

**City of New York
Office of Administrative Trials and Hearings**

Notice of Promulgation of Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Office of Administrative Trials and Hearings (OATH) in accordance with Sections 1049 and 1043 of the New York City Charter that OATH amends sections 3-15 and 3-16 of subchapter A of chapter 3 of title 48 of the Rules of the City of New York, concerning the appellate procedures that apply to proceedings conducted by OATH pursuant to § 1049-a of the New York City Charter. The proposed rule was published in *The City Record* on January 22, 2019, and a public hearing was held on February 21, 2019.

No one testified at the public hearing concerning this rule and OATH did not receive any written comments. OATH made no additional amendments to the rule.

Statement of Basis and Purpose of Final Rule

The Office of Administrative Trials and Hearings (OATH) amends sections 3-15 and 3-16 of subchapter A of chapter 3 of title 48 of the Rules of the City of New York, concerning the appellate procedures that apply to proceedings conducted by OATH pursuant to § 1049-a of the New York City Charter. The amendments to subdivision a of section 3-15 clarify that, unless a request for a superseding appeal is timely filed, appeals decisions issued by OATH's Environmental Control Board are final determinations of the Tribunal subject to judicial review pursuant to Article 78 of the Civil Practice Law and Rules (CPLR). The amendments to subdivision b of section 3-15 explain that: (1) a request for a superseding appeal must be served upon the non-requesting party; (2) a decision denying a request for a superseding appeal incorporates by reference the initial appeals decision while a decision granting a request for a superseding appeal vacates the initial appeals decision; and (3) a superseding appeals decision granting or denying a request for a superseding appeal is the final determination of the Tribunal subject to judicial review pursuant to Article 78 of the CPLR.

The amendments to the title of section 3-16 clarify that this section provides the procedure for seeking judicial review when the board has either not issued an appeals decision after 180 days from the filing of an appeal, or has not issued a superseding appeals decision after 180 days from requesting a superseding appeal. These amendments also provide a more organized explanation of the conditions necessary to rely upon the recommended decision as a final determination.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Sections 3-15 and 3-16 of chapter 3 of title 48 of the Rules of the City of New York are amended to read as follows:

§ 3-15 Panel or Board Review of Appeals.

(a) The Board will establish panels from among its members to review recommended decisions [issued] prepared by the Appeals Unit pursuant to § 6-19(e), and to issue appeals decisions. A panel may refer a case to the Board for review if the panel is unable to reach a decision. Such case will be considered by the Board and the Board will issue [a] an appeals decision. Unless a party files a request pursuant to subdivision (b) of this section, the appeals decision of the panel or the Board will be deemed to have been issued by, and become the final [decision] determination of[,] the Board, which is also a final determination of the Tribunal. [The Board's final decision is also the final decision of the Tribunal] Judicial review of such determination may be sought pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR).

(b) Superseding appeals decisions. Within 10 days of the mailing of the Board's appeals decision, a party may apply to the Board for a superseding appeals decision to correct ministerial errors or errors due to mistake of fact or law. The request for a superseding appeals decision must be served upon the non-requesting party. A decision denying a request for a superseding appeal incorporates by reference the initial appeals decision. A decision granting a request for a superseding appeal vacates the initial appeals decision. This superseding appeals decision will become the final [decision] determination of the Board, which is also the final determination of the Tribunal. [The Board's final decision is also the final decision of the Tribunal] Judicial review of such determination may be sought pursuant to Article 78 of the CPLR.

§ 3-16 Judicial Review [of] When Board Decision[s] is Delayed.

(a) If [a Respondent appeals and] the Board has not issued [a final] an appeals decision within 180 days from the filing of the appeal, or if the Board has not issued a superseding appeals decision within 180 days from the request for superseding appeal, the Respondent may at any time file a petition seeking judicial review of the Hearing Officer's recommended decision pursuant to Article 78 of the New York Civil Practice Law and Rules (CPLR). Such Respondent may rely on the recommended decision of the Hearing Officer as the final [decision] determination of the Board, provided that the following three conditions are met:

- (1) at least forty-five days before the filing of such petition, the Respondent files with the Board written notice of the Respondent's intention to file the Article 78 petition;
- (2) [the Board has still not issued a final decision when the Respondent files the petition] the Respondent serves and files the Article 78 petition on the Board pursuant to the CPLR; and
- (3) [the Respondent serves the petition on the Board pursuant to the CPLR] the Board has not issued an appeals decision or, if applicable, a superseding appeals decision at the time of filing the petition.

(b) The Board may issue a final [decision] determination after a Respondent files with the Board written notice of intention to file a petition for judicial review under subdivision (a) and before the Respondent has filed the petition.