

REGULATION 1.19 Administrative Hearings

Air Pollution Control District of Jefferson County Jefferson County, Kentucky

Relates To: KRS Chapter 77 Air Pollution Control

Pursuant To: KRS Chapter 77 Air Pollution Control

Necessity and Function: KRS 77.180 authorizes the Air Pollution Control Board to adopt and enforce all orders, rules, and regulations necessary or proper to accomplish the purposes of KRS Chapter 77. This regulation establishes procedures for administrative hearings provided by the District to enforce KRS Chapter 77, District regulations, orders of the Board, and permits and to provide an opportunity to be heard to persons aggrieved by orders of the Board or determinations made by the District or the Board, including actions on permits .

SECTION 1 Applicability

This regulation applies to administrative hearings provided by the District for the following purposes:

- 1.1 Enforcing KRS Chapter 77, these regulations, orders of the Board, and permits, and
- 1.2 Providing an opportunity to be heard to persons who consider themselves aggrieved by orders of the Board or determinations made by the District or the Board, including actions taken by the District or the Board on permits, so long as the person has not previously been heard regarding that matter in an administrative hearing pursuant to this regulation. An action on a permit includes the issuance, denial, modification, transfer, suspension, or revocation of the permit.

SECTION 2 Petition for Administrative Hearing; Notice of Administrative Hearing

- 2.1 If, after the District has notified, in accordance with KRS 77.310(1), a person alleged to have violated KRS Chapter 77, these regulations, an order of the Board, or a permit, the alleged violation remains unresolved, then the District may file a petition with the Secretary-Treasurer requesting that an administrative hearing be held. The Secretary-Treasurer shall serve written notice of the petition on each person named in the petition and shall schedule an administrative hearing to be held not less than 30 days after the petition is filed unless the person complained against waives in writing the 30-day period.
- 2.2 Permittees or persons who consider themselves aggrieved by orders of the Board or determinations made by the District or the Board, including actions taken by the District or the Board on permits, may file a petition for an administrative hearing with the Secretary-Treasurer so long as the person has not previously been heard regarding that matter in an administrative hearing pursuant to this regulation. The petition shall allege that the action is contrary to law or fact and is injurious to the petitioner, state the grounds and reasons for the allegation, and request an administrative hearing. Unless the Board considers the petition frivolous, the Secretary-Treasurer shall serve written notice of the petition on each person named in the petition and shall schedule an administrative hearing to be held not less than 60 days after the petition is filed unless the person complained against waives in writing the 60-day period. The right to request an administrative hearing pursuant to this regulation shall be limited to a period of 30 days after the petitioner has had actual notice, or could reasonably have had notice, of the order or action specified in the petition. Prior to

scheduling an administrative hearing, the Secretary-Treasurer may require the parties to meet for settlement purposes.

- 2.3 The Secretary-Treasurer shall provide written notice of the administrative hearing to the person alleged to be in violation, the petitioner, and any other party named in the petition by certified mail, return receipt requested.

SECTION 3 Hearing Officer

- 3.1 Administrative hearings subject to this regulation shall be held before a qualified, independent hearing officer who, in the discretion of the District, may serve by contract, be paid on a per diem basis, or be a full-time employee of Jefferson County not assigned to the District.
- 3.2 The hearing officer shall preside at the administrative hearing, shall keep order, and shall conduct the administrative hearing in accordance with reasonable administrative practices.
- 3.3 In conducting administrative hearings, the hearing officer may do all of the following:
- 3.3.1 Administer oaths and affirmations,
 - 3.3.2 Issue subpoenas,
 - 3.3.3 Issue appropriate orders relating to discovery,
 - 3.3.4 Rule on procedural requests or similar matters,
 - 3.3.5 Hold prehearing conferences for settlement or simplification of the issues,
 - 3.3.6 Regulate the course of the administrative hearing, and
 - 3.3.7 Rule on offers of proof and receive relevant evidence.

SECTION 4 Intervention

- 4.1 A person who may be adversely affected by the outcome of an administrative hearing may file a petition to intervene as a party to the proceeding.
- 4.2 The hearing officer shall consider whether to grant the petition to intervene based on the following criteria:
- 4.2.1 The nature of the issues,
 - 4.2.2 The adequacy of representation of the petitioner's interest being provided by the existing parties to the proceeding,
 - 4.2.3 The ability of the petitioner to present relevant evidence and argument, and
 - 4.2.4 The effect of intervention on the Board's and the District's implementation of their statutory mandates.

SECTION 5 Prehearing Conference

Prior to the formal administrative hearing, and upon 15-day advance written notice to all parties, the hearing officer may hold a prehearing conference to consider simplification and clarification of the issues, stipulations and admissions of fact, discovery issues, limitation of the number of witnesses, and any other matters as will aid in the disposition of the matter. Disposition of the matter may be made at the prehearing conference by stipulation, agreed settlement, or default for failure of a party to appear.

