

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
PUBLIC NOTICE

Pursuant to the provisions of to R.I. Gen. Laws Chapters 42-17.1 and 42-17.7, as amended, and consistent with the procedures set forth in the R.I. Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35, the Rhode Island Department of Environmental Management hereby gives notice of its intention to afford the public an opportunity to offer written comment and to request the scheduling of a public comment hearing at which oral and written comments may be offered concerning the Department's intention to repeal the following rules and regulations :

ADMINISTRATIVE RULES OF PRACTICE AND PROCEDURE
FOR THE ADMINISTRATIVE ADJUDICATION DIVISION
FOR ENVIRONMENTAL MATTERS
ERLID # 708

Written comments concerning the proposed repeal of the above regulations will be accepted at the Office of Legal Services, Department of Environmental Management, 235 Promenade Street, Providence, Rhode Island 02908 on or before 4:00 p.m. on September 18, 2014. A public hearing on the proposed repeal of the above regulations will be held if the Department receives requests for such a hearing from twenty-five (25) or more people, a governmental agency or subdivision, or an association having not less than twenty-five (25) members on or before 4:00 p.m. on September 18, 2014. If a public hearing is to be conducted, a public notice will be posted announcing the date, time, and place of such hearing.]

The Department has determined that small businesses should not be adversely impacted by the proposed repeal of the above regulations. The public comment period is being afforded to solicit comment on the proposed repeal of the above regulations and to allow public input from small businesses or any cities or towns, which may nevertheless believe that they may be adversely affected. Small businesses are requested to comment on the proposed repeal of the above regulations as to how such proposed action can be changed to minimize the impact on those small businesses affected.

A copy of the subject regulations will be available for examination from August 18, 2014 through September 18, 2014 by mail or at the offices of the Office of Legal Services, which is located at 235 Promenade Street, Providence, RI 02908. Electronic copies of the proposed regulations will also be available on the DEM website at the following web address:

<http://www.dem.ri.gov/programs/director/legal/pdf/aadrepeal.pdf>

Signed this 18th day of August, 2014.

Janet L. Coit, Director

Rhode Island Department of Environmental Management
Administrative Adjudication Division
ADMINISTRATIVE RULES OF PRACTICE AND PROCEDURE
FOR THE ADMINISTRATIVE ADJUDICATION DIVISION
FOR ENVIRONMENTAL MATTERS
ERLID # 708

Summary of Proposed Action

The Administrative Adjudication Division promulgated ERLID #6587 which substituted the *ADMINISTRATIVE RULES OF PRACTICE AND PROCEDURE FOR THE ADMINISTRATIVE ADJUDICATION DIVISION FOR ENVIRONMENTAL MATTERS* for the subject regulations which offered the earlier version of the *ADMINISTRATIVE RULES OF PRACTICE AND PROCEDURE FOR THE ADMINISTRATIVE ADJUDICATION DIVISION FOR ENVIRONMENTAL MATTERS* under the Administrative Adjudication Division *Conducted* its hearings and other proceedings.

On the basis, of the above, the subject regulations are no longer necessary and should be repealed and eliminated.

**ADMINISTRATIVE RULES OF PRACTICE AND PROCEDURE
FOR THE ADMINISTRATIVE ADJUDICATION DIVISION
FOR ENVIRONMENTAL MATTERS**

SECTION

1.0 INTRODUCTION:

These rules are adopted pursuant to Chapters 42-35, 42-92 and Chapter 42-17.7 of the Rhode Island General Laws, specifically Sections 42-35-2(a)2 and 42-35-3 and 42-17.7-3(2) for the purpose of assisting the carrying out of the functions, powers and duties assigned to the Department of Environmental Management and the Administrative Adjudication Division of the Department of Environmental Management in Chapter 42-17.1 of the R.I.G.L. specifically, Sections §42-17.1-2, 42-17.7 and any other provisions of the General Laws conferring jurisdiction to the Director of the Department and/or the Administrative Adjudication Division, whether in effect prior to or subsequent to the adoption of these Regulations. Issues not addressed in these rules or for which a party seeks clarity are to be considered in light of Chapters 42-35 and 42-17.7. These rules shall become effective twenty (20) days after filing and will govern only adjudicatory proceedings commenced after the effective date.

2.00 FORMAL RULES

a) Scope of Rules

These rules shall govern the conduct of Adjudicatory Proceedings within the jurisdiction of the Administrative Adjudication Division of the Department of Environmental Management.

b) Construction of Rules

These rules shall be construed to further the prompt and just determination of every proceeding and in conformity with the Rhode Island Administrative Procedures Act.

c) Definitions

AAD RULES OF PRACTICE AND PROCEDURE
PAGE 2

The following words when used in the rules, except as otherwise required by the context, shall have the following meaning:

1. ~~1. "Adjudicatory Proceeding". A proceeding before the Administrative Adjudication Division for Environmental Matters in which the legal rights, duties or privileges of specifically named persons are determined after opportunity for an agency hearing.~~
2. ~~2. "Administrative Proceeding". A proceeding before the Department of Environmental Management Administrative Adjudication Division which is adjudicatory in nature.~~
3. ~~3. "Agency". Any department (other than DEM), board, commission, council, division or authority within the executive branch of state government.~~
4. ~~4. "Authorized Representatives". An attorney, legal guardian or other person authorized by a Party to represent him/her in an Administrative Proceeding.~~
5. ~~5. "Certification". A statement wherein a party attests that they have performed the requirements of Rule 5.00(f).~~
6. ~~6. "Clerk". The administrative clerk of the Department of Environmental Management Division of Administrative Adjudication for Environmental Matters appointed by the Governor with the advise and consent of the senate.~~
7. ~~7. "Commenced". An administrative hearing has commenced when the notice of the hearing is deposited in the mail, or on the date of publication when required, whichever event occurs first.~~
8. ~~8. "Department". The Department of Environmental Management as created in Section 42-17.1 of the R.I.G.L.~~

