

**WATER SUPPLY REGULATIONS  
FOR  
KENT COUNTY, MICHIGAN**



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**KENT COUNTY HEALTH DEPARTMENT  
ENVIRONMENTAL HEALTH DIVISION**

**WATER SUPPLY REGULATIONS**

**PREAMBLE**

It is hereby recognized that a supply of safe potable water is fundamental to individual, public, and community health; that water supply facilities installed and operated in a proper manner are necessary for safeguarding public health; that water supplies furnishing water for human consumption need to be isolated and protected from sewage or other sources of pollution; and that contamination of water resources and supplies, or the creation of conditions menacing the public health, should be prevented. These regulations governing water supplies are hereby adopted pursuant to Sections 2435 and 2441 of Act 368 of the Public Acts of 1978, State of Michigan, as amended, being Sections 333.2435 and 333.2441 of the Michigan Compiled Laws.

**SECTION 1.0 - SCOPE**

These regulations shall apply to all premises in Kent County, but do not apply to the installation of wells, water mains, service lines, etc., which are part of a Type I public water supply, as defined by Michigan's Safe Drinking Water Act, Act 399 of the Public Acts of 1976, and Administrative Rules, as amended.

**SECTION 2.0 - DEFINITIONS**

**Section 2.1 - General**

When not inconsistent with the context, words used in the present tense include the future, words in singular number include the plural number, and words in the plural number include the singular number. Words and terms not defined herein shall be interpreted in the manner of their common usage.

**Section 2.2 - Abandoned Water Supply**

"Abandoned water supply" means a water supply whose use has been permanently discontinued, a water supply or portion thereof which is in such disrepair that its continued use for the purpose of obtaining water is impractical, a water supply which has been left uncompleted, a water supply which is a threat to other sources of water, or a water supply which is or may be a health or safety hazard.

**Section 2.3 - Approved**

"Approved" means acceptable for intended use as determined by the Health Officer using public health laws and regulations.

**Section 2.4 - Habitable Building**

"Habitable building" means any house, building, structure, tent, shelter, trailer, or vehicle, or portion thereof, in which human beings reside, are employed, or congregate.

Section 2.5 - Health Department

“Health Department” or “Department” means the Kent County Health Department.

Section 2.6 - Health Officer

“Health Officer” means the Health Officer in charge of the Kent County Health Department or an authorized representative.

Section 2.7 - Permit

“Permit” means a water supply construction permit, unless otherwise noted.

Section 2.8 - Person

“Person” means an individual, partnership, copartnership, company, firm, cooperative, public or private association or corporation, political subdivision, unit or agency of a local, state, or federal government, trust, estate, or any other legal entity, or their legal representative, agent, or assigns.

Section 2.9 - Premise

“Premise” means a tract of land with or without a habitable building.

Section 2.10 - Public Water Supply

“Public Water Supply” means a water supply which provides water for drinking or household purposes to persons other than the supplier of water, except those water supplies which supply water to only one living unit. Public water supplies are defined in Act 399, Public Acts of 1976 as amended, as follows:

- a. Type I: “Community Supply” means a public water supply which provides year-round service to at least 15 living units or which regularly provides year-round service to at least 25 residents.
- b. Type II: “Non-community Supply” means a public water supply which is not a community supply, but which has at least 15 service connections or which serves at least 25 individuals on an average daily basis for at least 60 days out of the year.
  1. Type IIa: Type IIa public water supplies are Type II public water supplies with an average daily water production for the maximum month equal to or greater than 20,000 gallons per day.
  2. Type IIb: Type IIb public water supplies are type II public water supplies with an average daily water production for the maximum month of less than 20,000 gallons per day.
- c. Type III: All public water supplies which are not classified Type I or Type II supplies shall be Type III public water supplies.

### Section 2.11 - Safe and Adequate Water Supply

“Safe and adequate water supply” means a water supply which is located, constructed and operated in such a manner as to provide water which will not endanger the health of the user and which provides sufficient water pressure to operate all connected plumbing fixtures.

