


AMENDMENT TO  
AMENDED RULES OF CONDUCT OF PROCEEDINGS  
BEFORE THE  
INDIAN RIVER COUNTY ENVIRONMENTAL CONTROL HEARING BOARD

The Indian River County Environmental Control Hearing Board (hereafter referred to as the "Hearing Board") adopts the following amendment to Section 6 of its Amended Rules for Conduct of Proceedings pursuant to Section 10 (8) of Chapter 85-427, Special Acts, Laws of Florida:

SECTION 6 - CONTINUANCES

A continuance of any proceeding may be granted for good cause shown. The Hearing Board delegates to its Chairman the specific authority to enter such orders on its behalf prior to any hearing. In the event that at the time of a hearing, the Hearing Board is unable to take action due to lack of a quorum, voting conflicts, or for any other reason, the Chairman, or in his absence, Vice Chairman or Chairman Pro Tem may order a continuance of the matter.

ADOPTED this 27 day of May, 1979.

  
Chairman

Filed:

Victoria M. Phillips 5/8/79  
Secretary to the Indian River      Date  
County Environmental Control  
Hearing Board

AMENDED  
RULES FOR THE CONDUCT OF PROCEEDINGS  
BEFORE THE  
INDIAN RIVER COUNTY ENVIRONMENTAL CONTROL HEARING BOARD

The INDIAN RIVER COUNTY ENVIRONMENTAL CONTROL HEARING BOARD (hereafter referred to as the "Hearing Board") adopts the following rules for the conduct of its proceedings, pursuant to Chapter 85-427, Sec. 10(8), Special Acts, Laws of Florida.

SECTION 1 - DEFINITIONS.

(a) The definitions set out in the Indian River County Environmental Control Act, Chapter 85-427, Special Acts, Laws of Florida, are adopted by reference; and

(b) "Secretary" shall mean the Secretary of the Board of County Commissioners, Suite 158, 1840.- 25th Street, Vero Beach, Florida.

SECTION 2 - COMMENCEMENT OF PROCEEDINGS.

(a) A proceeding shall be commenced before the Hearing Board by

(i) the Environmental Control Officer or the County Health Director filing with the Secretary a Notice of Non-Compliance, which shall have attached thereto a copy of the Notice of Violation together with sufficient documents to show the service of delivery of said Notice of Violation upon the alleged violator; or

(ii) any other person aggrieved by an action or decision of the Environmental Control Officer filing with the Secretary a written request for hearing.

(b) Within ten (10) days after filing of a Notice of Non-Compliance or written request, the Hearing Board shall schedule a hearing by issuing a Notice of Hearing and Order to Appear, which shall specify the date, time of day, and exact location of the hearing. The hearing shall be scheduled within forty-five (45) days after the filing of the Notice of Non-Compliance or written request. The Hearing

Board delegates to its chairman the specific authority to schedule said hearing and to issue on its behalf the Notice of Hearing and Order to Appear; and

(c) A copy of the Notice of Hearing and Order to Appear shall be served promptly upon the opposing party, which service shall be completed in any event no later than ten (10) days before the hearing. The responsibility for serving a copy of said order shall be upon the party requesting the hearing. Service shall be in the following manner

(i) by personal or substitute service in the same manner for service of process as provided in Chapter 48, Fla. Stat. and Fla. R. Civ. P. 1.070; or

(ii) by certified mail, return receipt requested; and

(iii) in cases where service is made in accordance with Paragraph 2(c)(i) above, the Hearing Board may permit service to be made by a person appointed as a special process server. Any member of the Environmental Control Officer's staff is hereby appointed to be special process server in any case before the Environmental Control Hearing Board. The Hearing Board delegates to its chairman the specific authority to enter an order permitting such service by persons other than the Environmental Control Officer's staff.

(d) Petitioner may amend a Notice of Non-Compliance as a matter of course at any time within twenty (20) days after filing the Notice of Non-Compliance. At any time prior to the entry of a Hearing Board Order, Petitioner may request leave to amend a Notice of Non-Compliance. The Hearing Board delegates to its chairman the specific authority to grant or deny such leave when requested prior to a hearing. Leave to amend shall be given freely when justice requires. Any amended Notice of Non-Compliance filed before the adoption of this amendment shall be deemed valid and proper.

