

AIR POLLUTION CONTROL (APPEAL BOARD) REGULATIONS
- CHAPTER 311D

(Cap 311 section 43)

[1 October 1983]

(L.N. 246 of 1983)

REGULATION 1

Citation VerDate:30/06/1997

These regulations may be cited as the Air Pollution Control (Appeal Board) Regulations.

REGULATION 2

Interpretation VerDate:01/07/2007

For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

In these regulations, unless the context otherwise requires-

"appellant" means the person aggrieved by a decision, requirement or specification of a public officer under any of the provisions listed in section 31(1) of the Ordinance and who has sent a notice of appeal to the Chairman under regulation 3(1);

"Board" means an Appeal Board constituted under Part VI of the Ordinance;

"Chairman" means the Chairman of Appeal Boards appointed under section 32 of the Ordinance;

"Secretary" means the Secretary for the Environment. (78 of 1999 s. 7; L.N. 106 of 2002; L.N. 130 of 2007)

REGULATION 3

Commencement of an appeal VerDate:30/06/1997

(1)An appeal under section 31(1) of the Ordinance shall be commenced by the appellant sending to the Chairman a notice of appeal in writing which shall be substantially in accordance with Form 1 in the Schedule and shall set out the grounds of the appeal.

(2)At the same time as sending the notice under paragraph (1) the appellant shall send a copy of such notice to the Authority or the Secretary as the case may be.

REGULATION 4

Date, time and place of hearing VerDate:30/06/1997

(1)The Chairman shall fix the date, time and place of the hearing of an appeal and the Chairman shall not less than 14 days before the date so fixed send to the appellant and to the Authority or the Secretary as the case may be a notice substantially in accordance with Form 2 in the Schedule.

(2)In exercising his power under paragraph (1) the Chairman shall fix the date for the hearing of an appeal in order that such appeal may be heard as soon as reasonably practicable after the notice of appeal has been lodged.

REGULATION 5

Witness summons VerDate:30/06/1997

Where a Board issues a witness summons under section 33(5)(c) of the Ordinance such summons shall be substantially in accordance with Form 3 in the Schedule.

REGULATION 6

Proceedings generally in public VerDate:30/06/1997

Proceedings before a Board shall be held in public unless the appellant or a witness requests otherwise and the Board accedes to the request.

REGULATION 7

Representation VerDate:30/06/1997

The appellant and the Authority or the Secretary as the case may be represented at the hearing of an appeal by a barrister or a solicitor.

REGULATION 8

Grounds of appeal VerDate:30/06/1997

The grounds of appeal shall be limited to those set out in the notice of appeal unless the Board grants leave for the grounds of appeal to be amended.

REGULATION 9

Grounds of appeal abandoned VerDate:30/06/1997

(1) The appellant may abandon all or any of his grounds of appeal before or during the hearing of his appeal.

(2) Where the appellant abandons grounds of appeal under paragraph

(1) before the hearing of his appeal he shall by notice in writing, addressed to each of the Chairman and to the Authority or the Secretary as the case may be, inform them of such abandonment.

REGULATION 10

Failure of appellant to attend hearing VerDate:30/06/1997

(1) If on the day fixed for the hearing of an appeal, the appellant fails to attend the hearing either in person or by barrister or solicitor the Board may-

(a) if satisfied that the appellant's failure to attend was due to sickness or other reasonable cause, postpone or adjourn the hearing for such period as it thinks fit;

(b) proceed to hear the appeal; or

(c) dismiss the appeal.

(2) If an appeal has been dismissed by the Board under regulation 10(1)(c) the appellant may, within 30 days after the making of the order for dismissal, by notice in writing addressed to the Chairman, apply to the Board to review its order and the Board may, if satisfied that the appellant's failure to

attend the hearing was due to sickness or any other reasonable cause, set aside the order for dismissal and proceed to hear the appeal.

REGULATION 11

Record of proceedings VerDate:30/06/1997

The Chairman shall take or cause to be taken in writing a full minute, so far as circumstances permit, of the following matters-

- (a) the nature of the grounds of appeal;
- (b) the names of the appellant, the Authority or the Secretary as the case may be and of the respective witnesses on either side;
- (c) the evidence of the witnesses; and
- (d) the decision of the Board.

SCHEDULE

SCHEDULE VerDate:30/06/1997

[regulations 3, 4 & 5]

FORM 1 [regulation 3]

NOTICE OF APPEAL

Appeal against the decision, requirement or specification contained in a notice issued under the Air Pollution Control Ordinance.

To: Air Pollution Control Appeal Board

1. Full name of Appellant:

.....
.....

2. Address of Appellant:

.....
.....

Telephone No.

3. (Address of Appellant or Representative for service of documents if different from the above address)

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.....

4. Details of notice appealed against :

Notice dated 19 Reference No.

(A copy of which is attached)

5. Address of the premises or place to which the notice refers :

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.....
.....

6. Name and full address of the public officer as shown on notice

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.....
.....

Telephone No.

7. Particulars of the decision, requirement or specification appealed against (set them out from the notice)

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8. The grounds for this appeal are ; (set them out in full)

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.....

(Signature)
Appellant

Dated 19

FORM 2 [regulation 4]

NOTICE OF TIME AND PLACE FIXED FOR HEARING OF AN APPEAL

Appeal No.: of 19

In the matter of the Appeal lodged by
.....
.....

(Appellant) against the decision, requirement or specification contained in a notice issued under the Air Pollution Control Ordinance on the day of 19

To (Appellant)

TAKE NOTICE that the above appeal will be heard at on the day of 19 at a.m./p.m.

AND TAKE NOTICE that if you do not attend at the time and place mentioned, either in person or by a person duly authorized to appear on your behalf, the appeal may be dismissed or be heard in your absence.

Dated this day of 19

(Signature)
Chairman of the Appeal Board

This notice was served by me on
.....at on the day of
..... 19

(Signature) (Signature)
Recipient of notice Process server

FORM 3 [regulation 5]

SUMMONS TO WITNESS

Appeal No.: of 19
In the matter of the Appeal lodged by
.....(Appellant) against the decision, requirement or specification contained in a notice issued under
the Air Pollution Control Ordinance on the day of 19

To (a)

YOU ARE HEREBY SUMMONED to attend at
on the day of 19..... at
*a.m./p.m., and so from day to day, until the proceedings are heard, to
give evidence in the above appeal* and also to bring with you and produce
the several documents hereunder specified:

(Here insert list of documents required to be produced)

Date this day of 19.....

(Signature)
Chairman of the Appeal Board

* Delete where inappropriate Note: (a) Insert name of person to be served

This notice was served by me on
.....at on the day of
..... 19

(Signature) (Signature)
Recipient of notice Process server