

**RULES GOVERNING THE PROCEEDINGS, ASSESSMENT
OF CIVIL PENALTIES, AND ISSUANCE OF ORDERS UNDER THE
SEWAGE AND WASTE CONTROL ORDINANCE OF THE
METROPOLITAN WATER RECLAMATION DISTRICT OF GREATER CHICAGO***

**I. Submittal of Recommendation for Show Cause Hearing to the
Law Department**

After the period for compliance with a previously issued Cease and Desist Order has expired, should the General Superintendent determine that the person has failed to attain compliance with the Sewage and Waste Control Ordinance, a Recommendation for Show Cause Hearing will be submitted to the Law Department.

**II. Notice of Pre-Hearing Conference and Issuance of Show
Cause Complaint**

a. Upon receipt of the Recommendation for Show Cause Hearing, the Law Department will prepare and issue a Notice of Pre-Hearing Conference and a Show Cause Complaint. The Notice of Pre-Hearing Conference shall set forth the date, time and place of the Pre-Hearing Conference. The Show Cause Complaint shall set forth each alleged violation of the District's Sewage and Waste Control Ordinance and the District's Prayer for Relief.

b. The Notice of Pre-Hearing Conference and the Show Cause Complaint may be served personally at the site or by certified mail, return receipt requested, upon an

***The definitions of the terms used in these rules are the same as those set forth in Article II of the Sewage and Waste Control Ordinance.**

officer, agent, or responsible corporate official of the Respondent. The Pre-Hearing Conference shall be scheduled for a date at least ten (10) business days after delivery or mailing of the Notice of Pre-Hearing Conference.

- c. The Metropolitan Water Reclamation District of Greater Chicago shall be designated as the Complainant, and the person served with the Notice of Pre-Hearing Conference and the Show Cause Complaint shall be designated as the Respondent.

III. Appearance

Respondent or Respondent's Counsel, duly licensed to practice law in the State of Illinois, shall file an appearance with the Clerk of the District either prior to or at the Pre-Hearing Conference.

IV. Filing of Documents

- a. Appearances, pleadings, notices, motions, discovery, affidavits, memoranda, briefs, orders, transcripts, and all other such documents permitted or required to be filed in a show cause proceeding shall be filed with the Clerk of the District during normal business hours at 100 East Erie, Chicago, Illinois 60601. Exhibits exchanged between the parties shall not be filed by the parties at the time of exchange. The hearing officer shall file exhibits that have been admitted into evidence or sought

- to be admitted via a proper offer of proof with the Clerk upon the issuance of his/her recommendation to the Board.
- b. Files maintained by the Clerk shall be open to inspection during normal business hours upon 48 hour advance written request.
 - c. Documents may be filed with the Clerk by certified, registered, or first class mail, by messenger service, or personally at the Clerk's office. Filing by electronic submission will not be accepted unless expressly authorized by the Clerk.
 - d. The enforcement action number assigned to the case shall appear on the first page of all documents filed with the Clerk.
 - e. A copy of all documents filed with the Clerk shall be served upon the hearing officer assigned to the case and all parties of record by certified, registered or first-class mail, by messenger or personally. Each document filed shall be accompanied by a certificate of service verifying that the hearing officer and all parties of record have been served and the date they have been served.

V. Pre-Hearing Conference

- a. A Pre-Hearing Conference shall be held at the date, time and place set forth in the Notice. All parties and their representatives shall be present at the

Pre-Hearing Conference where the parties will have the opportunity to discuss the case informally and exchange information. The parties may enter into an agreed settlement order, subject to the approval of the hearing officer, and entry by the Board of Commissioners. An agreed settlement order can be presented to a hearing officer at any mutually agreed upon date.

- b. At the Pre-Hearing Conference, the District will serve a Notice of Show Cause Hearing on the Respondent. If the Respondent or its representative does not appear at the Conference, the Notice of Show Cause Hearing shall be served on the Respondent personally or by registered or certified mail.
- c. The Notice of Show Cause Hearing will specify the date, time and place of the Show Cause Hearing and it shall give the name and address of the designated hearing officer. A copy of the Notice of Pre-Hearing Conference, the Notice of Show Cause Hearing, the Show Cause Complaint and the Respondent's Appearance will be filed with the Clerk and served upon the hearing officer.
- d. Within twenty-five (25) business days after the Pre-Hearing Conference, each party shall exchange exhibits and a list of witnesses it intends to use at the Show Cause Hearing.

e. Any admissions or declarations against interest, written or oral, made by either party during or in the course of the Pre-Hearing Conference shall not be binding and shall not be admissible for any purpose at the Show Cause Hearing, unless reduced to written stipulation.

