

ONEIDA-HERKIMER SOLID WASTE MANAGEMENT AUTHORITY ENFORCEMENT HEARING PROCEDURES

Adopted October 18, 1999
Amended November 15, 1999

1. APPLICABILITY

These procedures apply to all administrative proceedings commenced by the Oneida-Herkimer Solid Waste Management Authority (the Authority) to enforce Local Law #1 of 1990 for Oneida County, Local Law #1 of 1990 for Herkimer County, the Solid Waste Collection and Disposal Permit Rules and Regulations and the Facilities Rules and Regulations.

2. JURISDICTION

Jurisdiction for the Authority to undertake enforcement actions arises from the following sources: New York State Public Authorities Law title 13-FF, Oneida County Local Law #1 for 1990, Herkimer County Local Law #1 for 1990, and the three-party agreements dated May 10, 1989 and December 28, 1989 among the Counties of Herkimer and Oneida and the Authority.

3. DEFINITIONS

Hearing Officer: A person designated by the Authority Board to sit as a trier of fact regarding violations alleged in an Authority Complaint.

CPLR: The New York State Civil Procedure Law and Rules.

Discovery: Disclosure of facts, documents, or other items which are in the knowledge or possession of a party and which are pertinent to the case of the person requesting the discovery.

Person: An individual, public or private corporation, partnership, association, firm, trust or any legal entity.

Respondent: A person charged with one or more violations of Local Law #1 of 1990 for Oneida County, Local Law #1 of 1990 for Herkimer County, the Solid Waste Collection and Disposal Permit Rules and Regulations and the Facilities Rules and Regulations.

Stipulation: An agreement between two or more parties to a hearing, entered into the record, resolving one or more issues of fact which are the subject of the hearing.

4. COMMENCING THE ACTION

A) Authority staff will commence an administrative proceeding through the service of a Notice of Hearing and Complaint.

B) The Notice of Hearing shall contain:

- (i) a statement of the date, time and place of the hearing;
- (ii) a statement that the location of the hearing is accessible to the physically impaired;
- (iii) a statement that the proceeding will be stenographically recorded;
- (iv) a statement indicating that an Answer to the Complaint must be filed within twenty (20) days of receipt of the Complaint;
- (v) a statement that a finding in favor of the Authority will be made should the Respondent fail to appear and answer the Complaint; and
- (vi) such other information as deemed necessary by the Authority staff.

C) The Complaint shall contain:

- (i) a statement of the legal authority under which the proceeding is to be held;
- (ii) a reference to the particular sections of the statutes and rules and regulations involved; and
- (iii) a concise statement of the matters asserted which constitute each violation.

D) Service of the Notice of Hearing and Complaint shall be made by personal service or certified mail to the last known address of the Respondent.

5. ANSWER

A) Within twenty (20) days after the Notice of Hearing and Complaint, the Respondent shall serve on the Authority staff an Answer signed by the Respondent or its duly authorized representative.

B) The respondent must specify in its answer which allegations it admits, which allegations it denies, and which allegations it has insufficient information upon which to form an opinion regarding the allegation.

- C) The respondent's answer must explicitly assert any affirmative defenses together with the facts which constitute the grounds of each affirmative defense asserted.

6. DISCOVERY

Discovery shall be provided pursuant to CPLR Article 31, except that discovery will only be allowed with permission of the Hearing Officer upon a finding that the requested material is likely to expedite the proceeding.

7. SUBPOENAS

A party not represented by an attorney admitted to practice in New York may request the Hearing Officer to issue a subpoena, stating the items or witnesses needed by the party to present its case.

8. AUTHORITY OF THE HEARING OFFICER

Upon designation by the Authority Board, the Hearing Officer has the power to:

- A) Rule upon motions and requests;
- B) Set the time and place for the hearing and grant adjournments only for good cause;
- C) Administer oaths and affirmations;
- D) Issue subpoenas upon the request of a party not represented by counsel admitted to the practice of law in New York;
- E) Upon the request of a party and where appropriate, issue, quash and modify subpoenas;
- F) Summon witnesses;
- G) Admit or exclude evidence;
- H) Allow oral argument, so long as it is recorded;
- I) Hear and determine arguments on the facts;
- J) Take measures necessary for the maintenance of order and the efficient conduct of the hearing;
- K) Preclude irrelevant or unduly repetitious or speculative testimony or argument; and

- L) Exercise any other authority available to presiding officers under Article 3 of SAPA.

9. ORDER OF EVENTS

- A) The Authority staff, then the Respondent or its representative, may make an opening statement prior to the offering of any evidence.
- B) The Authority staff shall present its case first.
- C) The Respondent will present its defense and any affirmative defenses thereafter.
- D) The Authority may present rebuttal evidence with respect to any affirmative defenses presented by the Respondent.
- E) Each witness will be first questioned by the party calling the witness (direct examination) and then examined by the opposing party (cross examination). These examinations may be followed by re-direct and re-cross examinations.
- F) At the conclusion of the evidentiary hearing, the Hearing Officer may give the parties an opportunity to make closing statements or to file briefs.

10. EVIDENCE

- A) Before testifying, each witness must be sworn or make an affirmation.
- B) The rules of evidence will not be strictly applied; provided, however, the Hearing Officer will exclude irrelevant, immaterial or unduly repetitious evidence and must give effect to the rules of privilege recognized by New York State Law.
- C) Every party shall have the right to present evidence and cross-examine witnesses.

11. STANDARD OF PROOF

Whenever factual matters are involved, the burden of proof must be sustained by a preponderance of the evidence. This subdivision does not modify or supplement the questions that may be raised in a proceeding brought pursuant to CPLR Article 78.

- A) Rule upon motions and requests;

12. RECORD OF THE HEARING

- A) All testimony and argument made at the hearing shall be stenographically reported.

- B) The record of the hearing, which shall form the basis for decisions made regarding matters addressed, shall include: the Notice of Hearing and Complaint, all rulings made, the transcript of the proceeding, exhibits accepted into evidence, the hearing report, and any written submittals, including briefs, made by any party.
- C) A copy of the stenographic record will be available to any party upon request to the stenographer or Authority, as appropriate, and upon payment of costs.

13. HEARING REPORT

The Hearing Officer will submit a hearing report to the Authority Board within forty-five (45) days of the close of the record. The report will include findings of fact and recommendations on all factual issues before the Hearing Officer.

14. FINAL DECISION

- A) The Final Decision of the Authority shall be rendered by the Authority Board. The Final Decision, together with the hearing report of the Hearing Officer, will be issued within sixty (60) days after the next regularly scheduled Authority Board meeting following the receipt of the Hearing Officer's hearing report by the Board.
- B) The Final Decision will be embodied in an order issued by the Authority Board which must contain reasons for the Final Decision and may provide for:
 - (i) a finding of liability or the dismissal of the charges;
 - (ii) assessment of penalties or other sanctions consistent with the applicable local law;
 - (iii) a combination of any or all of the foregoing; and
 - (iv) any determination deemed appropriate by the Board under the circumstances, and consistent with applicable provisions in question.

15. MISCELLANEOUS

- A) Any time period required by these procedures may be extended or shortened by mutual agreement of the Authority staff, the respondent, the Authority Board or the Hearing Officer.
- B) Provisions of the Civil Procedure Law and Rules shall govern all matters of procedure not specifically addressed herein.
- C) Tape recording or televising of the adjudicatory hearing for rebroadcast is prohibited by Section 52 of the New York State Civil Rights Law.