

ARTICLE XXIII

ADMINISTRATIVE ENFORCEMENT, PRACTICES AND PROCEDURES

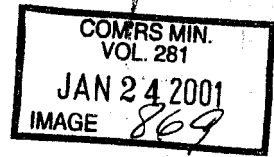
Section 2301 Notice of Violation: Administrative Complaint and Proposed Action

- A. A Notice of Violation or Noncompliance ("NOV") shall mean a written notice from the District to a User which identifies the date, time, nature, and details of a violation of these Rules and Regulations or conditions of a permit issued under Article XV of these Rules and Regulations to a User. The District shall send a NOV to the User as expeditiously as possible after the District first receives information that such violation has occurred. If a prolonged time period elapses (in excess of 45 days) before a User receives an NOV, the User may present that fact as a mitigating circumstance in any subsequent enforcement action brought by the District. A User shall respond to an NOV in writing on a form provided by the District, eliciting information which may include the source of the violation, measures taken to prevent recurrence, rebuttal, explanation or other pertinent facts. As a result of such information, the District may modify, amend or withdraw a NOV.
- B. An Administrative Complaint and Proposed Action ("Proposed Action") shall mean a written notice from the District to a User which (i) identifies the NOV(s) issued by the District to the User which form the basis for the Proposed Action or otherwise identifies a violation of these Rules and Regulations, (ii) sets forth any proposed action, including but not limited to monetary charges or penalties, and the date upon which such proposed action shall become final, (iii) informs the User of its rights under this Article XXIII to request a settlement conference, request an administrative appeal, or request a judicial appeal, and (iv) is sent by the District to the User via certified mail.
- C. Effective Date. Except for cease and desist orders or other extraordinary action of the Director taken pursuant to these Rules and Regulations, no Proposed Action shall become effective until after the expiration of the thirtieth (30th) day after receipt by User of the Proposed Action. If the User requests a settlement conference, pursuant to Section 2302 of these Rules and Regulations, the Proposed Action shall be stayed pending the issuance of the Director's Final Action pursuant to Section 2303 of these Rules and Regulations. If no request for a settlement conference is made by the User, the Proposed Action shall become the Director's Final Action automatically upon the effective date set forth in the Proposed Action.

Section 2302 Settlement Conferences

2302-1 Request for Settlement Conference

Upon receipt of a Proposed Action, the User shall be entitled to request a settlement conference with the District, provided that the User notifies the Director that it is exercising its right by delivering to the Director a written request for a settlement conference. The requests must concisely state each issue in dispute and must be sent to the Director via certified mail, postmarked no later than fourteen (14) days after the User's receipt of the Proposed Action.



2302-2 Informal Settlement Conference

As soon as convenient for the User and the District, the settlement conference shall be held. The purpose of this informal meeting shall be to share information and points of view in an attempt to resolve matters in dispute, which are the subject of the Proposed Action. In lieu of a conference, the User may submit a written response to the Proposed Action. The Superintendent of the Division of Industrial Waste (or other Division, when the matter in dispute does not involve industrial waste), or his/her staff, will represent the District in the settlement conference. One or more individuals familiar with the issues in dispute shall represent the User. The settlement conference will not be transcribed and statements made and information provided by the User and the District will not be admissible in any subsequent administrative or judicial proceeding. It is the policy of the District to encourage settlement and to resolve disputes if settlement is consistent with the provisions and objectives of these Rules and Regulations and applicable law.

Section 2303 Director's Final Action

The Director's Final Action shall be the final administrative order with respect to any Proposed Action. If no settlement conference has been requested, it shall take effect according to the provisions of Section 2301(C) of these Rules and Regulations. If a settlement conference has been requested and conducted, the Director shall, upon consideration of all available facts, promptly issue a Final Action; such Final Order will be effective upon the Director's signature. In the interests of economy and efficiency, the issuance of a Final Order may be delayed for no more than ninety (90) days, for the purpose of allowing the Director to consolidate some or all Proposed Actions pending against the same User. The fact that the Director may not have consolidated some or all Proposed Actions shall not operate as a waiver or release of any such Proposed Action(s). The Director's Final Action shall (i) identify the date, time, nature, and details of all violations found, (ii) specify the final administrative action ordered, including but not limited to the achievements and maintenance of compliance with applicable laws and regulations immediately or in accordance with a compliance plan and time schedule, payment of penalties, and/or payment of stipulated penalties upon violation of any order, (iii) inform the User of its rights under this Article XXIII to an administrative appeal or a judicial appeal, and (iv) be sent to the User via certified mail. A summary of the Director's Final Action shall be published in the *City Bulletin* of the City of Cincinnati.