AAD RULES OF PRACTICE AND PROCEDURE

PAGE 3

9. ~~"Division". A subsection of the Department with authority to carry out statutorily designated departmental functions.~~
10. ~~"Director". The individual appointed by the executive as the Director of the Department of Environmental Management or his/her designee.~~
11. ~~"Administrative Hearing Officer". The individual(s) authorized by law or duly designated by the Chief Hearing Officer to conduct Adjudicatory Proceedings.~~
(AHO)
12. ~~"Papers". All written communications submitted to the Director or the Administrative Adjudication Division in an Administrative Proceeding, including but not limited to, motions, pleadings, documents and all other correspondence.~~
13. ~~"Party". The specifically named Person(s) whose legal rights, duties or privileges are being determined in an adjudicatory proceeding; the division and any other person who has been granted the right to intervene.~~
14. ~~"Person". Means any individual, partnership, corporation, association, governmental subdivision, or public or private organization.~~
15. ~~"Petitioner". An individual or legal entity(ies) who initiates an Adjudicatory Proceeding.~~
16. ~~"Regular Business Hours". Papers will be deemed filed during regular business hours if received during the hours of 8:30 a.m. to 4:00 p.m. Monday through Friday. The department's date stamp shall be presumptive of the actual date and the time of filing. Filing by telecopier or facsimile is prohibited.~~
17. ~~"Respondent". The Party who challenges an order of the department, or any other parties not bearing the burden of proof.~~

AAD RULES OF PRACTICE AND PROCEDURE

PAGE 4

3.00 Jurisdiction:

Pursuant to Chapter 17.7 of Title 42 the Administrative Adjudication Division for Environmental Matters has jurisdiction pursuant to R.I.G.L. § 42-17.7-2, over all contested enforcement proceedings, all contested licensing proceedings and all adjudicatory proceedings of the Department of Environmental Management.

4.00 Representation:

- a) ~~Appearance.~~ The division and the hearing officer shall inform an individual of his/her right to be represented by legal counsel in an adjudicatory proceeding.
- b) ~~Representative/Attorney Unavailability.~~
 - 1. ~~The hearing officer at his/her sole discretion shall determine when a valid scheduling conflict exists which requires a continuance of the hearing.~~
 - 2. ~~A hearing date shall be continued upon presentation of a signed court excuse by an attorney of record covering the date in question.~~
 - 3. ~~A hearing shall be continued upon notification to the hearing officer that an attorney of record is otherwise engaged on the date of the hearing in a state or federal court. The hearing officer shall be informed of the nature of the conflicting action, the case name and the court in which the attorney's presence is mandated.~~
 - 4. ~~Organizations who are parties to an administrative hearing and who are not represented by legal counsel shall designate a spokesperson to participate on their behalf in the hearing. Officers of the organization shall serve as alternate spokespersons. Should the spokesperson be unavailable on a scheduled hearing date, they shall notify the hearing officer of the specific reason for their unavailability.~~
 - 5. ~~Spokespersons for parties not represented by counsel, who have a conflict with hearing dates, shall be required to inform the hearing officer of the specific nature of the conflict and the reason for his/her unavailability.~~
 - 6. ~~Should the hearing officer grant a continuance, it shall be the responsibility of the party requesting the continuance to immediately notify all other parties of record and their representatives and pay any costs that may be associated with the cancellation of the hearing. It shall also be the responsibility of the requesting~~

AAD RULES OF PRACTICE AND PROCEDURE

PAGE 5

party to contact an individual at the site of the hearing and arrange for a cancellation notice to be posted at the entrance to the facility, said notice to include the date and time of the next scheduled hearing.

7. — It shall be the further responsibility of the party requesting the continuance to notify the hearing officer of any anticipated scheduling conflict as soon as possible.

c) "Ex Parte Communications"

1. — Except as provided below, no person who is a party to, or a participant in, any proceeding before the Director, including his counsel, employee, agent or any other person acting on his behalf, shall submit ex parte, off the record communications to the Director and/or the Administrative Hearing Officer regarding or in any way related to the proceeding; (2) The above prohibition does not apply to a communication from a party or participant or his counsel, agent or other person acting on his behalf, if the communication relates solely to general matters of procedure or scheduling.
2. — Notwithstanding the provisions of § 42-35-13, the director shall have no communication directly or indirectly, with a hearing officer relating to any issue of fact or of law on any matter then pending before said hearing officer.

5.00 Time:

- a) — Timely filing. Papers required or permitted to be filed under these regulations, or any provision of the applicable law must be filed with the clerk at the Administrative Adjudication Division office within the time limits for such filing as are set by Department regulation, or the hearing officer, or other provision of law.

