

**A Guide to the
Air Pollution Control (Appeal Board)
Regulations**

Environmental Protection Department
Hong Kong
(Web version)
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CONTENTS

	<i>Page</i>
1. Introduction	3
2. Definitions	3
3. Initiating an appeal by appellant	4
4. Processing of an appeal by the board	4
<i>Appendix</i> Schedules – Form 1, Form 2 and Form 3	6

1. Introduction

The Air Pollution Control (Appeal Board) Regulations were made on 27th July 1983 under the Air Pollution Control Ordinance and came into operation on 1st October 1983. The main objective of these regulations is to provide the necessary procedures and prescribed forms for making an appeal and they should therefore be regarded as a supplementary provision to Part VI of the Ordinance.

This guide is intended to explain briefly the provisions of these regulations in simple terms. Following each heading, the relevant regulation number, and where related, the section number of the main ordinance are shown in brackets for easy reference. While every care has been exercised in the preparation of this guide, the regulations themselves remain the sole authority for the provisions of the law explained. Copies of the regulations are on sale at the Publications Section of the Information Services Department (ISD) and the online Government Bookstore at <http://bookstore.esdlife.com>. Also, they can be found on the website of the Bilingual Laws Information System at <http://www.elegislation.gov.hk>.

2. Definitions (Regulations 2; Section 2)

Except where the context otherwise requires, the terms in the regulations are defined as follows :

“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);

“Authority” means the public officer appointed under section 4(1) of the Ordinance to be the air pollution control authority who is the Director of Environmental Protection;

“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 as defined under the Air Pollution Control Ordinance.

3. Initiating an appeal by appellant (Regulation 3; Section 31)

Any appellant may initiate within 21 days after he has received notice of

the decision, requirement or specification of a public officer, an appeal by sending to the Chairman a written notice of appeal which should be substantially in accordance with Form 1 in the Schedule (reproduced in the Appendix) and should set out the grounds of the appeal. He should, at the same time, send a copy of such notice to the Authority or the Secretary as the case may be.

All such correspondence and enquiry on appeal matters should be addressed to :

Air Pollution Control Appeal Board
40/F., Revenue Tower,
5 Gloucester Road,
Secretary Wanchai, Hong Kong
(Telephone No: 2594 6324)
(Fax No: 2872 0603)

4. Processing of an appeal by the Board (Regulations 4 to 11; Section 33)

4.1 Fixing the date, time and place of hearing

Upon receipt of the appeal notice, the Chairman will fix the date, time and place of hearing such that the case is to be heard as soon as reasonably practicable. He will not less than 14 days before the hearing date send to the appellant and copy to the Authority or the Secretary as the case may be, a notice substantially in accordance with Form 2 in the Schedule (reproduced in the Appendix).

4.2 Hearing of the appeal

The Board may summon any person to appear before it to produce any document or to give evidence that may be required by issuing a witness summons which should be substantially in accordance with Form 3 in the Schedule (reproduced in the Appendix).

Unless the appellant or a witness requests otherwise and the Board accedes to the request, proceedings before a Board are to be held in public.

The appellant and the Authority or the Secretary may be represented at the hearing by a barrister or solicitor.

Unless the Board grants permission, no amendment is to be made on the grounds of appeal as set out in the notice of appeal. However, the appellant

may abandon all or any of his grounds of appeal before or during the hearing of his appeal. Where the appellant abandons the grounds of appeal before the hearing, he should by a written notice, inform the Chairman and the relevant party (i.e. the Authority or the Secretary) of such abandonment.

The Chairman will take a full minute of the proceedings of the hearing on matters relating to (a) the nature of the grounds of appeal, (b) the names of the appellant, the Authority or the Secretary and the respective witnesses on either side, (c) the evidence of the witnesses, and (d) the decision of the Board.

4.3 Failure of appellant to attend hearing

If on the day of hearing, the appellant fails to attend the hearing either in person or by a barrister or solicitor, the Board may (i) if satisfied that the appellant's failure to attend was due to sickness or other reasonable cause, postpone or adjourn the hearing, (ii) proceed to hear the appeal, or (iii) dismiss the appeal.

If the Board has dismissed the appeal, the appellant may, within 30 days after the making of the order for dismissal, by a written notice addressed to the Chairman, apply to the Board to review its order. If satisfied that the appellant's absence was due to sickness or any other reasonable cause, the Board may set aside the order for dismissal and proceed to hear the appeal.

APPENDIX

SCHEDULE [regs. 3,4 & 5.]
Form 1 [reg. 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)
.....
4. Details of notice appealed against:
Notice dated Reference No.:
(A copy of which is attached)
5. Address of the premises or place to which the notice refers:
.....
6. Name and full address of the public officer as shown on notice
.....
Telephone No.:
7. Particulars of the decision, requirement or specification appealed against (set them out from the notice)
.....
.....
.....
8. The grounds for this appeal are: (set them out in full).....
.....
.....
.....

(Signature)
Appellant

Dated

NOTICE OF TIME AND PLACE FIXED FOR HEARING OF AN APPEAL

Appeal No.: of (year)

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

To (Appellant)

TAKE NOTICE that the above appeal will be heard at on
the day of 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

(Signature)

Chairman of the Appeal Board

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

(Signature)

Recipient of notice

(Signature)

Process server

SUMMONS TO WITNESS

Appeal No.: of (year)

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

To ^(a)

YOU ARE HEREBY SUMMONED to attend at on the day of 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)

Dated this day of

(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.....

(Signature)
Recipient of notice

(Signature)
Process server