

**AIR QUALITY APPEAL HEARING
MINUTES OF THE OCTOBER 22, 2009 MEETING**

Call to Order

The meeting was called to order in the Main Hall of the Bob Ruud Community Center in Pahrump, Nevada at 10:00 a.m.

Hearing Officer: Henry Melton

Air Quality Program Administrator: Cheryl Beeman

Air Quality Compliance Officer: George Bernath

Matters to be Heard

A. Non-Contested Notices of Alleged Violation:

There are none to be heard.

B. Non-Contested Notices of Alleged Violations with Stipulations:

There are none to be heard.

C. Notices of Alleged Violation with Contested Penalties:

There are none to be heard.

D. Notices of Alleged Violations with Contested Penalties and/or Facts:

1. S A recycling LLC

NOAV 09-06 – For alleged violations on June 1, 2009; June 8, 2009; July 6, 2009; August 10, 2009 at the construction site located at 1650 E. Mesquite Ave.

Violation(s) Alleged: Subsection 15.28.090.C.1; failure to submit a Dust Control Plan before disturbing .5 acres or more.

Subsection 15.28.100.A; failure to pave a new parking and/or storage area that is constructed within the Pahrump Regional Planning District.

Recommended Penalty: \$3,365.00

Cheryl Beeman reviewed the alleged violation NOAV 09-06 for S A Recycling. They are asking approval for the Recommended Penalty of \$3,365.00.

George Bernath referenced a photo that was taken on 6/1/09 of tanks stacked around the perimeter and fence posts being put in. The tanks were brought in previous to this date. Page two in the backup is a warning letter to Jeff Ferano of S A Recycling. The warning letter was to inform them they were in violation and the corrective actions are listed in the letter. The letter was sent certified mail. Referenced another photo dated 6/8/09. In the picture there are some trailers that have been brought onto the site. He began the inspection 7/6/09 at 9:20 a.m. there was no dust coming from the site but there was activity on the site. He wasn't able to see the activity because the fence had been constructed to obscure most of the view. The only thing that was visible was the very top of the cylinder and the trailers. The reason he did not enter the site is because there were no trespassing signs and a beware of dog sign and he doesn't go on sites that say that. He was under the assumption that it was owned by S A Recycling because they are the listed owner with the assessor. So again he sent a warning notice of the alleged violation. The warning was received by S A Recycling by certified mail, return receipt on 7/8/09. There was no response from either of the previous warnings. He tried to call Mr. Ferano previous to this and he left a voice mail but apparently did not get it. They issued the notice of Alleged Violation on August 13, 2009, there is a copy of it in the backup. The penalty for this was \$13,050.00 and the calculations are in the backup. This is an administrative penalty so there no potential for

harm or public health risk. The total number of days of violation is 36 starting from the day the previous warning NOAV was issued until the day of this calculation which was 8/13/2009. The degree of corporation was considered twenty five percent for significant non-corporation. He explained the violation calculations. On 8/28/09 he received the option letter from Chuck Bailey who was in attendance today. He is the owner of Pahrump Valley Recycling. He will leave it up to him to explain the relationship between Pahrump Valley Recycling and S A Recycling when he is finished with his presentation. He sent them a request for a CRC Meeting, they sent out Notice to Appear for the CRC to Jeff Ferano because they are the owner of record for the property. At the time he did not have a Power of Attorney to allow Mr. Chuck Bailey to represent S A Recycling. The CRC notice was received by S A Recycling on 9/8/09. The day of the CRC Mr. Bailey provided a Power of Attorney from the president of S A Recycling to allow Mr. Bailey to represent S A Recycling in these proceedings. The result of the CRC is shown on page 18 in the backup. He reviewed the result. The combined total fine was \$3,365.00. The results were incorporated into a Settlement Agreement and that was sent to S A Recycling on 9/17/09. The copy of the settlement agreement is in the backup. The signature for S A Recycling on the settlement agreement is blank because they never received a signed copy back from S A Recycling. If the violations are agreed to by the violator then they need to sign the settlement agreement and return it to the Planning Department within 14 calendar days or they can request a hearing before the hearing officer. Neither of these requests were complied with. They were advised that the settlement agreement was going before the hearing officer for review and adjudication on 10/22/09 and that these findings may be formally appealed and heard in accordance with provisions of Nye County Ordinance 369. The notice for the hearing was received by S A Recycling.

Henry Melton reviewed the letter from S A Recycling.

George Bernath stated the letter that is in the backup expired on 10/17/09. Asked Henry Melton is he had a signed Settlement Agreement from S A Recycling.

Henry Melton stated yes he does. He asked if he had seen it.

George Bernath stated he has not seen it and he did not get a copy of it.

Henry Melton stated they do have a copy of the Power of Attorney from one of the principals and there is a signed copy of the settlement agreement.

George Bernath asked if Jeff Ferano did indeed sign the settlement agreement.

Henry Melton stated yes and with that in mind they are now going to clearly establish the relationship between Mr. Bailey and S A Recycling. He asked him to identify himself and his relationship to S A Recycling.

Charles Bailey stated he is one of the owners for Pahrump Valley Recycling. He recently sold the property to S A Recycling.

Henry Melton stated he was swearing in Charles Bailey.