Papers filed in the following manner shall be deemed filed as set forth herein:

1. — Hand delivery: Papers hand delivered during regular business hours shall be deemed filed on the date of hand delivery. Papers delivered by hand at times other than during regular business hours shall be deemed filed on the next regular business day when stamped by the Clerk of the Administrative Adjudication Division.
2. — Mailing: Papers deposited in the U.S. Mail shall be deemed filed on the date stamped by the Clerk of the Administrative Adjudication Division. In the event that no date stamp by the Clerk appears, papers shall be deemed filed on the date so postmarked. All papers shall show the date received by Administrative Adjudication Division.

AAD RULES OF PRACTICE AND PROCEDURE

PAGE 6

3. ~~Telecopying: Papers transmitted by facsimile or telecopier shall not be accepted for filing.~~

- b) ~~Computation of Time. Unless otherwise specifically provided by law or these rules, computation of any time period referred to in these rules shall begin with the first day following the act which initiates the running of the time period. The last day of the time period so computed is to be included unless it is a Saturday, Sunday, or legal holiday or any other day on which the Administrative Adjudication Division is closed, in which event the period shall run until the end of the regular business hours of the next following business day. When the time period is less than seven (7) days, intervening days when the Administrative Adjudication Division is closed shall be excluded in the computation.~~
- c) ~~Extension of Time. It shall be within the discretion of the AHO, for good cause shown, to extend any time limit contained in these rules, unless precluded by statute. All requests for extensions of time shall be made by motion before the expiration of the original or previously extended time period.~~

6.00 Filings Generally:

- a) ~~Title. Papers filed with the Administrative Adjudication Division shall state the division and the file number, if any, the title of the proceeding, and the name of the person on whose behalf the filing is made.~~
- b) ~~Signatures. Papers filed with the Administrative Adjudication Division shall be signed and dated by the party on whose behalf the filing is made or by the party's authorized representative. This signature constitutes a certification that; the individual has read the document, knows the content thereof, and to the best of his/her knowledge, that such statements are true, that it is not interposed for delay, and that if the document has been~~

AAD RULES OF PRACTICE AND PROCEDURE

PAGE 7

- ~~signed by an authorized representative he/she has full power and authority to do so.~~
- ~~Failure to comply may be cause for sanctions.~~
- e) — Designation of Divisions. Any Division as a party to an Administrative Proceeding shall be designated by its name and not by the name(s) of particular individual(s) holding office, and if while the Administrative Proceeding is pending, a change occurs in an individual(s) holding office, the proceeding shall not abate, and no substitution of parties shall be necessary.
- d) — Form.
1. — Size and Printing Requirements. All papers, except those submittals and documents which are kept in a larger format during the ordinary course of a party's business shall be submitted on a 8 1/2" x 11" inch paper. All papers shall be hand printed or typewritten.
 2. — Format. The Clerk of the Administrative Adjudication Division may provide forms to be used by the parties.
- e) — Copies. The original of all papers shall be filed with the Clerk together with such number of additional copies as the Administrative Adjudication Division or AHO may require.
- f) — Service. Simultaneously with the filing of any and all papers with the Administrative Adjudication Division, the party filing such papers shall send a copy thereof to all other parties, or their authorized representative to the proceedings, by delivery in hand, or by U.S. Mail, postage prepaid, properly addressed.

7.00 Commencement of Formal Adjudicatory Proceedings:

- a) — Request for Hearing. Any person having a right to request an adjudicatory hearing shall follow the procedures and timelines set forth in R.I.G.L. § 42-17.7-9 and other applicable statutes and regulations. Such requests shall be filed directly with the Administrative Adjudication Division for Environmental Matters.

AAD RULES OF PRACTICE AND PROCEDURE
PAGE 8

- b) ~~Content of Hearing Request.~~ The request for a hearing shall state clearly and concisely the specific issues which are in dispute, and the facts in support thereof, the relief sought, if any, the license or permit sought or involved, and any additional information required by applicable statutes and regulations.
- c) ~~Amendments and Withdrawal of Pleadings.~~ The Administrative Adjudication Division or AHO upon his/her own initiative or upon the motion of any party may, in his/her discretion, order any party to file an Answer or other pleading, or to reply to any pleading and further permit either party to amend its pleadings upon a condition just to all parties.

8.00 Motions.

a) General Requirements.

1. ~~Motion Practice.~~ A party may request of the Administrative Adjudication Division or AHO any order or action not inconsistent with law or these regulations. Such a request shall be called a motion. The types of motions made shall be those which are permissible under these Rules and the R.I. Superior Court Civil Rules of Procedure.
2. ~~Presentation/Objection to Motions.~~ Motions may be made in writing at any time before, or after the commencement of a hearing, or they may be made orally during a hearing. Each motion shall set forth the grounds for the desired order or action and state whether oral argument is requested. Within seven (7) days after a written motion is filed with Administrative Adjudication Division or AHO, a party opposing said motion must file a written objection to the allowance of the motion and shall, if desired, request oral argument. All motions and objections shall be accompanied by a written memorandum, specifying the legal basis and support of the party's position. Failure to file a written objection within the prescribed time period, will be deemed a waiver of the objection.
3. ~~Action on Motion.~~ The AHO shall, if he/she determines oral argument on the motion is warranted, give at least three (3) days notice of the time and place for such argument. The AHO may grant requests for continuances for good cause shown. The AHO may rule on a motion without holding a hearing if delay would seriously injure a party, or if the motion involves a matter as to which presentation of testimony or oral argument would not advance the AHO's understanding of the issues involved, or if disposition without a hearing would best serve the public interest. The AHO may act on a motion when all parties have responded thereto,