VI. Responsive Pleadings Interrogatories, and Requests for Production

a. Respondent shall file an Answer to the Complaint or otherwise plead within ten (10) business days from the date of the Pre-Hearing Conference. Should Respondent fail to file an Answer or otherwise plead, in accordance with these Rules, each allegation in the Show Cause Complaint shall be deemed admitted.

b. Either party may serve the other party with a maximum of twenty-five (25) written interrogatories, including subparts and a request to produce for inspection or copying specified documents or photographs that are relevant to the subject matter of the action, within ten (10) business days after the Pre-Hearing Conference. The answers or objections to the interrogatories and response to the production request shall be served on the other party within ten (10) business days after mailing or delivery of the interrogatories and request for production. A copy of the interrogatories, request for production, interrogatory answers, and response to

production request will be filed and served as provided for in these rules.

VII. Hearing Officers

- a. The Board of Commissioners shall establish a panel of independent hearing officers to conduct all hearings on the assessment of civil penalties and issuance of orders under 70 ILCS 2605/7a(d) of the Sewage and Waste Control Ordinance. The hearing officers shall be attorneys licensed to practice law in the State of Illinois.
- b. Hearing officers will disclose to the parties any matter that could be considered a conflict of interest with their duty to render fair and impartial Reports to the Board of Commissioners. If the hearing officer has a conflict of interest, the hearing officer will disqualify himself or herself from continued participation in the Show Cause Hearing and another hearing officer will be appointed.
- c. The hearing officer shall refrain from engaging in any ex parte communication with either party or their counsel, except by express agreement of the parties or for non-substantive communication involving scheduling or procedure.
- d. The hearing officer will normally schedule the Show Cause Hearing to be held on a date within forty (40) to fifty (50) business days after the Pre-Hearing

Conference. If a hearing officer becomes unavailable to conduct a scheduled Show Cause Hearing, another hearing officer will be appointed to replace the unavailable hearing officer.

VIII. Motions

- a. All pre-hearing motions shall be in writing, filed with the Clerk and served on the other party and the hearing officer within thirty (30) business days after the Pre-Hearing Conference. The non-moving party may file a written response to the motion within five (5) business days of the receipt of the motion or it may elect to make an oral response to the motion at the Show Cause Hearing.
- b. Every motion shall clearly state the reasons for and grounds upon which the motion is made and shall contain a statement of the relief sought.
- c. Motions for continuance of the Show Cause Hearing must be made in writing, state the grounds for the motion and list dates within the following twenty (20) business days, absent a showing of exceptional circumstances, when the moving party is available to attend a Show Cause Hearing. Motions for continuance shall be filed with the Clerk and served on the other party and the hearing officer at least five (5) business days prior to the scheduled beginning of the

hearing. If the motion is granted, the hearing officer shall schedule a new date for the hearing.

- d. Motions for continuance of the Show Cause Hearing made less than five (5) business days of the scheduled date, and all subsequent requests for a continuance after an initial request for a continuance has been granted, shall be made in person before the hearing officer at the scheduled Show Cause Hearing. If the motion for a continuance is granted by the hearing officer, the hearing officer shall order the party necessitating the continuance to pay all costs of the hearing that are caused by the continuance, including court reporter's and hearing officer's fees.
- e. The hearing officer shall rule upon all pending motions in writing prior to the Show Cause Hearing, at the Show Cause Hearing or in the hearing officer's Report to the Board of Commissioners.

IX. Show Cause Hearing

- a. All Show Cause Hearings shall be conducted on the record, and testimony will be under oath and recorded stenographically. Hearing transcripts shall be made available to any member of the public or any party to the hearing upon payment of the usual charges for transcripts.

