

ALLEGHENY COUNTY HEALTH DEPARTMENT

Rules and Regulations

ARTICLE XI. HEARINGS AND APPEALS

1101. PURPOSE

This Article provides for appeals to and hearings before the Director and Hearing Officer of the Allegheny County Health Department, sets forth definitions, and outlines procedures governing hearings and appeals.

1102. DEFINITIONS

The following words and phrases when used in this Article shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Action." Any order, notice, decision, determination or ruling by the Department affecting personal or property rights, privileges, immunities, duties, liabilities or obligations of any person.

"Article." Article XI of the Rules and Regulations of the Allegheny County Health Department governing Hearings and Appeals.

"Department." The Allegheny County Health Department.

"Director." The Director of the Allegheny County Health Department or his/her duly authorized Hearing Officer(s).

"Hearing Officer." A person or persons other than the Director designated by the Director to preside at hearings or conferences.

*** HEARING OFFICER'S NOTE:** The Allegheny County Health Department has one Hearing Officer. The current Hearing Officer is Max Slater, who presides over all hearings for the Department.

"Intervenor." A person who has been permitted to intervene in an appeal by the Director or the Hearing Officer, as provided by Section 1104.1 (relating to intervention).

"Notice of Appeal." A written appeal that complies with all of the requirements of Section 1104 of this Article.

*** HEARING OFFICER'S NOTE:** Parties filing a Notice of Appeal are strongly encouraged to fill out the Department's Standard Appeal Notice Form, which includes space for all the

information required by Section 1104.B. below. The Standard Appeal Notice Form is available at <https://www.alleghenycounty.us/Health-Department/Resources/Legal/Legal.aspx>.

"Party." Includes (1) any person perfecting an application for hearing or appeal under the provisions of this Article; (2) any person permitted by the Director or the Hearing Officer(s) to intervene in a hearing or appeal conducted pursuant to the provisions of this Article; (3) the Allegheny County Health Department; and (4) any person against whom action may be taken after hearing or opportunity for hearing.

"Person." Any individual, firm, corporation, partnership, association, political subdivision, municipal authority, or other entity.

"Stay of Proceedings." A suspension of the effect of an action of the Department pending an appeal.

1103. RIGHT TO APPEAL

Any person aggrieved by an action of the Department and who has a direct interest in such action may file a Notice of Appeal.

***HEARING OFFICER'S NOTE:** As used in this Section, the phrase "an action of the Department" refers to a final agency action, such as a Notice of Violation.

1104. APPEALS

A. The Notice of Appeal shall be filed no later than thirty (30) days after receipt of written notice or issuance of the action by which the Appellant is aggrieved. The notice of appeal must be filed no later than 4:00 p.m. Eastern Time on the thirtieth (30th) day after written notice or issuance of the action.

B. The Notice of Appeal must be signed by the person aggrieved or by his or her duly authorized attorney or agent and must contain the names, addresses, and telephone numbers of the Appellant and his or her duly authorized attorney or agent, if any. The Notice of Appeal shall set forth with particularity the manner in which the Appellant is aggrieved by the action of the Department, the extent to which the Appellant has a direct interest in the action and the grounds for his or her appeal.

*** HEARING OFFICER'S NOTE:** Parties filing a Notice of Appeal are strongly encouraged to fill out the Department's Standard Appeal Notice Form, which includes space for all the information required by Section 1104.B. above. The Standard Appeal Notice Form is available at <https://www.alleghenycounty.us/Health-Department/Resources/Legal/Legal.aspx>.

C. The Notice of Appeal shall be filed in the Office of the Director, 542 Fourth Avenue, Pittsburgh, PA 15219. If an appellant is objecting to a permit or permit condition in their Notice of Appeal, then, concurrent to filing their appeal with the Office of the Director, that appellant must also provide a copy of their Notice of Appeal to the permittee whose permit is the subject of the appeal.

D. All actions of the Department shall become final thirty (30) days after receipt of written notice or issuance if no appeal has been perfected under the provisions of this Section.

E. A person may amend their Notice of Appeal as of right within thirty (30) days after filing the Notice of Appeal. After the 30-day period for amendment as of right, the Director or the Hearing Officer(s), upon motion by the appellant, may grant leave for further amendment of the appeal. This leave may be granted if no undue prejudice will result to the opposing parties. The burden of proving that no undue prejudice will result to the opposing parties is on the party requesting the amendment.