AAD RULES OF PRACTICE AND PROCEDURE
PAGE 9

~~or the deadline for response has passed, whichever comes first.~~

4. ~~Factual Basis. The parties may offer at a hearing on the motions only such evidence as is relevant to the particular motion in accordance with R.I.G.L. § 42-35-10.~~

9.00 Special Requests:

- a) ~~Withdrawals. A petitioner at any time may withdraw his request for hearing, but the withdrawal must be submitted in writing to the Administrative Adjudication Division or AHO and be signed by the petitioner or his authorized representative and shall be deemed a withdrawal with prejudice.~~
- b) ~~Emergency Scheduling. The Administrative Adjudication Division's Chief Hearing Officer by request of a party, may for good cause order an accelerated hearing. Any request for an order accelerating the scheduling of a hearing shall be in writing addressed to the Chief Hearing Officer and shall state the grounds therefore.~~
- c) ~~Other Requests. A request may be made by a party, or his/her authorized representative, in writing at any time or orally during a hearing for rulings or relief, and may after notice to the other parties, be ruled upon by the AHO without a hearing.~~

10.00 Powers and Duties of Clerk:

~~The Clerk shall have the custody of the seal of the Administrative Adjudication Division, have general charge of the office, keep a full record of proceedings, file and preserve all documents and papers entrusted to his or her care, prepare such papers and notices as may be required by the director or the hearing officers, and perform such other duties as may be prescribed. Such clerk shall have the power to issue subpoenas for witnesses and documents and to administer oaths in all cases before any hearing officer or pertaining to the duties of his or her office.~~

AAD RULES OF PRACTICE AND PROCEDURE
PAGE 10

11.00 Permits/License:

- a) ~~It shall be the applicant's responsibility to notify the Administrative Adjudication Division and AHO of all permits required for the construction and/or operation of the facility or project, and the status of each required permit.~~
- b) ~~When more than one permit from DEM is required for a particular project/facility to proceed, the AHO, sua sponte or by motion of a party may, in his or her discretion, may consolidate the administrative adjudicatory proceedings.~~
- c) ~~After hearings have been consolidated, by motion or order of the AHO, the matter may not be noticed or heard until all applications are deemed complete by the Division(s) responsible for the review, and review by the Division(s) is complete. The scheduling of a consolidated hearing shall be determined by the Chief Hearing Officer.~~
- d) ~~Amendments:~~
1. ~~Amendments Initiated by Applicant:~~

~~Once a draft permit or application has gone out to public notice, and the hearing has commenced as provided for in these Rules, if the applicant seeks to amend such draft permit or application, it must make such a motion before the hearing officer. If such a motion is granted, the hearing officer in his/her discretion, shall suspend the hearings for a period of time sufficient to allow the other parties adequate time to review and prepare their case in response to the amendments.~~
 2. ~~Recommended Conditions of Approval:~~

~~Notwithstanding the foregoing, if the amendment is a recommended condition of approval of the permit/license made by the Division and has been clearly set forth in the notice of hearing then the applicant may amend its application to adopt the condition without permission of the hearing officer and without suspension of the proceedings.~~
 3. ~~If the facts upon which an application or draft permit was approved or denied are materially and substantially modified, after it has gone out to public notice, the AHO in his/her discretion, may elect to treat the modified permit or application as a new application.~~

AAD RULES OF PRACTICE AND PROCEDURE

PAGE 11

12.00 Discovery

- a) ~~General.~~ Parties to an Administrative Proceeding are encouraged to engage in voluntary discovery as practiced in the Superior Courts of this State.
- b) ~~Time for Filing.~~ Request for discovery may be made any time after a request for a hearing has been filed and shall be made in accordance with Section 8.00 of these rules. The AHO, in his/her discretion may establish limits on such discovery, including, but not limited to, when discovery shall commence and close.
- c) ~~Review of Division's Files.~~ The Division must make all discoverable records available for review by the parties at a specified time and provide the parties with an opportunity to copy any discoverable records. However, the divisions are not required to send copies of their records and documents to the parties upon their request.
- d) ~~Departmental Costs.~~ A division shall be entitled to a fee per page for copies, and such other costs as set forth in R.I.G.L. § 38-2-1, et seq.:

13.00 Intervention and Participation:

- a) ~~Initiation.~~ Except as otherwise specifically provided by these Rules, any person not initially a party who wishes to intervene in, or participate in, an Adjudicatory Proceeding shall file a written petition to intervene or participate with the AHO prior to the prehearing conference in the proceeding, and must be present at the prehearing conference.
- b) ~~Form and Content.~~ The petition shall state the name and address of the person submitting the petition. It shall specifically describe the injury in fact alleged by the petitioner and set forth how the petitioner(s) interests differ from, and are not adequately represented by, existing parties. The petition must identify the areas in dispute, specifically citing each

AAD RULES OF PRACTICE AND PROCEDURE

PAGE 12

~~regulation where applicable.~~

- e) ~~—— Filing the Petition. Except as otherwise specifically provided by these Rules or unless an applicable statute requires otherwise, the petition shall be filed with the AHO not later than seven (7) days prior to the date set for the initial prehearing conference. Petitions filed may be granted at the discretion of the AHO, provided that the parties are given notice and opportunity to object.~~
- d) ~~—— Rights of Intervenors. Intervenors shall be persons who have demonstrated an injury in fact which will result from a challenged action or application and whose interests are not adequately represented by other parties to the hearing. Any person permitted to intervene shall be a full party to the hearing. Every petition to intervene shall be treated in the alternative as a petition to participate.~~
- e) ~~—— Rights to Participate. Any person who wishes to participate in a proceeding shall be permitted to participate. Permission to participate shall be limited to the right to file a brief. Permission to participate, unless otherwise stated, shall not be deemed to constitute an expression that the person allowed to participate is a party in interest who may be aggrieved by any final decision. A person who petitioned to intervene and who was allowed to participate, may participate without waiving its rights to judicial review of the denial of said petition to intervene.~~

