

**CODE OF REGULATIONS OF THE
NORTHEAST OHIO REGIONAL SEWER DISTRICT**

**RULES OF PROCEDURE
FOR ADMINISTRATIVE DETERMINATIONS MADE BY THE
NORTHEAST OHIO REGIONAL SEWER DISTRICT**

February 19, 2013

Interested Parties:

**Re: Proposed Revised Rules of Procedure for Administrative Determinations
Made by the Northeast Ohio Regional Sewer District**

The Northeast Ohio Regional Sewer District is proposing the attached modifications to the Rules of Procedure for Administrative Determinations Made by the Northeast Ohio Regional Sewer District ("Rules of Procedure"). These Rules of Procedure set forth the process and requirements for appeals by ratepayers of any administrative determination arising under the District's *Code of Regulations*, or for any request for adjustment of stormwater, sewer, or other fees and charges. These revisions are made to adapt the Rules of Procedure to the resolution of issues anticipated to arise with the implementation of the Regional Stormwater Management Program pursuant to Title V of the *Code of Regulations*.

The proposed changes to the Rules of Procedure are too numerous to make distribution of a redlined version of the existing Rules of Procedure productive. The existing Rules of Procedure may be found at <http://neorsd.org/images/147/RulesOfProcedure.pdf>. The major features of the proposed revisions are summarized below:

- The Board of Trustees may designate an Appeals Board of up to three members to hear specific disputes and then prepare Findings and Recommendations for Board of Trustee's action. Currently, only one District staff person has been designated to act as Hearing Examiner for appeals.
- The Hearing Examiner who customarily conducted Show Cause Hearings may be replaced by an Appeals Board of up to three members, without affecting the other aspects of the Show Cause process.
- District staff at the Department level are authorized to make certain determinations upon requests for adjustments of bills, charges, fees and fee credits, which determinations will bind the District unless appealed to an Appeals Board.
- Settlements in amounts less than \$25,000.00 may be determined by Director-level action without separate Board approval, consistent with Article X of the Board of Trustees Bylaws. Article X authorizes the Director of Law, with approval of the Executive Director, to enter on behalf of the Board into settlement-and-release agreements to resolve legal claims that do not exceed \$25,000.00.

The January 31, 2013 version of the Rule of Procedure with the proposed revisions is also available on our web site at www.neorsd.org.

If you have any comments on the proposed changes, please provide written comments by March 22, 2013 to Lawrence K. English, Assistant Director of Law, at the address below or by e-mail at englishl@neorsd.org.

The District will review all comments received and make necessary adjustments to the proposed changes for the Board's consideration.

We look forward to your review. Please contact Mr. English with questions.

Sincerely,



Julius Ciaccia
Executive Director

Enclosure

**RULES OF PROCEDURE
FOR ADMINISTRATIVE DETERMINATIONS MADE BY THE
NORTHEAST OHIO REGIONAL SEWER DISTRICT**

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CHAPTER 1 - PURPOSE AND AUTHORIZATION

- Section 1.1 Purpose - These Rules of Procedure are intended to delineate the requirements for proper appeal of any administrative determination arising under the Code of Regulations of the Northeast Ohio Regional Sewer District or request for adjustment of sewer or other fees and charges of the Northeast Ohio Regional Sewer District, hereinafter referred to as "District," and to the Board of Trustees, hereinafter referred to as "The Board."
- Section 1.2 Authorization - These Rules are promulgated pursuant to the District's Plan of Operation, Orders of the Cuyahoga Court of Common Pleas, and Chapter 6119 of the Ohio Revised Code.
- Section 1.3 Title and Distribution - These Rules shall be known as the Rules of Procedure for Administrative Determinations made by the Northeast Ohio Regional Sewer District, hereinafter referred to as "Rules of Procedure," and may be separately printed, distributed, posted on the District's website (www.neorsd.org) and/or made available at District Administrative Headquarters for inspection by interested parties.
- Section 1.4 Rescission, Revision, Amendment or Adoption of Rules - Whenever changes in these Rules of Procedure are advisable or necessary, the Board of Trustees shall make such revisions by resolution adopted as part of its regular functions in public sessions. Whenever the Board of Trustees proposes to adopt or amend these Rules of Procedure, it shall first notify all communities within the District of the nature and content of the proposed rule, regulation, or amendment.