- b. At the hearing, the hearing officer may issue, in the name of the Board of Commissioners, Notices of Hearing requesting the attendance and testimony of witnesses and the production of evidence relevant to any matter involved in the hearing. The hearing officer may examine witnesses.
- c. The hearing officer shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, to maintain order and to insure the development of a clear, complete and concise record. The hearing officer shall give each party the opportunity to present evidence and to cross-examine the witnesses of the other party. The hearing officer may require the submission of post-hearing written statements or proposed findings by each party. The hearing officer may establish reasonable limits on the duration of the testimony and questioning of any witness and may limit repetitious or cumulative testimony and questioning. The hearing officer may recess or continue the Show Cause Hearing as may be necessary.
- d. After all evidence has been presented, the hearing officer shall issue a Report based upon a preponderance of evidence in the record, which includes findings of fact, conclusions of law, orders, and, if violations are proven, recommended civil penalties. Civil penalties

shall be assessed at the level of \$100.00 to \$2,000.00 per day of violation. The Hearing Officer may also recommend that the party responsible for the violation pay court reporter costs and Hearing Officer fees in a total amount not to exceed \$3,000.00. Each day's continuation of such violation or failure to abide by the terms of the Ordinance is a separate offense. A regulatory multiple day average that exceeds acceptable limits constitutes a separate violation.

e. In determining the appropriate civil penalty to be imposed under this section, the hearing officer shall take into consideration all of the facts and circumstances bearing on the activities involved as shown by the record produced at the hearing. The hearing officer may consider any matters of record, in mitigation or aggravation of a civil penalty, including but not limited to the following factors:

(1) the duration and gravity of the violation;

(2) the presence or absence of due diligence on the part of the violator in attempting to comply with the requirements of the Sewage and Waste Control Ordinance and regulations thereunder or to secure relief therefrom as provided by this Ordinance;

(3) any economic benefits accrued by the violator because of delay in compliance with requirements;

- (4) the amount of monetary civil penalty which will serve to deter further violations by the violator and to otherwise aid in enhancing voluntary compliance with this Ordinance by the violator and other persons similarly subject to the Ordinance;
- (5) the number, proximity in time, and gravity of previously cited violations of this Ordinance by the violator;
- (6) the ability of the violator to pay civil penalties beyond the statutory minimum.

The burden is on the violator to establish reasons why a civil penalty should be mitigated. Such reasons include, but are not limited to, good faith or intent in achieving compliance and the ability of the violator to pay civil penalties beyond the statutory minimum.

- f. The hearing officer's Report may include an order to revoke or modify a Discharge Authorization or Permit that had been issued to the Respondent pursuant to the Sewage and Waste Control Ordinance.
- g. The hearing officer's Report, which includes findings of fact, conclusions of law, orders and recommended civil penalties, if any, shall be transmitted to the Board of Commissioners, along with a complete record of the hearing within thirty (30) days of the conclusion of the hearing. Copies of the Report will be sent to the

attorneys for each party. If the hearing officer cannot submit a timely Report, upon notice to the parties, the District's General Superintendent may reassign the matter to another hearing officer who shall either reconvene the hearing or issue a Report based upon the record of the hearing. A Report may be based on the record if there was no issue in the hearing regarding the credibility of witnesses and the new hearing officer states that fact in the Report. The new hearing officer will be the next available hearing officer who will be selected on a rotational basis from the panel of hearing officers.

X. Additional Violations

- a. Additional violations are those that occur after the last cited violation in the Show Cause Complaint but before the hearing officer's Report is presented to the Board of Commissioners.
- b. The District may amend the existing Show Cause Complaint to include additional violations or it may elect to implement a new Show Cause proceeding.
- c. If the District elects to commence a new Show Cause proceeding, it will be initiated by a Notice of Pre-Hearing Conference, be conducted in accordance with these Rules, and be assigned to the same hearing officer.

d. If the District elects to amend the Show Cause Complaint, Respondent shall have all rights provided in these Rules, including the right to interrogatories and a request for production of documents, an amended list of witnesses and copies of exhibits, and the right to file an amended answer. The hearing officer may continue the hearing as necessary to satisfy these procedures.

XI. Review by the Board of Commissioners

a. In issuing its determinations, orders and civil penalties, the Board of Commissioners shall take into consideration all the facts and circumstances bearing on the involved activities of the person as shown by the record produced at the Show Cause Hearing, including, but not limited to, the factors identified in Section IX(e) of these Rules.

b. The Board of Commissioners shall either approve or disapprove the findings of fact, conclusions of law, orders and recommended civil penalties in the hearing officer's Report. If the findings of fact, conclusions of law, orders or recommended civil penalties are rejected, the Board of Commissioners shall remand the matter to the hearing officer for further proceedings. If the hearing officer's Report is accepted by the Board of Commissioners, it shall constitute the final order of

the Board of Commissioners regarding the violations that are detailed in the hearing officer's Report. If the Board of Commissioners does not accept or reject a hearing officer's Report within thirty (30) days of receipt of the Report, the Report will be deemed rejected and remanded to the hearing officer for further proceedings.

