



Minutes of the Clark County
Air Pollution Control Hearing Board Meeting
April 21, 2016

I. CALL TO ORDER

Chair Daniel Sanders called the meeting of the Air Pollution Control Hearing Board to order at 1:34 p.m. A quorum was present and Affidavits of Posting of the agenda were provided as required by the Nevada Open Meeting Law. The Affidavits will be incorporated into the official record.

PRESENT: Daniel Sanders, Chair
Evan S. Wishengrad, Esq., Vice-Chair
Craig Schweisinger
Ryan L. Dennett
William Kremer
Karen Purves

ABSENT: Tom Foster, Jr., P.E.

LEGAL COUNSEL: Leslie A. Nielsen, Esq.

DAQ STAFF: Mike Sword, Acting Compliance and Enforcement Manager
Marci Henson, Director
Pamela Thompson, Sr. Secretary

OTHERS
PRESENT: Shibi Paul, DAQ; Jeffrey Robb, DAQ; Mike Sword, DAQ; Chuck Richter, DAQ;
Richard Beckstead, DAQ; Whitney Francis, DAQ; Lea Kain, DAQ;
Edward Mulrean, Desert Tree Farm; Jack Paripovich, Complete Demo Services.

II. PUBLIC COMMENT

There were no public comments.

III. ELECTION OF CHAIR

[Continued from previous meeting.]

Chair Sanders opened consideration to the board. Board Member Schweisinger motioned the current Chair and Vice-Chair from 2015 continue their appointments for 2016. The motion was seconded by Board Member Kremer. There was no discussion from the board. Chair Sanders called for a vote on the motion, and asked those in favor of reappointing Daniel M. Sanders as Chair and Evan Wishengrad as Vice-Chair to signify by saying aye. It was met by a chorus of ayes. There was no opposition. The motion passed unanimously. Chair Sanders spoke briefly about his time with the Hearing Board.

IV. ELECTION OF VICE-CHAIR

See Item III above.

V. APPROVE MINUTES OF DECEMBER 10, 2015

Chair Sanders called for comments, changes, or corrections to the December 10, 2015 minutes. Board Member Purves asked for clarification of the minutes concerning Lhoist North America aka Chemical Lime Company (Chemical Lime Company). She requested confirmation that after the vote of approval by the Hearing Board, Chemical Lime Company prepared a new permit based on the Hearing Board's decision, and it has not been accepted by the EPA because the changes violated federal law. The question was tabled while Department of Air Quality (DAQ) Permit Manager Richard Beckstead was located. Board Member Purves then asked Marci Hensen if she will continue to manage the Desert Conservation Program while performing her duties as Director of DAQ. Ms. Hensen stated she will take on both roles. The Board returned to the initial question, and Chair Sanders stated his understanding was Chemical Lime Company filed for a permit, but it did not meet with EPA standard, and it is still in a two year delay. Board Member Schweisinger motioned to lay over the acceptance of the minutes to later in the hearing, and then retracted his motion. Vice-Chair Wishengrad motioned the minutes be approved, provided clarification of the second bullet point under permitting from the December 10, 2015 minutes was given *[continued in Item VII of the minutes]*. The motion was seconded by Board Members Kremer and Schweisinger. Chair Sanders called for a vote on the motion, and asked those in favor of approving the December 10, 2015 minutes signify by saying aye. It was met by a chorus of ayes with Board Members Schweisinger and Dennett choosing to abstain because they did not attend the December 10, 2015 meeting. There was no opposition. The motion passed.

VI. MATTERS REQUIRING BOARD ACTION DISCUSSION/POSSIBLE ACTION

A. CERTIFICATE OF EXEMPTION

- 1. DESERT TREE FARM** -- Certificate of Exemption for distributing and marketing a low pollinating olive tree for the next three (3) years.

Chair Sanders asked the representative from Desert Tree Farm to approach table and address the board. Ed Mulrean identified himself as the Director of Marketing and Sales for Arizona Trees from Phoenix, Arizona, and was sworn in. He stated he was here not as a representative of Arizona Trees, but as a professional favor to a colleague with Desert Tree Farms, John Augustine (sp?), and does not work for or have a business association with Desert Tree Farm.

Chair Sanders asked for comments from DAQ staff. DAQ Planning Manager, Mike Sword stated DAQ staff has reviewed the application for a Certificate of Exemption for distributing and marketing a low pollinating olive tree (shrub), and is recommending approval of the certificate for 3 years. Chair Sanders asked if this tree exemption was consistent with previous exemptions the board has approved. Mr. Sword responded it was consistent. Chair Sanders asked if the tree has undergone DNA testing, and if the trees will be labeled appropriately. Mr. Sword confirmed that requirements would mandate DNA testing and labeling.

Chair Sanders requested comments from the board. Board Member Purves asked Mr. Mulrean to approximate the number of shrubs which will be sold over the life of the certificate based on other markets. Mr. Mulrean stated it is a minor shrub in Arizona, and would have trouble estimating the number. He then stated thousands would be generous, but after the first year of the exemption a better estimate could be made. Board Member Purves asked for confirmation this was the first application for exemption of the shrub. Mr. Mulrean stated it was the first application in Clark County. Board Member Purves then asked DAQ staff for the general reason behind Air Quality Regulation Subsection 44.2.1, which prohibits the sale and planting of mulberry and European olive trees. Mr. Sword responded the pollen from mulberry and olive trees is pervasive, and they are high pollen producers. He stated that most sensitive people have a response to 150 grains. The mulberry pollen count has been 60,000 grains and the olive pollen count has been 300-600 grains. These trees can cause issues for people sensitive to pollen. He then commented this variety of olive tree was non-pollinating.