CHAPTER 2 - BOARD OF TRUSTEES

- Section 2.1 All Appeals to be Heard by Board of Trustees - All appeals of administrative determinations or request for adjustment of sewer or other fees and charges are to be heard by the Board of Trustees, the Executive Director or his/her designee, the appropriate Department Director, or by an Appeals Board comprised of one to three members appointed pursuant to [Section 2.2](#) of these Rules of Procedure.
- Section 2.2 Appeals Board - The Board of Trustees may appoint an Appeals Board with up to three members to conduct hearings and to hear evidence on its behalf. Any or all of the members of the Appeals Board may be employees of the District. The Board of Trustees, by Resolution duly adopted, shall issue a Final Order on appeals heard by Appeals Boards. For all other matters the Board of Trustees authorizes the procedures herein.
- Section 2.3 Findings and Recommendations of Appeals Board - The Appeals Board shall prepare findings and recommendations based upon the evidence submitted to it. The findings shall be in writing, and shall be based upon prior decisions where applicable. The findings and recommendations shall be submitted to the Board of Trustees for action by that body.
- Section 2.4 Disqualification - No member of the Board of Trustees or its designated Appeals Board shall participate in proceedings or in any case in which he/she has an interest which might prevent him/her from conducting a fair hearing or reaching an impartial decision.
- Section 2.5 Objection to Board of Trustees Members or Appeals Board - Any individual who might be subject to disqualification under [Section 2.4](#) may be challenged by any interested party at any time prior to the hearing of the appeal. The challenge must be made in writing. The challenge shall be heard by the Board of Trustees. The employment by the District of any member of the Appeals Board shall not be grounds for disqualification.
- Section 2.6 Costs - All costs of filing a request for adjustment or an appeal shall be the responsibility of the person filing such request. The District will not compensate the person for any expenses associated with filing a request for adjustment or appeal, regardless of the outcome.

CHAPTER 3 - SCHEDULING OF HEARINGS

Section 3.1 Scheduling of Hearings - Generally - Every hearing or other proceeding to be held under these Rules of Procedure shall be scheduled promptly. All proceedings shall be held at the Administrative Offices of the District, unless at its discretion, the Board of Trustees or Appeals Board determines that a more equitable determination can be made by holding the proceedings at another location or by telephone or otherwise if extenuating circumstances exist. All hearings shall be held during normal District business hours.

Section 3.2 Single Hearing - Except as provided in this section, all appeals shall be heard independently. Consolidation may be requested where any of the following criteria are met:

- (a) all parties have a mutually shared issue upon appeal;
- (b) the appealing party has multiple appeals best determined and expedited with a single presentation;
- (c) the availability of witnesses is limited; or
- (d) the appealing party believes consolidation with any other pending appeal would be in the best interests of all parties.

The Board of Trustees or the Appeals Board shall rule on all requests for consolidation.

Section 3.3 Notice of Hearing - A Notice of Hearing shall be sent to the appealing party at least fourteen (14) days prior to the scheduled hearing date or any other proceeding under these Rules. The notice shall specify the time and place of the proceeding, and shall set forth, in brief, the issues to be heard and the proceedings to be held. The notice shall be mailed to the address indicated on the request for hearing, or shall be delivered in person to the appealing party. Any provision of this section may be waived upon the consent of all parties to the hearing.

Section 3.4 Postponement of Hearing - Except in the event of extraordinary circumstances, requests for postponement of a hearing must be made at least seventy-two (72) hours prior to the scheduled proceeding. Postponements shall not be unreasonably denied where just cause has been shown. All requests for postponements must be in writing. In any event, not more than three (3) postponements requested by the appealing party will be granted. Failure of the appealing party to comply with the provisions of this section shall be deemed a failure to appear in accordance with [Section 4.7](#).

