



# Representing Yourself in the Environmental Protection Commission Administrative Appeal Process

This document has been prepared by the Environmental Protection Commission of Hillsborough County (EPC) Legal Department to help you prepare for an administrative appeal challenging an agency decision and to generally explain the appeal process under Section 9 of the EPC’s Special Act, Chapter 84-446, Laws of Florida, as amended (the “EPC Act”), and Part IV of the EPC Administrative Procedures Rule, Chapter 1-2, Rules of the EPC. Although this is similar to the State of Florida Chapter 120, Florida Statutes, Administrative Procedures Act program, the Chapter 120 process is NOT addressed here. It is important to remember that the information presented on this page is general and is intended to cover more common situations and does not cover all of the possible situations that may arise in a case. Moreover, this guide is not intended to replace existing laws and all parties to the litigation must comply with current laws and procedures.

## NOTICE OF APPEAL FILING REQUIREMENTS

Each decision of the EPC Executive Director or authorized staff that may be administratively challenged by an aggrieved party (the “Appellant”) provides a “Notice of Rights.” That Notice of Rights identifies the information that an Appellant MUST include in a Notice of Appeal that disputes an Agency decision and it also explains how and where the Notice of Appeal must be filed.<sup>1</sup>

Part IV of the EPC’s Administrative Procedures Rule, [Chapter 1-2](#), Rules of the EPC outlines the Appeal process. A copy of Chapter 1-2 may be obtained from the EPC Legal Department or by visiting the EPC’s website [www.epchc.org](http://www.epchc.org).

[Relevant information](#) available on the EPC’s website includes: the EPC Act under which the EPC was created and operates; all of the rules adopted pursuant to the EPC Act; any delegation agreements authorizing the EPC’s local administrative process for the appropriate program area; and a list of agency Final Orders entered after administrative hearings.

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<sup>1</sup> In the event you are appealing someone else’s permit or authorization, you as the “Appellant” will be considered a third party and the person who received the permit or authorization would be an “Appellee.” This document can still be a resource for Appellees without counsel.

## FREQUENTLY ASKED QUESTIONS

### **WHAT IS A PRO SE LITIGANT?**

A person who represents himself or herself in court or the administrative process without the help of a lawyer is said to appear *pro se*.

### **HOW MUCH DOES IT COST TO FILE A NOTICE OF APPEAL?**

There is no fee for filing a Notice of Appeal with the Environmental Protection Commission.

### **WHAT DOCUMENTS DO I NEED TO FILE A NOTICE OF APPEAL?**

The only document you will need to submit is a timely and sufficient written Notice of Appeal in accordance with the Notice of Rights that is attached to the action you intend to appeal.

In order for an Appeal to be considered sufficient, it must contain all of the requirements identified in the Notice of Rights which are also found in Part IV of Chapter 1-2, Rules of the EPC. Be sure to include all of the required information in the Notice of Appeal before you submit it electronically to the Commission via Legal Clerk at [legalclerk@epchc.org](mailto:legalclerk@epchc.org). While not required at this early stage, you may attach to the Notice of Appeal any relevant photos or documents that help support your position for the Hearing Officer to review. Note, documents ultimately considered by the Hearing Officer will be subject to the evidence laws applicable to an administrative hearing.

Pursuant to Section 1-2.01, Rules of the EPC, the parties of record shall designate an e-mail address for use in the proceeding.

### **MAY I TALK TO THE HEARING OFFICER OR THE COMMISSION ABOUT THIS CASE?**

You may not directly contact the Hearing Officer or the Commission outside of the presence of the other parties in the case. After the appointment of the Hearing Officer and up to the entry of the Recommended Order, any inquiries, requests, and motions in the case must be in writing, filed with the Hearing Officer and copied to all parties.

### **WHAT IS THE PROCESS UNDER WHICH THE APPEAL IS HEARD?**

Part IV of Chapter 1-2, Rules of the EPC, outlines the administrative appeal process.

Although less formal, the administrative appeal process is similar to a civil court trial before a judge. Upon filing an electronic Notice of Appeal with the EPC Legal Department via [legalclerk@epchc.org](mailto:legalclerk@epchc.org), the Notice of Appeal will be reviewed to ensure it was electronically filed within the designated timeframe and that it includes the minimum information necessary. If the initial Notice of Appeal lacks sufficient information to determine if an administrative hearing can be held, it may be dismissed with or without the ability to re-file it. An order dismissing the appeal “with leave to amend” will allow the appeal to be re-filed and will specify what information is lacking. The order will also provide a new deadline to file an amended appeal. If the Notice of Appeal is deemed timely filed and it contains the necessary information, the case will be transferred to a Hearing Officer who is appointed by the Commission Chair on a rotational basis.