### Section 2.12 - Water Supply

“Water supply” means a system of pipes and structures through which water is obtained, including but not limited to, the source of the water such as wells, surface water intakes, or hauled water storage tanks; and pumping and treatment equipment, storage tanks, pipes and appurtenances, or a combination thereof, used or intended to furnish water for domestic or commercial use.

### Section 2.13 – Well

“Well” means an opening in the surface of the earth for the purpose of obtaining ground water, monitoring the quality or quantity of ground water, obtaining geologic information on aquifers, recharging aquifers, purging aquifers, utilizing the geothermal properties of earth formations, or removing ground water for any purpose. Wells as defined in this section include:

- a. A water supply well used to obtain water for drinking or domestic purposes.
- b. An irrigation well used to provide water for plants, livestock, or other agricultural processes.
- c. A test well used to obtain information on ground water quantity, quality, or aquifer characteristics, for the purpose of designing or operating a water supply well.
- d. A recharge well used to discharge water into an aquifer.
- e. A dewatering well used to lower the ground water level temporarily at a construction site.
- f. A heat exchange well used for the purpose of utilizing the geothermal properties of earth formations for heating or air conditioning.
- g. An industrial well used to supply water for industrial processes, fire protection, or similar non-drinking or domestic uses.
- h. A fresh water well at an oil or gas well drilling site, when the fresh water well is to be retained after completion of the oil or gas drilling operation.

## **SECTION 3.0 - POWERS AND DUTIES OF THE HEALTH OFFICER**

### **Section 3.1 - General Authority to Regulate**

The Health Officer is authorized to regulate the design, installation, operation, and maintenance of all water supplies under the jurisdiction of the Kent County Health Department.

### **Section 3.2 - Establish Guidelines**

The Health Officer may establish guidelines and policies concerning the interpretation of these Regulations, which shall be subject to review and approval by the Board of Commissioners prior to implementation.

### **Section 3.3 - Power to Review Specific Well Installations**

The Health Officer is authorized to review and evaluate plans for all proposed water well facilities for single family dwellings and other types of water facilities for which plan review is authorized by other public agencies or officials.

### **Section 3.4 - Power to Conduct Inspection; Right of Entry**

The Health Officer is authorized to conduct inspections of all properties, public or private, in conjunction with the fulfillment of the duties and responsibilities in these regulations. No person shall refuse to permit the Health Officer, after proper identification, to inspect any premises in accordance with Section 2446 of the Public Health Code (Act No 368 of the Public Acts of 1978), nor shall any person molest or resist the Health Officer in the discharge of those duties and the protection of the public health.

### **Section 3.5 - Power to Issue/Withhold Permits for Water Wells**

The Health Officer is authorized to issue permits authorizing the installation of all water wells subject to these regulations. If the Health Officer determines that the installation of a water well may endanger public health and safety or the water source, he may withhold issuance of a permit for the well.

### **Section 3.6 - Power to Investigate Complaints/Conduct Surveys**

The Health Officer is authorized to investigate complaints from persons alleging health, or safety hazards, nuisances, or environmental degradation resulting from improper well installation practices or from malfunctioning water wells. Written records of investigations conducted shall be retained by the Department for a reasonable period of time.

The Health Officer is authorized to conduct surveys of neighborhoods, subdivisions or other geographical units for the purpose of assessing the adequacy of water supplies within those areas.

Section 3.7 - Power to Issue Violation Notices: Power to Order Corrective Action

The Health Officer is authorized to issue a notice to any person who violates a provision of these regulations. The notice shall contain a description of the violation and shall cite the specific sections of these regulations which apply.

The Health Officer may also order correction of a violation and may specify the nature of corrective action required and a reasonable time limit for the corrective action to be completed. In the case of violations which may present an imminent danger to public health and safety, immediate corrective action may be required.

Section 3.8 - Power to Pursue Judicial Remedies and Sanctions

The Health Officer is authorized to seek judicial remedies and sanctions for any violation of these regulations when administrative efforts to resolve the violation have proven ineffective, inadequate or are otherwise deemed inappropriate.

