. 1321, specific to failure to have the Dust Control Logs, for Permit No. APCP20-0232, onsite at the project as required per Section 040.030 (Dust Control), Subsection E.2.a.(2), of the Regulations.

Mr. Squire moved that the Hearing Board deny the appeal of Q&D Construction, Notice of Violation No. AQMV21-0050, Case No. 1321, specific to failure to have the Dust Control Logs, for Permit No. APCP20-0232, onsite at the project as required per Section 040.030, Subsection E.2.a.(2), of the Regulations and upholding the \$1,000.00 fine.

Mr. Kaplan seconded the motion.

The motion carried with Mr. Squire, Mr. Kaplan, Ms. Downs, Mr. Schweber, and Mr. Harris voting “aye”; and Mr. Dimpel being recused.

Ms. Smith, Recording Secretary, advised Mr. Bean and Mr. Kelly that the Hearing Board is a recommending body only; that the recommendation of the Hearing Board will be forwarded to the District Board of Health for a final review and action.