Board Member Kremer stated this cultivar of shrub was a non-flowering variety, and asked if Mr. Mulrean has ever seen it flower. Mr. Mulrean stated he has not, nor has Mr. Augustine in his 20 years of experience. Board Member Dennett asked Mr. Mulrean if he knew of other jurisdictions which have approved this shrub where similar trees are prohibited, like California or Arizona. Mr. Mulrean responded he is not aware of other exemptions, though his knowledge is limited. Board Member Purves commented the tree is used in other similar climates without regulation prohibiting the use of the plant. Vice-Chair Wishengrad asked if the shrubs would be farmed locally before being sold at retail nurseries. Mr. Mulrean responded the trees would be grown at Desert Tree Farm's property in Maricopa County, Arizona. Vice-Chair Wishengrad asked if the trees will be tagged and identified when they enter Nevada. Mr. Mulrean answered they would be identified and barcode labeled similar to the Swan Hill tag.

Chair Sanders asked if there were any further questions from the Board Members. Being none, he closed the hearing and asked for a motion. Board Member Purves motioned to approve the Certificate of Exemption for distributing and marketing a low pollinating olive tree for the next 3 years. Board Member Kremer seconded the motion. Chair Sanders called for a vote, and asked all in favor of approval of the Certificate to say aye. It was met by a chorus of ayes. There was no opposition. The motion passed unanimously.

[Clarification of minutes was taken up at this time (Item VII).]

B. APPEALS

- 1. COMPLETE DEMO SERVICES (Project Number: 152005; DCP #45056) – NOV #8736 --**
On January 20, 2016, the Hearing Officer found Complete Demo Services in violation of 40CFR61, Subpart M, Part 61.145(b)(3)(i) (adopted by reference in Section 13.1 of the Air Quality Regulations) for failing to notify Air Quality of all structures subject to renovation or demolition activities prior to conducting renovation and demolition activities, as identified during a routine site inspection on July 29, 2015, located at 405 North 6th Street, in Clark County, Nevada. A \$1,000.00 penalty was assessed. Complete Demo Services appealed the Air Pollution Control Hearing Officer's Order.

Chair Sanders requested representatives of Complete Demo Services (Complete Demo) to approach the testimony table. Jack Paripovich from Las Vegas, Nevada, introduced himself as the representative from Complete Demo, and was sworn in.

DAQ Air Quality Supervisor Chuck Richter called Whitney Francis to testify and give background on the case. Mr. Francis identified himself as Air Quality Specialist II at 4701 Russell Road, Las Vegas, Nevada, and was sworn in. Mr. Richter then asked Mr. Francis a series of questions. Mr. Francis was asked if he was familiar with NOV #8736, and to whom it was given. He responded he was familiar, and the Notice of Violation (NOV) was issued to Complete Demo for their 405 North 6th Street project. Mr. Francis confirmed in NOV #8736 he alleges Complete Demo violated Air Quality and National Emissions Standards for Hazardous Air Pollutants (NESHAP) regulations. Mr. Francis was then asked if Complete Demo included a demolition notification form and demolition supplemental for this project. Mr. Francis responded Complete Demo did include the documents. Mr. Richter referred to Exhibit 3, bates stamped 0009, and asked Mr. Francis when the demolition form was submitted to DAQ. Mr. Francis responded May 8, 2015. Mr. Richter asked Mr. Francis to read the instructions on the first page of the notification form in the general instructions starting with "separate notifications." Mr. Francis read the instructions regarding the need for separate notifications to be provided for each building or other individual facility to be demolished. Mr. Francis was then asked to read the date DAQ received the demolition supplement found on page 0011. Mr. Francis responded May 13, 2015. Mr. Richter asked if the demolition supplement was submitted as part of the dust control permit application for Complete Demo. Mr. Francis confirmed it was. Mr. Richter then asked what the application stated for total number of buildings on site and number of buildings to be demolished on site. Mr. Francis answered one, and then confirmed the form was signed by Jack Paripovich. Mr. Francis went on to confirm on July 29, 2015, he conducted an inspection of the 405 North 6th Street demolition site.

Mr. Richter introduced Exhibit 1, bates stamped 0005, the site inspection form and photos 1-4, bates stamped starting at 0007. Mr. Francis was then asked to describe his observations from the inspection and photos. Mr. Francis gave a description of the site from photo 1 which was an aerial photo of the foundation of building 2 and the parcel that contained the remains of building 3. He then commented these two demos were not notified for on the project site. Mr. Francis stated in photo 2 the site of the properly notified building 1 is visible, and the remains of the other two buildings are visible. He then stated photo 3 contains a closer view of buildings 2 and 3, and photo 4 shows the dust control permit sign lying on the ground. The dust control permit sign led Mr. Francis to contact Complete Demo and Mr. Paripovich as the on-site demolition contractor. Mr. Francis confirmed when he was on-site on July 29, 2015, two buildings were completely demolished and the third building was in the process of being demolished. Mr. Francis stated building 1 was properly notified for demolition, but building 2 and 3 were not properly notified 10 working days prior to demolition. Mr. Francis continued, stating the observations violated 40CFR61.145(b)(3)(i) and Air Quality Regulation Subsection 13.1 requiring demolition notifications for each of the buildings and a 10 working day waiting period after notification before site prepping or demolition could begin. Mr. Francis said he contacted Mr. Paripovich, and notified him DAQ had not received two additional demolition notifications for the project. Mr. Francis added Complete Demo eventually sent in the demolition notifications and supplementals for buildings 2 and 3. Mr. Richter then referred to Exhibit 4, bates stamped starting at 0012, and Mr. Francis described it as a demolition notification received as a fax submittal from July 29, 2015, from Complete Demo. He continued to say this demo notification was unacceptable because it was not an original wet signature copy. Two original copies were received on July 31, 2015. Mr. Francis stated it is federal law, and the 10-day waiting period allows DAQ time to review the demolition notification, the asbestos survey, and to inspect the facility for regulated asbestos-containing material (RACM), items missed during the asbestos survey and abatement, or any other air quality concerns. Mr. Francis read from bates stamped 0015 of Exhibit 4, which states there are two buildings on-site and three buildings to be demolished, including the previously demolished building. Mr. Richter concluded his questions.