- c. If a Report is remanded to a hearing officer, the record compiled in the Show Cause Hearing shall be reviewed by the hearing officer who shall then submit a revised Report within thirty (30) days of the date the matter was remanded. Upon remand, the hearing officer shall also have the right to reconvene the hearing for the purpose of taking further evidence. If a hearing is reconvened, the hearing officer will submit a revised Report to the Board of Commissioners within thirty (30) days of the conclusion of the reconvened hearing. Revised Reports that are submitted to the Board Commissioners are subject to the procedures stated in Section XI, Paragraph (b) of these rules.
- d. Civil penalties specified by the Board of Commissioners shall be paid within 35 days after the person on whom a civil penalty is imposed receives a written copy of the order of the Board of Commissioners, unless the person

to whom the order is issued seeks judicial review under Section XIII of these Rules.

- e. Persons not submitting civil penalties within the time specified herein nor seeking judicial review of the final orders of the Board of Commissioners will be assessed interest at the rate of five (5) per cent per annum from the final due date for payment of the civil penalty.

XII. Rules Governing Expedited Hearings under Article VI, Section 6 of the Sewage and Waste Control Ordinance

- a. The General Superintendent may order a person to cease the discharge of industrial waste upon a finding by the General Superintendent that the final order of the Board, entered after a hearing to Show Cause, has been significantly violated. For purposes of this section, a person shall be considered in significant violation of the final order of the Board if the person:
 - (1) Discharges process wastewater in the absence of a current valid Discharge Authorization;
 - (2) Is in chronic or acute significant noncompliance as defined in Appendix F of the Sewage and Waste Control Ordinance;
 - (3) Fails to install and maintain suitable devices to detect the presence of the hazardous material in the discharge and to notify the District immediately;

(4) Fails to install and maintain a control manhole or sampling chamber for each separate discharge conveying process wastewater from its facility to the sewerage system that is safely and directly accessible to representatives of the District at all times; or

(5) Fails to provide an acceptable Spill Prevention, Control and Countermeasure Plan.

b. The General Superintendent shall serve the person with a copy of the order either by certified mail or personally by serving the owner, officer, registered agent or individual designated in said person's Discharge Authorization. The order of the General Superintendent shall also schedule an expedited hearing before a hearing officer designated by the Board in accordance with Article VI, Section 3(b) of the Ordinance for the purpose of determining whether the company has significantly violated the final order of the Board. In no event shall the hearing be scheduled less than seven days after receipt by the person of the General Superintendent's order.

c. At the expedited hearing, the District shall have the burden of establishing that a person has significantly violated the final board order. At least three business days prior to the commencement of the expedited hearing,

the parties shall exchange exhibits and a list of witnesses they intend to use at the hearing. The hearing shall be conducted in accordance with the provisions of Section IX(a) through IX(c) of these rules.

- d. Within 7 days after all of the evidence has been presented, the hearing officer shall issue a report, based upon a preponderance of evidence in the record, which includes findings of fact, conclusions of law, and recommended orders, which shall be transmitted to the Board of Commissioners. If the Board of Commissioners, after reviewing the findings and recommendations, and the record produced at the hearings, determines that the person has significantly violated the Board of Commissioner's final order, the Board of Commissioners may authorize the plugging of the person's sewer. The general superintendent shall give not less than 10 days written notice of the Board of Commissioner's order to the owner, officer, registered agent, or individual designated by permit, as well as the owner of record of the real estate and other parties known to be affected, that the sewer will be plugged. The Administrative Review Law, and the rules adopted under that Law, shall govern all proceedings for the judicial review of final orders of the Board of Commissioners issued under this subject.

- e. The foregoing provision for plugging a sewer shall be in addition to and not in derogation of any other remedy, in law or in equity, that the District may have to prevent violation of its ordinances and orders of its Board of Commissioners.

XIII. Judicial Review

- a. The Administrative Review Act, and the rules adopted under that Law, shall govern all proceedings for the judicial review of final orders of the Board of Commissioners issued under this subsection.
- b. If the person seeks judicial review of the order assessing civil penalties, the person shall, within 20 days after the date of the final order of the Board of Commissioners, pay the amount of the civil penalties into an escrow account maintained by the District for that purpose or file a bond guaranteeing payment of the civil penalties in the event that the civil penalties are upheld on review.