F. After the filing of a Notice of Appeal, the parties may exchange, before the hearing, all documents which they plan to enter into evidence at the hearing. This exchange of documents shall be made pursuant to a discovery plan as ordered by the Director or Hearing Officer pursuant to Article XI, Section 1107.A.

G. *Representation of parties.* In administrative proceedings before the Hearing Officer:

1. Individuals may be represented by themselves, by an attorney at law, or by a representative with personal knowledge of the subject matter of the litigation and written authorization from the individual to appear as the individual's representative.

2. Partnerships may be represented by an attorney at law, a partner, or by an employee or authorized agent of the partnership with personal knowledge of the subject matter of the litigation and written authorization from a partner to appear as the partnership's representative.

3. Corporations or similar entities and unincorporated associations may be represented by an attorney at law, by an officer of the corporation, entity, or association, or by an employee or authorized agent of the corporation, entity, or association with personal knowledge of the subject matter of the litigation and written authorization from an officer of the corporation, entity, or association to appear as its representative.

4. A representative, employee, or authorized agent:

a. Must provide written verification of personal knowledge of the subject matter of the litigation, and

b. May take no action on behalf of a party until the written authorization required under paragraph G.1, G.2, or G.3 is filed with the Hearing Officer.

5. Entries of appearance by counsel of record for a party shall be filed with the Hearing Officer and served upon the other parties to the proceedings.

*** HEARING OFFICER'S NOTE:** As stated above, corporations do not need to be represented by a lawyer in administrative hearings before the Allegheny County Health Department Hearing Officer. This differs from proceedings in Pennsylvania state courts or federal courts, in which corporations must be represented by a lawyer.

1104.1. INTERVENTION

- A. A person may petition the Director or Hearing Officer to intervene in any pending matter prior to the initial presentation of evidence. A permittee whose permit is the subject of an appeal may intervene in that appeal as of right at any time prior to the presentation of evidence by entering an appearance in the appeal.
- B. A petition to intervene shall be verified, and contain sufficient factual averments and legal assertions to establish the following:
1. The reasons the petitioner seeks to intervene;
 2. The basis for asserting that the identified interest is greater than that of the general public;
 3. The manner in which that interest will be affected by the Director's or Hearing Officer's decision; AND
 4. The specific issues upon which the petitioner will offer evidence or legal argument.
- C. A copy of the petition shall be served upon the parties to the proceedings.
- D. A party may file an answer to the petition. An answer shall be verified and filed within fifteen (15) days after service of the petition, unless a shorter time is ordered by the Director or Hearing Officer.
- E. The Director or Hearing Officer will deny the petition if it fails to include sufficient legal grounds or verified factual averments to establish the right to intervene.
- F. If the Director or Hearing Officer grants the petition, the order may specify the issues as to which intervention is allowed. An order granting intervention allows the intervenor to participate in the proceedings remaining at the time of the order granting intervention.

*** HEARING OFFICER'S NOTE:** Even if the Hearing Officer does not allow a party to intervene, the Hearing Officer may allow that party to file an amicus brief in the case.

1104.2. CONSOLIDATION AND SUBSTITUTION OF PARTIES

A. The Director or Hearing Officer, on their own motion or on the motion of any party, may order proceedings involving a common question of law or fact to be consolidated for hearing of any or all the matters in issue in such proceedings.

B. A person who has succeeded to the interests of a party to an appeal by operation of law, election to public office, appointment or transfer of interest may become a party to the pending action by filing with the Director or Hearing Officer a verified petition for substitution of party, which includes a statement of material facts upon which the right to substitute is based.

1. The substituted party shall have all the rights and liabilities of the original party to the proceeding, provided that any other party to the proceeding may move to strike the substituted party for just cause. A substituted party-appellant is limited to pursuing only those objections raised in by the original appellant in its appeal, unless both the original appellant and the substituted appellant meet the conditions of § 1104.E (relating to amendments to appeals), above.

1104.3. JOINDER OF INDISPENSABLE PARTIES

(1) *Indispensable Party.* A person who is subject to service of process and whose joinder will not deprive the Department of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the Hearing Officer cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

- (i) as a practical matter impair or impede the person's ability to protect their interest; or
- (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

*** HEARING OFFICER'S NOTE:** The Department's definition of "Indispensable Party" is nearly identical to the Pennsylvania Rules of Civil Procedure's definition.

