



POLICY #22
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Subject **Procedural Guidelines for Protest Hearings**
Adopted **7/21/2006; 7/10/1998**

On July 10, 1998, the Petroleum Storage Tank Committee adopted Procedural Guidelines for Petroleum Storage Tank Committee Fund Protest Hearings, attached hereto and incorporated herein, as Committee Policy 22.



Procedural Guidelines for Petroleum Storage Tank Committee Fund Protest Hearings

Section 1.0 - Filing of Protest

1. **Time for Filing Protest** - An applicant shall review the Fund Payment Report, referred to in 7 CCR 1101-14, Section 8-8, and shall, if dissatisfied with any facts therein, file a written protest with the Committee within sixty (60) days of the date of the report. If the applicant does not file a written protest within the sixty (60) days, the applicant will have waived its right to object to anything covered by the report. After the sixty (60) days, everything regarding the application, including the amount of reimbursement (including any reductions applicable to future applications), will be deemed final.
2. **Form of Protest** - Protests must be signed by the applicant and contain any information required by the Committee, or the Division of Oil and Public Safety, including a clear statement of each item which the applicant disputes on the Committee's Fund Payment Report. The protest shall be submitted on a form provided by the Committee or the Division of Oil and Public Safety. Parties may download the form from the [Fund Forms page](#) on the Division's website.

Section 2.0 - Formal Notice of Protest Hearing

1. **Contents** - Prior to all fund protest hearings, the Committee shall send written notice containing:
 - (a) The time, date, place and general subject matter of the hearing.
 - (b) A statement regarding the legal authority and jurisdiction under which the hearing is to be held, including the matters of fact and law asserted.
 - (c) A statement whether a prehearing conference is scheduled, and, if so, the time, date, place, and general purpose of the prehearing conference.
 - (d) A description as to how an interested person or entity may apply to become a party to the proceedings.
 - (e) All pertinent filing deadlines.

In fixing the time and place for a hearing, due regard shall be had for the convenience and necessity of the parties and their representatives.

2. **Notice of Special Procedures** - A notice may contain special procedures or requirements which the Committee deems appropriate for a particular hearing or set of hearings.
3. **Amended Notices** - The Committee may issue an amended notice without continuance of the hearing date, at any time prior to the hearing as long as the amended notice does not alter the original notice to the substantial prejudice of any party. If an amendment is substantial and prejudicial, the hearing date shall be continued to an appropriate date as determined by the Committee.
4. **Cancellation; Continuance; Reopening of the Record** - The Committee may cancel or continue any hearing to another date by issuing written notice at any time prior to the close of the record, or by announcement at the date, time, and place set for the original hearing. The record may be reopened after it is closed for further proceedings upon the issuance of written notice.
5. **Distribution of Notice** - The Committee shall mail notice to all parties and to each person who has filed a written request to receive notices from a particular fund protest proceeding or from fund protest proceedings in general. Unless otherwise provided by law, the notice shall be served personally or by mailing by first-class mail to the last address furnished in writing to the Committee or the Division of Oil and Public Safety by the persons to be notified, at least thirty (30) days prior to the hearing.



Section 3.0 - Party Status

1. **Applications for Party Status** - The notice of each hearing issued pursuant to Section 2.0 shall prescribe a date by which applications for party status shall be filed. In no event will such date be less than forty-five (45) days prior to the hearing. Thereafter, application to be made a party shall not be considered except upon motion for good cause shown. The party filing the protest and the Division of Oil and Public Safety shall be granted party status and need not apply therefor.
2. **Contents of Application** - An application for party status must:
 - (a) Identify the individual or entity applying.
 - (b) Give the address and phone number where the applicant may be contacted.
 - (c) Set forth the reasons for seeking party status, the manner in which the applicant is affected by the proceedings, and an explanation of why the applicant's interests are not already adequately represented.
 - (d) Describe the general nature of the evidence to be presented in the course of the proceedings.
3. **Granting of Party Status** - The Committee may grant party status, in its sole discretion, to any person or entity whose interests are affected by the proceeding and whose interests are not adequately represented. The Committee may grant party status during the prehearing conference or other appropriate time prior to hearing.
4. **Non-Limitation of Party Status** - Nothing in this section shall prevent the Committee from admitting any person or party to any proceedings for limited purposes.

