

Northern Nevada Public Health Air Pollution Control Hearing Board Meeting Minutes

Members

Richard Harris, JD, PhD, Chair
Yvonne Downs, Vice Chair
Martin Breitmeyer
Anthony Dimpel, PE
Paul Kaplan
Phil Schweber
Lee Squire

Thursday, March 14, 2024
6:00 p.m.

Northern Nevada Public Health
Bldg B, Conference Rooms A & B
1001 East Ninth Street
Reno, NV 89512

1. Roll Call and Determination of Quorum.

Chair Harris advised the board he would be arriving late; Vice Chair Yvonne Downs called the meeting to order at 6:05 p.m.

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

Board member absent: Paul Kaplan

Nennette Cano, Recording Secretary, verified a quorum was present.

Staff present: Francisco Vega, Air Quality Management Division Director
Joshua Restori, Supervisor, Permitting and Compliance
Chaz Lehman, Deputy District Attorney Civil Division
Nennette Cano, Senior Office Specialist

2. Pledge of Allegiance.

Vice Chair Downs led "The Pledge of Allegiance."

3. Ethics Law Announcement.

Chaz Lehman, Deputy District Attorney provided a verbal ethics law announcement.
Chair Harris arrived at 6:08 p.m.

4. Public Comment.

Chair Harris opened the public comment period.

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

5. Approval of Agenda.

March 14, 2024

Martin Breitmeyer moved to approve the March 14, 2024, agenda. Lee Squire seconded the motion, which carried unanimously.

6. Approval of Draft Minutes.

April 12, 2023

Lee Squire moved to approve the April 12, 2023 minutes as received. Martin Breitmeyer seconded the motion, which carried unanimously.

Joshua Restori and Appellant, Max Cardenas, were sworn in by Mr. Lehman, Deputy District Attorney.

7. Recommendation of Staff to Uphold Notice of Violation No.'s AQMV24-0002, 0003, and 0004 issued to All Eagle, LLC for failure to provide the AQMD with written notice of intention to demolish a facility on a date other than the one contained in the original notice as required by 40 CFR 61.145(b)(iv), with a total associated administrative fine of \$24,000.00 by the Air Quality Management Division and Appealed to the Air Pollution Control Hearing Board.

Chair Harris called staff to provide testimony on this case.

Joshua Restori, Supervisor of Permitting and Compliance for the Air Quality Management Division, provided a PowerPoint presentation regarding Air Quality Requirements and background prior history. Mr. Restori provided testimony regarding the Issuance of Notices of Violation (NOV) AQMV24-0002, AQMV24-0004 and AQMV24-0003. Recommended penalty: \$24,000.00.

Chair Harris asked if on the date of demolition, a member of Air Quality staff is at the site.

Mr. Restori replied as best as they can with their staff of four inspectors.

Chair Harris asked if the person on site has any monitoring equipment to determine if asbestos air quality standards are being violated, do they measure around the site where the demolition occurs.

Mr. Restori responded they do not have equipment during the demolition, explained that prior to the demolition the inspector assigned to the site, a demolition survey is conducted on the structure to identify any asbestos containing materials. If there are asbestos containing materials of a certain concentration and quantity, they are to be abated prior to a demolition taking place. As the demolition is taking place the inspector is there as observer to identify any additional materials that were not sampled as part of the original sampling of the demolition. Mr. Restori explained that there is no equipment to measure asbestos fibers in real time.

Mr. Dimpel asked what the difference was between Violations 2 and 4.

Mr. Restori explained that there are two different structures and parcels (APN), at 9300 Gateway Drive.

Mr. Squire asked if there's a cost for the notification of the demolition.

Mr. Restori replied that there's a cost for the original notification, and no charge for any revisions.

Mr. Schweber asked if AQM received any feedback or acknowledgement regarding the warning letters from All Eagle.

Mr. Restori replied that he did not and AQM did not.

Mr. Squire followed up with the question that the feedback should be on the record.

Chair Harris asked if there was any evidence of any harm or shelf conditions arising from the unauthorized demolition.

Mr. Restori replied that there is no evidence but on the California demolition, there were asbestos materials identified in the structure, the asbestos materials were below the notifiable amounts, the quantity in the structure did not require notification to our department for the abatement of them, so Air Quality was not aware of the abatement of them. When a complaint came in for dust from the demolition of the structure, inspectors went out and they were unaware of the demolition starting on the 11th, there was a concern of not enough adequate water put on the structure and potential asbestos fibers released from the demolition.

Mr. Breitmeyer asked if the surveys were done with the first notification or did not get done.

Mr. Restori replied that all the surveys were done on all structures.

Mr. Squire stated that he believes 9300 Gateway is not as populated as 131 California.

Mr. Restori replied that it was correct. One of the items that was looked at by the enforcement panel, who developed the penalties associated with the violations, when they come up with the penalty amounts, they're using a fine calculation worksheet that has been approved by APCHB and the District Board of Health as well as a fine table and they are looking at the potential impacts it would have to the public. Gateway Drive has a Daycare close to the area, which was a concern.

Mr. Dimpel had a question regarding the penalty calculation worksheets for the compliance history multipliers.