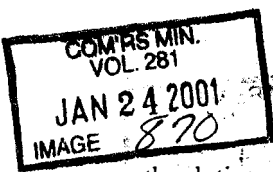
Section 2304 Administrative Appeal

2304-1 Notice of Appeal

Upon receipt of a Director's Final Action, or upon the effective date of such Final Action if it became effective automatically pursuant to Section 2301(C), the User shall be entitled to an administrative appeal of such Final Action, provided that the User notifies the Director that it is exercising its right by delivering to the Director a written notice of appeal. This notice of appeal must concisely state each issue in dispute and must be sent to the Director via certified mail, postmarked no later than thirty (30) days after (i) User's receipt of the Final Action or (ii) the effective date of the Final Action, whichever is later.

2304-2 Hearing Examiner

Administrative Appeals brought under Section 2304 of these Rules and Regulations shall be heard and decided by a hearing examiner nominated by the City Manager and approved by the County Administrator. A hearing examiner shall be appointed solely with regard to his or her qualifications for



the duties of the office, and shall have such training or experience as will qualify the hearing examiner to conduct administrative or quasi-judicial hearings involving discretionary review hearings and administrative decisions and findings. In addition, the hearing examiner shall have expertise and experience in the field of regulation in which the hearing examiner is to exercise authority. The hearing examiner may employ scientific, engineering or other technical assistants necessary to adequately adjudicate a pending appeal.

2304-3 Procedure

The Administrative Appeal heard under Section 2304 of these Rules and Regulations shall be conducted in accordance with the following procedural guidelines:

A. General Duties.

Hearing examiners shall review and examine all information, conduct public hearings, prepare records thereof, enter findings, conclusions, and orders in cases assigned to the examiner for decision or review, in accordance with the procedures set forth herein and with all other applicable laws, ordinances and regulations.

B. Freedom From Improper Influence.

No person shall interfere with, attempt to interfere with, or improperly influence or attempt to improperly influence a hearing examiner in the performance of the duties of office.

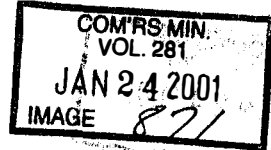
An examiner shall not conduct or participate in any hearing or decision in which the examiner or any of the following persons has a direct or substantial financial interest: a spouse, brother, sister, child, parent, or in-law of the examiner, or business firm or organization in which the examiner has a substantial interest. The examiner shall promptly report to the County Administrator any attempt at interference or improper influence or any actual or potential conflict prior to such hearing.

Wherever it may be shown to the satisfaction of the appropriate appellate authority that an examiner was subjected to improper influence, interference or interest, such improper influence, interference or interest shall be grounds for vacating any decision made by the examiner in such proceedings.

C. Ex Parte Communications Prohibited.

No party or other person participating in any proceeding before a hearing examiner shall communicate by any means with the examiner regarding that proceeding other than at a public hearing, or at a pre-hearing conference at which all interested persons have been given notice or by mail with copies sent to all other parties and interested persons. This provision shall not prohibit communication between an examiner and any member of the administration assigned to assist or give legal counsel to the examiner in the pending proceeding.

D. Public Hearings.



The hearing examiner shall conduct a public hearing on all appeals whenever so authorized by these Rules and Regulations or other applicable laws and regulations. When the respective filing requirements of the applicable laws, rules, and regulations have been met, a date shall be assigned by the examiner for public hearing. The hearing shall be held within 30 days after the filing of the notice of appeal, unless otherwise provided in the applicable law, rule or regulation, or the delay is agreed to by all parties to the proceeding or is necessary in the interest of justice. The examiner may conduct such pre-hearing conferences as the examiner shall deem necessary or desirable upon notice to all interested persons. The right of cross-examination of witnesses shall be afforded only to counsel for the parties of record.

