

SECTION 25

APPEAL AND REVIEW OF ACTIONS

A. Matters Regarding Installers

The following provisions shall pertain only to matters regarding any actions of the Department regarding installers licenses.

1. Appealable Actions

The following Adverse Actions of the Director of the Department, or his designee, may be appealed pursuant to the provisions of this section.

Deleted: adverse actions

- (a) Denial of License
- (b) Suspension of License
- (c) Revocation of License
- (d) Draft of the letter of credit or surety of the installer

Deleted: surety bond or

2. Notice of Adverse Recommendation or Action

An installer against whom an Adverse Action has been taken shall be given written notice of such action. Such notice shall:

Deleted: adverse action

- (a) State the Adverse Action taken and summarize the grounds for such action.
- (b) Advise the installer of his right to a hearing pursuant to the provisions of this Section.
- (c) Specify the number of days following the date of receipt of notice within which a request for a hearing must be submitted.
- (d) State that failure to request a hearing within the specified time period shall constitute a waiver of right to a hearing and to a review on the matter.

Deleted: promptly

Deleted: special

Deleted: adverse action

Deleted: an appellate

- (e) State that upon receipt of his hearing request, the installer will be notified of the date, time and place of the hearing.

Deleted: , and the grounds upon which adverse action is based...

3. Request for Hearing

An installer shall have ten (10) days following his receipt of the notice as provided above to file a written request for a hearing. Such written request shall be delivered to the chairman of the Board of Health with a copy to the Director of the Department.

Deleted: Public

Failure to request a hearing within ten (10) days of receipt of notice shall be conclusively deemed to be an acceptance of the adverse action taken by the Director of the Department.

Deleted: by certified mail

Deleted: in a timely manner

4. Board of Health or Hearing Officer

Deleted: Appointment

(a) The Board of Health shall convene and conduct a hearing within thirty (30) days of receipt of a request for a hearing pursuant to the procedures set forth below.

Deleted: The

(b) In the alternative, the Chairman of the Board of Health, within fourteen (14) days of receipt of a request for hearing shall appoint a Hearing Officer to conduct a hearing pursuant to the procedures set forth below, who shall conduct a hearing within thirty (30) days from receipt of the request for a hearing.

Deleted: ten (10)

5. Notice of Time and Place of Hearing

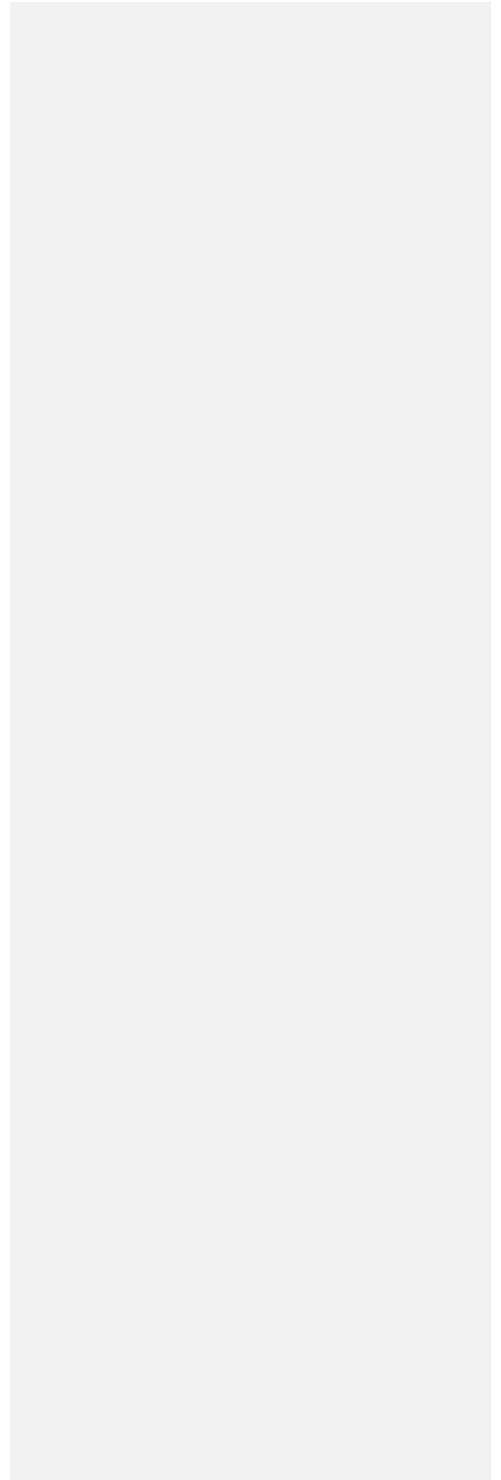
After appointment, the Board of Health or Hearing Officer shall make all necessary arrangements for the hearing and shall notify both the installer and the Director of the Department of the time, place and date of the hearing.

