



**AIR POLLUTION CONTROL  
HEARING BOARD/HEARING OFFICER**

**MANUAL OF PROCEDURES**

Adopted August 21, 2001  
Clark County Board of County Commissioners

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***I. JURISDICTION***

Nevada Revised Statutes 445.546 gives the Clark County Commission authority to establish and administer an air pollution control program, and establish regulations to implement such a program.

Nevada Revised Statutes 445.481 gives the Clark County Commission authority to appoint an Air Pollution Control Hearing Board (Hearing Board).

Clark County Air Quality Regulation Section VII gives the Hearing Board authority to adopt a Manual of Procedures governing the operations of the Hearing Board.

## **II. Hearing Board**

### **A. General**

Meetings of the Hearing Board, including public hearings, shall be held at a time, date and place established by the Hearing Board. The chair person of the Hearing Board shall first call the meeting to order if a quorum is present. A quorum shall consist of a simple majority of the members of the Hearing Board.

The minutes of the Hearing Board's previous meeting shall be presented to the Board for approval, disapproval or modification.

The Department of Air Quality Management Staff (Staff) shall report to the Hearing Board on relevant matters and recent developments relating to air quality.

Legal counsel for the Hearing Board shall report to the Hearing Board on relevant matters.

The Hearing Board shall consider relevant matters, including but not limited to appeals from Orders issued by Control Officers and Hearing Officers, and requests for issuance, renewal or changes for Variances from the Air Quality Regulations.

Except for appeals from Hearing Officer Decisions, the Hearing Board shall conduct itself according to the administrative procedures as set forth in Nevada Revised Statutes Chapter 233 (B) and/or other special procedures adopted by the Hearing Board. If the Administrative Procedures Act set forth in Nevada Revised Statutes Chapter 233 (B) and/or other special procedures are not applicable, the Board shall use Roberts Rules of Order.

The chair person may issue subpoenas to compel attendance of any person at the hearing, and to require the production of books, records and other documents material to any matter before the Hearing Board.

All testimony shall be provided under oath after identification by name and address, and recorded verbatim, by human or electronic means. Upon request, the Hearing Board shall provide a transcript at the expense of the requesting party.

The public shall be allowed participation at Hearing Board meetings.

### ***B. Public Hearings***

At public hearings, the Hearing Board shall hear presentations by Staff and the applicant, and then testimony by the public. The applicant may present rebuttal testimony following which the chair person shall close the public meeting. The Hearing Board shall make its decision following discussion and majority vote.

### **C. Appeals of Hearing Officers Decisions**

Appeals of Hearing Officers' Decisions must be made in writing and received by staff within ten (10) days of receipt of the written decision of the Hearing Officer. The written Notice of Appeal shall specify the reasons for the appeal. Upon consideration of the reasons for the appeal, the chair person may if appropriate, either dismiss the appeal or limit the scope of the appeal.

Appeals of Hearing Officers' Decisions shall be heard de novo with testimony and exhibits presented and the appeal hearing conducted in the same manner as before the Hearing Officer.

The chair person shall preside over the hearing and make all procedural rulings. The chair person's rulings are subject to appeal before the Hearing Board and may be reversed by a majority vote of the members of the Hearing Board considering the matter.

At the conclusion of the appeal hearing, the Hearing Board may find that no violation has occurred, may find that a violation has occurred, and shall at the same time impose a penalty, or in the alternative, may find a violation has occurred and after further discussion, if any, shall then vote to impose a penalty.

***D. Rehearing of Final Orders***

Any rehearing of a matter previously before the Hearing Board must be based upon a mistake of fact or misapplication of the law made by the Hearing Board, or the Hearing Board not completely disposing of the matter before it.

### **III. Hearing Officers**

#### **A. General**

The meetings of the Hearing Officer shall be held at a time, date and place established by the Hearing Officer.

The Hearing Officer shall consider cases with noncontested facts and penalties, cases with noncontested facts and contested penalties, and cases with both contested facts and penalties.

The Hearing Officer may issue subpoenas to compel attendance of any person at the hearing, and require the production of books, records and other documents material to a Notice of Violation before the Hearing Officer.

All testimony shall be provided under oath after identification by name and address, and recorded verbatim, by human or electronic means. Upon request, the Hearing Officer shall provide a transcript at the expense of the requesting party.

Members of the public may be heard on cases before the Hearing Officer.

## **B. Hearings Pursuant to Notices of Violation**

1. Noncontested cases - When the Control Officer and cited party have agreed on the facts and penalty submitted to the Hearing Officer, the Hearing Officer may approve the noncontested agenda item and impose the agreed upon penalty. If the Hearing Officer rejects the noncontested agenda item, the Notice of Violation shall be removed from the noncontested agenda and unless good cause exists, set for hearing before the same Hearing Officer at a subsequent meeting.
2. Noncontested facts and contested penalties - When the Control Officer and cited party agree on facts submitted to the Hearing Officer but disagree on the penalty, the Control Officer shall place the Notice of Violation on the contested agenda before the Hearing Officer. The Control Officer and cited party shall inform the Hearing Officer of their respective recommended penalties and supporting reasons, following which the Hearing Officer shall impose a penalty. The Hearing Officer may impose a penalty from zero to \$10,000 per day for each violation unless the Regulations provide for a different minimum or maximum penalty, such as Air Quality Regulation Section 41 (Fugitive Dust) being a \$1,800 minimum penalty.

3. Contested facts and penalties - When the Control Officer and cited party disagree on the facts and the penalty, the Control Officer shall place a Notice of Violation on the contested agenda of the Hearing Officer.

