



# **RESOLUTION No. 22-112**

## **OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA**

### **RESOLUTION REPEALING THE ESTABLISHMENT OF A HEARING OFFICER AND APPROVING PROCEDURES CONCERNING LOCAL ENFORCEMENT AGENCY HEARING OFFICER AGREEMENT FOR PROFESSIONAL SERVICES FOR APPEALS ARISING FROM THE ACTIONS OF THE SOLID WASTE LOCAL ENFORCEMENT AGENCY**

WHEREAS, on March 10, 1992, the County of Nevada Board of Supervisors adopted Resolution 92-140 designating the County of Nevada Department of Environmental Health as the Local Enforcement Agency (LEA) for permitting, inspection and enforcement of solid waste handling and disposal sites under the California Public Resources Code (PRC); and

WHEREAS, on March 10, 1992, the County of Nevada Board of Supervisors adopted Resolution 92-139 which establishes an Independent Hearing Panel for LEA Appeals; and

WHEREAS, on August 10, 2010, the County of Nevada Board of Supervisors adopted Resolution 10-413 which repealed Resolution 92-139 and reestablished an Independent Hearing Panel for LEA Appeals; and

WHEREAS, PRC 44308 authorizes the County of Nevada Board of Supervisors to appoint a Hearing Officer to hear LEA Appeals if it also adopts procedures for making the appointment and adopts qualifications that the Hearing Officer is required to meet; and

WHEREAS, on July 8, 2014, the County of Nevada Board of Supervisors adopted Resolution 14-454 to replace the Independent Hearing Panel with a Hearing Officer and to designate procedures for the appointed adjudicatory hearings by such Hearing Officer; and

WHEREAS, procedures for appointment of Hearing Officers for petitions related to LEA proceedings are prepared and have been approved by CalRecycle (Exhibit A); and procedures for conducting hearings in accordance with applicable sections of the California Public Resources Code are prepared and approved by CalRecycle (Exhibit B); and

WHEREAS, the California Association of Environmental Health Administrators (CAEHA) provides professional services by contracting with individuals that demonstrate the experience and familiarity with the current law in the state of California concerning solid waste issues; and

WHEREAS, the County of Nevada Department of Environmental Health as the Local Enforcement Agency has entered into an agreement with CAEHA for CAEHA to provide professional hearing officers to preside over administrative hearings regarding solid waste permitting, inspection, and enforcement.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the County of Nevada Board of Supervisors hereby repeals Resolution 14-344, eliminating the position of Hearing Officer for LEA.

BE IT FURTHER RESOLVED that the Board hereby establishes the Hearing Officer process for the appeals of LEA activities as set forth in Exhibit A, and adopts the procedures for conducting hearings as set forth in Exhibit B.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 8th day of March, 2022, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward Scofield, Dan Miller, Susan K. Hoek and Hardy Bullock.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER  
Clerk of the Board of Supervisors

By:  \_\_\_\_\_

 \_\_\_\_\_  
Susan K. Hoek, Chair

3/8/2022 cc: EH\*  
AC\*

## EXHIBIT A

### QUALIFICATION REQUIREMENTS OF HEARING OFFICERS PROVIDED BY THE CONTRACTOR (CAEHA) FOR HEARINGS ON PETITIONS RELATED TO SOLID WASTE LOCAL ENFORCEMENT AGENCY PROCEEDINGS HELD BY COUNTY

1. The Hearing Officer provided to the local enforcement agency by CAEHA shall be pursuant to the provisions of the California Public Resources Code (PRC) concerning activities of the COUNTY as Local Enforcement Agency (LEA), including but not limited to those provisions set forth in PRC Sections 44308 et seq.
2. The Nevada County Environmental Health Director shall determine if a proposed hearing officer provided by CAEHA is consistent with the requirements set forth below.
3. A Hearing Officer approved by the Nevada County Environmental Health Director shall conduct all proceedings in accordance with the applicable provisions set forth in the Public Resources Code as described in EXHIBIT B.
4. For consideration as a hearing officer in the above described role, a person shall be a currently Registered Environmental Health Specialist (REHS) with experience in the LEA program. Currently employed REHS', if utilized, shall not be currently employed by COUNTY.
5. For consideration as a Hearing Officer, a person shall demonstrate experience and familiarity with the current law in the State of California concerning solid waste issues.
6. For consideration as a Hearing Officer, a person shall demonstrate to the satisfaction of the Director of Environmental Health that the person possesses a judicial demeanor consistent with the impartial conduct of any proceedings.
7. CAEHA shall consider and take action on the recommendation received from the Director of Environmental Health regarding a proposed hearing officer. Any such appointment shall be effective until completion of the proceedings and a finding is issued unless terminated earlier by either party.
8. Additional Hearing Officers may be appointed who may serve on a rotational basis.

## EXHIBIT B

### PROCEDURES FOR ADJUDICATORY LEA HEARINGS

#### Section 1. Application

(a) The hearing procedures under this Article shall govern all hearings and appeals which the Hearing Officer is authorized or required to conduct pursuant to the California Public Resources Code (PRC). To the extent that the procedures set forth in this Article conflict with the PRC, the PRC shall control.