CHAPTER 4 - CONDUCT OF HEARINGS & OTHER PROCEEDINGS

- Section 4.1 Testimony; Record - All testimony in any case under these Rules of Procedure shall be under oath or by affirmation. The proceedings shall be recorded by mechanical means or otherwise as may be prescribed by the Board of Trustees, and no other formal record of any proceedings by manual, mechanical, or electronic device shall be permitted. The record of a case shall include all written submittals and actions under these Rules of Procedure pertaining to the case or to the interested parties.
- Section 4.2 Procedure and Evidence - The Board of Trustees and/or Appeals Board shall conduct hearings and other proceedings in a case in such order and manner, and shall take any steps consistent with the impartial discharge of their duties which appear reasonable and necessary to ascertain all relevant facts and to render a fair and complete decision on all issues which have been presented. To the end that all facts relevant to a fair and complete decision shall be received as directly and simply as possible, the proceedings shall be informal, and the Board of Trustees and/or Appeals Board shall not be bound by common law or statutory rules of evidence. The hearing shall be in accordance with these Rules of Procedure. The Board of Trustees or Appeals Board conducting a proceeding may examine the interested parties and other witnesses, and each interested party and his/her representative shall have the right to be heard on all issues presented on appeal.
- Section 4.3 Stipulations by the Parties - Interested parties may submit stipulations or any other agreed statement, respecting all or any part of the facts involved in the case, and may also waive a formal hearing. The Board of Trustees or Appeals Board conducting such proceeding shall require or obtain such additional evidence as may be necessary to reach a fair and complete determination.
- Section 4.4 Securing Witnesses and Documents; Special Investigations - The production of books, papers and other documents, files and records, may be required by the Board of Trustees or Appeals Board, if deemed necessary, to present fully and adequately any issue to be determined. Whenever an investigation or other examination is necessary to fully and adequately present any issue to be determined in a case, the Board of Trustees or Appeals Board shall require or authorize that same be made and the findings submitted into evidence.
- Section 4.5 Public Hearings - All hearings under these Rules of Procedure shall be open to the public.
- Section 4.6 Adjournment or Continuance - On its own motion or upon the showing of good cause by an interested party, or whenever it appears that such action is necessary to afford the parties a reasonable opportunity for a fair hearing, the Board of Trustees or Appeals Board may adjourn or continue a hearing to another time or place. Notice of the time and place of the adjourned or

continued hearing shall be given to the interested parties, as provided in [Section 3.3](#), except that the fourteen (14) day notice provision shall not apply.

Section 4.7 Failure of Appealing Party to Appear - If the appealing party in any case fails to appear personally or by counsel or other authorized representative at the hearing scheduled on his/her appeal, and if good cause for such failure to appear is not shown in writing to the Board of Trustees or Appeals Board within ten (10) days after the scheduled date of such hearing, the Board of Trustees or Appeals Board to whom the case is assigned for decision shall prepare findings based upon the evidence in its possession. In the event there is a showing of good cause for failure to appear within such ten (10) day period, the hearing shall be rescheduled with due notice to all interested parties.

Section 4.8 Oral Argument and Briefs - At the conclusion of any hearing, the interested parties shall be granted a reasonable opportunity to present argument on all issues of fact and law to be decided. The Board of Trustees or Appeals Board to whom a case is assigned shall afford the interested parties an opportunity to present oral argument or to file briefs, or may permit both, and may limit the time of oral argument. The deadline for acceptance of briefs shall be set by the Board of Trustees or Appeals Board at the conclusion of the hearing.

Section 4.9 Reopening of Proceedings - At any time after a hearing, and prior to the issuance of a decision, the Board of Trustees or the Appeals Board to whom the case is assigned for decision may, on its own motion or in its discretion upon a showing of good cause by the appealing party, reopen the appeal for further proceedings.