14.00 Public Participation:

- a) ~~General. In general, any person who is not a party to the proceeding may, in the discretion of the Hearing Officer, be permitted to make oral or written statements of his/her position on the issues, attend prehearing conferences, and submit written or oral questions of witnesses through the Hearing Officer. The Hearing Officer shall set such limits on public~~

AAD RULES OF PRACTICE AND PROCEDURE
PAGE 13

- participation as he/she deems necessary to ensure that the hearing is held in an orderly and expeditious fashion.
- b) — Rules of Evidence. The Rules of Evidence shall apply to evidence introduced during public participation to the same extent the rules apply to evidence admitted by other parties. Testimony and papers submitted by members of the public which do not comport with the evidentiary requirements of 42-35-10 shall be accepted, made part of the record and marked as public comment.
- c) — Hearing Hours. Whenever possible hearings shall be held during regular business hours. The AHO may, in his/her discretion, schedule an evening hearing if he/she deems it necessary to provide adequate opportunity for public comment or public questioning of witnesses.

15.00 Hearings and Conferences:

A) — Prehearing Conference

1. — The Adjudicatory Hearing Officer shall require the parties to appear for a prehearing conference at least seven (7) days prior to the scheduled commencement of the hearing to consider:
 - a) — The simplification or clarification of the issues;
 - b) — The possibility of obtaining stipulations, admissions, agreements on documents, understanding on matters already of record, or similar agreement which will avoid unnecessary proof;
 - c) — The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;
 - d) — The possibility of agreement disposing of all or any of the issues in dispute; and
 - e) — Such other matters as may aid in the disposition of the Adjudicatory

AAD RULES OF PRACTICE AND PROCEDURE
PAGE 14

~~Proceeding.~~

2. ~~All parties shall prepare and exchange the following prior to the initial prehearing conference:~~

a) ~~Names and addresses of prospective witnesses including proposed areas of expertise for expert witnesses.~~

b) ~~A brief summary of proposed testimony.~~

c) ~~A time estimate of each witnesses' direct testimony.~~

d) ~~Curricula vitae (resumes) of all prospective expert witnesses.~~

3. ~~The parties shall meet prior to the initial prehearing conference to exchange and consider all documentary exhibits. As to those admissible without objection, counsel shall affix sequential numbers and shall prepare a descriptive list in numerical order of all such exhibits. The parties shall also consider the qualification of expert witnesses and as to those who may be qualified without objection, counsel shall prepare a list of such qualified persons and the precise area of agreed qualification.~~

4. ~~The parties shall submit the following to the Hearing Officer at the commencement of the prehearing conference:~~

a) ~~Any stipulations of fact which have been agreed upon in advance.~~

b) ~~A concise summary of each party's position.~~

c) ~~The list of exhibits and expert witnesses prepared in accordance with two (2) above. Every proposed exhibit to which objection shall be made at hearing shall be marked for identification, and a schedule of those exhibits shall be prepared, along with summary notations of anticipated objections by a party, e.g. "privilege", "authenticity", "hearsay", etc.~~

~~A party shall not be permitted, except, in the discretion of the hearing officer to introduce into evidence in said party's direct case exhibits which are not filed in accordance with the order.~~

AAD RULES OF PRACTICE AND PROCEDURE
PAGE 15

- ~~d) — A list of pending motions which require action prior to the hearing.~~
- ~~e) — The names and address of witnesses each party intends to produce in its direct case.~~

~~The scheduling of a Prehearing Conference shall be solely within the discretion of the Chief Hearing Officer and/or Administrative Hearing Officer.~~

- ~~b) — Submission Without a Hearing. Any party may elect to waive a hearing and to submit its case upon the record. Submission of a case without a hearing does not relieve the parties from the necessity of providing the facts supporting their burdens, allegations or defenses.~~
- ~~c) — Hearings, When and Where Held. Hearings will be held at the location designated by the Administrative Adjudication Division. Any party may, by motion, request that a hearing be held at some place other than that designated, due to disability or infirmity of any party or witness, or where justice and equity would be best served. Upon motion of any party and upon good cause shown, the Chief Hearing Officer may in his/her discretion advance a case for hearing.~~
- ~~d) — Notice of Hearings. The notice of hearing must include the date, time and place of the hearing and prehearing conference and a statement of the petitioner's right to have an authorized representative present. The notice shall provide sufficient notice of the issues involved so that the parties may have a reasonable opportunity to prepare and present evidence and argument. The notice of hearing must set forth the requirements for intervention as outlined in Rule 13.00.~~

~~If the issues cannot be fully stated in advance of the hearing, they shall be fully stated as soon as practicable. In all cases of delayed statement, or where subsequent amendment of the issues is necessary, sufficient time shall be allowed at the discretion of the AHO after full statement or~~