Section 4.0 - Prehearing Conference and Prehearing Statements

1. **Prehearing Conference** - A prehearing conference may be held to dispose of motions, form stipulations, and identify contested matters respecting the issues to be raised, identify witnesses and exhibits to be presented by the parties, determine the order of presentation during the hearing, exchange prehearing statements and supplements, and settle any other matter which can be resolved before the hearing. Each party shall attend the prehearing conference, if one is scheduled, in person or through counsel, and shall present to every other party a prehearing statement and a supplement if one has been prepared.
2. **Notice of Prehearing Conference** - The Committee may specify in the notice of hearing identified in Section 2.0 that a prehearing conference will be held. If the Committee does not schedule a prehearing conference, any party may request that a prehearing conference be held. Such request must be made not less than forty-five (45) days in advance of the hearing unless otherwise determined by the Committee. The Committee shall serve notice of any such request upon all other parties.
3. **Prehearing Statement; Contents** - The prehearing statement shall state the name of the party or parties on whose behalf it is presented and shall briefly set forth the following matters under the following captions and in the following order:
 - (a) **History And Statement Of Claims And Defenses**
 - (1) Provide a concise history of the site of the tanks including:
 - (I) Whether there are prior or subsequent owners or operators of the tanks and/or property where the tanks are located, and corresponding dates of ownership; and an identification of the party operating/leasing the tanks during the life of the tanks;
 - (II) Whether the tanks are underground or aboveground;
 - (III) Whether the tanks were removed and, if so, the date of removal and by what party;
 - (IV) Date of suspected leak and date reported to the Division of Oil and Public Safety and any other date relevant to the protest;
 - (2) Provide a history of fund applications stating:
 - (I) Date of applications for reimbursement;
 - (II) Decisions made by the Committee regarding applications, dates of such decisions and bases for such decisions;
 - (I) Date protest filed.
 - (3) Provide a concise statement of all claims and or defenses asserted by that party in relationship to the protest.



- (b) **Undisputed Facts** - A concise statement of all facts which the party filing the statement contends are or should be undisputed.
 - (c) **Disputed Issues** - A concise statement of the issues the party claims or concedes to be in dispute in relationship to the protest.
 - (d) **Points of Law** - Statements of all points of law on which that party will rely, citing pertinent statutes, ordinances, rules, regulations, policies, standards, guidelines, cases and other authority and legal argument regarding why the protest should or should not be granted.
 - (e) **Itemization of Reimbursable Expenses** - An itemization of reimbursable expenses that are being protested.
 - (f) **Stipulations** - A listing of any stipulations requested or offered to facilitate disposition of the case.
 - (g) **Witnesses** - The name, address, title and telephone number of any witness or party whom the party may call at the hearing together with a summary of such person's anticipated testimony or an attached copy of any statement of such person. No witnesses will be allowed to testify at the hearing unless they are endorsed in the prehearing statement or supplement to prehearing statement.
 - (h) **Exhibits** - A specific description, attached copy or photograph of each piece of physical or documentary evidence that the party may offer into evidence at the hearing, including the place where the exhibits may be viewed and examined.
 - (i) **Experts** - The name, address, title and a brief summary of the qualifications of any expert witness the party may call at the hearing. This disclosure shall be accompanied by a written report or summary. The report or summary shall contain a complete statement of all opinions to be expressed and the basis and reasons therefor; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; and the qualifications of the witness. No expert witnesses will be allowed to testify unless they are endorsed in the prehearing statement or supplement to prehearing statement.
 - (j) **Other Matters** - Any unusual aspects about the case and other matters that the parties would like to bring to the attention of the Committee.
4. **Filing and Distribution of Prehearing Statements; Supplement to Prehearing Statements** - Fifteen [15] copies of prehearing statements and supplements shall be filed with the Committee. Parties shall be required to file prehearing statements containing the information identified in Section 4.0(3) no later than thirty (30) days before the hearing date. Parties may file one supplement to the prehearing statement. Any supplement shall be filed no later than fifteen (15) days before the hearing date. Parties may agree to alternative deadlines for filing the prehearing statements and supplements without leave of the Committee, but in no event may the prehearing statements or supplements be filed later than fifteen (15) days before the hearing date. Any such agreement shall be filed with the Committee as a written stipulation.
5. **Obligation to Confer** - Prior to the prehearing conference, or if no prehearing conference is scheduled, no later than thirty (30) days prior to the hearing date, the parties shall confer with each other to explore the possibilities of a settlement or resolution of the protest. If such settlement or resolution cannot be reached, the parties shall attempt to agree upon the facts, issues, points of law, claimed reimbursable expenses, witnesses, exhibits, experts or other matters related to the hearing and shall attempt to prepare a written joint stipulation stating those items that are resolved and those that remain unresolved. Any such stipulation shall be filed with the Committee no later than fifteen (15) days prior to the hearing date. Whether a prehearing conference is scheduled or not, the parties should continue to confer prior to the hearing date to attempt to settle or resolve the protest or to narrow the issues for hearing.
6. **Prehearing Order** - The results of any prehearing conference shall be embodied in an order prepared by the Committee.