Shortly after his/her appointment, the Hearing Officer will likely schedule a Case Management Conference at which the parties must meet to discuss procedure and to schedule various dates and

deadlines, including scheduling the evidentiary/administrative appeal hearing (hearing). After this Case Management Conference, the Hearing Officer will issue an Order Setting Final Hearing and Pre-hearing Instructions that identifies any procedural requirements and sets forth the deadlines to meet, including the date of the final hearing.

Prior to the hearing, parties in the case may conduct legal “discovery,” which could consist of written questions in the form of interrogatories, requests for documents, and even depositions. Service of certain written discovery and discovery responses (such as interrogatories and requests for production) do not require filing with the Hearing Officer. All service of discovery related matters shall be in accordance with the Florida Rules of Civil Procedure and Rules of General Practice and Judicial Administration. Chapter 1-2, Rules of the EPC and Rule 2.514, Florida Rules of General Practice Judicial Administration govern computing and extending time, unless the Hearing Officer orders differently.

Also prior to the hearing, parties may conduct motion practice requesting relief from the Hearing Officer. Motions may include but are not limited to Motions to Dismiss, Motions for Summary Recommended Order, Motions in Limine, or Motions for Extensions of Time. Pleadings such as these shall be submitted via electronic mail to the Hearing Officer and all parties of record shall be copied (served) on any filing to the Hearing Officer.

During the hearing, the parties are expected to call witnesses, which may include expert witnesses, to provide testimony to the Hearing Officer on whether an agency decision should be upheld, modified, or overturned.

After the conclusion of the evidentiary hearing, the parties, if required to do so pursuant to the Order Setting Final Hearing and Pre-Hearing Instructions, will file proposed recommended orders (PRO) with the Hearing Officer. The PRO may have proposed findings of fact and conclusions of law that you want the Hearing Officer to accept. Subsequently, the Hearing Officer will issue a Recommended Order in accordance with Part IV of Chapter 1-2, Rules of the EPC, which will be forwarded to the Commission. The Hearing Officer has no further responsibility unless the Commission refers the case back for additional review.

The Commission will consider the Recommended Order during a regularly scheduled meeting. See below for further details.

### **HOW LONG WILL IT BE BEFORE THE HEARING OFFICER CONDUCTS AN EVIDENTIARY HEARING (HEARING) AND REVIEWS MY CASE?**

The EPC Legal Department cannot estimate the time it will take the Hearing Officer to review your case. Many cases take over 5 months before the hearing is conducted. The timeframes will depend on the complexity of the matter as well as the schedules of all parties involved. The Hearing Officer will likely conduct a Case Management Conference during which all parties will discuss scheduling the date of the final hearing and all other pertinent deadlines.

### **WHAT WILL HAPPEN DURING THE HEARING?**

The appointed Hearing Officer, an impartial, independent attorney not directly employed by the EPC who does not have any personal interest in the outcome of the matter, will conduct the hearing. He/she will fairly evaluate the positions presented by each party and weigh the evidence presented in order to make findings of facts on disputed matters and to determine and interpret relevant applicable laws and regulations.

The Hearing Officer will decide who will present evidence first and how the hearing will proceed. This decision may be based on which party is requesting the action and on the most practical and orderly way to develop the issues in the case. Before the actual presentation of the evidence begins, the Hearing Officer should explain the procedures to be followed. If you are confused about the procedures or other matters, you should let the Hearing Officer know either at the Case Management Conference or in writing, copying all parties involved.

During the hearing, each party will be allowed to present witnesses and other evidence and will be allowed to question the other party's witnesses, which is called cross-examination. The Hearing Officer may ask questions of any party or any witness at the hearing. All relevant evidence may be presented, including hearsay, which is a term applied to testimony given by a witness who relates, not what he/she knows personally, but what others have told him/her, or what he/she has heard others say. However, the Hearing Officer cannot base a finding of fact on hearsay alone and may limit the presentation of evidence if it is repetitive or irrelevant.

A Court Reporter will create a record of everything that is said during the hearing, so it is important that you speak in an audible, clear voice.

