

## **CLARK COUNTY**

### **AIR QUALITY REGULATIONS**

#### **SECTION 7 – AIR POLLUTION CONTROL HEARING BOARD AND HEARING OFFICER**

- 7.1 The Air Pollution Control HEARING BOARD shall select a Chairman and Vice-Chairman and such other officers as it deems necessary and, subject to the approval of the Clark County Board of County Commissioners, may adopt a manual of procedures to govern its operation.
- 7.2 Members of the Air Pollution Control HEARING BOARD shall serve the following terms: Three shall be appointed for a term of one year, three shall be appointed for a term of two years and one shall be appointed for a term of three years. Each succeeding term shall be for a period of three years.
- 7.3 The HEARING OFFICER(s) shall act, independent of each other in regards to decisions. HEARING OFFICER(s) shall be selected by the Clark County Board of County Commissioners, from qualified applicants to the Department of Air Quality and Environmental Management. The HEARING OFFICER(s) will be an independent contractor who serves at the pleasure of the Clark County Board of County Commissioners. The Clark County Board of County Commissioners shall review and set such fees as are paid to the HEARING OFFICER and shall be in accord with the fee schedule(s) annually approved by the Clark County Board of County Commissioners.
- 7.4 **Alleged Violations:**
- 7.4.1 Alleged Violations without Corrective Action:
- 7.4.1.1 The CONTROL OFFICER may notify person or persons responsible for an alleged violation to appear before the HEARING OFFICER.
- 7.4.1.2 If a hearing upon an alleged violation is held and if the Hearing Officer finds that a violation has occurred:
- 7.4.1.2.1 The HEARING OFFICER may levy such penalty that he deems appropriate to the violation, in accordance with Section 9 of these Regulations.

7.4.1.2.2 If the HEARING OFFICER determines that emissions in excess of any limits, contained in the Regulations, were the result of a malfunction, then he shall dismiss the Notice of Violation, except as otherwise provided herein. In determining whether or not a malfunction occurred, the HEARING OFFICER may use the guidelines of Subsection 25.1.1.

7.4.2 Alleged Violations with Corrective Action:

7.4.2.1 If an alleged violator does not agree with a Corrective Action Order issued by the CONTROL OFFICER, he may appeal to the Air Pollution Control HEARING BOARD.

7.4.2.2 The Air Pollution Control HEARING BOARD may affirm, modify, or rescind a Corrective Action Order previously issued by the CONTROL OFFICER; and

7.4.2.2.1 The Air Pollution Control HEARING BOARD may issue an order for abatement, control or other appropriate corrective action.

## 7.5 **Request for Variance**

7.5.1 The owner or operator of a source of Air Contaminant or a person who desires to establish such a source may apply to the Air Pollution Control HEARING BOARD for a variance. There shall be a \$140.00 fee for filing any request for a variance. The Air Pollution Control HEARING BOARD may grant a variance only if, after public hearing on due notice, it finds from a preponderance of the evidence that:

7.5.1.1 The emissions occurring or proposed do not endanger or tend to endanger human health or safety; and

7.5.1.2 Compliance with the Regulations would produce serious hardship without equal or greater benefits to the public.

7.5.2 Variance Applicants shall truthfully disclose all information required to process the variance application. Information determined to be false or misrepresented shall void the variance application and the application fee shall be forfeit.

7.5.2.1 Variances granted based on false or misrepresented application information shall be nullified by the Air Pollution Control HEARING BOARD and may result in enforcement action. All fees paid for the variance shall be forfeit.

7.5.3 A variance shall not be granted unless the Air Pollution Control HEARING BOARD has considered the relative interests of first, the public; second, other owners of property likely to be affected by the EMISSIONS; and last, the applicant.

7.5.4 The Air Pollution Control HEARING BOARD may in granting a variance impose appropriate conditions upon an applicant, and may revoke the variance for failure to comply.

7.5.5 No STATIONARY SOURCE shall be granted a variance from any applicable requirement, as defined in Section 0, or any requirement in Section 19.

## 7.6 **Renewals of Variance**

7.6.1 A variance may be renewed only under circumstances and upon conditions which would justify its original granting.

7.6.2 Application for any renewal must be made at least sixty (60) days prior to expiration of the variance to be renewed, and the Air Pollution Control HEARING BOARD shall give public notice of the application.

7.6.3 If a protest is filed with the Air Pollution Control HEARING BOARD against the renewal, the Air Pollution Control HEARING BOARD shall hold a public hearing and shall not renew the variance unless it makes specific, written findings, of fact which justify the renewal.

## 7.7 **Duration of Variance**

7.7.1 If the variance is granted for any reason, it shall be granted for one year or less.

7.8 **No applicant is entitled to the granting or renewal of a variance as a right.**

## 7.9 **Advice**

7.9.1 Any interested person may file a petition with the Air Pollution Control HEARING BOARD for a declaratory order or advisory opinion as to the applicability of these Regulations or of actions by the Clark County Board of County Commissioners, or the CONTROL OFFICER.

## 7.10 **Appeals**

7.10.1 Any person aggrieved by:

7.10.1.1 The issuance, denial, renewal, suspension or revocation of an OPERATING PERMIT; or

7.10.1.2 The issuance, modification or rescission of any other order by the CONTROL OFFICER may appeal to the Air Pollution Control HEARING BOARD.

