



OFFICE OF THE SECRETARY
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
201 WEST PRESTON STREET • BALTIMORE, MARYLAND 21201

Harry Hughes, Governor

Adele Wilzack, R.N., M.S., Secretary

December 12, 1984

James D. Tadlock
Captain, USN
Commanding Officer
Naval Ordnance Station
Indian Head, Maryland 20640

Re: Naval Ordnance Station
Complaint and Order C-O-85-165
Hearing Office Docket No. 84-E-287

Dear Captain Tadlock:

This is to acknowledge your appeal dated December 6, 1984 and received in the Office of Hearings on December 10, 1984, and to advise you that an administrative hearing has been set for Wednesday, December 19, 1984, at 9:30 a.m., in Hearing Room 102, State Building #2, 300 West Preston Street, Baltimore, Maryland 21201.

At issue is Complaint and Order, dated November 26, 1984, issued by the Office of Environmental Program's Waste Management Administration.

The legal authority for this hearing being held is found in Health Environmental Article, Sections 7-261 and 9-337.

The procedure to be followed at the hearing is found in State Government Article, Section 10-201 et seq., of the Maryland Annotated Code, and in COMAR 10.01.03. A copy of this latter regulation is enclosed. If you have not done so already, you may engage legal counsel, who should promptly enter an appearance on your behalf.

NEGOTIATIONS BETWEEN PARTIES ARE, OF COURSE, ENCOURAGED. HOWEVER, THEY ARE TO TAKE PLACE PRIOR TO THE TIME SCHEDULED FOR THE HEARING SO AS NOT TO DELAY THE STARTING TIME OF THE HEARING.

Very truly yours,

William F. Clark/mz
William F. Clark, Esquire
Chief Hearing Examiner
Office of Hearings

WFC/mz
Enc.

cc: Diane Matuszak, M.D., M.P.H.
Mr. Ronald Nelson
Richard Hall, Esq.

TTY for the Deaf:

Baltimore Area 383-7555
D.C. Metro Area 565-0451

Title 10
DEPARTMENT OF HEALTH AND MENTAL HYGIENE
Subtitle 01 PROCEDURES

Chapter 03 Procedures for Hearings Before the Secretary of
Health and Mental Hygiene

Authority: Article 41, §251, Annotated Code of Maryland

.01 Scope.

These regulations shall apply to all formal hearings before the Secretary of Health and Mental Hygiene (hereinafter referred to as the Secretary) except those hearings for which specific procedural regulations have been promulgated. They do not apply to conferences, other informal investigations, or proceedings at or upon which no formal ruling or decision is made.

.02 Notice of Hearing.

A. All interested parties shall be afforded an opportunity to be present at formal hearings.

B. Written notice of the hearings shall be sent by the Secretary to all interested parties at least 10 days before the hearings. This notice shall state the date, time, and place of the hearing. It shall also state the complaint and charges involved in the proceeding.

.03 Parties — Representation.

A. "Party" includes any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in formal hearings. Any person or agency may be admitted as a party for limited purposes.

B. Any person or organization which has a case referred to the Secretary may appear in person before the Secretary at a hearing duly convened to consider the case, at which time he may be represented by counsel. All proceedings before the Secretary shall be subject to the provisions of the Administrative Procedure Act.

.04 Records — Transcripts.

A. The Secretary shall prepare an official record which shall include all pleadings, testimony, exhibits, and other memoranda or material filed in the proceedings.

B. Expense.

(1) Unless waived by all parties, a stenographic record of the proceedings shall be made at the expense of the Department of Health and Mental Hygiene. This record need not be transcribed unless requested by a party or by the Secretary.

(2) The cost of any typewritten transcript of the proceedings, or a part of the proceedings, shall be paid by the party requesting the transcript unless, for good cause shown, the Secretary or his representative orders the cost to be paid by the Department.

.05 Presiding Officer — Duties.