Charles Bailey stated originally he sold the property in 2007. He had the land approved by the RPC to change the zoning and open a recycling center. S A Recycling bought his yard in Las Vegas. Charles knew the owner, George Adams for twenty eight years, and they hired him back to work in the Las Vegas yard. When his contract was up he decided to buy the land back from S A Recycling. So he is in charge right now of the operation. He met with George in 2007 regarding a property on Carroll Street. He told George at that time that he planned on putting a recycling yard on that property. He stated he got the paperwork on the 28th of August on these violations. He called Jeff Ferano on the phone immediately and asked him what was going on, on the property. He called George shortly after he got done talking to Jeff and signed the paperwork. Two months prior to that Civilwise accepted a check for \$20,000. The Planning Department did not receive the paperwork till approximately two weeks ago. It was extremely drug out. He had no idea that he was in violation because he thought that paying the engineering and paying all the fees would take care of everything but it didn't. He is not trying to violate any ordinances or laws. He believes this is more of a nuisance and they have tried to abide by the rules with rules with engineering, planning and everywhere else. They have a mailbox in front of their property located at 1650 E. Mesquite and he thinks it was improper on George's part not to mail the letter there. He thinks that it is improper that they are being fined. He went on to say

that it was a waste of his time. He is disgusted with this whole proceeding because he was left in the dark. During that time in August nobody stopped by the property or anything. He mentioned that he still had his \$50,000 bond. If he was an enforcement officer he would pull into the property and let them know there was a violation. It never would have been handled this way if something would have been put in his mailbox on the subject property.

Henry Melton stated there are some limitations for George Bernath as far as trespassing. He has to legally send the letter to the legal owners of record. He understands that the violations were cut. In support of what he sees and his testimony, he is in agreement with the decisions that have been made of reducing the violation costs. He has the letter from Mr. Ferano as of 10/21/09 with the Power of Attorney. All the other documentation remains the same other than the fact it was signed.

Cheryl Beeman reviewed the settlement agreement.

Charles Bailey stated he has the power of attorney to sign the document.

Henry Melton stated they can have Mr. Bailey sign the document in lieu of Mr. Ferano and include the Power of Attorney with it.

Don Skalicky stated that on the document itself, it states that it needs to be signed within fourteen calendar days of receiving it the information and he received this document on 9/23/09. That would make it past the fourteen calendar days.

Henry Melton stated even though it is beyond the fourteen day limit, they can still accept it because there is no suggested penalty for not signing it.

George Bernath stated the only document they have is within the backup, so he can sign the copy that is in his backup and they can use that as an official record.

Henry Melton asked him to sign it with c/o Jeff Ferano and at the bottom print his name and mark it with today's date.

Charles Bailey asked if they will fax a copy to 537-1505 for his records.

George Bernath stated he will fax him a copy after the hearing.

Henry Melton asked if he agrees with the findings.

Henry Melton stated that in the interest of the of the County, the order is approved.

Henry Melton stated it should be sent to the address at Pahrump Recycling with S A on it because it is still under S A Recycling.

Charles Bailey stated that they can send it to both.

Henry Melton stated he appreciates him coming in today.

E. Dismissed Notices of Alleged Violation:

There are none to be heard.

F. Other Matters:

Cheryl Beeman stated between the two violations of the two subsections, they felt it was a little bit of double jeopardy considering the history of non-compliance. It seemed like they hit them twice for not having a Dust Control Plan or a paved area.

George Bernath stated they have always considered the warning NOAV as a violation, so that is the reason the previous violation was in the calculations because of the NOAV not being complied with. In the guidance the number of days is negotiable. So there is no problem negotiating the number of days of violation.

Cheryl Beeman stated it just seems like when they got into that area they were hitting them on the Dust Control Plan and failure to pay twice, so that is where the sympathy came from.

Henry Melton stated that is reflected in the reduction of fines, when it goes from \$13,000 down to \$3,000. He is still being fined for both violations the amount is just reduced. It is consistent with what is going on and he supports the decision. The CRC has the power to do what is in the best interest of the town and Nye County.

George Bernath stated each case is its own merits. Changes occur depending on the case.

Don Skalicky stated another concern was that this gentleman would be put in a hardship because the other company ignored it and Mr. Bailey attempted to remedy the situation. That is what they took into consideration because he is trying to start a business in the community.

George Bernath stated another thing to consider is that if he was aware that Pahrump Valley Recycling was the entity that was doing the work there, this wouldn't have gone farther than the first warning and that was another big reason why they lowered the penalty.

Henry Melton stated they all operate under the sunshine law.

Cheryl Beeman thanked them for explaining the limitation the George Bernath is under.

Henry Melton stated that you can't just go trespassing an wandering onto someone property.

George Bernath stated absolutely.

Public Comment Open – 10:55 a.m.

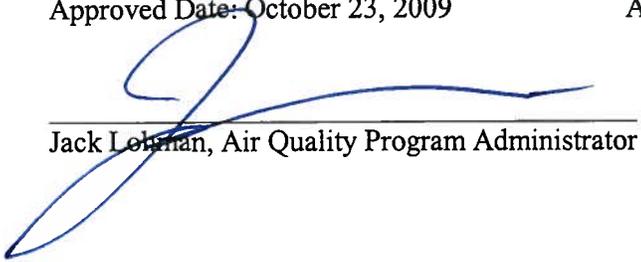
Public Comment Closed

Adjournment

This meeting was adjourned at 10:55 a.m.

Approved Date: October 23, 2009

Attest:



Jack Lehman, Air Quality Program Administrator