



**DENVER**  
THE MILE HIGH CITY

DEPARTMENT OF ENVIRONMENTAL HEALTH

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**Board of Environmental Health:**

Chris J. Wiant, M.P.H., Ph.D., Chair

Lloyd Burton, Ph.D., Vice-chair

Kenneth Crichlow, D.D.S.

Leo K. Goto

Patti Shwayder

**BOARD OF ENVIRONMENTAL HEALTH MEETING  
THURSDAY, MARCH 11, 2010, 5:30 P.M.  
200 W. 14<sup>TH</sup> AVENUE, 1<sup>ST</sup> FLOOR**

**Call Meeting to Order**

The Vice-chair, Dr. Lloyd Burton, called the meeting to order at 5:43 p.m.

- Roll Call – Dr. Burton took roll call. Present: Mr. Leo Goto, and Ms. Patti Shwayder.
- Approval of the Agenda – Dr. Burton asked for a motion to approve the March 11, 2010 agenda. Mr. Goto made a motion to approve the March 11, 2010 agenda and Ms. Shwayder seconded the motion. Motion passed 3 – 0.
- Approval of Minutes - Dr. Burton asked for a motion to approve the February 11, 2010 minutes. Mr. Goto made a motion to approve the February 11, 2010 minutes as written and Ms. Shwayder seconded the motion. Motion passed 3 – 0.

**Public Comment on Items Not on the Agenda**

There were no comments on items not on the agenda.

**Docket No. BEH 10-22, An Appeal of a Civil Penalty**

Dr. Burton called Docket No. BEH 10-22, an appeal of Civil Penalty #0000-1982 ENVHL, from The Delectable Egg Restaurant. Mr. Bob McDonald, Director of Public Health Inspection, commented that the petitioner was not present. He mentioned that he left the petitioner a voice mail message about the time and place of the meeting but had not received a call back from the petitioner. In fairness to the petitioner, McDonald asked the Board to hold over the appeal to next month's meeting. The Board agreed to hear the appeal at the April 8, 2010 meeting.

**Case No. BEH 10-07, Petitioner Dr. Alan Shaw**

Dr. Burton called Case No. BEH 10-07 for hearing on a petition from Dr. Alan Shaw for review of hearing officer's "Findings of Fact, Conclusions of Law, and Recommended Decision" upon written submittals as requested by Petitioner. After consideration of the matter, the Board directed entry of its Order to uphold the administrative citation but reduce the fine to \$0. A copy of the order is attached.

**Status Report Regarding Administrative Citation Matters**

Ms. Nancy Severson, Manager of DEH, referenced the report regarding Administrative Citation matters for January and February. She said this document is for the Board's information and that there would be no verbal report.

**Environmental Quality Proposal for a Multi-Project Variance**

Mr. Gregg Thomas, Environmental Quality (EQ) Supervisor of air, water, and noise programs, said the Colorado Department of Transportation (CDOT) road and bridge improvement projects will start up in May. Mr. Thomas reported that he met earlier this week with CDOT regarding its list of 20 – 30 projects that are expected to begin

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this summer. Two-thirds of the projects will require nighttime work. He mentioned that EQ would like to streamline the variance process. Mr. Thomas commented that an umbrella noise variance could cover all the 2010 projects and noted that the alternative would be that contractors apply for a variance for each project separately.

He spoke about a variance granted by the Board to RTD last fall that spans three years and mentioned that a one-year variance similar to the one granted to RTD would cover a multitude of projects. Mr. Thomas emphasized that each project would have noise mitigation, neighborhood association notification, council member notification, and hotel voucher requirements. He noted that DEH would ensure that compliance with the variance is being met on each project. CDOT's contractors currently conduct spot noise monitoring and said that DEH has not been getting noise complaints for nighttime work on those projects that were granted a variance. Mr. Thomas remarked that it would conserve CDOT resources because it would save \$10,000 - \$20,000 noise consultation fees on each project.

Mr. Thomas said that EQ will get a gauge of how many projects would be under an umbrella variance, figure out the terms for the blanket coverage, and could provide the Board with a map of locations. He asked for the Board's approval for EQ to come back to the Board in May with more information and a proposal for the umbrella variance. The Board approved EQ to come back to the May meeting with the details of an umbrella variance.