(2) *Joinder by Administrative Order.* If a person has not been joined as required, the Director or Hearing Officer, on his or her own motion, or at the request of any party, must order that the person be made a party. The Director or Hearing Officer shall have the discretion to designate the party as an appellant, appellee, or other interested party, as the case may require.

(3) *Definition of "Person."* The term "person" in this rule shall have the same definition as defined in § 1102 of Article XI—"Any individual, firm, corporation, partnership, association, political subdivision, municipal authority, or other entity."

1105. HEARINGS

A. Except as provided for below, the Director or Hearing Officer shall schedule a full evidentiary hearing to determine any material or substantial issue of fact raised in any Notice of Appeal filed under the provisions of Section 1104 of this Article. Within thirty (30) days after receipt of a Notice of Appeal, the Director or Hearing Officer shall give written notice, by mail, to all parties of the time and place of the scheduled hearing.

1. After the appeal has been filed, The ACHD and appellant(s) may settle or resolve the case without the involvement of the Hearing Officer, if they so choose.
 - a. If the appeal is resolved before the hearing, the Department must inform the Hearing Officer or Director, and request that you dismiss the appeal. If an appeal settles, the Department and appellant(s) must sign an agreement indicating that the appeal has been settled.
2. If the parties, in writing, stipulate to all material facts, agree to waive their right to a hearing, or agree to submit all evidence in writing, by affidavit or deposition, no hearing shall be held.

*** HEARING OFFICER'S NOTE:** If the parties wish to resolve the case informally, such as through a mediation-like process, the Hearing Officer will act in a mediator role if the parties so choose. This approach often works in situations in which the appellant does not dispute the facts of the case, but does dispute the amount of the penalty levied against them. See also Section 1107, below, regarding Conferences.

3. If the Director or Hearing Officer determines that a formal hearing will not contribute to a determination of an appeal raising only physical or technical issues of fact that can be resolved by inspection, examination or testing, or raising only legal issues, no hearing shall be held. In lieu of holding a formal hearing, the Director or Hearing Officer shall comply with the provisions of Section 1108 of this Article.
4. If a hearing is not held, the Director or Hearing Officer may consider written materials, including, but not limited to, briefs, photographs and affidavits which, within the time prescribed by the Director or Hearing Officer, shall be filed in the office of the Director and served upon all parties.

*** HEARING OFFICER'S NOTE:** Unless otherwise specified, all hearings will be held at the Clack Health Center, Building 7, 301 39th Street, Pittsburgh, PA 15201.

B. The Director or the Hearing Officer, on his or her own motion, may initiate a hearing by issuing a Notice of Hearing, which shall notify the appellant(s) and/or intervenor(s) of their right to appear and show cause why the Department should not take such action as is

proposed and specified therein. All Notices of Hearing shall be in writing and shall be served upon all parties at least ten (10) days prior to the hearing, and shall state the time and place of the hearing, and the proposed action of the Department.

1. The Director or Hearing Officer may cause notice of any hearing to be published in the Pittsburgh Legal Journal and/or one newspaper of general circulation.

C. Procedure at Hearing

1. Any person may be represented at a hearing by counsel. A partnership may be represented by any of its members, a corporation or association by any of its officers, and an authority or agency by an officer, or employee duly authorized in writing to represent the authority or agency.

2. Examination and cross-examination of witnesses shall be permitted by all parties.

3. No document or written material of any kind shall be introduced in evidence until a copy of the document or writing is furnished to every party.

*** HEARING OFFICER'S NOTE:** If you are presenting written documents as evidence at a hearing, PLEASE provide copies of these documents to (1) the opposing party or parties, (2) the Hearing Officer, and (3) the court reporter.

*** HEARING OFFICER'S NOTE:** The evidence rules at a hearing will generally follow the Pennsylvania Rules of Evidence, which can be found at <https://www.pacode.com/secure/data/225/225toc.html>. However, the rules of evidence at a hearing will be more permissive than in a Pennsylvania court. Evidence will generally be admissible if it is relevant and does not clearly run afoul of a Pennsylvania Rule of Evidence.

4. The Director or Hearing Officer may, on his or her own motion, or at the request of any party, subpoena witnesses and any material relevant to the proceedings. The party requesting the subpoena shall be responsible for the service costs associated with the subpoena.

5. All hearings shall be open to the public unless deemed confidential by the Director or the Hearing Officer acting upon his or her own motion or upon consideration of any party's motion, for good cause shown or when confidentiality is required by law.