CHAPTER 5 - TIME LIMITATIONS ON APPEAL - VOLUNTARY WITHDRAWAL

- Section 5.1 Time of Appeal; Beginning of Appeal Period - Notice of appeal other than an appeal of a decision pursuant to Section 7.6 of this Title by an interested party must be filed no later than ninety (90) calendar days after a copy of the decision appealed from is mailed to the party's last known post office address. Notice of Appeal may be by regular, certified or electronic mail or personal service. If notice of appeal is mailed, it must be postmarked before midnight of the last day of the appeal period; if delivered, it must be received at District Administrative Offices before the closing time of the office on the last day of the appeal period. In computing the period of time within which an interested party may file an appeal, such period shall begin at 12:01 A.M. on the next day following the date on which the decision or other notice is mailed to his/her last known post office address, and shall extend for the number of days specified above. When the last day of the period of appeal referred to above falls on a Saturday, Sunday, or on a legal holiday for the District, the period shall extend to and include the next day which is not a Saturday, Sunday or a District legal holiday. An appeal or other request or application shall be deemed to be filed with the Board of Trustees or Appeals Board on the date of receipt where delivered to the Board of Trustees or Appeals Board at District Administrative Offices by the person him- or herself, or his/her representative, agent or messenger. Filing shall be deemed to be completed on the postmarked date appearing on the enclosing envelope where filing is by mail.
- Section 5.2 Date of Decision or Other Notice - The date on which the decision or other notice is deposited in the United States mail, addressed to the last known post office address of the party, shall be the date of the decision or other notice.
- Section 5.3 Voluntary Withdrawal of Appeal, Request, or Application - An appeal or any other request or application under these Rules of Procedure may be withdrawn upon application to the Board of Trustees or Appeals Board, in writing, by the appealing party or his/her authorized agent or attorney prior to the issuance of a Final Order by the Board of Trustees or Appeals Board.

**CHAPTER 6 - SHOW CAUSE HEARINGS PURSUANT TO SECTION
2.0604 OF TITLE II - PRETREATMENT REGULATIONS; SECTION 3.0604 OF TITLE
III - SEPARATE SANITARY SEWER CODE; AND SECTION 4.0604 OF TITLE IV –
COMBINED SEWER CODE – CODE OF REGULATIONS OF THE NORTHEAST
OHIO REGIONAL SEWER DISTRICT**

- Section 6.1 Purpose - This Chapter is intended to provide Rules of Procedure to delineate the requirements necessary for proper hearing under a Show Cause Order as provided pursuant to Section 2.0604 of Title II - Pretreatment Regulations; Section 3.0604 of Title III - Separate Sanitary Sewer Code; and Section 4.0604 of Title IV – Combined Sewer Code - Code of Regulations of the Northeast Ohio Regional Sewer District.
- Section 6.2 Authorization - These Rules are promulgated pursuant to Chapter 6119 of the Ohio Revised Code, and pursuant to the Code of Regulations of the Northeast Ohio Regional Sewer District, Title I - Sewer Use Code, Section 1.0302; Title II - Pretreatment Regulations, Section 2.0604; Title III - Separate Sanitary Sewer Code, Section 3.0604; and Title IV – Combined Sewer Code, Section 4.0604.
- Section 6.3 Show Cause Hearing - Pursuant to Section 2.0604 of the Pretreatment Regulations; Section 3.0604 of Title III - Separate Sanitary Sewer Code; and Section 4.0604 of Title IV – Combined Sewer Code of the Code of Regulations of the Northeast Ohio Regional Sewer District, when a violation of Section 2.0601, Section 3.0601, or 4.0601, respectively, is determined by the District, the District may order the discharger who causes or allows conduct prohibited by Section 2.0601 or the community pursuant to Section 3.0601 or 4.0601, to show cause before the Board of Trustees or its designated Appeals Board why revocation of service, termination action and/or application of charges should not occur.
- Section 6.4 Appeals Board - Show Cause Examinations - The Board of Trustees may appoint an Appeals Board to conduct a hearing, and to hear evidence on its behalf for show cause examinations. The Appeals Board appointed for show cause examinations may be comprised in whole or in part of employees of the District. All hearings shall be conducted in accordance with Chapters 4 and 5 of these Rules of Procedure.
- Section 6.5 Notice of Hearing - Show Cause Examination - Pursuant to Section 2.0604, Section 3.0604, or 4.0604 of the Code of Regulations, a Notice of Hearing for show cause shall be served on the discharger or community by personal service or certified mail, return receipt requested, specifying the time and place of a hearing to be held by the Board of Trustees or its designated Appeals Board regarding the violation, the reasons why the enforcement action is to be taken, and the proposed enforcement action. The Notice of Hearing shall direct the discharger or community to show cause before the