6. Statement of Issues and Grounds

The notice of hearing provided above shall contain a concise statement of the grounds for such action.

Deleted: installer's alleged acts or omissions.

S25-1



7. Personal Presence

The personal presence of the installer who requested the hearing shall be required. An installer who fails without good cause to appear and proceed at such hearing shall be ~~in default and will be~~ deemed to have waived his rights in the same manner and with the same consequence as provided above in connection with failure to request a hearing.

8. Representation

The installer who requested the hearing shall be entitled to be accompanied by ~~legal counsel~~. The Director of the Department shall also be entitled to the services of the County Attorney in making his presentation to the ~~Board of Health or~~ Hearing Officer.

Deleted: an attorney.

9. Rights of Parties

During a hearing, each of the parties shall have the right to:

- (a) Call and examine witnesses.
- (b) Introduce exhibits.
- (c) Cross-examine witnesses against him/her.
- ~~(d) Rebut any evidence.~~
- ~~(e) Call and cross-examine an adverse party.~~

Deleted: Impeach any witness.
f
(e)->

Deleted: f

10. Procedure and Evidence

The hearing need not be conducted strictly according to rules of law relating to the examination of witnesses or presentation of evidence. Any relevant matter upon which responsible persons customarily rely in the conduct of serious affairs shall be admitted, regardless of the admissibility of such evidence in a court of law. Each party shall prior to or during the hearing, be entitled to submit memoranda concerning any issue of law or fact, and such memoranda shall become part of the hearing record. The ~~Board of Health or~~ Hearing Officer may, but shall not be required to, order that oral evidence be taken only on oath or affirmation.

Deleted: administered by any person designated by him and entitled to notarize documents in Williamson County.

11. Official Notice

In reaching a decision, the ~~Board of Health or~~ Hearing Officer may take official notice, either before or after submission of the matter for decision, of any generally accepted technical or scientific matter relating to the issues under consideration, ~~the Regulations~~ and of any facts that may be judicially noticed by the courts of this state. Parties present at the hearing shall be informed of the matters to be noticed and shall be given opportunity on timely request, to request that a matter be officially noticed and to refute the officially noticed matters ~~in writing~~.

Deleted: by evidence, or by written or oral presentation of authority, the manner of such refutation to be determined by the Hearing Officer

12. Order and Burden of Proof

The Director of the Department must go forward with proof of the grounds for the adverse action taken. The installer requesting the hearing shall then have the burden of proving, by a preponderance of the evidence, that the adverse recommendation or action of the Director of the Department lacks a substantial factual basis or that such basis of the conclusions drawn therefrom are either arbitrary, ~~capricious or~~ unreasonable.

Deleted: , or capricious

13. Recording of Hearing

A record of the hearing shall be kept that is of sufficient accuracy to permit an informed and valid judgment to be made. ~~The Board of Health or~~ Hearing Officer may select the method to be used for making the record, such as court reporter, electronic recording unit, detailed transcription, or minutes of the proceedings. Either party may have a court reporter present provided that the party arranging for those services pay for the appearance and transcript.

Deleted: by the

Deleted: of Williamson County. The

14. Postponement

Requests for postponement of a hearing may be granted by the Board of Health or Hearing Officer only upon a written request showing good cause and only if the written request is made as soon as is reasonably practical.

15. Recesses and Adjournment

The Board of Health or Hearing Officer may recess the hearing and reconvene the same without additional notice for the convenience of the participants or for the purpose of obtaining new or additional evidence or consultation. Upon conclusion of the presentation of oral and written evidence, the hearing shall be closed.

16. Findings and Ruling,

At the conclusion of all proof the Board of Health or Hearing Officer shall within thirty (30) days submit in writing findings of fact and law, which shall contain, but will not be limited to, the following:

- (a) A statement of the adverse action taken by the Director of the Department which is the subject of the appeal.
- (b) A concise statement of the charges upon which the adverse action of the Director of the Department are based.
- (c) A summary of the positions of the installer in response to the charges made by the Director of the Department.
- (d) A summary of evidence considered,
- (e) A statement of issues of fact or law presented by the parties, and a statement of the findings of the Board of Health or Hearing Officer,
- (f) A ruling of the Board of Health or Hearing Officer on the case.

17. Effects of the Ruling,

The Ruling, when rendered and distributed, is effective upon the date and time of receipt by the party requesting the hearing. Where the Ruling is made by the Hearing Officer, the installer may request review of the Ruling of the Hearing Officer by the Board of Health by written request of such review to the Chairman of the Board of Health. Request for review of the Ruling of the Hearing Officer must be delivered to the Chairman of the Board of Health within ten (10) days of receipt of the Hearing Officer's Ruling.

