

**BEFORE THE MARICOPA COUNTY
AIR POLLUTION HEARING BOARD**

In the matter of:)	
)	STANDING ORDER No. 1(R1)
Adoption of Standing Order No. 1)	
Appointment of Presiding Officer and)	
Disposition of Prehearing Matters)	Cause No. MCAPHB2010-03-M
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BEFORE:

Kimberly W. MacEachern, chair, Jean McGrath and Shane Leonard, members.

APPEARANCES:

None.

PROCEDURAL HISTORY:

The Hearing Board adopted a proposed "Maricopa County Air Quality Hearing Board Manual of Procedures" on September 16, 2010. The draft Manual of Procedures was forwarded to the Maricopa County Board of Supervisors for approval pursuant to A.R.S. § 49-496(D). The Board of Supervisors approved the Manual of Procedures on October 20, 2010. At its September 16, 2010 meeting, the Board requested that counsel develop a Standing Order, as authorized by Manual of Procedures § 2.6(C), to provide for appointment of a Presiding Officer and appropriate disposition of prehearing matters in preparation for the substantive hearing on the merits. The Board adopted Standing Order No. 1 on December 17, 2010.

Based on experience with Standing Order No.1, the board chair and counsel recommended to the Board that Standing Order No. 1 be amended to grant greater flexibility to address cases where the parties settle and that Standing Order No. 1 be replaced with proposed Standing Order No. 1R1. The Board considered the proposed Standing Order No. 1R1 at its November 14, 2011 special meeting.

IT IS THEREFORE ORDERED:

1. Upon receipt of an appeal or a request for hearing, the clerk promptly shall notify the chairman or, if the chairman is not available, the vice chairman, via email that an appeal or request for hearing has been received. The notice shall state the number of days from the permit action or issuance of the order of abatement to receipt of the notice of appeal or request for hearing and shall include a copy of the notice of appeal or request for hearing and any attachments the clerk deems

appropriate to assist the Board in determining whether the appeal or request for hearing is within the Board's jurisdiction. The clerk shall copy the Board and counsel, if any, on this notice, and shall include the notice of appeal or request for hearing.

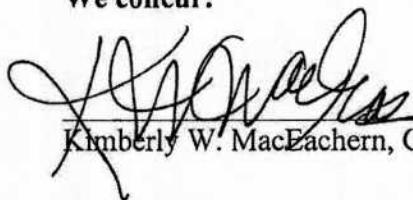
2. Upon receipt of the notice from the clerk, the chairman may designate as presiding officer for the matter one of the following: the chairman, another Board member or Board counsel. The chairman shall notify the Board, the clerk, and Board counsel of this appointment. The clerk will notify the parties and their counsel, if any. Appointment of a presiding officer is not required if the chairman determines that the Board has no jurisdiction, in which case the chairman shall exercise the responsibilities of the presiding officer.
3. The presiding officer shall review the notice of appeal or request for hearing to determine if it falls within the Board's jurisdiction to review. If the presiding officer determines that no jurisdiction exists, the presiding officer may prepare an order of dismissal for lack of jurisdiction. The proposed order shall be circulated to the Board and, if no Board member objects, shall be entered as the Final Decision and Order of the Board. If any member objects, the matter shall be set for hearing.
4. If a matter is not disposed pursuant to paragraph 3 above, the presiding officer shall notify the clerk, who will distribute all papers or materials to the Board unless otherwise directed by the presiding officer or Board. The presiding officer shall then supervise the prehearing process, including setting the schedule for the hearing, ruling on motions or objections, and acting for the chairman in issuing subpoenas pursuant to A.R.S. § 49-496(C) and Section 3.18 of the Manual of Procedures, all in accordance with Section 2.3(D) of the Manual of Procedures. The Board, the clerk, counsel and the parties, as appropriate, shall be copied on all rulings.
 - a. Once a presiding officer is appointed, all pleadings and motions should be filed with the clerk and a copy delivered to the presiding officer. The clerk promptly will forward materials to Board members and counsel, if any (duplicate copies are not required if already provided in capacity as presiding officer).
 - b. The presiding officer may call a prehearing conference to set the schedule, resolve evidentiary and subpoena issues, and to clarify the issues to be presented to the Board at the main, or substantive, hearing on the matter. Counsel may be asked to work with the parties to clarify the issues.
 - c. The presiding officer may, upon request, hold oral or telephonic argument on motions or objections, as the presiding officer deems best for the expedient resolution of the matter.
 - d. If the parties reach settlement or the Appellant/Petitioner withdraws its appeal or request for hearing, the presiding officer may prepare an order approving settlement, dismissing the action, or such other action as

appropriate. The proposed order shall be circulated to the Board and, if no Board member objects, shall be entered as the Final Decision and Order of the Board. If any member objects, the matter shall be set for hearing.

- e. A Board member may, at any time, request that a matter or part of a matter be heard by the full Board by contacting the presiding officer. Upon receipt of such a request, the presiding officer shall schedule the matter or part of a matter for hearing before the full Board.
 - f. The presiding officer shall ensure compliance with the requirements of the Open Meeting Law in all matters. Minutes shall be kept in accordance with Section 2.5(A) of the Manual of Procedures and this Standing Order.
5. Prior to the start of the substantive hearing, the Board shall hear any appeals from parties concerning prior rulings of the presiding officer, as provided in Section 2.3(E) of the Manual of Procedures. Motions stating the basis for such an appeal shall be filed with the clerk and a copy delivered to each Board member and Board counsel, if any.
 6. The Board will hear the substantive hearing. At the hearing, the chairman or the presiding officer, at the chairman's discretion, will preside and rule on motions, objections and other matters on behalf of the Board, subject to appeal to the Board.
 7. A majority of the Board present and participating in a hearing, in person or remotely, shall decide any appeals of a ruling of the chairman or the presiding officer as provided in Section 2.2(B) of the Manual of Procedures.
 8. All final decisions and orders of the Board in a matter that proceeds to hearing shall be decided by a majority of the Board, as provided in A.R.S. § 49-496(A) and Sections 2.2(C) and 3.24(A) of the Manual of Procedures. All decisions shall be in writing. Orders of the chairman or presiding officer pursuant to paragraphs 3 or 4(d) of this Order to which no Board member objects are unanimous orders of the Board and shall be retained as the minutes of the Board as required in Section 2.5(A) of the Manual of Procedures.
 9. The Board reserves the right to vary from this Standing Order No. 1R1 upon application by any party or upon its own motion as justice may require.

So ordered this 14th day of November, 2011.

We concur:



Kimberly W. MacEachern, Chair



Shane Leonard, Member

Jean McGrath
Jean McGrath, Member

not present
Phil Noplos, Member

not present
Gary Van Hofwegen, Member