AAD RULES OF PRACTICE AND PROCEDURE
PAGE 16

amendment to afford all parties reasonable opportunity to prepare and present evidence and argument respecting the issues.

e) ~~Conduct of Hearing:~~

1. ~~General.~~ Hearings shall be as informal as may be reasonable and appropriate under the circumstances.
2. ~~Decorum.~~ All parties, authorized representatives, witnesses and other persons present at a hearing shall conduct themselves in a manner consistent with the standards of decorum commonly observed in any court. Where such decorum is not observed, the AHO may take appropriate action including adjournment, if necessary.
3. ~~Duties of Hearing Officer.~~ The AHO shall conduct the hearing, make all decisions regarding admission or exclusion of evidence or any other procedural matters, and administer an oath or affirmation to all witnesses. The hearing officer, shall submit a recommended Decision and Order to the Director after due consideration of the hearing record.

f) ~~Order of Proceedings~~

1. ~~Opening.~~ Except as otherwise required by law, it shall be the usual practice that in proceedings initiated by an application for a license or permit, the party bearing the burden of proof shall open. In hearings resulting from Notices of Violations the Division conducting the investigation or issuing the Notice shall open.
2. ~~Discretion of AHO.~~ Where evidence is peculiarly within the knowledge of one party, or in cases in which Adjudicatory Proceedings have been consolidated, or where there are multiple parties, the Administrative Hearing Officer may direct who shall open and shall designate the order of presentation.

g) ~~Presentation:~~

1. ~~Rights of Parties.~~ All parties shall have the right to present evidence, crossexamine witnesses, make objections, bring motions and make oral arguments.

Whenever appropriate, the Administrative Hearing Officer shall permit further examination as he or she deems necessary.

h) ~~Witnesses and Evidence:~~

AAD RULES OF PRACTICE AND PROCEDURE
PAGE 17

1. ~~Oath.~~ A witness' testimony shall be under oath or affirmation.
 2. ~~Rules of Evidence.~~ In contested cases, the Rules of Evidence set forth in R.I.G.L. § 42-35-10, as amended, shall govern.
 3. ~~Offer of Proof.~~ An offer of proof made in connection with an objection taken to a ruling of the Hearing Officer rejecting or excluding proffered testimony shall consist of a statement and substance of the evidence which the party contends would be adduced by such testimony, and if the excluded evidence consists of evidence in documentary or written form, or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.
 4. ~~Written Testimony.~~ The hearing officer may order the parties to file, prior to the commencement of any hearing, the testimony of any or all of their respective witnesses and to submit such testimony to the hearing officer and the opposing party or the opposing counsel by such date as the hearing officer shall determine. The witness shall testify under oath, and all of such testimony shall be in a question and answer format. Save for good cause shown, said testimony shall be the direct examination of said witness, provided, however, that said witness shall be available at the hearing for cross-examination by the opposing party or opposing counsel.
- i) ~~Evidence Included.~~ All evidence, including any records, investigative reports, documents, and stipulations must be offered and made a part of the record. Documentary evidence may be received in evidence in the form of copies or excerpts.
- j) ~~Administrative Notice.~~ The AHO may take notice of any fact which may be judicially noticed by the courts of this State, or of general, technical or scientific facts within the Hearing Officer's specialized knowledge, only if the parties are notified of the material so noticed and are given an opportunity to contest the facts so noticed. Notice may also be taken of properly adopted rules and regulations adopted by the agencies of this State or Federal agencies.
- k) ~~Subpoenas.~~ In all cases of every nature before the Administrative Adjudication Division the Clerk and/or AHOs may issue, and the AHOs may vacate, and modify subpoenas requiring the attendance and testimony of witnesses and to compel the production and

AAD RULES OF PRACTICE AND PROCEDURE
PAGE 18

~~examination of papers, books, accounts, documents, records, certificates and other legal evidence that may be necessary or proper for the determination and decision of any question before or the discharge of any duty required by law of the said hearing officer.~~

- ~~1. All subpoenas and subpoena duces tecum shall be signed by a hearing officer or the clerk and shall be served as subpoenas are served in civil cases in the superior court.~~
- ~~2. Motion to Vacate or Modify. Any person to whom a subpoena is directed may, within a five (5) day period, file in writing a motion that the subpoena be vacated or modified. The AHO may grant such motion in whole, or in part, upon a finding that the testimony, or the evidence whose production is requested, does not relate with reasonable directness to any matter in question, or upon a finding that a subpoena for the attendance of a witness or the production of evidence is unreasonable or oppressive, or has not been issued a reasonable period in advance of the time when the evidence is requested or for other good and sufficient cause.~~
- ~~3. Costs. Witnesses subpoenaed under these Rules shall be entitled to the same fees for attendance and travel as are provided for witnesses in civil cases in the superior court.~~
- ~~4. Contumacy. In cases of contumacy or refusal to obey the command of the subpoena so issued, the superior court shall have jurisdiction in accordance with R.I.G.L. § 42-17.7-8.~~

~~1. Transcript of Proceedings.~~

- ~~1. Recording and Transcripts.
Testimony and argument at the hearing shall be either recorded electronically or stenographically. Transcripts of the proceedings shall be supplied to any party at his/her own expense upon request to the stenographer.~~
- ~~2. Correction of Transcript.
Corrections in the official transcript may be made only to make it conform to the evidence presented at the hearing. Transcript corrections, agreed to by opposing parties, may be incorporated into the record, if and when approved by the AHO, at any time during the hearing, or after the close of evidence. The AHO may call for the submission of proposed corrections and may make disposition thereof at appropriate times during the course of the proceeding.~~