Mr. Restori replied that the enforcement panel looked at the warning letter for the four incidents of not notifying AQMD of those four abatements as a prior enforcement history in the last 12 months. Warning letters are sent out to make the appellant aware of the requirements to have the notifications sent to AQMD.

Mr. Squire asked if AQMD reached out to All Eagle numerous times to get the problem corrected.

Mr. Restori stated that staff typically reaches out to the company and advises them to update their notifications if the staff sees that an abatement or demolition is occurring outside of the time of what's indicated in the notification.

Having no further questions, Chair Harris called the appellant to provide testimony on behalf of All Eagle. Chair Harris asked the appellant to state his name and his position in the company.

DDA Lehman swore in the appellant, as appellant did not raise his right hand in the beginning or say I do.

Appellant introduced himself, Max Cardenas, Vice President, and Owner of the Demolition Division of All Eagle LLC. He has been working in asbestos and demolition for 18 years.

Mr. Cardenas explained that he cannot say it's not their fault, but there was a case of sabotage within their company, with the office manager and secretary. The office manager and secretary wanted more money from All Eagle, and they destroyed warning letters from AQMD and deleted emails from AQMD.

Mr. Squire inquired about how many weeks between the cases did it take for the company to figure out what was happening.

Mr. Cardenas answered within 6 months of each other.

Mr. Squire restated that within the 6-month period, the company did not know what was happening with the office manager.

Mr. Cardenas said no because the office manager has been with the company for over seven and there was trust built with the office manager and the company.

Mr. Squire asked again that there was no follow-up, he understands that Air Quality sends out notifications on time.

Mr. Cardenas said all notifications went to the office manager; she manages the admin email address.

Mr. Squire requested verification of where the company found the emails.

Mr. Cardenas said they found them on the server, not on office managers in box. The main server proved that the office manager did receive the notifications and warning letters.

Mr. Schweber inquired about the 2 employees, if both were let go.

Mr. Cardenas said the secretary was not let go but the office manager was. The secretary was not part of deleting the emails. They worked for 2 different parts of the company.

Mr. Breitmeyer asked if the appellant is required to call prior to demolition.

Mr. Cardenas answered that AQMD does not accept verbal communications only written emails.

Mr. Restori said that AQM takes verbal notification but will need follow-up emails.

Mr. Dimpel asked if the company sent in initial notifications and follow-ups.

Mr. Cardenas answered that the initial notifications were sent out, but the revisions were not submitted.

Mr. Squire followed up with the question if there are checks and balances in the office.

Mr. Cardenas said that the office manager did say she processed what she needed to process, and no one followed up with her. The office manager only reports to the owner of the company.

Chair Harris asked if there are more questions for either Mr. Restori or Mr. Cardenas.

Francisco Vega, Division Director of Air Quality Management Division, asked to speak prior to board deliberation. He wanted to remind the board that AQMD relies on notifications and accurate reporting to protect public health. The recommendation for the penalty was kept to the lowest possible, based on tools approved by the APCHB.

Chair Harris asked for board discussion. He asked the board if they had any further comments they may bring it up to either of the testifying parties.

Mr. Squire said there has to be a paper trail. He questioned why no one was checking the office manager's work. Safety is a seriously personal issue.

Mr. Dimpel commented that employees can benefit and hurt a company, it comes hand in hand.

Mr. Breitmeyer commented that all work still falls back on the supervisor/owner. He always verifies all work has follow through, he still makes the phone calls and makes sure he has proper permits. from personal experience.

Mr. Squire commented that he also has a small business, and everything falls to him. He felt that someone should be checking the office manager.

Chair Harris closed the testimony. He read the three possible motions, per the agenda packet.

Mr. Schweber moved to uphold Notice of Violation No.'s AQMV24-0002, 0003, and 0004 issued to All Eagle, LLC for failure to provide the AQMD with written notice of intention to demolish a facility on a date other the one contained in the original notice as required by 40 CFR 61.145(b)(iv), with a total associated administrative fine of \$24,000.00. Mr. Squire seconded the motion, which carried unanimously.

8. Board Comment.

Chair Harris called for comments from the Board.

Vice Chair Downs commented the presentation was easy to follow, commended the staff.

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

9. Public Comment.

Chair Harris opened the public comment period.

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

10. ADJOURNMENT.

Mr. Squire moved to adjourn the meeting. Mr. Breitmeyer seconded the motion, which carried unanimously.

Chair Harris adjourned the meeting at 7:00 p.m.

DRAFT

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 Air Quality Management Division in writing at Northern Nevada Public Health, 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 Northern Nevada Public Health 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, Notice of this meeting was posted electronically at the following locations:

Northern Nevada Public Health, 1001 E. 9th St., Reno, NV

Washoe County Administration Building A, Reno, NV

Northern Nevada Public Health Website <https://www.NNPH.org>.

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 Northern Nevada Public Health located at 1001 E. 9th Street, in Reno, Nevada. The Senior Office Specialist to the Air Pollution Control Hearing Board is the person designated by the Northern Nevada Public Health to respond to requests for supporting materials. The Senior Office Specialist is located at Northern Nevada Public Health and may be reached by telephone at (775) 784-7200 or by email at AQMDAdmin@nnph.org. Supporting materials are also available at the Northern Nevada Public Health Website <https://www.NNPH.org> pursuant to the requirements of NRS 241.020.