SECTION 3 - DISCOVERY

(a) Any party may conduct discovery - including, but not limited to, interrogatories, depositions, requests for admissions and requests for production of documents or tangible items - which shall be governed, as nearly as practical, by the Florida Rules of Civil Procedure, with the following exceptions:

(i) discovery may be commenced at any time after service of the initial Notice of Hearing and Order to Appear;

(ii) requests for admissions shall clearly state on the face thereof: "THE FACTS SET FORTH IN THESE REQUESTS SHALL BE DEEMED TO BE ADMITTED UNLESS AN ANSWER OR OBJECTION THERETO IS SERVED WITHIN THIRTY (30) DAYS FROM THE DATE HEREOF" or words of similar import; and

(iii) the Hearing Board may extend or shorten the time provided for discovery and, in the event that a party fails to make discovery, may enter an order compelling discovery. The Hearing Board delegates to its chairman the specific authority to enter such orders on its behalf.

SECTION 4 - SUBPOENAS.

The Hearing Board shall, upon request by either party, issue subpoenas to command the appearance of any person for deposition or before a hearing at a specified time and place to be examined as a witness. Such subpoenas may require such person to produce books, papers, documents, and other tangible items in his possessions or under his control, which are material to such deposition or hearing. Any such subpoena shall be issued by the chairman, or in his absence, by the vice-chairman.

SECTION 5 - SERVICE OF OTHER PLEADINGS.

All documents and pleadings subsequent to the Notice of Hearing and Order to Appear, including the final decision of the Hearing Board, may be served upon the opposing party by ordinary mail.

SECTION 6 - CONTINUANCES.

A continuance of any proceeding may be granted for good cause shown. The Hearing Board delegates to its chairman the specific authority to enter such orders on its behalf; except that the chairman shall not have the authority to grant a continuance of any hearing on the same day that said hearing is scheduled before the Hearing Board. Such a continuance may be granted only by vote of the Hearing Board.

SECTION 7 - CONDUCT OF HEARINGS.

(a) All hearings of the Hearing Board shall be open to the public;

(b) Oral evidence shall be taken only on oath of affirmation;

(c) The Hearing Board shall generally follow the Rules of Evidence recognized in the State of Florida; except that the Hearing Board may, in its discretion, consider any other proffered evidence which is trustworthy and has substantial value. Evidentiary rulings shall be made by the chairman; except that any member of the Hearing Board may request the admission of any proffered evidence which he believes to be trustworthy and of substantial value, and such evidence shall be admitted.

(d) The hearing shall proceed in the following order: petitioner's opening statement; respondent's opening statement; petitioner's presentation of evidence with respondents right of cross-examination; respondent's presentation of evidence with petitioner's right of cross-examination; petitioner's presentation of rebuttal evidence with respondent's right of cross-examination; petitioner's closing argument; respondent's closing argument and petitioner's rebuttal argument. Opening statements and closing arguments may be waived. Members of the Hearing Board may ask pertinent questions of any party or witness;

(e) All proceedings of the Hearing Board shall be recorded electronically. The Hearing Board shall not permit withdrawal of exhibits entered into the record so long as any issue concerned in the hearing is still pending a final decision before either the Hearing Board or the Courts of Florida, unless the parties stipulate otherwise. After a final decision has been rendered and the appropriate appeal period has expired, exhibits may be withdrawn at the request of the party which submitted them, after due notice to all parties and upon order of the Hearing Board.

(f) In reaching a decision, the Hearing Board may take judicial notice, either before or after submission of the case for decision, of any fact which may be judicially noticed by the Courts of Florida; and

(g) The decision of the Hearing Board shall be in writing and shall set forth such findings of fact and conclusions of law as are necessary in view of the issues and submitted. A copy of the decision shall be delivered or mailed to all parties.

#### SECTION 8 - PROCEDURAL IRREGULARITIES.

The Hearing Board may disregard in its discretion any procedural irregularity which does not materially affect the substantive rights of any party.

#### SECTION 9 - DELEGATION TO CHAIRMAN.

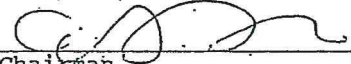
By adoption of these rules, the Hearing Board delegates to its chairman, or in his absence, its vice-chairman, the specific authority to enter on its behalf procedural or ministerial orders to the limited extent set forth above; provided that, prior to the entry of any such order, any party or Hearing Board member may request in writing that said matter be considered by the Hearing Board as a whole, in which event the matter shall be considered in accordance with the request.

SECTION 10 - JUDICIAL REVIEW

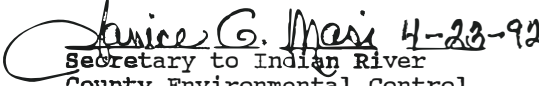
Any person aggrieved by an action or decision of the Hearing Board may seek appropriate judicial review as provided by law.

ADOPTED the 27th day of May, 1987.

RATIFIED the 12th day of March, 1992.

  
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Chairman

Filed:

 4-23-92  
Secretary to Indian River  
County Environmental Control  
Hearing Board