XIV. Revocation or Modification of Discharge Authorization or Permit

Any Discharge Authorization or Permit authorized and issued under the terms of the Sewage and Waste Control Ordinance may, when necessary to prevent the pollution of the sewers or waters under the jurisdiction of the District or when the person engages in activity which is contrary to a term or condition contained in the Discharge Authorization or Permit, be revoked or modified by

the Board of Commissioners after investigation, notice and hearing as provided for in the above provisions of these Rules.

XV. Delinquent Filing of Required Reports

a. Persons required to submit reports by the terms of the Sewage and Waste Control Ordinance, including but not limited to Article V, Reporting Requirements; and Appendix C, Article I, Reporting Requirements Applicable to Significant Industrial Users, and any order of the Board or the General Superintendent issued pursuant to the terms of this Ordinance, shall submit the required reports by the specified due dates. As set forth in said Ordinance, persons not submitting the reports by the specified due dates shall be subject to fees as follows:

1. Persons submitting reports up to 10 calendar days following the specified due date shall be assessed \$100.00 for each delinquent report.
2. Persons submitting reports more than 10 calendar days and up to 30 calendar days following the specified due date shall be assessed \$500.00 for each delinquent report.
3. Persons submitting reports more than 30 calendar days following the specified due date shall be assessed \$1,000.00 for each delinquent report.

b. The above-referenced fees shall be submitted with the delinquent filings. To determine the date of receipt, the

District will utilize the earliest of either the date of receipt via certified mail, date of receipt of transmitted facsimile or the date of receipt by personal delivery. If an appropriate fee is not submitted with late report, the District will bill the person the amount of the fee.

- c. Continued failure to submit reports as required by the Sewage and Waste Control Ordinance shall give the General Superintendent cause to recommend the revocation of a Discharge Authorization or Permit. Revocation procedures will comply with the terms of Section XIV of these Rules.

XVI. Objections to Delinquent Filing Fees

- a. The District shall provide by certified mail a written notice of the fee assessment that states the person has thirty days from the receipt of the notice to request a conference with the General Superintendent's designee to discuss or dispute the appropriateness of the assessed fee. Unless a person objects to paying the assessed fee for filing a report late by timely requesting, in writing, to the Director of Research and Development with 30 days of receipt of the late filing fee notice, a conference with a designee of the General Superintendent, that person waives his or her right to a conference and the District may impose a lien recorded against the property of the person for the amount of unpaid fee.

- b. If a person requests a conference and the matter is not resolved at the conference, the person subject to the fee may request an administrative hearing to determine the person's liability for and the amount of the fee. The request for an administrative hearing must be received by the District within 30 days after the person's receipt of the written conclusion of said conference. An impartial administrative hearing officer shall be appointed under Section VII, Paragraph (a) of these Rules to determine the person's liability for and the amount of the fee. Hearings under this provision are to be conducted in accordance with the provisions of Section IX of these rules.
- c. The hearing officer shall send the decision to each party or their attorneys of record. If the hearing officer decides that late filing fees are owed to the District, the District shall notify the responsible person or persons of the hearing officer's decision. If payment is not made within 30 days after the notice, the District may impose a lien on the property of the person or persons.
- d. Any liens filed under this section shall apply only to the property to which the late filing fees are related. The lien shall be filed in the office of the Recorder of Deeds of the county in which the property is located.

The filing of a claim for lien by the District does not prevent the District from pursuing other means for collecting filing fees. If a claim for lien is filed, the District shall notify the person whose property is subject to the lien, and the person may challenge the lien by filing an action in the Circuit Court of Cook County. The action shall be filed within 90 days after the person receives the notice of filing of the claim for lien. The court shall hear evidence concerning the underlying reasons for the lien only if an administrative hearing has not been held under this subsection.

XVII. Savings Clause

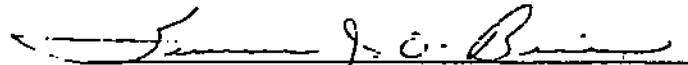
If the provisions of any paragraph or section of these Rules are declared unconstitutional or invalid by the final decision of any court of competent jurisdiction, the provisions of the remaining paragraphs and sections shall continue in full force and effect.

XVIII. Effective Date

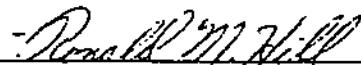
These Rules shall take effect immediately upon passage by the Board of Commissioners.

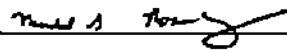
Dated: This 9th day of July, 1998.

Approved:


 Terrence J. Brien, President
 Board of Commissioners
 Metropolitan Water Reclamation
 of Greater Chicago

Approved as to Form and
 Legality:


 Principal Assistant Attorney


 Attorney