AAD RULES OF PRACTICE AND PROCEDURE
PAGE 19

- m) ~~Contents of Records.~~ The record shall, at all reasonable times, be available for inspection by the parties.
- n) ~~Evidence after Completion.~~ No evidence shall be admitted after completion of a hearing or after a case submitted on the record, unless otherwise ordered by the AHO or Director.
- o) ~~Weight of Evidence.~~ The weight to be attached to any evidence in the record will rest within the sound discretion of the AHO. The AHO or Director may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the administrative hearing.
- p) ~~Exceptions.~~ Formal exceptions to rulings on evidence and procedure are unnecessary. It is sufficient that a party, at the time that a ruling is made or sought, makes known his or her objection to such action and his or her grounds therefore, provided that, if a party has no opportunity to object to a ruling at the time it is made, or to request a particular ruling at an appropriate time, such party within three (3) days of notification of action taken or refused, shall state his objection and his grounds therefor.

16.00 Decisions:

- a) ~~Recommended Decisions.~~ All decisions rendered by an AHO at the conclusion of a hearing shall be in writing and shall comply with the requirements of R.I.G.L. § 42-17-7-6 and § 42-35-12. The decision is a recommendation to the Director which shall be made public when submitted to the Director for review.
- b) ~~Final Decisions.~~ Every final decision shall be in writing and shall be signed by the Director. The Director may in his/her discretion, pursuant to R.I.G.L. § 42-17-7-6, adopt, modify or reject such findings of fact and/or conclusions of law provided, however, that any such modification or rejection of the proposed findings of fact or conclusions of law

AAD RULES OF PRACTICE AND PROCEDURE

PAGE 20

- ~~shall be in writing and shall state the rationale therefore. Every final Decision shall contain a determination of every issue of fact or law necessary to the Decision in accordance with § 42-35-12.~~
- e) ~~—— Withdrawal of Exhibits. After a Decision has become final and all appeal periods have lapsed the AHO may in his/her discretion, upon motion, permit the withdrawal of original exhibits or any part thereof by the party or person entitled thereto.~~
- d) ~~—— Presiding Officer Unavailable. When an AHO becomes incapacitated or unavailable to complete a hearing and/or render proposed finding of fact and conclusions of law, the hearings shall be completed and/or a recommended Decision shall be rendered by a substitute AHO appointed by the Chief Hearing Officer upon the record as herein defined.~~

17.00 Consent Order

- a) ~~—— Negotiations.~~
- ~~At any time prior to rendering a final decision, parties to a hearing may attempt to dispose of a matter by entering into a consent order. A joint request for a stay of a hearing for this purpose shall be forwarded to the hearing officer and shall indicate the present status of negotiations. If an agreement is not reached within the time period for which the stay was approved, a hearing shall be promptly rescheduled by the AHO.~~
- b) ~~—— Contents of Agreement.~~
- ~~Every agreement shall contain, in addition to an appropriate order, an admission of all jurisdictional facts and express waivers of further procedural steps before the Hearing Officer and of the right to appeal and shall also state that such agreement is enforceable as an order of the Director in accordance with procedures prescribed by law. In addition,~~

AAD RULES OF PRACTICE AND PROCEDURE
PAGE 21

~~the agreement may contain a statement that the signing thereof is for settlement purposes only and does not constitute an admission by any party that the law or regulations have been violated as alleged in the Notice of Violations.~~

~~c) — Disposition of Proposed Agreement.~~

~~Upon receiving such agreement, the hearing officer may:~~

- ~~1. — Accept it and issue the order agreed upon; except that no agreement shall be Accepted unless consistent with the provisions of R.I.G.L. § 42-17.1-2 (s)(1).~~
- ~~2. — Reject it and reschedule a hearing or;~~
- ~~3. — Take such other action as he or she deems appropriate.~~

~~The provision of this Rule shall not preclude settlement of the proceedings in any other manner.~~

18.00 Licensing or Permitting Procedures

~~a) — Persons denied a license or permit from the Division may request an adjudicatory hearing as provided for by statute.~~

~~b) — Solid Waste Management Facilities~~

- ~~1. — Appeals of issuance of a license or final denial of a solid waste management facility license must be filed in writing within ten (10) days of issuance with the Administrative Adjudication Division for Environmental Matters.~~
- ~~2. — Appeals shall be limited to the applicant; any person who provided substantive comment during the public comment period as indicated by the Director in his/her decision; and any person who shall demonstrate good cause for failure to participate and who demonstrates that his or her interest shall be substantially impacted if prohibited from appearance in the appeal.~~
- ~~3. — Appeals shall be in writing and shall contain precise statements of the issues presented on appeal including statutory and regulatory citations and shall indicate the specific parts of the decision of the director which are challenged.~~
- ~~4. — Appeals shall be limited to those issues raised by the parties in the written~~

AAD RULES OF PRACTICE AND PROCEDURE
PAGE 22

~~appeal filed with the Administrative Adjudication Division provided however, that upon good cause shown, the Hearing Officer shall allow additional issues to be raised.~~