Chair Sanders opened up questions to the board. Board Member Kremer asked if any of the buildings have separate addresses, and who assigned them different numbers. Mr. Francis answered, stating he believes the separate buildings on the parcel were merged into one larger parcel and one address; however if buildings on one parcel do have separate addresses, it does not affect the notification process. Mr. Francis continued to explain he assigned building numbers only as a point of reference. Board Member Kremer asked if the buildings were contiguous on one parcel of land is there anything to mandate which building was permitted for demolition. Mr. Francis stated he believed the first demolition notification, at 405 North 6th Ave, was for the original building, and the dust control permit covered all three of the buildings. Board Member Schweisinger asked if there was a fence that surrounded the entire construction site. Mr. Francis answered there was not. Mr. Paripovich clarified 405 North 6th Street was the address of the original demolition when the project began, and then the City of Las Vegas annexed the two buildings next to the original building into the parcel. Mr. Paripovich pointed out he was contracted to demolish one building (building 1), and the City later notified him he was demolishing all three buildings. The other two buildings were originally located at 409 North 6th Street, and when Mr. Paripovich returned to the Assessor's office, all three buildings were merged to 405 North 6th Street. Mr. Paripovich added this caused him confusion because gave a demolition notification for the building at the 405 North 6th Street address, and the other

buildings were added to it. Vice-Chair Wishengrad pointed out the number of structures increased from 1 to 3. Mr. Francis then added that Mr. Paripovich permitted the entire area, incorporating all three areas, for a dust control permit the first time. Board Member Schweisinger questioned whether demolition of all three building was expected. Mr. Francis stated Mr. Paripovich said he would give notification for the other structures to DAQ when the time came because the City did not have full ownership or close escrow on the other two buildings until after the first building was going to be demolished. Mr. Francis stated that a month or two after this conversation, he drove by the site and the two other buildings were on the ground.

Vice-Chair Wishengrad requested confirmation of a May 8, 2015 demolition application and a May 13, 2015 supplemental application. Mr. Francis explained that the supplemental application provided additional information for the dust permit relating to the building 1. Vice-Chair Wishengrad then clarified the inspection was July 29, 2015, and on the same day Mr. Paripovich filed an additional supplemental application which covered the other two structures; however the DAQ required wet copies, not faxed. Mr. Francis responded he needed a demolition notification, not a demolition supplemental form. He continued to say the demolition notification form is part of the NESHAP, which is a federal requirement. The demolition supplemental is part of the dust control permit, which is a local permit. Vice-Chair Wishengrad then referred to the Exhibits stating the issue was not the use of facsimile to send the documents, but each structure is required to have a separate demolition notification. He asked if on July 31, 2015, Mr. Paripovich should have filed an additional supplement. Mr. Francis explained Complete Demo should have given notification 14 days (10 working days) prior to the demolition. Vice-Chair Wishengrad requested verification the respondent tried to immediately comply after he was notified of a violation on July 29, 2015. Mr. Francis verified after he notified Mr. Paripovich of the violation, Complete Demo did attempt to send in the demolition notification. Vice-Chair Wishengrad asked for a clarification of the job duties of an Air Quality Specialist and a description of what routine patrol entails. Mr. Francis stated he is assigned to inspect asbestos abatement and demolition jobs, and routine patrol typically entails driving around looking for air quality violations. Vice-Chair Wishengrad then asked what drew Mr. Francis' attention to this project. Mr. Francis answered because the first building was previously demolished with proper permitting, and on this trip by the site the other buildings were demolished.

Chair Sanders inquired what credentials asbestos inspector Dennis Kish has, and if Mr. Kish completes an asbestos site inspection form. Mr. Francis responded Mr. Kish is licensed by OSHA to perform asbestos inspections, and Mr. Kish does not fill out a form for DAQ. Mr. Kish is hired by the building owner to do asbestos sampling. Chair Sanders then commented on the importance of asbestos abatement and questioned the ability for someone to forge a signature on the demolition notification form if the DAQ does not receive an asbestos report. Mr. Francis confirmed the DAQ received an asbestos report, but he does not currently have it in his possession at the Hearing. Chair Sanders added he does not have an asbestos report in his case file, and asked if one was completed for buildings 2 and 3, which were demolished without a demolition notification. Mr. Francis responded that he believed the report encompassed all three buildings. Chair Sanders requested confirmation the asbestos report was completed and received with the demolition notification for building 1. Mr. Francis stated he is positive that asbestos was removed from buildings 2 and 3, but there was no notification of demolition, which would have given DAQ time to inspect the structures to ensure the asbestos was properly removed. Chair Sanders expressed his understanding of Mr. Francis' position on the lack of notification;

however the Chair is looking for verification an asbestos inspection was completed on the other two structures. Vice-Chair Wishengrad then asked for confirmation that Mr. Francis believed asbestos was found in all three buildings. Mr. Francis stated he believed so, and then asked for confirmation from Mr. Paripovich. Mr. Paripovich confirmed asbestos was removed from all three structures. He continued to say the same company which removed asbestos from the first building performed asbestos abatement on the other two buildings. Board Member Kremer asked who oversaw the asbestos removal. Mr. Francis responded the asbestos was non-friable so there was no notification to DAQ necessary. Board Member Kremer asked Mr. Paripovich if the City of Las Vegas or Life is Good contracted him because both parties are listed. Mr. Paripovich responded that the City of Las Vegas had Life is Beautiful hire Complete Demo to handle the project, but it was through the City of Las Vegas. Board Member Kremer then stated that it sounds as though the City of Las Vegas had an umbrella viewpoint over Complete Demo and approval over their work. Mr. Paripovich responded the City of Las Vegas does not have approval over his work, they hired him to complete the work, trusting he would do it properly as a licensed contractor.