### **HOW SHOULD I PREPARE FOR THE HEARING?**

In preparing for the hearing, it may be helpful to make a list of all the information that relates to your case and that you may want to present. All parties may be required to share their documentary evidence before the hearing in the form of evidentiary exhibits. Bring the evidentiary exhibits you intend to introduce into evidence and enough copies of the exhibits to the hearing so that you can give a copy to the Hearing Officer, to each of the other parties and to the Court Reporter. Generally, the exhibits are shared amongst the parties prior to the evidentiary hearing. Persons who have knowledge of your case and have been identified as a witness should be asked to attend the hearing and testify on your behalf. Subpoenas may be issued by the Hearing Officer for those individuals who you want to testify if you believe the individuals may not attend otherwise. If you need the testimony of a person who is an expert, such as a contractor or professional engineer, you may also ask that person to attend the hearing and testify. However, you may have to pay the expert a fee to appear.

### **WHAT IF I DECIDE THAT I DO NOT WISH TO PROCEED WITH THE APPEAL?**

If you decide, at any time, that you do not wish to proceed with your appeal, you may file a notice with the Hearing Officer stating that you are withdrawing your appeal and relinquishing your right to appeal, and the Hearing Officer will close the file and return the case to the EPC. You should understand that if you withdraw your appeal, the EPC's decision may become final.

### **WHAT WILL HAPPEN IF I DO NOT APPEAR AT THE HEARING?**

If you are unable to appear at the time and place of the hearing, you must contact the Hearing Officer immediately and explain why. If you do not contact the Hearing Officer, or if you do not have an adequate explanation for not attending the hearing, the Hearing Officer may decide against you in the case. If you are late for the hearing, you should attempt to contact the Hearing Officer and explain the problem. If you cannot reach the Hearing Officer, contact the EPC Legal Department, who will attempt to communicate with the Hearing Officer.

### **MAY I GET A TRANSCRIPT (WRITTEN RECORD) OF THE HEARING?**

Yes, but you must request a copy from the Court Reporter and you will have to pay the full cost for a certified copy of the transcript.

### **MAY I OBJECT TO THE MATTERS CONTAINED IN A RECOMMENDED ORDER?**

Yes, such objections are called exceptions and must be electronically filed with the Commission via the Legal Clerk at [legalclerk@epchc.org](mailto:legalclerk@epchc.org) (not the Hearing Officer) within 10 calendar days of entry of the Recommended Order (See Part IV of Chapter 1-2). The exceptions should explain the particular portions of the Recommended Order with which you disagree and the specific reasons for your disagreement. If you believe that the Hearing Officer made a mistake concerning the facts or law in your case, you should review Section 1-2.35, Rules of the EPC for guidance. If you cannot meet the deadline for submitting exceptions, you should write to the Commission and Legal Department and ask for an extension before the deadline.

### **WHEN WILL A FINAL DECISION BE MADE?**

Generally, the Commission will hear the matter at a public hearing during its next regularly scheduled meeting after the exceptions and any responses to the exceptions have been filed. Typically, the Commission meetings are held in the morning on the third Thursday in January, April, August and October. The Commission will review and consider the transcript, the Recommended Order, any exceptions, and responses to the exceptions. No new factual evidence can be introduced. The parties will have an opportunity to present their arguments regarding the exceptions to the Commission. The Commission will then render a final order upholding, modifying or overturning the Recommended Order and the Executive Director's original decision.

### **CAN EPC EMPLOYEES ADVISE ME ON THE LAW?**

The staff of the EPC may provide general information about procedures but they are forbidden by State Law from giving you any legal advice. Although attorneys are not required by law for representation in EPC administrative challenges, parties in these administrative proceedings, such as yourself, should consider obtaining a lawyer to represent you.

### **CONFIDENTIAL INFORMATION**

Every person filing a document with the EPC and the Hearing Officer has the responsibility to ensure that no information protected by privacy or confidentiality laws is contained in the document, which may be posted on the EPC's website in the regular course of business. This means that the person filing the document has the responsibility to redact (black out) or remove any protected private or confidential information, including but not limited to trademark information, health information, a Social Security number, etc.

### **AMERICANS WITH DISABILITIES ACT**

In accordance with the Americans with Disabilities Act, persons needing a special accommodation to participate in a hearing should contact the Clerk of the EPC Legal Department no later than seven days prior to the hearing. The Clerk may be contacted at our address via telephone number at 813-627-2600, ext. 1054 or via e-mail at [legalclerk@epchc.org](mailto:legalclerk@epchc.org).