

ARTICLE XIV. BOARD OF HEALTH/HEALTH OFFICER

5-62. Duties Generally.

- A. In addition to the specific duties of the health officer, set forth in this chapter, it shall be the duty of the health officer or designee to:
 - (1) Hold hearings when necessary and issue specific written decisions;
 - (2) Generally supervise the administration and enforcement of this chapter;
 - (3) Recommend legal proceedings to be taken in appropriate cases when deemed necessary;
 - (4) Issue specific orders or recommendations consistent with this chapter.

- B. In addition to the specific duties of the board of health, set forth in this chapter, it shall be the duty of the board of health or designee to:
 - (1) Hold hearings on appeal of an order issued by the hearing officer and issue specific written decisions;
 - (2) After the hearing on appeal, the board of health or designee may affirm, modify or rescind the order of the hearing officer.
 - (3) Generally supervise the administration and enforcement of this chapter;

5-63. Complaints Filed.

Any person claiming to be aggrieved by any notice served upon him under this chapter may file with the health officer a written complaint, requesting a hearing before the assigned hearing officer. Such complaint must be so filed within twenty (20) days after a person receives such a notice. After receiving a complaint, the health officer shall forthwith notify the assigned hearing officer of such complaint. The health officer shall set a time, place, and date of hearing on the complaint, and notify the complainant of this fact not less than three days before the date.

5-64. Sealing – Sealing of Offending Equipment.

After three notifications of the same violation of this chapter within a twelve (12) month period in respect to the emission of air contaminants from the same source, a violator shall be notified to show cause before the board of health within twenty (20) days why the offending equipment should not be sealed. The hearing shall be conducted in the same manner as prescribed in section 5- 65 of this chapter. If upon a hearing, the hearing officer finds that a violation exists and that corrective measures have not been taken, the hearing officer may authorize and direct the Polk County Attorney to institute legal proceedings in a court of competent jurisdiction to cause the offending equipment to be sealed. This process shall not preclude injunctive actions by the health officer.

5-65. Hearing.

At such hearing, the complainant shall be afforded a full opportunity to be heard, have the right to produce witnesses, and to be represented by counsel. After hearing all relevant evidence and reviewing

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the actions of the health officer, and if reasonable grounds exist, the hearing officer may modify or rescind the order or notice of the health officer or may order compliance with said order or notice within a specified period of time. The decision of the hearing officer shall be transmitted in writing to both the complainant and the health officer within ten (10) days after the hearing.

A. Hearing Procedure .

1. At all non-appellate hearings prescribed by section 5-65 the Local Program Director, or his designee, shall preside as the hearing officer.
2. If a party fails to appear after having been properly notified, the hearing officer may proceed with the hearing and enter a decision in the absence of the party. The parties, at hearing, shall be the owner, permit-holder or applicant for a permit, AND the health officer, air permit engineer, air quality specialist involved.
3. The hearing officer shall swear the parties and their witnesses, and examine them in such a way as to bring out the truth. The hearing officer shall make detailed minutes of the testimony, or may electronically record it. The parties may participate, either personally or by attorney. The hearing officer may continue the hearing from time to time.
4. Unless precluded by Polk County Board of Health Rules and Regulation, Chapter 5, informal disposition may be made of any case, by stipulation, agreed settlement, consent order or default or by any other method agreed upon by the parties in writing.
5. The record in each case shall include:
 - a. The minutes made by the hearing officer, or the electronic recording of the meeting and all other submissions;
 - b. Copies of all documents served upon or mailed to the owner by the Local Program;
 - c. A statement of all matters officially noticed;
6. All hearings shall be open to the public. The record of the hearing shall be filed and maintained by the Local Program for at least five (5) years from the date of decision.
7. Findings of fact shall be based solely on the evidence in the record and on matters officially noticed in the record.
8. The hearing shall be simple and informal, and shall be conducted by the hearing officer, without regard to technicalities of procedure.

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B. Evidence.

1. Irrelevant, immaterial or unduly repetitious evidence should be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. The hearing officer shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be required to be submitted in verified written form.
2. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original, if available.
3. Witnesses at the hearing, or persons whose testimony has been submitted in written form if available, shall be subject to cross examination by any party as necessary for a full and true disclosure of the facts.
4. Official notice may be taken of all facts of which judicial notice may be taken and of other facts within the specialized knowledge of the Local Program. Parties shall be notified at the earliest practicable time of the facts proposed to be noticed and their source, including any staff memorandum or data, and the parties shall be afforded an opportunity to contest such facts before the decision is announced unless the hearing officer determines as a part of the record or decision that fairness to the parties does not require an opportunity to contest such facts.
5. The Local Program's experience, technical competence and specialized knowledge may be utilized in evaluation of the evidence.

C. Decision/Order.

The decision/order required of the hearing officer by Polk County Board of Health Rules and Regulation, Chapter V-Air Pollution shall constitute a final decision.

Any person aggrieved by the decision of the hearing officer may appeal such decision to the Board of Health or Polk County District Court within thirty (30) days for review of such decision. Such review shall be de novo.

5-66. Effect of Complaint.

After a complaint is filed under this article, the health officer shall stay all proceedings until he has received a report from the hearing officer, prepared pursuant to section 5- 65 of this chapter.

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5-67. Judicial Review.

Any person aggrieved by the decision of the hearing officer may appeal such decision to the Polk County District Court within 30 days for review of such decision. Such review shall be de novo.