Chair Sanders added the dust permit sign had tape and black markings on it, and then asked if the sign was in acceptable condition and properly displayed. Mr. Francis responded the sign was not installed correctly and should be printed properly; however it was the least of the problems he encountered on the site, and the condition of the permit was not part of the violation. Board Member Purves asked why the penalty of \$2,000, which was then reduced to \$1,000, was decided upon, when the maximum penalty was \$10,000, as seen in bates stamp 0003. Mr. Sword explained that another witness will be called to answer questions about the penalty. Board Member Purves asked for final verification that asbestos was found on the site before demolition, and a dust permit must be obtained when demolishing a house. Mr. Francis responded yes to both questions. Seeing no further questions for Mr. Francis, Chair Sanders asked for the next witness.

Mr. Richter called Jeff Robb to the testimony table. Mr. Robb identified himself as a Senior Air Quality Specialist with DAQ at the 4701 W. Russell Road location, and was sworn in. Mr. Richter asked Mr. Robb about his familiarity with NOV #8736 and how the amount of the penalty was decided. Mr. Robb affirmed his familiarity with NOV #8736, and explained Complete Demo was cited for a one violation on July 29, 2015, of 40CFR61.145(b)(3)(i) for failure to submit NESHAP notification 10 days prior to demolition. The penalty rate for this type of violation is \$2,000. He continued to say there are no adjustments for mitigation or aggravating circumstances; therefore the recommended penalty remained at \$2,000. Mr. Robb then explained the Hearing Officer's decision was to reduce the penalty to \$1,000. Vice-Chair Wishengrad asked if the penalty was typically \$2,000 per day per violation, and if so, how was the decision made to make this a one day violation on July 29, 2015, when 10 days of notification are required. Mr. Robb responded that rather than assessing a considerable amount for multiple days DAQ typically assigns a penalty based on the nature of the violation, which was failure to notify. Vice-Chair Wishengrad pointed out that the penalty could have been assessed for each structure of the two structures which failed to provide notification, and Mr. Robb concurred. Seeing no further questions for Mr. Robb, Chair Sanders asked if Mr. Richter had any further witnesses, which he did not.

Mr. Paripovich approached the testimony table. Chair Sanders requested confirmation that Mr. Paripovich was appealing the fine and violation. Mr. Paripovich responded his appeal was

concentrated on the violation because a violation on Complete Demo's record may affect the business when applying for future government contracts. Vice-Chair Wishengrad asked if the violation is a civil violation, and if the applications for contracts request civil or criminal violations. Mr. Paripovich responded that different government entities request different information on applications. He explained he does not currently have any violations, and would like to maintain a clean record. Vice-Chair Wishengrad then asked if a settlement agreement is possible with a penalty being assessed, but there is no admittance of a liability or violation. Mr. Sword answered the penalty must be tied to a notice of violation. Vice-Chair Wishengrad added this is a common occurrence in civil court. Board Member Purves commented she is aware of the frequency of this action in civil court; however she agrees with DAQ staff that penalties must be accompanied by a violation.

Board Member Kremer then asked Mr. Sword if this would have been a violation if all three buildings were listed on the original application. Mr. Sword responded the demolition notification states separate notifications must be provided for each building or other individual facility where the demolition of said building or facility must be demolished. He continued to say this requirement is in the Federal (NESHAP) regulations, which DAQ has adopted. Board Member Kremer then asked how Mr. Paripovich was made aware of this regulation. Mr. Paripovich replied the application packet contains a demolition supplemental but not a demolition notification. When he asked DAQ staff why the notification is not contained in the packet, DAQ staff responded there is no room. Mr. Paripovich continued to say part of his violation is failure to complete the demolition notification, which is not part of the packet given to him. He explained the application does state to complete a demolition notification, but one was not included in the packet, it is not available in the forms carousel at DAQ, and the pdf online is not working; therefore, the form he did not complete is not available in the application or at the counter of the DAQ. Board Member Purves asked if the demolition notification form, bates stamp 0009, Exhibit 3, which has his signature, dated May, 8, 2015, and was received on May 13, 2015, on which he stated demolition of one building, and reads a separate notification must be completed for each building was not completed for the other structures. Mr. Paripovich answered he completed the initial form when his secretary provided it to him before leaving for vacation, but he overlooked the form on the other two structures because it is not available. Board Member Purves then verified that Mr. Paripovich signed the document stating separate forms must be filed for each building. Mr. Paripovich responded the secretary has copies of the form in her office; however the form is not available in the packet or in the carousel. He continued to say the 10 business day waiting period can be waived if necessary. Another project he is working on was demolished with the waiting period being waived.

Chair Sanders suggested the board allow Mr. Paripovich to plead his case before asking questions. Mr. Paripovich reasserted the demolition notification is not included in the dust permit packet, in the carousel of forms at DAQ, and the link to the form is not currently working online. He summarized the demolition notification is not available. He added that he did have asbestos testing and abatement done, so the public was not in danger. He did complete a form, but only listed one building to be demolished rather than three, but the buildings were on the same parcel. Finally, he suggested DAQ add the form to the packet or carousel. Chair Sanders asked Mr. Paripovich if he was done pleading his case, and he confirmed he was.