6. Except as provided below, the Director or the Hearing Officer may provide that all testimony be stenographically recorded, and may keep a full and complete record of the proceedings. In the event the Director or Hearing Officer does not provide for recording of the testimony, such testimony shall be stenographically recorded at the request of any party agreeing to pay the costs thereof. The costs of obtaining

transcripts of stenographically recorded hearings shall be borne by the party requesting the transcript.

7. The burden of proceeding and the burden of proof shall be the same as at common law, in that the burden shall normally rest with the party asserting the affirmative of an issue. It shall generally be the burden of the party asserting the affirmative of the issue to establish it by a preponderance of the evidence. In cases where a party has the burden of proof to establish the party's case by a preponderance of the evidence, the Hearing Officer may nonetheless require the other party to assume the burden of proceeding with the evidence in whole or in part if that party is in possession of facts or should have knowledge of facts relevant to the issue.

- a. The Department has the burden of proof in the following cases:
 - i. When it assesses a civil penalty.
 - ii. When it revokes or suspends a license, permit, approval or certification.
 - iii. When it issues an order.

- b. A party appealing an action of the Department shall have the burden of proof in the following cases:
 - i. When the Department denies a license, permit, approval or certification.
 - ii. When a party who is not the recipient of an action by the Department protests the action.
 - iii. When a party to whom a permit approval or certification is issued protests one or more aspects of its issuance or modification.
 - vi. When a party appeals or objects to a settlement of a matter between the Department and another private party.

*** HEARING OFFICER'S NOTE:** The burdens of proof listed above only apply to a hearing on the merits of a case, not hearings involving preliminary issues, such as a party's inability to pay the amount of a civil penalty, or to matters involving a request for a stay of proceedings. In such instances, the burden of proof is on the appellant to show, for example, why they are unable to pay the civil penalty, or why the proceedings should be stayed.

8. In hearings held pursuant to subsection 1105.A. of this Article, the Director or Hearing Officer shall hear and admit only such testimony and evidence as is relevant to the matters and issues set forth in the Notice of Appeal.

9. The Director or the Hearing Officer may dismiss any Appeal, or part thereof, upon failure of the appellant to appear at any scheduled hearing or to go forward with respect to any issue.

D. All requests for postponements of any scheduled hearings shall be made at least three (3) days before the date set for such hearing. Requests for postponements may be made by phone or email, and should be addressed to the lawyer representing the Department in the appeal. All postponements shall be within the discretion of the Director or the Hearing Officer.

1106. DECISION OF THE DIRECTOR

The Director or Hearing Officer shall, within a reasonable period of time after service of all materials submitted by the parties, after close of any hearing or rehearing, or after any inspection or test is conducted under Section 1108, render a written decision on the matter in controversy. The Director or Hearing Officer shall make findings of fact and conclusions of law, give reasons for the decision and the decision shall be served personally or by mail upon all parties.

*** HEARING OFFICER'S NOTE:** There is no formal timeframe for the Hearing Officer or Director to issue a decision on the case. The timeframe for issuing a decision will depend on factors such as the complexity of the case, the amount of evidence and testimony to examine, and the number of other pending cases assigned to the Hearing Officer.

1107. CONFERENCES

- A. The Director or Hearing Officer, on his or her own motion, or at the request of any party, may hold a conference prior to, or during, or in lieu of, a hearing for the purpose of hearing offers of settlement or compromise, to develop a discovery plan, or for the purpose of narrowing the matters in controversy. Any agreement entered into at such conference shall be in writing and shall be signed by all parties. A discovery plan shall include the discovery to be conducted, such as depositions and exchange of documents, and when discovery should be completed.
- B. All parties to the proceedings shall be notified of the time and place of the conference and shall have the right to be present at the conference.
- C. The Director or Hearing Officer may close the conference to the public.

1108. DISPOSITION OF APPEAL WITHOUT A HEARING

Where only legal questions or physical or technical facts are at issue in an appeal, and the Director or Hearing Officer determines that a formal hearing will not contribute to a resolution of the matters in issue, he or she must conduct or order the conduct of an inspection, examination, or test, or request the filing of written briefs. The Director or Hearing Officer must otherwise comply with every other provision of this Article.

1108.1. MOTIONS TO DISMISS

The Department, an appellee-intervenor, or the permittee in a third party appeal, may file a motion to dismiss the appeal. The Director or Hearing Officer shall evaluate motions to dismiss in the light most favorable to the appellant, and may only grant the motion against the appellant when there are no material facts in dispute and appellant is incapable of demonstrating a right to relief with respect to issues raised by the moving party.