**SECTION 4.0 - RELATION TO OTHER LAWS AND REGULATIONS**

Compliance with these regulations or a permit issued under these regulations shall not relieve any person of their obligations to comply with any or all other applicable regulations, standards or requirements under local, state, or federal laws, including, without limitation, the following:

- a. The "Safe Drinking Water Act", Act No 399 of the Public Acts of 1976, as amended, being sections 325.1001 through 325.1023 of the Michigan Compiled Laws, and the following sections of Administrative Rules promulgated pursuant to that Act: Part 1, being R 325.10101 to R 325.10115; Part 4, being R 325.10401 to R 325.10409; parts 7 and 8, being R 325.10701 to R 325.10833; and Parts 10 through 14, being R 325.11001 to R 325.11407 of the Michigan Administrative Code, and
- b. Part 127 of Act No 368 of the Public Acts of 1978, as amended, of Michigan's Public Health Code, being sections 333.12701 through 333.12715 of the Michigan Compiled Laws, and the Administrative Rules promulgated pursuant to that Act, being R 325.1601 through R 325.1676 of the Michigan Administrative Code.

**SECTION 5.0 - UNLAWFUL TO OCCUPY**

No person shall occupy, permit to be occupied, or offer for rent, lease, or occupancy, any habitable building which is not provided with an approved water supply, adequate in design and capacity to meet the peak water demands of the habitable building. The Health Officer may declare as unfit for habitation (and/or may order condemned) any building which is not served with an approved water supply, and the building may be so posted by the Health Officer. The Health Officer may order the owner to connect the building to a municipal water supply, if available, or to construct a water supply in compliance with these regulations within 30 days.



## **SECTION 6.0 - PRIORITY OVER BUILDING PERMITS**

Where an approved municipal water supply is not available, a municipality, township, or other agency shall not issue a building permit, or otherwise allow construction to commence, for any habitable building, until a water supply construction permit has first been issued by the Health Officer.

## **SECTION 7.0 - WATER SUPPLY CONSTRUCTION PERMIT REQUIRED**

No person shall begin construction of a new water supply, or make extensive changes to existing water supplies, without first obtaining a water supply construction permit from the Kent County Health Department. Extensive changes include replacing the well casing, removing a well casing from the ground, changing aquifers or sources of water, changing screen elevation, deepening or plugging back a bedrock well, changing the pump type, installing a liner pipe, or significantly increasing the capacity of the water supply.

## **SECTION 8.0 - PROJECT PERMIT**

If multiple wells of a similar nature are proposed to be constructed for the same project, a single project permit may be issued to cover all of the wells in the project.

## **SECTION 9.0 - PERMIT APPLICATION PROCEDURE**

### Section 9.1 - Application Form

Application for a Water Supply Construction Permit shall be made on forms provided by the Health Officer.

### Section 9.2 - Completed Application A

completed application shall include:

- a. A completed application form, including all of the requested information.
- b. The signature of the property owner or the property owner's authorized representative.
- c. The required application fee.
- d. A site plan of the proposed or existing water supply showing the location of the proposed source of water (well, hauled water storage tank, etc.) in relation to the building, property lines, all known, suspected, or potential contamination sources, and all wells whether usable or abandoned, and any data which may be required by the Health Officer. For water supplies using a source of water other than a well, a scaled engineering drawing may be required.

Section 9.3 - Health Officer Response

The Health Officer shall make a written decision on a completed permit application within 30 days after the receipt of the application. If the Health Officer fails to act within this 30 day period, the permit shall be considered issued subject to the terms of the application.

**SECTION 10.0 - LATE APPLICATION PENALTY**

If a person fails to obtain a permit prior to beginning construction of a water supply, a penalty fee equal to the normal application fee shall be charged in addition to the normal application fee. Within five (5) working days of being notified of the permit violation, the person shall submit a water supply construction permit application, accompanied by the normal application fee and the penalty fee, to the Health Officer. Payment of the late application penalty fee shall not exempt said person from any further penalties prescribed for violation of these regulations.

**SECTION 11.0 - PLUGGING OF WELL**

The Health Officer may require the proper abandonment of a well that is constructed without a permit or is constructed in violation of these regulations or permit requirements.