Board Member Kremer asked Mr. Paripovich what prompted him to move forward and demolish the other two buildings after completing the demolition notification for the first building. Mr.

Paripovich responded Life is Beautiful asked him to look at only one building for demolition. He provided them a quote to demolish the one building, and before he completed the demolition the City of Las Vegas asked him why he did not complete demolition of the other two buildings. He contacted Life is Beautiful to ask why they contracted him for one building. Life is Beautiful told Mr. Paripovich they made a mistake, and the City combined the two parcels into one. Life is Beautiful then paid Complete Demo for the demolition of the other two buildings. He then had the asbestos tested and removed, and finally, he demolished them. He stated the form should have been completed, changing the demolition notice from one to three buildings, but he asserted getting a notification form is difficult. He admitted he made a mistake, and reasserted the asbestos was removed. Board Member Kremer questioned what the organization Life is Beautiful does and who pays the organization. Mr. Paripovich answered, stating downtown properties have different entities which he does not understand. He said Complete Demo has demolished many buildings downtown and they all have different divisions. He believed Life is Beautiful needed the property for their festival, and the City of Las Vegas owes them property through a deal with Zappos. He then reasserted a violation would give the impression that Complete Demo is cutting corners. Board Member Kremer again requested clarification as to who hired Mr. Paripovich, and who is paying to have the work completed. Mr. Paripovich stated he was hired by Life is Beautiful, and he is unsure, but he believes the City was paying for the work. Mr. Paripovich again affirmed his desire to pay a penalty without violation.

Vice-Chair Wishengrad asked Mr. Paripovich to verify the packet he provided the Hearing Board members as evidence is the complete packet DAQ offers to the public. Mr. Paripovich confirmed it was. Vice-Chair Wishengrad requested DAQ staff verify the packet entered as evidence is the complete packet available online or in the carousel at the DAQ. Mr. Sword answered the packet for a dust control permit does not contain a demolition notification form. Vice-Chair Wishengrad asked Mr. Sword to verify if the packet possessed by the Board is the complete packet offered to the public. Mr. Sword stated he cannot verify if all of the documents are the same. Vice-Chair Wishengrad asked Mr. Paripovich to examine the demolition supplemental form, Appendix A-2, of the dust control permit. Vice-Chair Wishengrad then asked Mr. Paripovich if he had access to this document in the dust control permit. Mr. Paripovich confirmed he did. Vice-Chair Wishengrad continued, inquiring if Mr. Paripovich completed the demolition supplemental form for buildings 2 and 3. Mr. Paripovich stated he did not. Vice-Chair Wishengrad asserted Mr. Paripovich's argument is he did not complete a demolition notification because it was not available; however he did not complete a demolition supplemental form for buildings 2 and 3, which was available to him. Mr. Paripovich argued that he was in violation because of the missing notification. Vice-Chair Wishengrad then asked Mr. Sword if the demolition notification form is available to the public through carousel or online. Mr. Sword confirmed it is available online and at DAQ office, but he is unsure if the carousel contains the document. Vice-Chair Wishengrad followed by asking what the process would be if the public brought in a demolition supplemental without providing a demolition notification form. Mr. Francis explained he reviews all dust control permits DAQ receives, and he might contact the applicant to inform them a demolition notification is also necessary. He added not all projects require demolition notifications; however this project did. Vice-Chair Wishengrad asked Mr. Francis if he had received this demolition supplemental form would he have reviewed it to determine whether a demolition notification was needed, and if it was needed would he have contacted the applicant. Mr. Francis confirmed he would.

Board Member Kremer stated that Life is Beautiful is the owner of the project not Mr. Paripovich, and then asked what is his culpability. Vice-Chair Wishengrad commented that Mr. Paripovich is the applicant and responsible for the demolition. Vice-Chair Wishengrad then asked if anyone from the City maintained on site oversight of the project. Mr. Paripovich answered no one from the City oversaw the project on site. Vice-Chair Wishengrad questioned if a penalty without violation is not possible, then, what about a probationary agreement in which the violation is removed if Complete Demo is in full compliance for a certain period of time. Deputy District Attorney Leslie Nielsen stated after researching the topic, a settlement agreement is possible. Vice-Chair Wishengrad added that Mr. Paripovich acknowledges wrong doing, and he was not in full compliance; however it was not intentional and not harmful. He continued to say he believes Mr. Paripovich has learned his lesson and will be in full compliance in the future. The Board Member asserted he would not want to harm Mr. Paripovich's ability to obtain future contracts as long as he remains in compliance with all regulations and laws. Vice-Chair Wishengrad believed the \$1,000 penalty was fair for the violation considering the penalty could have been higher because it could have been \$2,000 or imposed per structure demolished without notification.

