

Filed in Office of the Secretary of State  
of West Virginia OCT 27 1972

RULES GOVERNING THE CONDUCT OF  
HEARINGS AND APPEAL PROCEDURE BEFORE  
THE WEST VIRGINIA AIR POLLUTION CONTROL COMMISSION

I. ADMINISTRATIVE HEARINGS

Any person, firm, corporation, partnership, or association who has been notified by the Commission to appear at a hearing shall be subject to the following rules for administrative hearings. These rules shall be in harmony with West Virginia laws as found in the Official Code of West Virginia of 1931, as amended, and in case of conflict, the statute law of West Virginia shall prevail:

Rule No. 1 NOTICE OF HEARING

Any person, firm, corporation, partnership, or association who shall be a party in any hearing held by the Commission shall be given at least ten (10) days' written notice of such hearing. The notice shall give the time, place, and subject of such hearing and shall be served by registered or certified mail or by any proper law-enforcement officer.

Rule No. 2 QUORUM

Any hearing before the Commission shall be conducted by a quorum of that body.

Rule No. 3 TESTIMONY AT HEARING

Testimony in any hearing before the Commission shall be given under oath, which oath shall be administered by the Chairman of the Commission.

Rule No. 4 PLACE OF HEARING

Hearings will be held in Charleston, West Virginia, unless the Commission determines otherwise.

Rule No. 5 SUBPOENAS

In any hearing called by the Commission, the Commission has the power and authority to issue subpoenas. Any person receiving a subpoena issued hereunder shall honor the same as though it was issued by a circuit court of the State, and shall appear as a witness in response to such subpoena. In case of disobedience or neglect of any subpoena served on any person or the refusal of any person to testify to any matter regarding which he or she may be lawfully interrogated, the circuit court of the county in which the hearing is being held or the judge thereof in vacation, upon application by the

Commission, shall compel obedience by attachment proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such circuit court or a refusal to testify therein.

Rule No. 6 CHAIRMAN'S DESIGNATE

At any hearing the Chairman of the Commission shall preside and have all authority necessary to the proper conduct of such hearing. In the event the Chairman cannot be present for such hearing, he shall designate a member of the Commission to preside over the hearing and such designate shall have all power to act on behalf of the Chairman and make any decisions necessary and proper while presiding over such hearing. When the term "Chairman" is used in these rules relating to the conduct of the hearing, it shall also mean designate of the Chairman.

Rule No. 7 REPRESENTATION BY ATTORNEY AT LAW

At any hearing held by the Commission, the firm, corporation, partnership, or association which is the subject of such hearing may be represented by an attorney at law duly admitted to practice before any circuit court of this State. Any person brought before the Commission by Order may represent himself or be represented by such attorney at law.

Rule No. 8 QUESTIONING OF WITNESSES

Any witness at a hearing may be questioned by any member of the Commission.

Rule No. 9 EVIDENCE

Written stipulation of facts may be submitted. Affidavits will not be considered as proof of any facts. The Chairman may admit any relevant evidence.

Rule No. 10 BRIEFS

At the conclusion of any hearing, briefs may be filed with the Commission. Such briefs shall be filed within such time as specified by the Chairman.

Rule No. 11 CONTINUANCE

A continuance of any hearing may be granted by the Commission for good cause shown. Any party desiring a continuance shall file such written motion with the Secretary of the Commission at least three (3) working days prior to the scheduled hearing to allow for notification of witnesses and for polling the Commission. The Secretary shall promptly poll the Commission on such requested

action and shall promptly notify all parties of such hearing of the Commission's action on the motion.

Rule No. 12 COMPLIANCE ORDER

The Commission shall make and enter any necessary compliance order following an administrative hearing. Such final order shall be based on findings of fact and conclusions of law.

II. APPEALS OF CEASE AND DESIST ORDERS

Any person upon whom a copy of such final Cease and Desist Order has been served may appeal such order to the Air Pollution Control Commission and shall be subject to the following rules of procedure for appeal of Cease and Desist Orders:

Rule No. 1 CEASE AND DESIST ORDER

If, from any investigation made by him or from any complaint filed with him, the Director shall be of the opinion that a person is violating the provisions of Article 20, Chapter 16 (§ 16-20), of the Code of West Virginia of 1931, as amended, or any rules and regulations promulgated pursuant thereto, he shall make and enter

an order directing such person to cease and desist such activity.

The Director shall fix a reasonable time in such order by which such activity must stop or be prevented. The order shall contain the findings of fact upon which the Director determined to make and enter such order.

Rule No. 2 SERVICE

The Director shall cause a copy of any such order to be served upon such person by registered or certified mail or by any proper law-enforcement officer.

Rule No. 3 GENERAL APPEAL PROCEDURE

Any hearing held by the Commission on an appeal of the Director's Cease and Desist Order shall be held in accordance with Section 6, Article 20, Chapter 16 (§ 16-20-6), of the Code of West Virginia of 1931, as amended.

Rule No. 4 SUBPOENAS AND SUBPOENAS DUCES TECUM

In any hearing held by the Commission or an appeal of the Director's Cease and Desist Order, any member of the Commission or the Secretary thereof, shall have the power and authority to issue subpoenas or subpoenas duces tecum in the

name of the Commission in accordance with the provisions of Section 1, Article 5, Chapter 29A (§ 29A-5-1), of the Code of West Virginia of 1931, as amended. All subpoenas and subpoenas duces tecum shall be issued and served within the time and for the fees and shall be enforced, as specified in Section 1, Article 5, Chapter 29A (§ 29A-5-1), of said Code, and all of the said Section 1 provisions dealing with subpoenas and subpoenas duces tecum shall apply to subpoena and subpoena duces tecum issued for the purpose of an appeal hearing hereunder.

