

77.310 Proceedings for alleged violations of chapter or regulations and for petitions for a hearing on board orders or determinations -- Hearing officers.

- (1) If there is reason to believe that a violation of this chapter or of a regulation promulgated under this chapter has occurred within an air pollution control district, the district shall issue and mail to or serve upon the person complained against a written notice of the provision of this chapter or the regulation allegedly violated. The district may schedule a settlement conference before the air pollution control officer or a designee at which the person complained against may appear to answer the charges set out in the notice. The conference shall be scheduled at a time not less than thirty (30) days after the date of notice unless the person complained against waives in writing the thirty (30) day period. Alleged violations that remain unresolved may be scheduled for a hearing under subsection (3) of this section at a time not less than thirty (30) days after a determination that the violation is unresolved unless the person complained against waives in writing the thirty (30) day period. The scheduling of a settlement conference or hearing shall not prevent the negotiation of a settlement of a violation prior to the conference or hearing. At any time, the air pollution control board may determine that a violation shall be resolved as a civil or criminal action in an appropriate court or referred for action to either the United States Environmental Protection Agency or the Energy and Environment Cabinet instead of being resolved as a district action.
- (2) When permittees or persons not previously heard in connection with the issuance of an order or the making of a determination including, but not limited to, the issuance, denial, modification, or revocation of a permit, consider themselves aggrieved, they may file with the district a petition for a hearing. The petition shall allege that the order or determination is contrary to law or fact and is injurious to the petitioner, stating the grounds and reasons, and demanding a hearing. Unless the board considers the petition frivolous, the air pollution control officer shall serve written notice of the petition on each person named therein and shall schedule a hearing not less than sixty (60) days after the date of the petition unless the person complained against waives in writing the sixty (60) day period. The right to demand a hearing under this section shall be limited to a period of thirty (30) days after the petitioner has had actual notice, or could reasonably have had notice, of the order or determination complained of. Prior to the hearing, the air pollution control officer may require the parties to meet for settlement purposes.
- (3) Hearings of unresolved violations or petitions for a hearing on orders or determinations shall be held before a qualified 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 the county not assigned to the district. The district shall provide written notice of the hearing to the person alleged to be in violation or to the petitioner. After the conclusion of the hearing, the hearing officer shall, within thirty (30) days, make a report and recommended order, which shall contain findings of fact and conclusions of law, to the secretary-treasurer. If the secretary-treasurer finds upon written request of the hearing officer that additional time is needed, the secretary-treasurer may grant an extension. The hearing officer shall serve a copy of the report and

recommended order upon all parties of record to the proceedings, and the parties shall be granted the right to file exceptions within fourteen (14) days of receipt. The secretary-treasurer shall schedule a time for the air pollution control board to consider the report, exceptions, and recommended order and to decide the case. The decision shall be served by mail upon all parties and shall be a final order of the board. No order of the board on a Title V permit shall become final for appeal purposes until it is approved by the United States Environmental Protection Agency under the Federal Clean Air Act of 1963 as amended by the Clean Air Act Amendments of 1990.

- (4) The hearing officer shall preside at the hearing, shall keep order, and shall conduct the hearing in accordance with reasonable administrative practices. A party to a hearing under this section may be represented by counsel, make oral or written argument, offer testimony, cross-examine witnesses, or take any combination of these actions. The record of the hearing shall be open to public inspection, and copies thereof shall be made available to a person upon payment of the actual cost of reproducing the original, except as otherwise provided in district regulations.

Effective: July 15, 2010

History: Amended 2010 Ky. Acts ch. 24, sec. 73, effective July 15, 2010. -- Created 1994 Ky. Acts ch. 420, sec. 9, effective July 15, 1994.