(b) Without limiting the generality of subsection (a), hearings conducted before the Hearing Officer shall be in accordance with PRC Section 44310.

#### Section 2. Scope of Formal Review

The Hearing Officer shall hear and review an appeal of the LEA's administrative determination or a petition alleging the LEA's failure to act in accordance with the laws or regulations specified in PRC Section 44307, taking into account:

(a) All of the material on which LEA staff based its determination or its decision to not act, including state law and all other applicable laws;

(b) The reasons given by the appellant or the petitioner for requesting Hearing Officer review;

(c) Any additional relevant documentary and, testamentary material submitted by the appellant or the petitioner; and

(d) Any further information which the Hearing Officer in its discretion obtains by request or investigation at the proceedings in order to insure a fair, full and impartial review of the claim.

#### Section 3. Conduct of the Hearing

Hearings shall not be conducted according to technical rules of evidence,

however: (a) Oral evidence shall be taken only on oath or affirmation;

(b) Admissibility of evidence. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions in courts of competent jurisdiction in this state;

(c) Exclusion of evidence. The Hearing Officer has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time;

(d) Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but

over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. An objection is timely if made before submission of the case or on reconsideration;

(e) The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing;

(f) All evidence must be part of the record and the Hearing Officer shall not conduct independent investigations or engage in off-the record conversations with witnesses or parties regarding the matter under consideration by the Hearing Officer;

(g) In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter related to solid waste, and of any fact which may be judicially noticed by the courts of this State. Parties present at the hearing shall be informed of the matters to be noticed, and those matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the matter of such refutation to be determined by the Hearing Officer,

#### Section 4. Rights of Parties

Each party shall have the right:

(a) To call and examine witnesses on any matter relevant to the issues of the hearing; (b)

To introduce documentary and physical evidence;

(c) To cross-examine opposing witnesses on any matter relevant to the issues of the hearing even though that matter was not covered in the direct examination. If an appellant does not testify on his or her behalf, he or she may be called and examined as if under cross-examination;

(d) To impeach any witness regardless of which party first called the witness to testify; (e)

To introduce rebuttal evidence;

(f) To be represented by any person who is lawfully permitted to so represent.

#### Section 5. Subpoenas

(a) The provisions of Article 11 of Chapter 4.5 of the California Government Code, Section 11450.05 et seq., entitled "Subpoenas," shall apply to the conduct of hearings held by the Hearing Officer;

(b) Without limiting the generality of subsection (a), above, reference is made to the provisions of Government Code Section 11450.20 (a) which states: "Subpoenas and subpoenas duces tecum shall be issued by the agency [LEA] or the presiding officer at the request of a party or by the attorney of record for a party, in accordance with the Sections 1985 to 1985.4, inclusive of the Code of Civil Procedure;"

(c) The Hearing Officer shall be considered the presiding officer for purposes of enforcing the provisions of Government Code Section 11450.05 et seq.

(d) The provisions of Government Code Section 11450.05 et seq. in their current form are set forth in Appendix A.

#### Section 6. Findings and Order

(a) Within five (5) days following the conclusion of the hearing, the Hearing Officer shall make written findings of fact, based upon the evidence received at the hearing to support its decision and shall issue an order affirming, modifying, or overruling the determination or order of the LEA under appeal or the subject of the petition;

(b) The decision of the Hearing Officer shall be final and conclusive pursuant to PRC Section 45017. An appeal may be filed with CalRecycle pursuant to PRC Section 45030 then to the Superior Court pursuant to PRC Section 45040;

(c) The Clerk of the Board of Supervisors shall be charged with the responsibility of providing a copy of the Hearing Officer's decision to the parties. The Clerk of the Board of Supervisors shall provide a copy of the decision to the appellant or the petitioner by United States mail or by personal service at the address listed on the appeal or the petition. If the appellant failed to provide a mailing address, the Clerk of the Board may provide a copy of the Hearing Officer's decision to the appellant by using any other method reasonably calculated to provide actual notice of the decision to the appellant.

#### Section 7. Record

A record of the entire proceedings before the Hearing Officer shall be made by tape recording or by any other means of permanent recording determined to be appropriate by the Hearing Officer. A copy of the tape or transcript of the proceedings shall be available to all parties upon request and upon prepayment of the fee prescribed by the Board of Supervisors.

#### Section 8. Continuances

To the extent permitted under the PRC, the Hearing Officer may grant continuances for good cause shown. All time limits specified herein may be extended upon a showing of good cause.

#### Section 9. Oaths

The Hearing Officer has the power to administer oaths and affirmations.

Exhibit C

Current 2021 CAEHA Subcontractor List

1. Dean Peterson, PE, REHS
2. Mel Knight
3. Craig Erickson
4. Jill Pahl
5. John Rogers
6. Jeff Benedict
7. Ken Stuart
8. Bob Kennedy
9. Dennis Lampson
10. Doug Ames
11. Lewis Pozzebon
12. Ray Ruminski
13. Walt Kruse
14. Jerry Sipe
15. James Goodloe
16. Rebecca Supplee
17. Eileen Woodbury
18. John Rickter
19. Larry Fay
20. Wayne Fox
21. Ron Rowe