

## AB Air Quality Appeal Policy and Procedures

1. **Definitions:**
  - a. “Agency” means the Asheville-Buncombe Air Quality Agency or AB Air Quality.
  - b. “Appellant” means any person appealing any decision of the Agency pursuant to these procedures, unless otherwise specified.
  - c. “Board” means the Board of Directors of the AB Air Quality.
  - d. “Chair” means Chair of the Board of Directors.
  - e. “Director” means the Director of the AB Air Quality.
  - f. “Person” means any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, political subdivision, or any other legal entity, or its legal representative, agents, or assigns.
  
2. **Matters Subject to Appeal:** Any Person taking exception to any action of the Agency listed below, may appeal said action, pursuant to the terms of these Procedures and Policy:
  - a. Notice of Violation;
  - b. Civil Penalty Assessment;
  - c. Denial of Permit Application;
  - d. Issuance of a permit with conditions unacceptable to applicant;
  - e. Any action taken by the Agency affecting the rights or property of any person.
  
3. **Statement of Intent and Purpose:** The purpose of this policy and these procedures is to provide any Person appealing an Agency action due process. While the North Carolina Administrative Procedures Act is not applicable to the Agency, it is the intent of this policy and these procedures to provide a reasonably equivalent administrative process.
  
4. **Notice of Appeal:** Any Person seeking to appeal an Agency action must file a written notice with the Agency, addressed to the Agency Director, within 30 days of the Agency action alleged to support the appeal. Where a notice of violation, civil penalty or permit action is at issue, this 30 day period will run from the date of written notice by the Agency.
  
5. **Content of Notice of Appeal:** Notice of Appeal must be in writing and must include the following information:
  - a. The date of the notice of violation, civil penalty assessment, or adverse action appealed;
  - b. A brief statement of the factual and legal basis of appeal, including the Appellant’s contentions as to whether the Agency:

- (i) Exceeded its authority or jurisdiction;
    - (ii) Acted erroneously;
    - (iii) Failed to use proper procedure;
    - (iv) Acted arbitrarily or capriciously; or
    - (v) Failed to act as required by law or rule.
  - c. A brief statement of the relief sought by appeal;
  - d. An indication as to whether or not the Appellant would be interested in mediation.
- 6. **Filing Fee:** Any Person seeking to appeal an Agency action must tender the sum of \$150, payable to AB Air Quality, concurrent with that Person's Notice of Appeal. This fee will be remitted at the conclusion of proceedings, in the event that the Appellant prevails.
- 7. **Mediation:** The Agency may, but shall not be bound, to participate in mediation in the event an Appellant indicates an interest in participating in mediation. In the event that the Agency does assent to participate in mediation, and mediation results in an impasse, the Appellant's right to a Hearing, shall survive. In the event that the Agency does assent to participate in mediation, mediation shall be pursuant to the rules of the North Carolina Supreme Court Dispute Resolution Commission. The costs of mediation shall be divided equally between the Appellant and Agency. The Board Chair shall have the right to designate a mediator, where the Agency and Appellant cannot agree, after considering the recommendations of the Agency and Appellant.
- 8. **Hearing:** The Appellant shall be entitled to a Hearing presided over by a Hearing Officer. Formal rules of evidence shall not apply except as to matters of privilege or immunities. The Appellant bears the burden of proof. The standard of proof shall be by the preponderance of the evidence.

The Agency shall arrange for the proceeding to be recorded so that a written or auditory record is preserved. The Appellant may arrange for a court report to record the proceeding at its own expense.

Unless the Agency otherwise agrees, the location of the Hearing shall be at the physical location of the Agency at 30 Valley Street, Asheville, NC 28801. The Hearing shall be scheduled by the Agency Director, or the Director's designee, and the Appellant shall receive written notice of hearing at least 10 days prior to its commencement.

- 9. **Hearing Officer:** The Board Chair shall, at the Chair's discretion, appoint a Hearing Officer or Officers to preside over any hearing on appeal. The Chair's appointee or appointees can be a member or members of the Board of Directors.

Upon the Appellant's request, or upon the Agency's request, the Board Chair shall appoint a lawyer, in good standing with the Buncombe County Bar, to preside as Hearing Officer over a particular case or cases. The Board Chair shall appoint this lawyer in the Chair's discretion, after receiving recommendations from the Appellant and the Agency. The lawyer appointed by the Chair shall have no conflict of interest that would prevent him or her from serving in an unbiased manner.

Fees associated with a lawyer's service as Hearing Officer shall be divided equally between the Appellant and Agency, regardless of whether the Appellant, or Agency requests that a lawyer be appointed as Hearing Officer.

10. **Duties of Hearing Officer:** The Hearing Officer shall have the following duties and authority to:
  - a. Control the proceeding and presentation of evidence;
  - b. Place witnesses under oath, and to examine witnesses;
  - c. Make evidentiary rulings;
  - d. Make findings of fact;
  - e. Take judicial notice of facts generally known;
  - f. Limit the presentation of testimony;
  - g. Compile a record of the proceeding;
  - h. Recess and adjourn the hearing from day to day as necessary and to conduct all other actions necessary to conduct a review of the matter on Appeal;
  - i. Render a decision.
  - j. Ensure that the final decision is properly served upon the Agency and the Appellant.
  
11. **Board Deliberations:** In the event that a Board member(s) act as Hearing Officer, the decision rendered by that member or members shall be presented to the Board during a scheduled board meeting, for the Board's approval by majority vote. The Board shall have access to the record of proceedings. The Board will approve the decision, reject the decision or remand the matter for further proceedings. Neither the Agency nor the Appellant will be entitled to present any additional evidence to the Board during the course of Board deliberations.
  
12. **Judicial Review:** Pursuant to Article 4, Chapter 150B of the North Carolina General Statutes, an Appellant against whom a decision is rendered, may seek judicial review by filing a written petition with the Superior Court of Buncombe County, in keeping with the North Carolina Rules of Civil Procedure, North Carolina Rules of Court, Local Rules and Chapter 150B.

13. **Hearings Open to the Public:** Hearings conducted pursuant to this policy and these procedures are open to the public. The Board, however, reserves the right to deliberate in closed session as permitted by N.C.G.S. 143-318.11.
14. **Effective Date of Application:** This policy and these procedures shall apply and pertain to any appeal noticed after January 8<sup>th</sup>, 2007 and supersede prior policies and procedures pertaining to appeals in their entirety.