Board of Trustees or its designated Appeals Board, why the proposed enforcement action should not be taken. The Notice of Hearing shall be served no less than seven (7) days before the hearing under Title II - Pretreatment Regulations and thirty (30) days before the hearing under Title III – Separate Sanitary Sewer Code or Title IV – Combined Sewer Code.

Section 6.6 Show Cause Examination Constitutes Appeal - A hearing requiring a discharger or community to show cause shall be considered an automatic appeal of the show cause charge. The charged party shall be considered the appellant automatically requesting a hearing of the Show Cause Order. Consistent with Chapter 6 of these Rules of Procedure, the Final Order of the District shall be the decision of the Board of Trustees as passed by resolution duly adopted.

Section 6.7 Failure of Party to Appear for Show Cause Hearing - If the party in any case for show cause fails to appear personally or by counsel or other authorized representative at the scheduled hearing, the Board of Trustees or Appeals Board to whom the case is assigned for decision shall prepare findings and recommendations based upon the evidence in its possession.

Section 6.8 Postponements of Show Cause Hearing - Request for postponement of a show cause hearing must be made at least seventy-two (72) hours prior to the scheduled proceeding. A single postponement shall not be unreasonably denied where just cause has been shown, and said hearing shall not be delayed longer than five (5) business days.

CHAPTER 7 – REQUESTS FOR ADJUSTMENTS

- Section 7.1 Purpose – The purpose of this Chapter is to provide Rules of Procedure to request adjustments to sewer or other fees and charges when incorrect information is identified in the District’s billing database(s). Incorrect information can be identified by third parties, account holders or District staff. All account holders are eligible for applicable adjustments to correct errors in billing if the undisputed amount of their bill is paid and current. Determinations made hereunder shall be informed but not prejudiced by determinations made by any District billing agent.
- Section 7.2 Authorization - These Rules are promulgated pursuant to the District’s Plan of Operation, Orders of the Cuyahoga Court of Common Pleas, Chapter 6119 of the Ohio Revised Code, and the Code of Regulations of the Northeast Ohio Regional Sewer District, Title I - Sewer Use Code, Section 1.0262, 1.0273, 1.0279, 1.031, 1.032, 1.0405, 1.0502, 1.0511, 1.0513, 1.0606, 1.0710, 1.0801(b), 1.0808, 1.0810, 1.0818, 1.0804, 1.0920, 1.0921, 1.0924, 1.0925, 1.0927 1.1004, 1.1007; Title II - Pretreatment Regulations, Section 2.0305, 2.0310, 2.0402. 2.0512, 2.0703; Section 3.0701(d), 3.0703 of Title III - Separate Sanitary Sewer Code; Section 4.0701(d), 4.0703 of Title IV – Combined Sewer Code; and Section 5.0204, 5.0209, 5.0227, 5.0228, 5.0402, 5.0702, 5.0704, 5.0706, 5.0712, 5.0713, 5.0716, 5.0718, and 5.801 *et seq.* of Title V – Stormwater Management Code. Determinations made hereunder shall be informed but not prejudiced by determinations made by any District billing agent.
- Section 7.3 Staff Review Process – The Board shall appoint the Directors of each relevant Department and the Customer Service Manager (hereinafter collectively referred to as Department Director) to make determinations on requests for adjustments of bills, charges, fees and fee credits authorized by Section 7.2.
- (a) Requests for adjustments shall first be reviewed by the Department Director to determine if the issue can be resolved on the basis that District staff used incorrect data, made an error in interpreting data, or if District staff incorrectly interpreted or applied any provision of the Code of Regulations applicable to the account holder’s complaint.
- Section 7.4 Review by the Department Director
- (a) Any account holder who disagrees with the calculation of the sewer charge, fee or fee credit review determination as applied to his/her account may request a staff review for an adjustment from the Department Director. Requests for staff review may be received in person, by phone, email or mail.