**SECTION 12.0 - WATER SUPPLY CONSTRUCTION PERMITS**

Section 12.1 – Issuance

The Health Officer may issue a water supply construction permit when the data obtained indicates that the requirements of these regulations and other applicable statutes and regulations have been or will be met, and that the quality of the ground water will not be degraded. A site evaluation may be required prior to the issuance of the permit. The permit may impose limitations or conditions which the Health Officer deems necessary to protect the public health or ground water quality.

Section 12.2 - Expiration

Unless construction of the water supply for which a water supply construction permit is issued is commenced, or a contract for the construction has been entered into, within 2 years from the date of issuance, the permit shall automatically expire and shall no longer be of any effect. Upon written request to the Health Officer prior to expiration of a permit, the duration of a permit may be extended one time only at no additional charge for an additional one year. No work shall be commenced or continued on a water supply for which the permit has expired.

Section 12.3 - Permits Non-Transferable

A water supply construction permit shall not be transferable as to permit holder or property location.

Section 12.4 - Revocation

The Health Officer may revoke a previously issued water supply construction permit for any of the following reasons:

- a. False, inaccurate, or incomplete information supplied by the permit holder.
- b. A change in the plans of the permit holder affecting circumstances relative to the water supply design, location, or use.
- c. Acquisition of new knowledge or information about the aquifer in the area that may result in a health hazard.

A revocation shall be in writing and sent to the permittee at the address provided by the permittee in the permit application. The revocation may be made effective immediately, or at any date specified in the revocation. No work shall be commenced or continued on a water supply for which the permit has been revoked.

#### Section 12.5 - Denial

The Health Officer may deny an application for a water supply construction permit when incomplete, inaccurate, or false information has been supplied by the applicant, or when the Health Officer determines that the requirements of these regulations or other applicable statutes or regulations have not or can not be met. The denial shall be furnished to applicant in writing at the address provided by the applicant in the permit application.

#### **SECTION 13.0 – NOTIFICATION**

The permit holder or well driller shall provide the following notifications to the Health Officer:

- a. Notice of intent to commence construction shall be provided at least one (1) working day in advance of the time construction of the water supply is to begin; and
- b. Notice of completion of construction or installation shall be provided within one (1) working day following completion of the water supply construction or pumping equipment installation.

#### **SECTION 14.0 - INSPECTION**

The Health Officer may inspect water supplies during and/or after completion of construction, as determined necessary by the Health Officer.

#### **SECTION 15.0 - APPROVAL**

A new water supply shall not be placed into service until the construction and installation have been approved by the Health Officer. The following conditions shall be met before the Health Officer may approve a new water supply:

- a. An on-site inspection has been completed by the Health Officer, and the water supply is found to be in compliance with applicable regulations and permit requirements.

- b. A completed “Water Well And Pump Record,” prepared by the well driller and/or pump installer, as applicable, has been received by the Health Officer.
- c. The Health Officer has received copies of the results of the analysis of water samples indicating that raw water quality meets minimum public health standards. Water sample analysis shall include coliform bacteria and any other parameter deemed necessary by the Health Officer. Analysis of water samples shall be performed by laboratories certified by the Michigan Department of Public Health. All water samples shall be collected by the Health Officer or other person specifically approved by the Health Officer.

### **SECTION 16.0 - STOP WORK ORDER**

The Health Officer may issue a written stop work order if the Health Officer determines that a water supply under construction does not comply with the requirements of these regulations. Work shall not resume until the owner and/or contractor have agreed to make corrections or take other actions as determined necessary by the Health Officer to comply with these regulations, and the Health Officer rescinds the stop work order.

### **SECTION 17.0 - EMERGENCY CONDITIONS**

If an emergency arises where the lack of water will result in undue hardship and the Kent County Health Department is closed, or when the well driller is involved with repair work and it is deemed necessary to begin construction immediately on a new well, a registered well driller may begin extensive changes to or construction of a new water supply without prior notification or without first obtaining a permit. However, the well driller must contact the Health Officer on the next regular working day to obtain a permit for the changes or new construction. The late application penalty specified in Section 10.0 of these regulations may be waived in these cases, at the discretion of the Health Officer.