- ~~5. — Hearings on appeals to the Administrative Adjudication Division are evidentiary hearings only.~~
- ~~6. — The Hearing Officer shall determine and apportion to the applicant the actual costs of the appeal process exclusive of attorneys fees.~~
- ~~c) — Notice of Adjudicatory hearing shall not issue until a denial or partial denial by the Division has been issued and an adjudicatory hearing has been requested of the Administrative Adjudication Division.~~
- ~~d) — Hazardous Waste Management Act Permits~~
 - ~~1. — Appeals of issuance of a permit or final denial of a Hazardous Waste Management Act permit must be filed in writing within thirty (30) days of issuance with the Administrative Adjudication Division for Environmental Matters. Petitions to intervene must likewise be filed within thirty (30) days of issuance.~~
 - ~~2. — Appeals/Petitions to Intervene shall be limited to the applicant and any person/entity who demonstrates an injury in fact which will result from the challenged action or application and whose interests are not adequately represented by existing parties to the hearing.~~
 - ~~3. — Appeals/Petitions to Intervene shall be in writing and shall contain precise Statements of the issues presented on appeal including statutory and regulatory citations and shall indicate the specific parts of the decision of the director which are challenged.~~
 - ~~4. — Appeals/Petitions to Intervene shall be limited to those issues raised by the parties in the written appeal/petition, filed with the Administrative Adjudication Division provided however, that upon good cause shown, the Hearing Officer shall allow additional issues to be raised.~~
 - ~~5. — Hearings on appeal to the Administrative Adjudication Division are evidentiary hearings only.~~

19.00 Filing for Recovery of Litigation Expenses

- a) Purpose

AAD RULES OF PRACTICE AND PROCEDURE
PAGE 23

~~The purpose of this rule is to carry out the statutory requirements contained in the Equal Access to Justice Act, Chapter 42-92 of the Rhode Island General Laws (R.I.G.L.) which provides for the award of reasonable litigation expenses to prevailing parties in adjudicatory proceedings conducted by state agencies.~~

~~b) — Filing Procedure~~

~~Within thirty (30) days of the conclusion of an adjudicatory proceeding of the Department relating to an enforcement action or order, or to the revocation or suspension of a license or permit, or to any other adjudicatory proceeding as defined in R.I.G.L. § 42-92-2, A Respondent may submit a claim to the Hearing Officer in the proceeding for litigation expenses pursuant to Chapter 42-92 of the R.I.G.L. For purposes of this section, the adjudicatory proceedings are deemed to be concluded on the date a final decision is issued pursuant to Rule 16.00 or on the date that a Consent Order is accepted by the Hearing Officer pursuant to Rule 17.00. The claim for litigation expenses shall conform to the general filing requirements of Rule 6.00 and shall contain a summary of the legal and factual basis for filing the claim.~~

~~c) — Supporting Affidavits and Documentary Evidence~~

~~The Petitioner shall submit with his or her claim for litigation expenses, affidavits and documentary evidence presenting the legal and factual basis by which the Petitioner claims he or she is entitled to an award of litigation expenses, including facts establishing:~~

- ~~1. — That the Petitioner is a party as defined in R.I.G.L. § 42-92-2(a).~~
- ~~2. — That the Petitioner has prevailed against the Department in the underlying adjudicatory proceeding.~~
- ~~3. — That the Department was not charged by statute with investigating a complaint which led to the underlying adjudicatory proceeding.~~

AAD RULES OF PRACTICE AND PROCEDURE
PAGE 24

4. ~~The amount of reasonable litigation expenses as defined in R.I.G.L. § 42-92-2(c).~~

d) ~~Department's Answer~~

~~The Division shall provide a written answer to the claim for litigation expenses to the Hearing Officer within twenty (20) days of receipt of the claim. Such answer may include affidavits and documentary evidence supporting its position and other evidence in support of the position that the Department was substantially justified in its actions.~~

e) ~~Evidentiary Hearing~~

~~Within ten (10) days of the filing of the Division's answer with the Hearing Officer, either party may move for an evidentiary hearing on the issue of the awarding of litigation expenses. The motion shall be granted only if the moving party satisfies the Hearing Officer that affidavits are an inadequate method of presenting new evidence relevant to the awarding of litigation expenses.~~

f) ~~Decision~~

~~(1). Within six (6) weeks of the hearing or within seven (7) weeks of the Department's filing of an answer if no hearing is held, the Hearing Officer shall prepare a written decision on the claim. Except as provided in Rule 19.00(f)(2), the Hearing Officer shall award reasonable litigation expenses to the Petitioner if he or she finds that the record in the case establishes by a preponderance of the evidence:~~

~~(a) That the Petitioner is a party as defined in the R.I.G.L. §42-92-2(a); and~~

~~(b) That the Respondent has prevailed against the Division in the underlying adjudicatory proceeding; and~~

~~(c) The amount of reasonable litigation expenses as defined in R.I.G.L. §42-92-2(c) which may include a recalculation of the expenses and a finding~~

AAD RULES OF PRACTICE AND PROCEDURE
PAGE 25

~~that some or all of the litigation expenses qualify as reasonable litigation expenses under the statute.~~

~~(2) (a) The Hearing Officer shall deny an award of litigation expenses to the Petitioner if:~~

~~(i) The Petitioner failed to meet the burden of proof established in Section 19.00 (f) (1); or~~

~~(ii) The Division was substantially justified in the actions leading to the proceedings and in the proceeding itself; or~~

~~(iii) The Division was charged by statute with investigating a complaint which led to the adjudicatory proceeding.~~

~~(b) The Hearing Officer may, at his or her discretion, deny fees or expenses if special circumstances make an award unjust.~~