§ 15-0903. Hearing procedure.

1. The provisions of this title shall not apply to applications for permits, requests for permit renewals and modifications, or to permit modification, suspension or revocation proceedings initiated by the department where any of such actions involve title 5, 15 or 27 of this article.

2. Whenever a public hearing is to be held pursuant to this article, the notice of such hearing shall be published in such newspaper or newspapers as the department shall deem appropriate, once in each week for not more than four weeks. At least one publication shall be in a newspaper of general circulation in the area affected. Notice thereof shall specify that on a date therein named, the department will cause such hearing to be held at such place and time as it may specify therein, for the purpose of receiving evidence and arguments from all persons and public corporations that may be affected by the proposed permit or project and shall have filed timely notices of appearance. The public notice shall specify the last day, not more than ten days prior to the day specified for the public hearing, on which notices of appearance may be filed with the department. Notices of appearance in opposition to the permit or project shall recite in the notice the interest of the person or public corporation filing such notice, and the specific grounds of objection to the permit or project. In the event that no notice of appearance in opposition to the proposed permit or project is filed within the time specified, the department may dispense with the public hearing and shall proceed to consider and examine the application, petition, maps, plans, proofs, arguments and other matters submitted in support of the proposed permit or project; provided, however, that nothing herein contained shall authorize the denial of an application unless and until the applicant or petitioner has been afforded an opportunity to present proof and argument in support of the application. The notice of hearing shall also specify the subject matter of the hearing in such detail as the department shall deem necessary.

3. Conduct of hearing shall be as follows:

a. All hearings shall be public except as to those matters where a public hearing may be dispensed with pursuant to the provisions of subdivision 1 of this section.

b. The hearings herein provided for may be conducted by the commissioner or any employee of the department to whom the commissioner shall delegate the power and authority to conduct such hearings as a hearing officer in the name of the department at any time and place.

c. In such hearings, the hearing officer may administer oaths to witnesses and may issue subpoenas in the name of the department, requiring the attendance and giving testimony by witnesses and the production of books, papers and other documentary evidence for such hearings.

d. The record, or summary thereof, of the proceedings of such hearings shall be made and filed with the department. The department, on its own motion or if requested to do so, may cause to be taken and filed with the department a full stenographic transcript in duplicate of the testimony presented at the hearing. The cost of such department copies shall be paid by the applicant. The stenographer shall, upon payment of his fees by a person requesting the same, furnish a copy of the whole or any part of the transcript to such person.

e. The department may, for the purpose of such a hearing, provide for the taking of depositions of witnesses before any member of the department, or any person who may be designated hereunder by the department to hold hearings. In such case such member, employee or other person may administer oaths to the witnesses whose depositions are to be taken. Each deposition shall be reduced to writing and subscribed by the deponent and shall be filed with the department prior to the final adjournment of the hearings.

f. The provisions of subdivision y of section 71-0503, applicable to investigations by the department and a direction to testify made by the department, shall apply to hearings and investigations and a direction

to testify or produce evidence made by a hearing officer at a hearing conducted pursuant to the provisions of this article.

g. The department and hearing officers designated by it pursuant to this article shall not be bound by the laws of evidence in the conduct of hearing proceedings, but every decision and order shall be founded upon competent, material evidence which is substantial in view of the entire record.

h. No factual information or evidence other than that in the record shall be considered in arriving at a decision in a case. However, all evidence, including records and documents in the possession of the department of which it desires to avail itself, may be offered and made a part of the record in the case. All such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference.

i. The applicant and any person who has filed a notice of appearance shall have the right of cross-examination of witnesses who testify, and shall have the right to submit rebuttal evidence.

j. The department may take notice of judicially cognizable facts and in addition may take notice of general, technical, or scientific facts within its specialized knowledge. Parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of material so noticed, and they shall be afforded an opportunity to contest the facts so noticed. The department may utilize its experience, technical competence, and specialized knowledge in the evaluation of evidence presented to it.

4. The department shall, upon any application submitted to it or initiated on its own motion, render its decision thereon in writing, including or accompanied by findings of fact, and whenever required by this article, by statutory determinations. The original of such decision, together with all maps, plans and other papers or records relating thereto, shall be filed and kept on file in the department. A copy of the decision shall be delivered or mailed to the attorney of

record of the applicant and of each person who filed a notice of appearance, or to the applicant or such person directly if not represented by an attorney.