- 7.10.2 The Air Pollution Control HEARING BOARD shall decide the appeal, and may order the affirmance, modification or reversal of any action taken by the CONTROL OFFICER which is the subject of the appeal.
- 7.10.3 The Air Pollution Control HEARING BOARD shall decide the appeal, and may order the affirmance, modification or reversal of any action taken by the HEARING OFFICER which is the subject of the appeal.
- 7.10.4 The Air Pollution Control HEARING BOARD shall provide by rule for the time and manner in which appeals are to be taken to the Air Pollution Control HEARING BOARD. Appeals from any order issued pursuant to Subsection 4.7.2 shall be made in writing within ten (10) days of receipt by the violator of the order or from receipt by the violator of the written decision of the HEARING OFFICER, whichever is later.
- 7.11 **Judicial Review**
- 7.11.1 Any person aggrieved by an order or decision of the Air Pollution Control HEARING BOARD may seek judicial review in accordance with law.
- 7.11.2 Judicial review procedures for permits issued pursuant to Section 19.
- 7.11.2.1 Any person aggrieved by the following may seek judicial review:
- (a) Failure of the CONTROL OFFICER to take final action within the time specified in Section 19:
    - (1) Permit Issuance
    - (2) Permit Renewal
    - (3) Permit Revision
  - (b) Failure of the CONTROL OFFICER to take final action on an application requesting minor permit modification within ninety (90) days of receipt of such application.
  - (c) Failure of the CONTROL OFFICER to reopen a permit under Subsection 19.5.6.1(e).
- 7.11.2.2 Subsection 7.11 shall be the exclusive means for obtaining judicial review of the permit terms and conditions
- 7.11.2.3 Petitions requesting judicial review shall be filed no later than thirty (30) days after the final decision of the Air Pollution Control HEARING BOARD as

provided in Subsection 7.10.2, or the failure of the CONTROL OFFICER to act as set forth in Subsection 7.11.2.1.

## 7.12 **Procedures**

7.12.1 The Air Pollution Control HEARING BOARD shall meet within twenty (20) days after receipt of a request by the AIR QUALITY COMMITTEE, the CONTROL OFFICER, or on its own initiative.

7.12.2 The Chairman, or in his absence the Vice-Chairman of the Air Pollution Control HEARING BOARD, may issue subpoenas to compel attendance of any person at hearing, and require the production of books, records, and other documents material to a hearing.

7.12.3 Four members of the Air Pollution Control HEARING BOARD must be present to hold a hearing, and a majority of those present must concur in any decision.

7.12.4 All testimony must be given under oath and recorded verbatim, by human or electronic means. Upon request, the Chairman shall provide for a transcript at the expense of the requesting party.

7.12.5 Air Pollution Control HEARING BOARD procedures shall be governed by a manual of procedures adopted by the Board where not inconsistent with Chapter 233B of NRS.

7.12.6 For the purpose of this Subsection an order of the Air Pollution Control HEARING BOARD shall be final ten (10) days after mailing to or personal service upon all of the aggrieved parties.

7.12.7 An aggrieved party may request a rehearing before the Air Pollution Control HEARING BOARD within ten (10) days of his receipt of the final order.

## 7.13 **Procedures of the HEARING OFFICER**

7.13.1 The HEARING OFFICER(s) shall meet upon the request of the CONTROL OFFICER or on their own initiative.

7.13.2 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 hearing.

7.13.3 The decision of the HEARING OFFICER or the CONTROL OFFICER shall be final unless the violator or the CONTROL OFFICER petitions for appeal of the decision to the Air Pollution Control HEARING BOARD pursuant to Subsection 7.10.

- 7.13.4 All testimony shall be given under oath and recorded verbatim, by human or electronic means. Upon request, the HEARING OFFICER shall provide for a transcript at the expense of the requesting party.
- 7.13.5 HEARING OFFICER shall be governed by a manual of procedures adopted by the Clark County Board of County Commissioners, consistent with the Air Pollution Control HEARING BOARD procedures and policies and where not inconsistent with Chapter 233B of NRS.
- 7.13.6 For the purpose of this Subsection, a written order of the HEARING OFFICER shall be final ten (10) days after mailing to or personal service upon all of the affected parties.
- 7.13.7 Actions of the HEARING OFFICER will be forwarded as an informational item to the Air Pollution Control HEARING BOARD.
- 7.14 **Conflict of Interest**
- 7.14.1 A HEARING OFFICER or a member of the Air Pollution Control HEARING BOARD may vote upon or consider a matter, if the benefit or detriment accruing to him as a result of the decision either individually or in a representative capacity as a member of a general business profession, occupation or group, is not greater than that accruing to any other member of the general business, profession, occupation or group.
- 7.14.2 A HEARING OFFICER or a member of the Air Pollution Control HEARING BOARD shall not vote upon, consider, or advocate the passage or failure of, but may otherwise participate in the consideration of a matter with respect to which the independence of judgment of a reasonable person in his situation would be materially affected by:
- (a) His acceptance of a gift or loan;
  - (b) His pecuniary interest; or
  - (c) His commitment in a private capacity to the interest of others.
- 7.14.3 If a member of the Air Pollution Control HEARING BOARD declares that he will abstain from voting because of the requirements of Subsection 7.14.2, the necessary quorum to act upon and the number of votes necessary to act upon the matter, is reduced as though the member abstaining were not a member of the Air Pollution Control HEARING BOARD

7.14.4 If a HEARING OFFICER declares that he must abstain from rendering a decision because of the requirements of Subsection 7.14.2, the scheduled hearing will then be forwarded to a second HEARING OFFICER. If there are no qualified individuals, then the HEARING OFFICER(s) who are not disqualified per Subsection 7.14.2, then the Air Pollution Control HEARING BOARD will take action on the item as the reviewing administrative body.

History: Amended: September 3, 1981; July 8, 1985; April 23, 1987; November 18, 1993; May 26, 1994; December 19, 1996; April 24, 1997; December 21, 2000; June 3, 2003; July 1, 2004.