Board Member Dennett asked Mr. Francis if the dust control permit packet warns the public they need to fill out a demolition notification form. Mr. Francis read Appendix 2, Number 4-A which states, "If Regulated Asbestos Containing Material (RACM) is present, a NESHAP notification must be submitted to DAQ and an Asbestos Waste Certificate must be issued before the asbestos can be removed and disposed." He also read from the top of the page, which states "NESHAP notifications must be submitted with renovation/demolition applications regardless of age and/or size of the building." Board Member Dennett asked if NESHAP is referencing the demolition notification form. Mr. Francis confirmed it was referring to the demolition notification, which is a federal form. Vice-Chair Wishengrad asked why DAQ appears at the top of the form if it is a Federal form. Mr. Francis responded it was a Federal Regulation that DAQ has adopted and created a form for. Board Member Dennett then asked Mr. Paripovich if he submitted the demolition notification, bates stamped 0009, on May 8, 2015, for the first building. Mr. Paripovich stated he believed so. Board Member Dennett then questioned where he obtained the form on that occasion because his testimony stated he had difficulty getting the form for buildings 2 and 3. Mr. Paripovich stated his secretary has copies of an older version of the demolition notification on file. Next, Board Member Dennett asked if the demolition notification form is part of the packet that Mr. Paripovich keeps in-house. Mr. Paripovich answered his secretary keeps them somewhere in his office, and she typically fills out the form when needed. Board Member Dennett stated he was confused by Mr. Paripovich's testimony because initially he stated he did not have access to the documents; however he is now testifying that he does have access. Mr. Paripovich explained that he does not know where the documents are located in his office. Board Member Dennett then asked if Mr. Paripovich was aware, independent of this action, the dust control permit contained a requirement that a demolition notification be completed for each building. Mr. Paripovich acknowledged that he did. He stated he is aware of the rules, but because of the confusion and commotion of the late addition and rush for completion of buildings 2 and 3, he overlooked submitting the demolition notification. He petitioned the board to treat the infraction as a revision fee of \$1,000 instead of a violation. Chair Sanders mentioned his experience as a contractor and stated that every contractor is aware of the rigidity and significance of regulations in Clark County.

Board Member Schweisinger commented that he would like to make a motion because the topic has been exhausted. Board Member Purves commented on the 10 day notice rule found in 40CFR61.145(b)(3)(i) and asked if the Order on Notice of Violation #8736, bates stamped 0023, was relevant when it states “Charged for failing to notify DAQ of all structures subject to renovation and demolition activities prior to conducting” because it references the multiple structures and the 10 day notice. She then mentioned this is different than the violation. Chair Sanders clarified the Order is no longer relevant because of the appeal.

Vice-Chair Wishengrad asked Mr. Paripovich to expound on the process of waiving the 10 day waiting period. Mr. Paripovich stated if a building was deemed as a hazard to the public an officer from the Las Vegas Metropolitan Police Department (Metro) can sign a letter to remove the 10 day waiting period. Vice-Chair Wishengrad then asked if this building could be considered a hazard to the public. Mr. Paripovich commented these buildings were worse than others he has recently had the waiting period waived for, and remembered a murder on the property a month before demolition. Vice-Chair Wishengrad then asked how Mr. Paripovich obtains an officer’s signature. Mr. Paripovich stated the property owners speak with Metro and let them know they would like the building down sooner. Vice-Chair Wishengrad asked to verify this type of letter is accepted by DAQ. Mr. Francis confirmed Metro can recommend waiving the 10 day waiting period, but stated that asbestos checks and abatement must still be performed.

Ms. Nielsen mentioned DAQ staff has authorized her to request to postpone the Hearing for a few minutes to discuss settling the appeal. Chair Sanders put the Hearing Board in recess for 10 minutes.

Chair Sanders called the Hearing Board meeting back to order. Chair Sanders called on Ms. Nielsen to report on any settlement made during the recess. Ms. Nielsen stated DAQ staff is not interested in settling the case. Chair Sanders then asked if there were any further questions by board members. Being none, Board Member Purves motioned to have an action on NOV #8736 for a penalty of \$1,000. Chair Sanders clarified the appeal would be denied, and there would be a NOV with a penalty of \$1,000. Board Member Dennett seconded the motion. Chair Sanders called for a vote on the motion asking those in favor to say aye. The motion was affirmed by Chair Sanders, Board Member Purves, and Board Member Dennett; and was opposed by Vice-Chair Wishengrad, Board Member Schweisinger and Board Member Kremer. The motion did not pass.

Vice-Chair Wishengrad motioned a penalty of \$1,000 be imposed with a probationary period of one year. He continued, stating if after one year the respondent has no further violations within the timeframe, then the infraction would not be considered a violation on his permanent record. Board Member Schweisinger then stated if the probationary period was 180 days, he would second the motion. Vice-Chair Wishengrad commented he was considering 180 days, and would amend his motion to 180 days. Board Member Kremer seconded the motion. Board Member Dennett asked DAQ staff about the possibility of policing such a ruling, adding the ruling is essentially what a criminal lawyer would call a plea in abeyance. Mr. Sword answered the order has language stating there can be no violations within a certain time frame or there will be a specific reaction, confirming the ruling is capable of being policed by DAQ. Board Member Dennett stated his concern with the motion is the timeframe. He commented the modification to the motion was to decrease the timeframe. If he were to consider the motion the probationary

period would need to be increased to two years. Vice-Chair Wishengrad responded his concern with a longer probationary period is Mr. Paripovich's ability to procure contractual work with governmental departments. Board Member Purves added the Clark County Air Pollution Control Hearing Board was here to maintain and uphold the Air Quality Regulations of the county; not to consider Mr. Paripovich's potential business losses from reporting a violation. She continued to say Mr. Paripovich knew the forms must be completed; however he did not complete them. The violation penalty is thousands of dollars less than could have been assessed, and while the potential harm to Mr. Paripovich can be considered, it is not the primary concern of the Hearing Board. Vice-Chair Wishengrad responded that he believes the function of the board is to be non-biased, and be a liaison between the department and a respondent. He continued, the facts and circumstances surrounding each case should be considered. He stated Mr. Paripovich's violation was not blatant or intentional, and he immediately responded to notification of non-compliance. The Vice-Chair added he views this case as somewhat a technicality and paperwork issue, rather than an intentional violation of the rules. Vice-Chair Wishengrad clarified he understands this was a violation of the rules, and the violation is the reason for the suggestion and recommendation of a penalty and probationary period. He does not feel one incident on a long history of compliance warrants a permanent black mark on Mr. Paripovich's work experience and record. He finished stating issuing a violation is not a fair and balanced outcome to this situation.