### **SECTION 18.0 - EXISTING WATER SUPPLIES**

#### **Section 18.1 - Pre-existing Active Water Supplies**

Subject to compliance with other applicable requirements of section 18 of these regulations and other applicable laws and regulations, a groundwater system in existence prior to the effective date of these regulations, which is in compliance with state law in effect at the time of system construction, may be continued and maintained in service as long as satisfactory performance continues, the system is not altered to include extensive repair, the water meets quality standards, the system is not subject to contamination due to improper installation, improper isolation from contamination sources, improper construction, or is otherwise not determined to be a potential health hazard.

#### **Section 18.2 - Inactive Water Supplies**

A water supply which has not been in use for more than one year shall not be put back into operation unless it can be shown to be in substantial compliance with these regulations.

### Section 18.3 - Change in Use

A change in use of a premise which may result in a significant increase in the demand on the water supply shall not be allowed unless it can be shown that the water supply is in substantial compliance with these regulations.

## **SECTION 19.0 - VIOLATIONS**

### Section 19.1 - Criminal Misdemeanor Penalties

Any person who fails to comply with any provision of these regulations is guilty of a misdemeanor, punishable by a fine of not more than \$200 per violation per day or by imprisonment in the county jail for not more than 90 days, or both fine and imprisonment.

### Section 19.2 - Civil Monetary Penalties: Citations

As provided by Section 2461 of the Public Health Code (Act No 368 of the Public Acts of 1978), the Kent County Board of Health may adopt and the Kent County Board of Commissioners may approve a schedule of civil monetary penalties to be levied for specific violations of these regulations. Further, the Health Officer may issue citations for violations of these regulations as provided by Section 2461 of the Public Health Code (Act No 368 of the Public Acts of 1978).

### Section 19.3 - Successive Violations

Each act of violation, and each day or portion of a day that a violation of these regulations, or of any permit issued under these regulations, is permitted to exist or occur, constitutes a separate offense and shall be punishable as provided by these regulations.

## **SECTION 20.0 - APPEALS**

### Section 20.1 - Right of Appeal: Procedures

Any person wishing to appeal a notice of violation, order, citation, or decision issued or made by the Health Officer under these Regulations must petition the Health Department in writing for a hearing within 20 days of receipt of the notice, order, citation, or decision.

### Section 20.2 - Conduct of Hearing

A hearing, if authorized in response to a petition, shall be held before a Hearing Officer designated by the Health Officer within 30 days after the receipt of the petition by the Health Department. After the hearing, the Hearing Officer may affirm, dismiss, modify, or reverse the notice, order, citation, or decision.

### Section 20.3 - Review of Decision of Hearing Officer

The decision of the Health Officer shall be final, unless within 60 days of the date of said decision, a written petition for review is received by the Chair of the Legislative and Human Resources Committee of the Board of Commissioners and granted by the Appeal Subcommittee appointed by the Chair of the Legislative and Human Resources Committee. If the Appeal Subcommittee grants review, it shall hear the appeal, make further investigation if necessary, and

affirm, dismiss, modify, or reverse the decision of the Health Officer. The Appeal Subcommittee shall conduct all appeals in accordance with Article X-A "Appeals Procedures" of the Kent County Health Department Sewage Disposal Regulations, as amended and attached hereto.

Section 20.4 - Right to Judicial Review

A person aggrieved by a final decision of the Health Officer or the Subcommittee under these Regulations may petition the Circuit Court of Kent County for relief, subject to any limitations provided under state law.

Section 20.5 - Emergency Powers of Health Officer Sustained

Nothing in these Regulations shall be construed to prohibit the Health Officer from taking appropriate action when an imminent danger to public health or safety exists, as provided in Section 3.7 of these regulations.

**SECTION 21.0 - TECHNICAL ADVISORY COMMITTEE**

Section 21.1 – Purpose

A Water Supply Regulation Technical Advisory Committee, hereafter referred to as the “Committee,” shall be established for the purpose of advising the Health Officer on technical matters and issues relevant to water supply construction, design and training.

