

**353.700 Administrative review of final determination or order of department --
Petition -- Notice -- Hearing -- Report and recommended order of hearing
officer -- Final order of secretary -- Judicial review.**

- (1) Any person aggrieved by any final determination made or order issued by the department under this chapter, except any orders of the commission, may file with the Energy and Environment Cabinet's Office of Administrative Hearings a petition alleging that the determination is contrary to law or fact and is injurious to the petitioner, alleging the grounds and reasons therefor, and demanding a hearing. An order or final determination includes but is not limited to the issuance, denial, modification, or revocation of a permit, but does not include the issuance of a letter identifying deficiencies in an application for a permit, a registration or a certification, or other nonfinal determinations. Unless the cabinet considers that the petition is frivolous, it shall serve written notice of the petition on each person named therein, and shall schedule a hearing before the cabinet not less than twenty-one (21) days after the date of the notice unless the person complained against waives in writing the twenty-one (21) day period.
- (2) The right to demand a hearing pursuant to this section shall be limited to a period of thirty (30) days after the petitioner has had actual notice of the final determination or order complained of, or could reasonably have had notice.
- (3) The burden of proof shall be upon the party complaining of the order or final determination. Any party may offer into evidence all or any part of the record of the hearing which resulted in the order, and any other relevant evidence.
- (4) All hearings under this chapter, except those before the commission, shall be held before a hearing officer, duly qualified to practice law in the Commonwealth of Kentucky, who may be a full-time employee of the cabinet, serve by contract, or be paid on a per diem basis at the discretion of the cabinet. After the conclusion of the hearing, the hearing officer shall, within sixty (60) days, make to the secretary a report and recommended order, which shall contain findings of fact and conclusions of law. If the secretary finds upon written request of the hearing officer that additional time is needed, the secretary may grant an extension. The hearing officer shall serve a copy of the report and recommended order upon all parties of record to the proceeding and their counsels, if any, and they shall be granted the right to file exceptions thereto within fourteen (14) days of receipt. Any party may submit a written response to exceptions within twenty-one (21) days of receipt of the report and recommended order. Exceptions and responses not timely filed shall be noted but shall not be considered by the secretary in making a final order. Within ninety (90) days of the report or recommendation made by the hearing officer, the secretary shall consider the report, exceptions, responses to exceptions, and recommended order and decide the case. The decision shall be served by mail upon all parties and their attorney of record and shall be a final order of the cabinet.
- (5) The cabinet shall promulgate administrative regulations, pursuant to the provisions set forth in this chapter and to the extent possible, consistent with those promulgated pursuant to KRS Chapter 224, establishing formal and informal hearing procedures by which any hearing shall, upon the written request of the

operator, permittee, or other person, be held in the Energy and Environment Cabinet's Office of Administrative Hearings in Frankfort, before an impartial hearing officer who is independent of any prosecutorial functions of the cabinet. The administrative regulations shall provide for the conduct of hearings and investigations of any matter relating to this chapter. The procedures developed pursuant to this subsection shall provide that the hearings be held in the most expeditious manner possible within the time constraints established under this chapter. No person who presided at a prior hearing shall either preside at a subsequent hearing or participate in any further decision or subsequent administrative appeal in the same matter.

- (6) Any party aggrieved by a final order of the secretary resulting from a hearing conducted pursuant to this section may appeal to the Franklin Circuit Court within thirty (30) days from the issuance of the final order. The party or parties affected by the final order shall file in the Circuit Court a petition, which states fully the grounds upon which a review is sought and shall assign all errors relied on. The cabinet shall be named respondent, and service shall be had on the secretary. Summons shall issue upon the petition directing the cabinet to send its entire record, properly bound, to the clerk of the Circuit Court after certifying that the record is its entire original record or a true copy. The record, when filed, shall become official and be considered by the Circuit Court on the review. After the case has been properly docketed in the Circuit Court, any party directly affected by the issues on appeal, may, upon notice to the parties, proper showing, and in the discretion of the court, be permitted to intervene. The court shall review the entire record and the findings and final order of the cabinet. No objection to the final order shall be considered by the court, unless the issue was raised before the cabinet or there were reasonable grounds for failure to do so. The findings of the cabinet as to the facts shall be prima facie evidence of the facts found therein. The court shall review the entire record and the findings and final order of the cabinet.
- (7) The court may stay the order until the court shall enter its decree. The court shall have jurisdiction to enter a decree affirming or setting aside the order or remanding the cause with directions to modify the order so that it shall conform to the provisions of this chapter. Appeals may be taken by any party to the suit in the same manner and to the same extent as in other civil actions.

Effective: July 14, 2018

History: Amended 2018 Ky. Acts ch. 94, sec. 11, effective July 14, 2018. -- Amended 1974 Ky. Acts ch. 45, sec. 7. -- Created 1960 Ky. Acts ch. 103, sec. 22, effective June 16, 1960.