- (b) The Department Director will conduct an internal review of the request for adjustment and provide a written response to the account holder within thirty (30) calendar days of receipt of the notice for staff review. The account holder will be notified in writing if additional time is needed to complete the review. Any adjustments to the account holder's account will be documented in a database that tracks requests for adjustments and their outcome.
- (c) If the Department Director determines that an error has been made based upon incorrect data or in interpreting the data and requirements of any Title of the Code of Regulations, the data shall be corrected and such correction shall be documented in the database.
- (d) If appropriate, and within the sole discretion of the Department Director, the Department Director may conduct a technical review of the conditions on the premises, parcel(s) and of any other relevant factors necessary to render a decision.
- (e) The Department Director may grant the request for an adjustment, adjust the fee, fee credit or charge applicable to an account holder in conformance with the general purpose and intent of the Code of Regulations and District policies, or deny the request. All decisions of the Department Director will be in writing and sent to the billing address of the account holder.

Section 7.5

Review by Appeals Board – When review is sought of a decision by a Department Director regarding an account adjustment or billing matter reached pursuant to this Title, the following procedures shall specifically apply:

- (a) Within thirty (30) calendar days from the date on which the account holder was notified of the Director's decision, the account holder may appeal an adverse decision in writing to the Appeals Board. The decision from which the account holder is appealing must be clearly stated on the Notice of Appeal to Appeals Board Form.
- (b) The request for hearing by the Appeals Board shall state the specific reasons why the decision of the Director is alleged to be in error.
- (c) The appellant shall submit to the Appeals Board the following:
 - i. The interpretation, decision or ruling from which the appellant is requesting an appeal.
 - ii. The relevant provisions of the Code of Regulations or District policies.
 - iii. The appellant shall state where the interpretation, decision or ruling is erroneous.

- (d) The Appeals Board shall conduct a hearing to take evidence and testimony as it deems necessary to render a decision. The account holder will be notified in writing if additional time is needed to complete the review. The Appeals Board may render decisions in conformance with the general purpose and intent of the Code of Regulations and District policies. Upon completion of the hearing of evidence and submittal of briefs when applicable, the Appeals Board shall prepare written findings and recommendations for submittal to the Board of Trustees. The findings shall include the following:
 - i. A brief summary of the facts.
 - ii. Pertinent dates of the decision appealed from, including filings, hearing, etc.
 - iii. A summary of the issues involved.
 - iv. A discussion of applicable authority.
 - v. Conclusions and Recommendations.
- (e) The Appeals Board shall submit a request to the Board of Trustees which states the Appeal Board's findings and recommendations and which recommends the Board of Trustees adopt a resolution issuing a final decision on the appeal. Such request shall be made within thirty (30) days of hearing on the matter.
- (f) Any adjustments to the appellant's account will be documented in a database that tracks requests for adjustments and their outcome.

Section 7.6 Board of Trustee Action Upon Appeals Board Findings and Recommendations - When an Appeals Board has been designated and presents its findings and recommendations pursuant to Section 7.6(e) of this Title, the Board of Trustees shall, by resolution, accept the findings and recommendations, request the hearing of additional evidence, or cause another hearing be held before another Appeals Board consistent with the Code of Regulations of the Northeast Ohio Regional Sewer District. The Board of Trustees shall act in a timely manner.

Section 7.7 Final Order of the District – The decision of the Board of Trustees as passed by resolution shall be the Final Order of the District. A properly certified copy of said resolution shall be timely mailed or otherwise delivered to the parties of record, and shall be evidence of said Final Order for appeal to the Cuyahoga Court of Common Pleas. The appeal processes above shall be a condition precedent to an aggrieved account holder seeking judicial relief in a court of law.