Chair Sanders commented he believes the board is opening a dangerous precedent. He stated a number of violations are written monthly by DAQ to individuals who fail to properly complete forms, and he suspects it is one of the more frequent violations. He continued, stating if the board allows this type of appeal to go forward, the board has set a precedent of being more lenient. Board Member Schweisinger responded a great number of the other cases are more egregious, including attacks on the environment and the water. Board Member Schweisinger stated he believes those types of violations should be dealt with harshly, but this is not one of those cases. Vice-Chair Wishengrad added he does not believe the board is setting a precedent. He continued, the board looks at each case based on its individual basis and circumstances, and many of the other cases are more egregious and should be dealt with accordingly. Board Member Purves responded, stating Mr. Paripovich knew the form must be completed, he has filled out the forms in the past, and he did not complete the forms. She countered he did not immediately respond to the request. She referenced materials provided by Mr. Francis, and commented Mr. Francis contacted Mr. Paripovich multiple times to get the necessary paperwork between the infraction on July 29, 2015, and receiving the paperwork on July 31, 2015. She summarized, in her opinion those actions are not taking the situation seriously and are not responding to the request immediately, and the only reason this violation was found is because Mr. Francis was driving by and saw the buildings were demolished.

Board Member Schweisinger stated the difference being debated is whether or not to allow a respondent to purge his violation at the end of 6 months. The violation was not egregious, and at the end of 6 months, DAQ staff will not report any violations by Complete Demo if asked. He finished stating the probationary penalty and \$1,000 penalty are severe enough for this situation, and called for the question. Vice-Chair Wishengrad then responded, stating the testimony specifically stated Mr. Francis drove by the property on July 29, 2015, contacted Mr. Paripovich on the same day, and Mr. Paripovich faxed Mr. Francis the requested documents on July 29, 2015. He felt this action showed immediate response. When Mr. Paripovich was told the documents must be submitted with an original signature, he submitted them on July 31, 2015.

Chair Sanders called for a vote on the motion. Board Member Dennett asked if in the motion the violation exists or if the violation was stayed or abated unless there was another violation. Vice-Chair Wishengrad answered he believed the violation would be stayed because if it is not stayed it would be deemed a violation. He further clarified the violation would be stayed for the six month time frame and at the end of six months, if there are no further violations, the case will disappear. Board Member Schweisinger agreed the description of the motion by Vice-Chair Wishengrad was what he seconded. Vice-Chair Wishengrad offered increasing the probationary period to somewhere between 180 days and 1 year if the board can come to consensus. Board Member Schweisinger requested a vote on the current motion. Chair Sanders called for a vote on the motion asking those in favor to say aye. The motion was affirmed by Vice-Chair Wishengrad, Board Member Schweisinger and Board Member Kremer; and was opposed by Chair Sanders, Board Member Purves, and Board Member Dennett. The motion did not pass.

Board Member Dennett moved the violation be entered as written for a period of six months and a fine of \$1,000 be assessed, and at the end of the six months if there are no further violations Mr. Paripovich can request expungement of the violation. Board Member Schweisinger asked for clarification of the motion. Vice-Chair Wishengrad provided clarification stating in this motion the violation is entered immediately rather than stayed for the probationary period, and then erased at the end of the probation. Chair Sanders asked if the motion was possible. Mr. Sword stated there is not mechanism to remove a violation. The Notice of Violation and the decision of the board are matters of public record; therefore if a request for information was made the violation would be transmitted. Chair Sanders mentioned a stay would also be a matter of public record. Vice-Chair Wishengrad commented in his opinion if the decision was stayed, after the six month probation Mr. Paripovich can state he does not have any violations on his record. Board Member Dennett requested clarification if a stay of the violation would show as a violation on Mr. Paripovich's record. Vice-Chair Wishengrad stated because the stay was a pending matter, Mr. Paripovich would need to strongly consider citing it as a violation if asked during the probationary period. Board Member Dennett stated after the explanation from staff, he withdraws his motion.

Chair Sanders stated he is looking for a compromise, feels the appeal should not be granted, and possibly the penalty should be greater; however any motion he put forth with that mindset would not pass. Chair Sanders then motioned to stay the appeal for 9 months, and if Complete Demo Service has no violations during the time period, the violation will be removed from the record, and there will be a \$1,000 penalty assessed. Vice-Chair Wishengrad asked if the penalty assessment was the cost of the proceedings. Chair Sanders answered almost all of the money received from penalties goes to the school district. Mr. Richter confirmed, stating all of the fines except a small percentage goes to Clark County School District. Board Member Kremer seconded the motion. Vice-Chair Wishengrad requested clarification that the motion was the same as his earlier motion with the probationary period being increased from 180 days to 9 months. Chair Sanders confirmed it was. Seeing no further discussion, Chair Sanders called for a vote on the motion. The motion was affirmed by Chair Sanders, Vice-Chair Wishengrad, Board Member Dennett, Board Member Kremer, and Board Member Schweisinger; and was opposed by Board Member Purves. The motion carried on a majority vote.

Mr. Sword commented, a review of Complete Demo's probation will be added to the agenda in 9 months. Chair Sanders asked Complete Demo be billed for the \$1,000 penalty and told Mr. Paripovich that he received a fortunate ruling.