### **2009 Year-end Financial Report**

Mr. Gerry Salcedo, DEH Controller, referred the Board to the DEH Annual Financial Report for 2009 and commented that he would provide financial highlights from the income statement, which identifies revenues and expenditures. He reported that the General Fund (GF) and the Enterprise Fund (EF) posted net income figures.

Mr. Salcedo spoke about the sources of funds noting that combined revenues for the GF, EF, and grants were above projections due to the following increases:

- Emergency Preparedness grants received in 2009
- Payments from ASARCO and the U.S. Army Corps of Engineers in the EF
- A transfer of monies from the Denver Office of HIV Resources (DOHR) to the GF for GIS services

Mr. Salcedo discussed the total uses of funds. He explained that the total combined expenditures were below the DEH budget due to department vacancy savings and savings attained by Denver Health & Hospital Authority (DHHA). Ms. Salcedo answered questions from the Board regarding charges for services.

Mr. Salcedo referenced the DEH statement of sources and uses of funds by division. He reported that all DEH GF agencies, except for ACC, recognized a net income. The loss in ACC revenues occurred due to the delayed implementation of the Administrative Citation process at ACC, but was offset by DOHR revenues and other grants. Mr. Salcedo noted that actual revenues were below budget projections by \$67,000. He mentioned that a Budget & Management Office (BMO) budgeting error recounted a one-time entry of revenue from Denver Human Services in 2008. He said the department paid DHHA less than budgeted and reported on the savings in payments to DHHA.

Mr. Salcedo concluded his financial report emphasizing that DEH had a great year. Ms. Shwayder congratulated DEH on the department's financial accomplishments and Ms. Severson acknowledged Mr. Salcedo and Ms. Sherry Purdy, DEH Deputy Manager, for their hard work and efforts to continue to stay within or under our annual budget. Dr. Burton thanked Mr. Salcedo for the report.

### **Healthy Food Access Initiative**

Mr. Robin Valdez, Director of Community Health and Decision Support, introduced Ms. Stacey McConlogue, Program Administrator for the Denver Healthy People Program (DHP). He mentioned that Ms. McConlogue started with the department in January, 2009, but previously worked with DEH and started DHP in 2000. Mr. Valdez reported that Ms. McConlogue started working on the healthy food access proposal to

the Colorado Health Foundation in October 2009 and DEH was awarded the grant in November, 2009. Mr. Valdez also stated there is a bill in the State Legislature, SB-106, which will establish a statewide advisory group on healthy food access that will report back to the State Legislature.

Ms. McConlogue said she was very pleased to share information about the *Denver Healthy Food Access Initiative* with the Board. This new DHP partnership with The Food Trust, funded by the Colorado Health Foundation, will find ways to encourage healthy food retail development in Denver. She noted the goal is to eliminate “food deserts” and to increase access to grocery stores for all of Denver’s residents. Denver is one of many large urban cities with “food deserts” where affordable, healthy options are scarce. Providing more access to supermarkets in underserved communities, economically disadvantaged populations will have access to healthy foods resulting in healthier diets and lower rates of chronic illness. She spoke about The Food Trust report regarding grocery sales and access to healthy food for low income families in the entire state. Ms. McConlogue commented that The Food Trust has been successful across the country in eliminating “food deserts.” Pennsylvania opened 78 new stores through its Fresh Food Financing Initiative.

Ms. McConlogue concluded her presentation and announced that the Denver Healthy Food Access Initiative established the Denver Healthy Food Stakeholder’s Group. Ms. McConlogue said members of the stakeholder’s group are leaders representing grocery retail, city departments, and community organizations. The group will develop a set of policy recommendations designed to create a positive environment for supermarket development in needed areas of Denver. The group will then facilitate implementation of policy recommendations through collaboration.

Dr. Burton thanked Ms. McConlogue for her presentation and asked her to keep the Board apprised of the initiative’s progress.

### **Legislative Update**

Mr. Valdez referred the Board to the weekly legislative status sheet and reviewed the following house and senate bills.