Section 21.2 - Composition of the Committee

The composition of the Committee shall be as follows:

- a. Two members shall be registered water well contractors whose business is located in Kent County.
- b. One member shall represent a registered professional engineer experienced in water well construction, theory, and design.
- c. One member shall be a faculty member of a local college or university whose area of expertise is relevant to ground water.
- d. One member shall be from the general public, residing in Kent County.
- e. One member shall represent the Environmental Health Division of the Kent County Health Department.

Section 21.3 - Appointments to the Committee

Appointments of members of the committee shall be by the Kent County Board of Health. Committee members shall serve without pay or other compensation or reimbursement.

Appointments to the Committee shall be for a period of two years, provided that the initial appointments may be of greater or lesser terms. Committee members may succeed themselves if reappointed.

Section 21.4 - Frequency of Meetings

The Committee shall convene at such times and frequencies as deemed necessary by the Health Officer.

Section 21.5 - Conduct of Meetings

- a. Chairman of Committee. Members of the Committee shall select one of their members to serve as Chairman at the first meeting held each calendar year. The Chairman shall retain the position as Chairman for the duration of the calendar year.
- b. Secretary of Committee. The Environmental Health representative shall act as secretary to the Committee and shall be responsible for the preparation of agendas, notices, minutes and other correspondence.
- c. Meeting Agenda. Items for discussion by the committee may be submitted by the Department, Committee members or other persons having reasonable concerns or interests relative to water wells.
- d. Committee Actions and Recommendations. Actions or recommendations of the committee shall be considered by the Health Officer in administering the provisions of these regulations. The committee's actions or recommendations shall not limit or obligate the Health Officer in the administration of these regulations.

**SECTION 22.0 - SEVERABILITY**

The various sections, paragraphs, sentences, clauses, and phrases of these regulations are hereby declared to be severable. If any section, paragraph, sentence, clause, or phrase is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of these regulations shall not be affected thereby.

**SECTION 23.0 - INJUNCTION OR OTHER PROCESS**

Notwithstanding the existence and pursuit of any other remedy, the Health Officer may maintain an action in the name of Kent County Health Department in a court of competent jurisdiction for injunction or other appropriate process against any person to restrain or prevent a violation of these regulations.

## **SECTION 24.0 - FEES**

### **Section 24.1 - Establishment of Fees**

A schedule of fees for licenses, applications, permits, and other services authorized by these regulations and performed by the Department may be established by the Kent County Board of Commissioners, in accordance with Section 2444 of the Public Health Code (Act No 368 of the Public Acts of 1978). The fees charged be reasonably related to the costs incurred by the Department. Fees paid pursuant to this section shall be credited to the Kent County health Department account.

### **Section 24.2 - Advanced Payment of Fees Required**

Fees required for services and permits authorized by these regulations shall be paid in full prior to performance of the service or issuance of the permits by the Department.

### **Section 24.3 - Refunds of Fees**

A fee paid for services or permits authorized by these regulations shall be nonrefundable unless a request for a refund is received prior to commencement of action by the Department in connection with the requested service or issuance of the permit.

## **SECTION 25.0 - EFFECTIVE DATES**

### **Section 25.2 - Effective Date of Regulations**

These regulations shall become effective on September 8, 1996.

### **Section 25.2 - Amendments To Regulations**

Any amendments to these regulations shall become effective on the 45<sup>th</sup> day following approval by the Board of Commissioners of Kent County.

## **APPEALS PROCEDURE**

### **CONDUCTED IN ACCORDANCE WITH ARTICLE X-A "APPEALS PROCEDURES" OF THE KENT COUNTY HEALTH DEPARTMENT SEWAGE DISPOSAL REGULATIONS:**

#### **1051 – RIGHT TO HEARING**

Any person wishing to appeal a notice of violation, order, citation, or decision issued or made by the Health Officer for an alleged violation of the Kent County Health Department Regulations has a right to an administrative hearing and review as provided by this Article.