1109. REHEARING

The Director or Hearing Officer may, at the request of any party, grant the right to a rehearing. All applications for rehearing shall be filed in the office of the Director and served upon all parties within fifteen (15) days after the date of the decision of the Director or Hearing Officer. The application shall include a short and concise statement setting forth the grounds for the request. The Director or Hearing Officer shall, within a reasonable period of time after request for rehearing, either deny the rehearing or give notice of the time and place of the rehearing, and conduct that hearing in accordance with Section 1105 of this Article.

*** HEARING OFFICER'S NOTE:** Generally, a rehearing or a motion for reconsideration of a Hearing Officer's Decision will only be granted in one of two scenarios: (1) After the original hearing and Hearing Officer's decision, a Pennsylvania court issues a decision that contradicts the Hearing Officer's decision; or (2) After the original hearing and Hearing Officer's decision, new evidence surfaces that may have affected the outcome of the case. The Hearing Officer shall have discretion whether to grant or deny any motion for rehearing or reconsideration.

1110. APPEAL TO COMMON PLEAS COURT

Any party who is aggrieved by any decision of the Director or Hearing Officer rendered pursuant to Section 1106 of this Article, may appeal there from within 30 days after the Hearing Officer's written decision to the Court of Common Pleas of Allegheny County pursuant to 42 Pa.C.S.A § 5571(b).

*** HEARING OFFICER'S NOTE:** Parties wishing to appeal a decision of the Hearing Officer to the Court of Common Pleas of Allegheny County should contact the Department of Court Records with questions about the appeals process, at (412)-350-5729.

1111. STAY OF PROCEEDINGS

A. The filing of a Notice of Appeal shall not stay any action by the Department or hold in abeyance any order of the Director unless a stay of proceedings is granted by the Director or the Hearing Officer.

B. A petition for stay of proceedings may be filed at any time during the pendency of an appeal in the office of the Director, and shall set forth with particularity the reasons for which it is requested. Copies of any such petition shall be served on all parties.

C. The Director or Hearing Officer may, upon petition, or on his or her own motion, grant a stay of proceedings, except that a stay may not be granted where it may result in serious and immediate danger to the public health and welfare. When deciding whether or not to grant a motion for a stay of proceedings, and in determining the length of the stay, the Director or Hearing Officer shall consider factors including, but not limited to, the following:

1. Irreparable harm to the petitioner;
2. The likelihood of the petitioner prevailing on the merits; and
3. The likelihood of injury to the public or other parties, such as the permittee in third-party appeals.

D. The grant of a stay shall suspend the effect of the appealed action of the Department, but shall not stay any action of the Department which is not subject to the appeal, nor shall it stay the enforcement of any Department rule or regulation.

1112. SERVICE

Where notice is given by United States mail, the time of service of such notice shall be the date of receipt.

1112.1 COMPUTATION OF TIME

Except as otherwise provided by law, in computing a period of time prescribed or allowed by the rules of the Department, time shall be computed to *exclude* the first day of the action, event, or filing. Time shall be computed to *include* the last day unless it falls on a Saturday, Sunday, or legal holiday, in which case the day will be omitted from the computation, and the period shall run until the end of the next business day. Intervening Saturdays, Sundays and legal holidays shall be included in the computation.

*** HEARING OFFICER'S NOTE:** As an example to illustrate how the Department computes time for the Rules listed above, suppose a party wants to amend its appeal within the 30-day window under Section 1104.E. The party filed its appeal on Thursday, April 1st. The first day of the 30-day window would be Friday, April 2nd. The thirtieth day would have been Saturday, May 1st, but because May 1st falls on a Saturday, the actual thirtieth day would be Monday, May 3rd, which is the next business day after the technical thirtieth day.

1113. APPLICABILITY

- A. This Article shall not govern procedures in informal conferences held by the Department in the ordinary course of the administration of its rules and regulations, nor shall it in any way limit the right of the Department to conduct such conferences or the right of any person to request that such conferences be held.

*** HEARING OFFICER'S NOTE:** In other words, if the parties request an informal conference to resolve the dispute at hand, the parties are not bound by the provisions of Article XI, above.

- B. This Article shall not apply to the procedures governing the employment or dismissal of Department personnel.

- C. The provisions of Article XI, effective the 15th day of March, 1958 are hereby repealed.