VII. REPORT BY DAQ STAFF

Clarification of Minutes *[Taken up early on the agenda, after Item VI-A]*

Chair Sanders asked Richard Beckstead, from DAQ, to approach the table and clarify the minutes from the December 10, 2015 meeting concerning Chemical Lime Company. Board Member Purves stated that she wanted clarification of the minutes that Chemical Lime Company's permit was on hold and not accepted by the Environmental Protection Agency (EPA) because she was not in attendance at the meeting in which the topic was covered. Mr. Beckstead provided an answer, stating that after the Hearing Board's decision, the DAQ staff prepared a report detailing the decision, incorporated the changes into the permit for Chemical Lime Company, and created a supporting document detailing that the changes were being made on the Order of the board. These documents were sent to the EPA for review. Removal of short term limitation on a permit which was previously federally enforceable must go through New Source Review (NSR). The revised permit must be reassessed for negative impact, the benefits of removing the limitations are evaluated, and the reason for the initial short term limitations must be re-evaluated. Then, the EPA evaluates the justifications and must finally agree with the decision. The EPA decided because the short term limits were set aside without NSR assessment, the EPA would not move forward with the permit. The EPA did not want to define the rules of DAQ, but because the NSR protocols were not followed, the permit would not be released back to DAQ. The DAQ then worked with Chemical Lime Company to mitigate the concerns of the EPA. The decision was made to do monthly compliance checks rather than re-implementing the short term limits. The EPA deemed this to be acceptable action. This action was put back into the permit, agreed upon by Chemical Lime Company, and it was resubmitted to the EPA. The EPA then released the permit back to DAQ. Chemical Lime Company agreed to these terms because when the EPA holds a permit for 2 years, DAQ cannot make changes to the permit, and Chemical Lime Company must be able to revise the permit as their needs change. Since the permit was released back Chemical Lime Company, they have submitted 11 revisions to the permit.

Mr. Beckstead continued, stating the DAQ is currently in the process of issuing the revised permit. The DAQ is working with Chemical Lime Company to re-evaluate their silt loading estimates from their most recent permit request. Both parties expect to reconcile the differences in the next two weeks, and forward the revised permit to the EPA for approval. Mr. Beckstead then stated that many of the changes made by the board are still in the permit, and the most recently issued permit is far better than the permit before it was appealed. Mr. Beckstead expected the permit to be ready in the next two months.

Board Member Purves asked for verification that the reason for the delay in the permitting was because of regulatory issues and not environmental hazards. Mr. Beckstead confirmed the delay was because of regulatory issues, and stated specifically because source limits must be demonstrated by continued compliance. The removal of both short term limits and monthly compliance evaluations did not meet EPA guidelines.

Vice-Chair Wishengrad requested clarification of whether a permit was issued to Chemical Lime Company and amendments are being finalized, or if Chemical Lime is waiting on a permit. Mr. Beckstead then stated the permit evaluated by the board, was submitted to the EPA, changes

were made, and the permit was issued to Chemical Lime Company about a year and a half or two years ago. He continued to say during the period in which the EPA held the permit, Chemical Lime Company needed to increase allowances to remove overburden. Vice-Chair Wishengrad then asked for confirmation of the release of the permit from the EPA to the DAQ. Mr. Beckstead confirmed the release of the permit to DAQ, and stated the DAQ can make changes to the permit through the Authority to Construct because of the Title V operating permit. Vice-Chair Wishengrad then asked for verification the minutes from December 10, 2015, were correct when stating “although these changes were not accepted by EPA there were other changes made as a result of the proceedings leading to an improved permit that was issued earlier this year.”. Mr. Beckstead stated that the minutes were accurate.

Recruitment of Compliance Manager [*Taken up as scheduled on the agenda*]

Mr. Sword reported the recruitment for the permanent Compliance Manager is on-going, and he is Acting Compliance Manager while the recruitment process is being completed.

Board Member Schweisinger asked Mr. Sword to expound on an article in the newspaper concerning the ranking of the State of Nevada for airborne particulate count. Mr. Sword responded the American Lung Association publishes a yearly report since about 2000. The report ranks cities and counties in America based on criteria slightly different than the EPA criteria. He stated the DAQ uses the same criteria as the EPA. The Executive Summary of the article stated that Clark County had improved since 2000 with respect to ozone, but still considered Las Vegas in the top 25 dirty cities for ozone and particulate. Board Member Schweisinger asked about the American Lung Association standards. Mr. Sword answered they use DAQ data and EPA standards with one small difference. The EPA allows DAQ to exempt things which are out of their control. An example is fireworks on July 4th or New Year’s Eve which create a PM₁₀. The EPA exempts these dates. The American Lung Association standards do not because their perspective is day to day air quality; while the DAQ and the EPA approach the data from a broader health standard.

VIII. IDENTIFY EMERGING ISSUES TO BE DISCUSSED BY BOARD AT FUTURE MEETINGS

Chair Sanders asked if Public Comment has to be included twice on the agenda. DAQ staff reported it was a requirement.

Board Member Schweisinger expressed a desire for the Air Pollution Control Hearing Board members to receive badges or identifiers, for example a business card, ID card or apparel badge. He stated there is a need for the identifiers while he was looking at sites or attending city, county and state meetings. He remembered asking about it years ago, and the budget could not provide them at the time. He would like this topic added to the agenda at a future meeting. Vice-Chair Wishengrad added his support to the idea. Mr. Sword confirmed it will be added to an agenda at a later date.

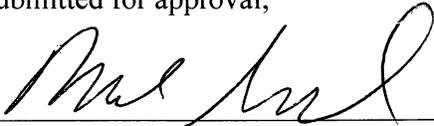
IX. PUBLIC COMMENT

There were no public comments.

X. ADJOURNMENT

Being no further business, Chair Sanders adjourned the meeting at 3:36 p.m.

Submitted for approval,



Mike Sword P.E, CEM, Acting Compliance & Enforcement Manager
Department of Air Quality

8/3/16

Date