#### **1052 - REQUEST FOR HEARING**

- a. To be entitled to a hearing, the appellant must file a written request for hearing with the Health Department, on a form provided by the Health Department, no later than 20 days after receipt of the notice of violation, order, citation, or decision. In .



computing this period, the day of receipt is not to be included. The last day of the period is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next Monday or non-holiday.

b. A filing fee, as established by the Board of Commissioners, must accompany the written request for hearing. If the Health Department's notice of violation, order, citation, or decision is dismissed after the hearing, the Health Department may refund the filing fee.

c. Upon receipt of a written request and filing fee, the Health Department shall give or send a copy of these procedures to the appellant or his/her designated representative.

### **1053 - TIME, PLACE AND NOTICE OF HEARING**

a. The Health Department shall schedule and hold a hearing within 30 days after receipt of the written request and filing fee.

b. The Health Department shall serve notice of the time, date, and place of the hearing on the appellant or his/her designated representative by certified mail a minimum of 10 business days before the date of the hearing.

c. The hearing may be adjourned to another specified time, date, or place if the Health Department gives written notice thereof, or if the appellant makes a written request for an adjournment at least 24 hours prior to the scheduled time of the hearing.

### **1054 - FAILURE TO APPEAR**

a. If the appellant fails to appear for the hearing at the scheduled or properly rescheduled date, time, or place after proper service of notice, and no further adjournment has been granted, the hearing may continue and a decision may be made in the absence of the appellant.

### **1055 - PARTIES**

a. The Health Department shall appear at the hearing by its designated representative.

b. The appellant may appear in person or by his or her representative designated in writing.

### **1056 - Hearing Officers**

a. Hearings shall be conducted in the manner set forth below by an impartial Hearing Officer designated by the Health Officer. The Hearing Officer shall not have

been involved in the determination to issue the notice of violation, order, citation, or decision.

b. If either party to the hearing believes the Hearing Officer is not qualified to hear the appeal because of personal bias or prejudice, that party may ask the Hearing Officer to disqualify himself/ herself. The request must be accompanied by a sworn written statement of facts showing that the Hearing Officer is biased or prejudiced. The request for disqualification and the accompanying statement of facts in support thereof must be filed no later than 4 business days before the scheduled hearing date.

Untimeliness of filing shall be a factor in considering whether or not the motion should be granted. The matter shall be determined by the Health Officer, and his/her determination shall become part of the record and shall be subject to review by a court as provided below. When a Hearing Officer has been disqualified, the Health Officer shall assign another Hearing Officer to conduct the appeal.

c. Whenever it becomes impracticable for the Hearing Officer to continue with the hearing, the Health Officer may assign another Hearing Officer to continue the hearing unless the change in Hearing Officer would substantially prejudice either party's case.

#### **1057 - Powers of Hearing Officer**

A Hearing Officer may:

- a. Administer oaths and affirmations
- b. Certify to official acts
- c. Provide for the taking of testimony by deposition
- d. Regulate the course of a hearing, set the time and place for continuation of a hearing, and fix the time for filing briefs and other documents
- e. Direct the parties to appear and confer to consider simplification of the issues by consent of the parties

#### **1058 CONDUCT OF THE HEARING**

During the hearing, and subject to reasonable regulation by the Hearing Officer:

- a. Each party shall have an opportunity to make an opening statement.
- b. The Health Department designated representative shall then present its evidence against the appellant. The appellant or his or her designated representative may cross-examine all witnesses presented by the Health Department.
- c. The appellant shall then present evidence on his or her behalf. The Health Department representative may cross-examine all witnesses presented by the appellant.

- d. Both parties may then present rebuttal evidence.
- e. At the close of evidence, each party shall have an opportunity to present a final argument or closing statement, either orally or in writing.