A. The Secretary, or his representative, shall be the presiding officer; he shall have complete charge of the hearing, permit the examination of witnesses, admit evidence, rule on the admissibility of evidence, and adjourn or recess the hearing from time to time.

B. If a party is not represented by an attorney at any hearing conducted under these regulations, the presiding officer shall provide the party with a copy of these regulations and shall satisfy himself that:

- (1) The party understands the nature of the proceedings;
 - (2) He understands the language and intent of these regulations;
- and

(3) He is fully cognizant of all of the rights to which he may be entitled under any applicable statutes upon which the subject of the hearing is conducted as well as his rights under these regulations.

C. If the person conducting the hearing is unable to satisfy himself that the party is fully informed as to these matters, he shall note this on the record.

D. It shall also be the duty of the person conducting the hearing, upon the rendering of any decision or the passage of any order pursuant to the provisions of these regulations and of law, to fully apprise any unrepresented party of his right to an appeal from a decision or order and the methods and procedures by which an appeal can be perfected.

.06 Order of Procedure.

The order in which the parties shall present their case shall be determined by the presiding officer.

.07 Examination of Witnesses and Introduction of Evidence.

A. The rules of evidence in all hearings under these by-laws shall be those set forth in Article 41, §252, Annotated Code of Maryland.

B. Any party may submit evidence, examine and cross-examine witnesses, and file objections, exceptions and motions. When a party is represented by counsel, all submission of evidence, examination and cross-examination of witnesses, and filing of objections, exceptions and motions shall be done and presented solely by counsel.

C. The presiding officer, or any person designated by him for the purpose, may examine any witness called by any party. He may call as a witness any person in attendance at the hearing.

.08 Briefs.

A. Any party may submit briefs of the issues of fact and law involved in the hearing. The briefs shall be filed in the form, with the number of copies, and at the time that the presiding officer may designate.

B. The presiding officer may request the State Law Department to participate in any hearing as counsel. Upon this request, counsel shall have all of the rights with regard to the submission of evidence, examination and cross-examination of witnesses, and filing of objections, exceptions and motions as counsel for any party.

C. If a party fails to appear at a hearing after due notice, the Secretary may reschedule the hearing, or, in his discretion, proceed upon the investigation, report, documents, witnesses, and records before him.

D. All testimony taken by the Secretary shall be under oath. The oath shall be in the following form: "Do you solemnly promise and affirm under the penalties of perjury that the testimony you are about to give in the matter now pending before the Secretary shall be the truth, the whole truth, and nothing but the truth?"

.09 Decisions and Orders.

A. Content and Distribution.

(1) Every decision and order rendered by the Secretary shall be in writing and shall be accompanied by findings of fact and conclusions of law.

(2) The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact.

10.01.03.10 DEPARTMENT OF HEALTH AND MENTAL HYGIENE

(3) A copy of the decision and order and accompanying findings and conclusions shall be delivered or mailed promptly to each party or his attorney of record.

B. Appeals. Any person or organization dissatisfied with the decision of the Secretary may seek administrative review to the Board of Review of the Department of Health and Mental Hygiene, as provided in Article 41, §206B of the Annotated Code of Maryland, and judicial review as provided in the Annotated Code of Maryland, Article 41, §255, or any other provision of law.

C. The decision of the Secretary shall be final and binding upon the Department and shall be implemented immediately unless otherwise specifically indicated in the decision or unless the party takes an appeal as provided in the Annotated Code of Maryland, Article 41, §206B.

.10 Rehearings.

A. Application.

(1) Within 10 days after service upon a party of the decision of the Secretary, the party may apply for rehearing.

(2) The application shall state the grounds for rehearing.

(3) The Secretary shall grant or deny the application within 20 days of its submission.

(4) Application for rehearing may stay enforcement of the order until disposition, within the discretion of the Secretary.

B. At a rehearing the Secretary may consider facts not presented in the original proceeding and facts arising after the time of the original proceeding.

C. By a new order the Secretary may change the original order.

Administrative History

Effective date: July 31, 1973