- HB-1042 Stationary Sources Air Quality Permitting Program – This bill makes several changes to the state’s Air Quality Program. It restricts the review process but requires the Air Quality Control Commission to report permit information on stationary industrial sources of pollution in its annual report to the public. The bill makes technical changes to align with current practice. It changes the notification for construction permits and increases the penalty for open burning. DEH has no position on this bill.
- HB-1044 Neighborhood Youth Organization (NYO) Requirements – This bill requires operators to obtain either a general child care center license or a separate NYO license and requires strict record keeping. DEH supports this bill.
- HB-1124 – Animal Protection Enforcement – This bill concerns laws related to animal welfare. Care of impounded animals could shift cost to the Animal Care & Control (ACC) division and opposed the bill. The bill died during second reading in the House.
- HB-1125 Regulation of Grease Collection/Disposal – This bill requires the Solid and Hazardous Waste Commission in the Colorado Department of Public Health & Environment (CDPHE) to regulate grease collection, transportation, storage, and disposal. DEH supports this bill.
- HB-1149 Update Radiation Control Laws – This bill updates state radiation control laws. DEH has no position on this bill.
- HB-1275 Record Private Burial County Clerk – This bill requires a landowner to record information about a private burial with the county clerk. This is not an issue in Denver, but DEH supports the bill to support other counties.
- HB-1329 Solid Waste User Fees – This bill includes a number of provisions related to the Hazardous Substance Response Fund, the Solid Waste Management Fund, and the fees which support both the Solid Waste Management Program and the Superfund program. Mr. Valdez noted that this bill’s sunset date is 2017. He commented that this bill is a priority and DEH actively supports it.
- HB-1147 Safer Streets for Non-Motorized Transports – This bill requires a transportation safety curriculum be made available to schools and a person 12 – 18 years of age must wear a helmet. Mr.

Valdez reported that he testified about this bill on behalf of Ms. Severson and the Public Health Directors of Colorado (PHDOC), which are supporting the bill.

- SB-1284 – Medical Marijuana Regulations – This bill creates the medical marijuana state licensing authority in the department of revenue. Mr. David Broadwell, Assistant City Attorney for City Council, is working with the legislature on how this relates to the Denver ordinance. DEH is working with PHDOC and other local public health agencies in assessing how this bill will address the food safety issues with the production and retail sales of medical marijuana edibles.

### **Manager's Report**

- DPH Highlights – Ms. Severson said Dr. Chris Urbina, Director of Denver Public Health (DPH), wasn't available to attend tonight's meeting.
- Department Highlights – Ms. Severson and Ms. Purdy highlighted the following items.
  - Civil Penalties – The department has been meeting with the Mayor's Office, City Council, and the Colorado Restaurant Association regarding Civil Penalty and Enforcement posting. Discussions have taken place to remove the requirement for a 30 day posting when a civil penalty has been issued to an establishment. Ms. Severson noted the department will bring this policy change to the Board in April.
  - 2011 Budget – BMO met with the DEH management team and provided a preliminary report on the 2011 budget. Additional cuts are expected in 2011.
  - DEH-DPH Strategic Plans – The next DEH-DPH Public Health Improvement Plan meeting is scheduled for March 22<sup>nd</sup>. DEH and DPH are combining their separate strategic plans into a joint strategic plan and developing joint goals.
  - DEH All Staff Meeting – The DEH quarterly all staff departmental meeting is scheduled for March 16<sup>th</sup> at 1:00. The Mayor will attend and will highlight DEH accomplishments. BMO will give a presentation on the outlook for the 2011 budget.
  - Medical Marijuana – PHI continues to receive requests for approval of food operations in connection with medical marijuana dispensary applications. Mr. McDonald recently met with the General Government Committee and spoke about the process.