**1059 - RULES OF EVIDENCE**

- a. As far as practicable, the hearing shall be conducted in accordance with the rules of evidence that apply in a non-jury civil case in the Michigan Circuit Court. However, evidence may generally be admitted and given probative effect if it is of a type commonly relied upon by reasonable, prudent people in the conduct of their affairs. Irrelevant or unduly repetitious material may be excluded. Effect shall be given to the rules of privilege recognized by law (e.g., attorney/ client, doctor/ patient).
- b. If either party objects to any evidence offered by the other party, the objection must be stated when the evidence is offered. The Hearing Officer shall rule as to the admissibility of the evidence.
- c. Subject to the requirements stated in subsections a. and b., the Health Department, for purposes of efficiency and when the interest of the parties will not be substantially prejudiced, may provide for submission of all or a part of the evidence in written form.
- d. Writings, recordings, and photographs may be received as evidence in the form of a copy, if the original is not readily available, or may be incorporated by reference, if the material so incorporated is available for reexamination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original, if it is available.
- e. The Hearing Officer may take official notice of a fact — that is, accept a fact as true without evidence — if the fact cannot be reasonably disputed because it is generally known throughout Kent County, is within the specialized knowledge of the Hearing Officer, or is capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned.
- f. The Hearing Officer may use his or her experience, technical competence, and specialized knowledge in evaluation of evidence presented to him or her.

**1060 - Stipulation of Facts and Settlements**

- a. The parties, by a stipulation in writing filed with the Health Department, may agree upon any fact involved in the controversy. The stipulation shall be used as evidence at the hearing and shall be binding upon the parties.

- b. Except as otherwise provided by law, the entire case may be settled by stipulation, consent to order, waiver, default, or other method agreed upon by the parties.

### **1061 - DECISION AND ORDER**

- a. After the administrative hearing, the Hearing Officer shall prepare a decision and order to affirm, dismiss, or modify the Health Department's notice of violation, order, citation, or decision, and shall report the reasons therefor, including findings of fact and conclusions of law. If a party submits proposed findings of fact that would control the decision or order, the decision or order shall include a ruling on each proposed finding.
- b. The decision and order shall be based upon the entire record and shall be supported by competent, material, and substantial evidence. Findings of fact shall be based exclusively on the evidence of record on matters officially noticed pursuant to subsection 1059.e.
- c. The parties shall be served with copies of the decision and order and shall be allowed to take exceptions thereto. Any exception must be in writing and filed at least 10 days after receipt of the decision and order.

### **1062 - Official Record of Hearing**

- a. The Health Department shall prepare an official record of the hearing, which shall include:
  - 1. The written request for hearing, all notices, and any pleadings, briefs, or written arguments
  - 2. Evidence presented
  - 3. Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose
  - 4. Any decision, opinion, order, or report by the Hearing Officer
- b. Oral proceedings at which evidence is presented shall be recorded by tape recorder or stenographically, but need not be transcribed unless requested by a party who shall pay for the transcription of the portion requested, except as otherwise provided by law.

### **1063 - Rehearing**

- a. The Health Department may order a rehearing on its own motion or on request of a party.
- b. Where, for justifiable reasons, the record of testimony made at the hearing is found by the Health Department to be inadequate for purposes of judicial review, the

Health Department on its own motion or on the request of a party shall order a rehearing.

c. A rehearing shall be noticed and conducted in the same manner as an original hearing. The evidence received at the rehearing shall be included in the record of agency reconsideration and for judicial review. A decision or order may be amended or vacated after the rehearing.

#### **1064 - Administrative Review**

a. A party aggrieved by the decision and order of the Hearing Officer may, within 60 days after the date of the decision and order, petition the chair of the Legislative and Human Resources Committee of the Board of Commissioners for review of the Hearing Officer's decision. Petitions for review shall be made on a form provided by the Health Department.

b. The grant of review and the scope and manner of review shall be within the discretion of an Appeal Subcommittee appointed by the Legislative and Human Resources Committee.

c. If the review is not granted within 60 days after the date of the decision and order of the Hearing Officer, the decision and order shall be final and subject to judicial review as provided by law.

d. If the review is granted, the Appeal Subcommittee may affirm, dismiss, modify, or reverse the decision of the Hearing Officer.

e. A denial of review or a decision on the merits by the Appeal Subcommittee shall be final and subject to judicial review as provided by law.