SECTION 6 Hearing Proceedings

- 6.1 A party to an administrative hearing held pursuant to this regulation may be represented by counsel, make oral or written argument, offer testimony, cross-

examine witnesses, or take any combination of these actions.

- 6.2 Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under judicial rules of evidence, not admissible under judicial rules may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The hearing officer shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when an administrative hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form. Notice may be taken of generally recognized technical or scientific facts within the District's specialized knowledge.
- 6.3 All administrative hearings subject to this regulation shall be recorded verbatim. It shall be within the hearing officer's discretion to provide for a court reporter or for a mechanical recording device. A transcript of an administrative hearing shall be made if a written request by a party to the administrative hearing is filed with the Secretary-Treasurer. The costs of creating a transcript shall be borne by the requesting party and the projected costs shall be paid to the Secretary-Treasurer before the transcript is created. A party requesting the creation of a transcript shall provide a copy to the District at no charge to the District. Fees for transcripts prepared by District employees from recordings shall be at rates that cover the cost of staff time, machine use, and materials.
- 6.4 The record of the hearing, including all documents filed and the hearing officer's report and recommended order, shall, consistent with the provisions of Regulation 1.08 *Administrative Procedures* Section 6 *Confidentiality and Open Records Policy*, be a public record open for inspection.

SECTION 7 Filing of Documents; Computation of Time

- 7.1 A document is considered filed in a matter subject to this regulation when it is received and stamped by the Secretary-Treasurer.
- 7.2 A party filing a document with the Secretary-Treasurer shall serve a copy of the document on all parties to the proceeding. If a party is on record as being represented by an attorney in the proceeding, then a copy of filed documents shall be served instead on the party's attorney. Service shall be made upon the District by serving the Secretary-Treasurer.
- 7.3 Computation of time for the initiation of an administrative hearing or the subsequent filing of a document in an administrative hearing subject shall be in accordance with KRS 446.030 *Computation of time*.

SECTION 8 Communications with the Hearing Officer

- 8.1 Except as authorized by law, there shall be no communication concerning the merits of a proceeding between a party to the proceeding, a person interested in the proceeding, or a representative of a party or interested person and the hearing officer, unless the communication, if oral, is made in the presence of all other parties or their representatives, or, if written, is furnished to all other parties. Communications concerning case status or requesting advice concerning compliance with procedural requirements are not prohibited unless the subject of the inquiry is in fact a subject of controversy in the proceeding.
- 8.2 The hearing officer in a proceeding in which a prohibited communication has been made may impose appropriate sanctions on the offending person, which may include the following:
 - 8.2.1 Reducing the oral communication made in violation of this section to writing in a memorandum, including the memorandum in the record, providing a copy of the memorandum to all parties, and giving all parties an opportunity to respond,
 - 8.2.2 Including the written communication made in violation of this section in the record, providing a copy of the written communications to all parties, and giving all parties an opportunity to respond, and
 - 8.2.3 Requiring an offending party to show cause why the offending party's claim, motion, or interest should not be dismissed or denied and invoking other sanctions as appropriate.

SECTION 9 Hearing Officer's Report and Recommendation; Exceptions; Order of the Board; Communication with Board Members

- 9.1 The hearing officer shall, within 30 days of the close of the hearing record, prepare and file a written report and recommended order with the Secretary-Treasurer. The report and recommended order shall be based on a preponderance of the evidence appearing in the record as a whole and contain findings of fact and conclusions of law. The Secretary-Treasurer may, upon written request from the hearing officer, grant additional time as needed.
- 9.2 The hearing officer shall send a copy of the report and recommended order to all parties of record to the proceeding.
- 9.3 The parties may, within 14 days of receipt of the hearing officer's report and recommended order, file with the Secretary-Treasurer exceptions to the report and recommended order.
- 9.4 After completion of the administrative hearing and any filing of exceptions, the Secretary-Treasurer shall schedule a time for the Board to consider the report, recommended order, and exceptions and to adopt a final order resolving the matter. A copy of the adopted final order shall be served by certified mail, return receipt requested, to all parties of record to the proceeding.
- 9.5 There shall be no communication concerning the merits of a proceeding between a party to the proceeding, a person interested in the proceeding, or a representative of a party or interested person and a Board member. Questions regarding case status or procedural requirements shall be addressed to the Secretary-Treasurer.

SECTION 10 Appeals

Appeals of a final order following an administrative hearing shall be filed with the Jefferson Circuit Court within 30 days of the Board action. The petition shall state fully the grounds upon which a review is sought and assign all errors relied upon. The District shall be named respondent. Notice of the filing of an appeal shall be given by the appellant to all parties of record to the prior proceeding. Service shall be made upon the District by serving the Secretary-Treasurer.

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