### **Other Issues**

- Delegation of Duty – Ms. Purdy presented the "Assignment of Hearings Regarding Administrative Citations For Violations of the Animal Code, Housing Code, and Noise Control Ordinance" for the Board's approval and signature. She noted this assignment references Section 8.3 of the Rules and Regulations Governing Administrative Citations, which provides that the Board may assign an Administrative Hearing Officer to conduct all hearings or when a matter is submitted for determination based on written argument and written statement of facts then all examination of such written material on a petition for review of an Administrative Citation for violations of the animal code, housing code, and noise control ordinance. This assignment exercises the Board's discretion to delegate such hearings and examination to Administrative Hearings Officers retained by the department. There being no questions or comments from the Board, Dr. Burton said he would sign the document.
- Denver Leash Law and Park Signage – Board discussion took place regarding process improvements for notifying the public of Denver's leash law. A suggestion was made to include information about the leash law with issuance of animal license. The Board also discussed leash law signage and improvements in Denver's parks. Dr. Burton asked the department to research mapping of all signage related to leash law in city parks of one-half city block in size or larger. He asked the department to provide follow-up information regarding the adequacy of notification to and/or education of the public of Denver's leash law at the April 8<sup>th</sup> Board meeting.
- ACC Website – The Board mentioned that the ACC website should be made more user friendly for the public, especially given the expected increase in web-traffic to ACC's website as a result of the new Administrative Citation process.

- Meeting Venue Options – Ms. Severson mentioned that the board’s secretary has reserved the large conference room on 2<sup>nd</sup> floor of 200 W. 14<sup>th</sup> Avenue for future meetings. The Elections division is scheduled to move in the week of March 15<sup>th</sup>. She commented that another option may be the Parr-Widener Community Room in the City & County Building. Ms. Severson said the department will contact the Board by April 1<sup>st</sup> to set up a time for any of the members who are interested to come and visit the meeting room options.
- Security Improvements – Ms. Severson reported that the department is making significant progress on improving the security for 200 W. 14<sup>th</sup> Avenue. There is now a security person on site during normal business hours. She noted that there will be further enhancements to security for our building once the Elections Division moves in because there are required security elements for election commission buildings.

### **Executive Session**

Dr. Burton asked for a motion to go into Executive Session to discuss Denver’s ranking in the county health rankings scheduled to be released publicly next week. Ms. Shwayder made a motion to go into Executive Session at 7:02 p.m. Mr. Goto seconded the motion. Motion passed 3 – 0. Dr. Burton asked for a motion to come out of Executive Session. Ms. Shwayder made a motion to come out of Executive Session at 7:27 p.m. and Mr. Goto seconded the motion. Motion passed 3 – 0.

### **Adjournment**

There being no further issues for discussion, Dr. Burton asked for a motion to adjourn. Mr. Goto made a motion to adjourn the meeting and Ms. Shwayder seconded the motion. Motion passed 3 – 0. Meeting adjourned at 7:28 p.m.

**BOARD OF ENVIRONMENTAL HEALTH**

In the Matter of: Dr. Alan Shaw, PO Box 161562, Big Sky, MT 59716-1562  
Administrative Citation No. AC02258  
Add the Board Case Number

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**Administrative Enforcement Order**

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Upon consideration of the administrative record established at the hearing before the Administrative Hearing Officer on January 25, 2010 and the Hearing Officer's recommended Administrative Enforcement Order; and it appearing that the Board has jurisdiction over this matter; and after due deliberation and sufficient cause appearing therefore, the Board

**ORDERS** that the recommended Administrative Enforcement Order is hereby:

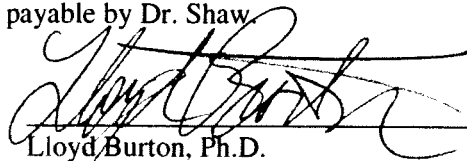
- upheld in its entirety
- rejected in its entirety and judgment is entered in Petitioner's favor as requested
- upheld in part with modifications as follows:

The Board upholds the recommended finding of the Hearing Officer that Dr. Shaw violated Section 8-16, Denver Revised Municipal Code, but modifies the civil penalty imposed from the \$60.00 recommended amount to \$0.00.

rejected and remanded with directions as follows:

No civil penalties or costs are due or payable by Dr. Shaw.

Dated: March 11, 2010



Lloyd Burton, Ph.D.  
Vice-Chair, Board of Environmental Health