Counsel for the County may make an opening statement describing briefly the nature of the case, and the cited party may then state briefly the nature of any defense. The parties shall then present their cases through the sworn testimony of witnesses and exhibits, with the County proceeding first. Each party may conduct direct examination of its witnesses and cross examination of the other party's witnesses. Exhibits will be presented to the other party before request for admission is made to the Hearing Officer. Strict adherence to the technical rules of evidence are not required but the Hearing Officer reserves the right to exclude irrelevant, immaterial or unduly repetitious testimony or other evidence. The Hearing Officer may inquire of any witness following any segment of testimony.

After both parties have presented their cases, members of the public may be given an opportunity to testify on the contested agenda item. Each party may then present a closing summary, following which the Hearing Officer shall find a violation has occurred and impose a penalty, or find that no violation has occurred. The Hearing Officer may impose a penalty from zero to \$10,000 per day for each violation unless the Regulations provide for a different minimum or maximum penalty, such as Air Quality Regulation Section 41 (Fugitive Dust) being an \$1,800 minimum penalty.

#### **IV. Appeals of Control Officers Orders**

Appeals of Control Officers' Orders must be made in writing and received by staff within ten (10) days following receipt of the Control Officers' Order. The written Notice of Appeal shall specify the reason for the appeal.

Appeals of Control Officers' Orders shall be heard by the Hearing Board in the same manner as appeals of Hearing Officers' Decisions.

**V. Certificate of Exemption of Low Pollinating Trees - protocol of procedure for exemption pursuant to Section 44.3 of the Clark County Air Quality Regulations.**

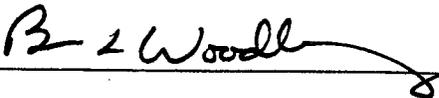
1. An application for an exemption shall contain the following information:
  - (a) Name, address and phone number of business;
  - (b) Nature of business;
  - (c) Name, address and phone number of local contact person;
  - (d) Name and variety of tree for which an exemption is being sought;
  - (e) Detailed description including but not limited to any horticultural and/or scientific information and background information which supports the claim that the cultivar is entitled to an exemption;
  - (f) Names, addresses, phone numbers and qualifications of expert witnesses who will testify or whose writings may be presented at the hearing on the exemption application;
  - (g) All material facts which the applicant is prepared to prove and upon which the Board hearing may base its decision to grant the request;
  - (h) Required exhibits and such other exhibits as the applicant deems appropriate;
  - (i) Any other information which the Control Officer deems appropriate; and
  - (j) Payment of any application fee established by the Clark County Air Quality Management Board.

2. The Control Officer, upon determining that there has been a completed application presented for an exemption, shall publish in a newspaper of general circulation within Clark County Nevada a Notice of Hearing.
3. The Control Officer shall set a hearing on the application which shall be held in no less than twenty (20) days or more than sixty (60) days from the completion of the publication in the newspaper.
4. A person with an interest desiring notice of application and hearing may file with the Control Officer an acknowledged request for a copy of the notice of application and hearing. The request must state the name and address of the person requesting copies of the notices. The Control Officer shall send a notice of the application and hearing to the persons with an interest who have requested notice.
5. Any person with an interest may petition to intervene.
  - a. A petition for leave to intervene must be in writing.
  - b. The name and address of the petitioner and, if represented, the name, address and telephone number of his attorney or other authorized representative must be set forth.
  - c. It must contain a clear and concise statement of the direct and substantial interest of the petitioner in the proceedings.
  - d. A statement as to whether the petitioner intends to present evidence must also be included. If the response is affirmative, the petitioner shall supply the information required by Item Nos. 1(e), 1(g), 1(h), and 1(i) stated above.
  - e. The Chairman of the Hearing Board shall determine if the petition to intervene should be granted.

6. At the hearing, evidence should be presented in the following order:
  - a. Applicant's;
  - b. Intervenor's;
  - c. Control Officer's;
  - d. Public comment; and
  - e. Applicant's rebuttal.
7. Witnesses may be cross-examined by the opposing parties, by members of the Board, legal Counsel for the Board, the Control Officer and Counsel for the County.
8. The Chairman of the Hearing Board may require any party of record to file proposed findings of fact and conclusions of law at the close of the proceeding. The Chairman of the Hearing Board will fix the period within which these proposed findings and conclusion must be filed. No decision, report or recommended order may be made until after the expiration of this period.

This Manual of Procedures has been amended this 21st day of August, 2001 by the Clark County Air Quality Management Board.

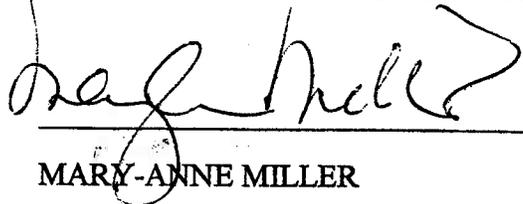
CLARK COUNTY AIR QUALITY MANAGEMENT BOARD:



BRUCE L. WOODBURY

Chairman

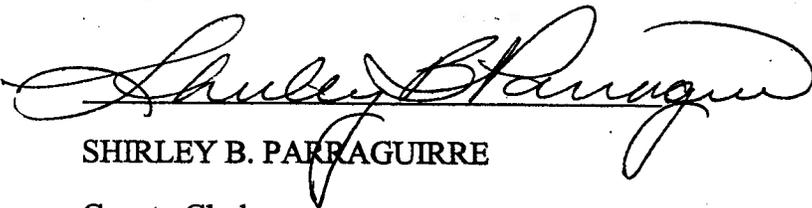
APPROVED BY THE DISTRICT ATTORNEY:



MARY-ANNE MILLER

Counsel

ATTEST:



SHIRLEY B. PARRAGUIRRE

County Clerk