E. Reconsideration.

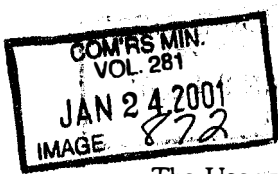
Any party or intervenor may request reconsideration of that decision by the examiner. The request shall be filed in writing with the examiner within seven days of the date of mailing of the original decision and set forth with particularity the alleged errors. The party requesting reconsideration shall serve copies of the request upon all other parties of record. Within 30 days of receipt of the request for reconsideration and after review of the record and consideration of such additional evidence as the examiner may in his or her discretion admit, the examiner shall affirm, modify or reverse the earlier decision. No decision shall be subject to reconsideration more than once.

In addition, the administrative appeal shall be heard in a manner and according to procedures not inconsistent with the administrative procedures set forth in Ohio Administrative Code 3745-47-11, Filing of papers and service requirements; 3745-47-15, Intervention; 3745-47-16, Rights of a dismissed party and of a person denied permission to intervene; 3745-47-17, Motions; 3745-47-18, Continuances; 3745-47-19, Pre-hearing conferences; proceedings prior to adjudication hearing; 3745-47-21, Adjudication hearing procedures; 3745-47-23, Burden of proof; 3745-47-25, Record; 3745-47-30, Rules of ethics, provided that any party may obtain discovery or protection from discovery in the same manner and to the same extent as is prescribed in the Ohio Rules of Civil Procedure.

2304-4 Decision

The hearing examiner shall promptly issue a decision after the close of the hearing, which decision shall (i) address all issues in dispute (ii) be in writing, and (iii) be delivered via certified mail to the User and the District.

2304-5 Waiver of Administrative Appeal



The User may waive its right to an Administrative Appeal pursuant to this Section 2304 and proceed, instead, with a judicial appeal of the Director's Final Action by filing a notice of appeal to the Hamilton County Court of Common Pleas pursuant to Ohio Revised Code Chapter 2506 and any other remedy of appeal provided by law. Issues of Joinder or Intervention shall be determined in accordance with the Ohio Rules of Civil Procedure, and other applicable law.

2304-6 Stay of Effective Date

Upon the filing of a notice of appeal pursuant to Section 2304-1 or Sections 2304-5 and 2305, the Director's Final Action, with respect to monetary penalties only, shall be stayed pending the final decision of the hearing examiner or court. At any time during the pendency of an administrative or judicial appeal, the District, User or Intervener may apply to the hearing examiner or court for an order suspending or modifying the stay. For good cause shown, the stay shall be suspended or modified.

Section 2305 Judicial Appeals

In addition to the rights afforded to the User under Section 2304-5 of these Rules and Regulations, nothing herein shall be interpreted to limit, and these Rules and Regulations specifically do not limit, the right of the User, Intervener or District to appeal any decision of the hearing examiner under Section 2304-4 to the Court of Common Pleas of Hamilton County, Ohio.

Section 2306 Penalty Payments

Any monetary penalty ordered as part of the Director's Final Action (and subsequently affirmed if appealed) shall be paid to the District within thirty (30) days after the later of the (i) effective date of the Director's Final Action, (ii) the date when the User receives the Director's Final Action, (iii) the date when the User receives the final decision of the hearing examiner pursuant to Section 2304-4, or (iv) the date of subsequent judicial affirmance. The District may accept payment in installments and may submit a separate bill or may add the amount to the User's sewer bill. The District may also certify amounts not timely paid to the County Auditor for collection in accordance with Ohio Revised Code 6117.02.

Section 2307 Civil Proceedings, Injunctive Action

Nothing herein shall be interpreted to limit, and these Rules and Regulations specifically do not limit, authority granted to the City Solicitor of the City of Cincinnati and the Prosecutor of Hamilton County, Ohio under the Cincinnati Municipal Code and/or the Ohio Revised Code to institute civil proceedings at any time in the name of the District to enjoin any person from violating these Rules and Regulations and/or the Cincinnati Municipal Code and/or the Ohio Revised Code, or seek other relief as afforded thereunder, without first exhausting any other remedy.