Rule No. 5 PARTIES TO THE HEARING

Director's Cease and Desist Order: Any person upon whom a copy of such final order has been served may appeal such order to the Air Pollution Control Commission. The person so appealing shall be known as the appellant and the Director shall be known as the appellee.

Rule No. 6 NOTICE OF APPEAL

Such appeal shall be perfected by filing a notice of appeal with the Commission, on the form prescribed by the Commission for such purpose, within fifteen (15) days after the date upon which the appellant received a copy of the order. The notice of appeal

shall set forth the order complained of and the grounds upon which the appeal is based. The filing of such notice of appeal shall stay the effect of the order complained of until final determination thereof is made by the Commission. A copy of the notice of appeal shall be filed by the Commission with the Director within eight (8) days after the notice of appeal is filed with the Commission.

Rule No. 7 CERTIFYING THE RECORD

Within seven (7) days after receipt of his copy of the notice of appeal, the Director shall prepare and certify to the Commission a complete record of the proceedings out of which the appeal arises, including all documents and correspondence in the Director's file relating to the matter in question. The Commission shall hear the appeal de novo, and evidence may be offered on behalf of the appellant and appellee.

Rule No. 8 HEARING TIME

Any such hearing shall be held within twenty (20) days after the date upon which the Commission received the timely notice of appeal, unless there is a postponement or continuance.

Rule No. 9 ORDER OF COMMISSION

After such hearing and consideration of all of the testimony, evidence and record in the case, the Commission shall make and enter an order affirming, modifying, or vacating the order of the Director, or shall make and enter such order as the Director should have entered.

Rule No. 10 FINDINGS AND CONCLUSIONS

Such order shall be accompanied by findings of fact and conclusions of law as specified in Section 3, Article 5, Chapter 29A (§ 29A-5-3), of the Code of West Virginia of 1931, as amended, and a copy of such order and accompanying findings and conclusions shall be served upon the appellant, and his attorney of record, if any, and upon the appellee in person or by registered or certified mail. The order of the Commission shall be final unless vacated or modified upon judicial review thereof in accordance with the provisions of Section 7, Article 20, Chapter 16 (§ 16-20-7), of the Code of West Virginia of 1931, as amended.

Rule No. 11 ADDITIONAL RULES

The Commission may from time to time revise and promulgate additional rules or modify these rules of procedure.

Rule No. 12 SEVERABILITY

The sections and subsections of these rules of procedure shall be deemed severable. Should any section or subsection be deemed by judicial opinion or legislative enactment to be invalid, unconstitutional, or in any manner contrary to the laws of the State of West Virginia, then such opinion or enactment shall invalidate only that particular section or subsection of these rules and all other sections shall remain in full force and effect, provided such remaining portions are not determined to be inseparable, and to this end these rules are declared separable.

NOTICE OF APPEAL OF CEASE AND DESIST ORDER

Chapter 16, Article 20, Section 6 of the West Virginia Code provides that any person upon whom a copy of such final order has been served may appeal such order to the West Virginia Air Pollution Control Commission. The notice of appeal must be filed with the West Virginia Air Pollution Control Commission within fifteen (15) days after the date the appellant received a copy of the cease and desist order being appealed. The person so appealing shall:

- I. Set forth the cease and desist order being appealed.
  
- II. Set forth all grounds on which the appeal is based.

Name of Company Filing \_\_\_\_\_

Address of Company Filing \_\_\_\_\_

Date Filed \_\_\_\_\_

Filed by \_\_\_\_\_

Title \_\_\_\_\_

The appeal shall be filed at the West Virginia Air Pollution Control Commission office, Charleston, West Virginia.

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NOTICE OF APPEAL OF CEASE AND DESIST ORDER



**WEST VIRGINIA  
AIR POLLUTION CONTROL COMMISSION**  
1558 Washington Street, East  
CHARLESTON, WEST VIRGINIA 25311  
TELEPHONE: 348-2275 OR 348-3286

October 27, 1972

Filed in Office of the Secretary of State  
of West Virginia **OCT 27 1972**

The Honorable John D. Rockefeller, IV  
Secretary of State  
State Capitol Building  
Charleston, West Virginia 25311

Dear Mr. Rockefeller:

Attached are the original and one copy of Rules Governing The Conduct of Hearings and Appeal Procedure Before The West Virginia Air Pollution Control Commission for file in your office.

These rules were adopted by the West Virginia Air Pollution Control Commission at their meeting in Wellsburg, West Virginia, on October 26, 1972.

Sincerely,

Handwritten signature of Carl G. Beard, II in cursive script.

Carl G. Beard, II  
Director

CGB:sl

Attachments (2)

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- I. Set forth the cease and desist order being appealed.**
  
- II. Set forth all grounds on which the appeal is based.**

**Name of Company Filing** \_\_\_\_\_

**Address of Company Filing** \_\_\_\_\_

**Date Filed** \_\_\_\_\_

**Filed by** \_\_\_\_\_

**Title** \_\_\_\_\_

**The appeal shall be filed at the West Virginia Air Pollution Control Commission office, Charleston, West Virginia.**