Failure to request a hearing on the Hearing Officer's Ruling within ten (10) days of receipt of notice shall be conclusively deemed to be an acceptance of the Hearing Officer's Ruling.

18. Review of Hearing Officer Ruling by Board of Health

Upon receipt of the request for a review of the Hearing Officer's Ruling, the Chairman of the Board of Health will cause a complete record of the hearing below to be prepared within thirty (30) days of the receipt of the request. The record shall contain the following information.

- (a) The Ruling of the Hearing Officer.
- (b) A transcription, or a summary of the testimony of all witnesses.
- (c) Copies of all exhibits introduced in the hearing.
- (d) The record may contain copies of any authorities relied upon by the Hearing Officer, or pertinent excerpts from such authorities.

A complete copy of the record shall be made available to each member of the Board of Health.

19. Final Ruling by the Board of Health

The Chairman of the Board of Health shall call a special meeting of the Board of Health to discuss and act upon the Ruling of the Hearing Officer. Each member of the Board shall have no less than thirty (30) days to review and consider the record before it.

Deleted: of the Hearing Officer

Deleted: , including a complete list of witnesses examined, exhibits introduced, and all other documents, publications, or authorities considered.

Deleted: upon each of the issues

Deleted: of the Hearing Officer

Deleted: of the Hearing Officer

Deleted: parties. Either

Deleted: or the Director of the Department

Deleted: twenty (20)

Deleted: fifteen (15)

Deleted: ¶
¶
¶

Deleted:Page Break.....

No action shall be taken by the Board of Health except by the vote of its members in a meeting called for that purpose. Members of the Board of Health shall not receive or consider information from other sources, or have ex parte communication with any other person in connection with the case before them.

After discussion of the record in the meeting of the Board, the Board may take the following actions:

Deleted: full

- (a) Request any other information, materials, or authorities it may require from any of the parties. Each party must have full notice of any such request and must be given an opportunity to respond to any additional information requested by the Board.
- (b) Continue its deliberations from time to time, for a reasonable period of time to allow for the additional information it requests.
- (c) Affirm, modify, or reverse the action of the Hearing Officer.

The decision of the Board must be by a majority vote of a quorum, upon a proper motion made by a member of the Board.

Deleted: the Members present and voting

The decision of the Board is final, and is effective upon receipt by the party requesting the hearing.

Deleted: Within five (5) days of the decision of the Board, the parties must be notified in writing of the decision.

B. Matters Regarding the Department

Deleted: parties

Deleted:

These provisions shall pertain to any actions of any officer or employee of the Williamson County Department of Sewage Disposal Management that materially and adversely affects approval of a system.

1. Actions Appealable

Any decision of the Department that materially and adversely affects approval of the system may be appealed pursuant to the provisions of this section.

2. Request for Review

The party against whom the adverse action was taken shall file a written request for review, delivered to the Chairman of the Board of Health which shall include a statement of what action is being appealed and the remedy sought by the applicant.

Deleted: by certified mail, including

Failure to request in writing the review of such action within ten (10) days from notice to party of such adverse action shall be conclusively deemed an acceptance of such action.

Deleted: written five (5)

Deleted: actions

3. Notice of Time and Place of Review

Applicant for review shall be notified in writing of the Board of Health meeting at which review of the adverse action shall take place. In no event shall any applicant receive less than fourteen (14) days notice.

Deleted: thirty (30)

4. Personal Presence

The applicant shall be required to attend the Board meeting at which review of the adverse action shall take place.

5. Representation

Although not required, the applicant may be accompanied by legal counsel.

6. Procedure and Evidence

The applicant shall present a written statement, with supporting documentation, at least five (5) days before the meeting. He or she shall then have a maximum of ten (10) minutes to present information related to such adverse decision. The applicant shall be entitled to present any supporting documents he so chooses, which shall be submitted in advance of the hearing when possible. The Department shall then have a maximum of ten (10) minutes to offer support for the decision. The Department shall be entitled to present any supporting documentation it so chooses. The applicant shall then have a maximum of five (5) minutes in rebuttal.

Deleted: oral argument or testimony

7. Ruling by Board of Health

The Board of Health has the following options:

- (a) Affirm the decision of the Department;
- (b) Reverse the decision of the Department and direct a result; ~~or~~
- (c) Reverse the decision of the Department with direction to consider additional specific material prior to ~~the Department~~ making a decision.

~~The Board's decision must be reached by a majority vote of a quorum.~~

~~Members of the Board of Health shall not receive or consider information from other sources, or have ex parte communication with any other person in connection with the case before them.~~

~~Deleted: ; or~~

~~Deleted: (d) Defer the matter to the next regularly scheduled meeting.~~

~~Deleted: , upon proper notice~~

~~Deleted: Only one deferral is permitted on a single item.~~