

# **BURNT**

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CITIZEN INVOLVEMENT WITH GOVERNMENT,  
BUSINESS, AND ACADEMIA

10 May 2008

Greer Tidwell, Jr  
Vice-Chair  
State Air Pollution Control Board

*via electronic mail and 1<sup>st</sup> class mail*

RE: Request to Delay Certificate of Exemption for the Metropolitan Nashville and Davidson County Air Board Due to Pending Investigation of Procedural Abuses

Dear Vice-Chair Tidwell:

I request that the State Air Quality Control Board delay consideration of the Metropolitan Nashville Air Board "Certificate of Exemption" scheduled for the June 2008 State Air Pollution Control Board agenda due to on-going procedural abuses by the Metropolitan Health Board and the failure to complete a pending investigation ordered by the State Air Quality Board. On 11 October 2005 I wrote to the State Air Pollution Control Board concerning multiple abuses by the Metropolitan Nashville Air Board including

--failure to hold mandated public hearings while penalizing the Metro owned Thermal plant

--failure to regulate mobile sources as required under *Metro Code 10.56.170* and *10.56.050(B)* in an appeal of the North American Galvanizing permit

--without a required public hearing or notice, amended '*Metro Code 2.36.140 review of decisions of the chief medical director*'

--created a multi-tier appeal process which guarantees applicants for air permits appealing a decision of the director a full hearing under protection of the Uniform Administration Procedures Act (UAPA) while citizens are not given this protection

--The Board violated *Section 129(e)* of the Federal Clean Air Act by regulating a solid waste incinerator which was owned, designed, and financed by Metropolitan Government

The members of the State Air Quality Control Board were highly concerned with our allegations. The State Air Quality Board ordered the Department to conduct an investigation and to issue a report. As volunteers involved with several issues, we provided numerous documents, had multiple interviews, and wrote to the Department and the Attorney General to determine the status of the investigation. . We ask your further intervention.

The Metro Air Board has allowed the Metro Department of Law to determine Board policy.

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For example, on the day of the North American Galvanizing Permit Appeal, the Board chair, an attorney, stated “I’ve been in this position [chair] three months and I’ve been on the board for two years. I have never heard of this company until just last week. I was not here for the [public] hearing. *There’s been all kinds of actions taken. I don’t have any idea what they are. [emphasis added]*” Without consulting the Board, Metro legal argued for two years motions and briefs in front of an Administrative Law Judge that completely reversed Board policy upheld Laidlaw Env. v. Metro Bd. Of Health (934 S.W. 2d 40) that *Metro Code 10.56.100* allowed the Board to could consider the location of the pollution source. And, without consulting the Board, the Department of Law persuaded the Administrative Law Judge that the Board could not regulate mobile sources despite the clear testimony of Metro Expert Spencer Hissam and *Metro Code 10.56.050(B)*. The Board recently approved a mosquito control policy which almost entirely reverses the recently approved policy [Metro Council Legislation] and also allows pedestrians to be sprayed with pesticides despite admonitions to senior Department staff by the pesticide manufacturer to not allow this practice.

As non-attorneys. we have requested that the Department meet with us, with the assembled record, to discuss all allegations, their preliminary findings, and the specific alternative outcomes of any recommendations they might make to the State Air Quality Control Board. This has not happened. We believe this is a vital step prior to any consideration of the “Certificate of Exemption” for Metro.

The authority of Metropolitan government to issue and regulate air quality permits is highly regulated by the Federal and State governments. We believe not having public hearings, changing the definition of standing, and allowing Metro Legal to change Board policy in the North American Galvanizing appeal are fundamental indicators of a Board which flaunts the intent and purpose of the US Clean Air Act.

There are substantial issues concerning the practices of the Metropolitan Air Quality Board. This was a basic conflict of interest by the Health Board regulating the Metro owned downtown solid waste incinerator. This resulted in years of sub-standard operations by the Thermal Plant which would have been tolerated from no other source. The Thermal Plant burned down in a cataclysmic fire due to reckless and wanton operations by this source which the Health Board permitted and regulated. Very few public power plants burn down in America.

The citizens of Nashville are subject to willful and random decisions by the Nashville Health Board. We are not protected procedurally or in our air quality. We request a delay in consideration of the Metro Air Board Certificate of Exemption. We request sanctions against Metro including but not limited to State supervision and approval of all permits, Health Board decisions, and a fine with suitable distribution.

Thank you

Bruce Wood

president and as an individual

Cc Air Pollution Control Board Members

Tennessee Department of Air Pollution Control and Office of General Counsel  
Metro Health Department