Section 5.0 - Motions

The Committee may require that as part of the prehearing conference or otherwise, parties submit in advance of the hearing all motions or requests for rulings that a party intends to make with respect to the proceedings. These may include motions regarding procedures, the scope and nature of the proceedings, or any other matter that requires a determination by the Committee prior to final agency action based on the record, or any other matter that may reasonably be disposed of by the Committee prior to the receipt of testimony or other evidence. All motions shall be in writing and shall follow the time frames specified in the Rules of the Colorado Department of Administration, Division of Administrative Hearings, 1 CCR 104-1.



Section 6.0 - Discovery

1. **Forms of Discovery** - Any party may initiate discovery in the form of interrogatories to another party, requests for admission to another party, requests for production of documents to another party, depositions of any person, or other forms of discovery provided by the Colorado Rules of Civil Procedure, or any combination thereof, to the extent that time is available to complete such discovery prior to the hearing. The Administrative Procedure Act and, except as may be inconsistent with the specific rules provided herein, the Colorado Rules of Civil Procedure, shall apply.
2. **Disposition of Motions** - The Committee may dispose of motions related to discovery.
3. **Time for Completion of Discovery** - Discovery shall be completed no later than twenty (20) days prior to the hearing date, except as otherwise ordered by the Committee. Any notice of hearing issued in accordance with Section 2.0 shall be valid, and the hearing may proceed, regardless of whether the period between notice and hearing is sufficient to enable all discovery to be completed.

Section 7.0 - Subpoenas

Subpoenas shall be issued without discrimination between public and private parties by the Committee. A subpoena shall be served in the same manner as a subpoena issued by a Colorado district court. Upon failure of any witness to comply with such subpoena, the Committee may petition any district court, setting forth that due notice has been given of the time and place of attendance of the witness and the service of subpoena. The district court, after hearing evidence in support of or contrary to the petition, may enter an order as in other civil actions compelling the witness to attend and testify or produce books, records, or other evidence, under penalty of punishment for contempt in case of failure to comply. A witness shall be entitled to the fees and mileage provided for a witness in a court of record.

Section 8.0 - Conduct of Hearings

1. **Presentation of Positions** - Every party to the proceeding shall have the right to present its case by oral and documentary evidence and to submit rebuttal evidence. Where a hearing will be expedited and the interests of the parties will not be substantially prejudiced thereby, the Committee may receive all or part of the evidence in written form. Opening and closing statements shall be allowed.
2. **Witnesses; Oaths; Cross-Examination** - Each witness shall take an oath or affirmation before testifying. All parties to the proceeding shall have the right to cross-examine witnesses who testify at the proceeding to the extent necessary for a full and true disclosure of the facts, and to make objections at the proceedings. Any member of the Committee may cross-examine witnesses.
3. **Burden of Proof** - The party filing the protest shall have the burden of proof.
4. **Applicability of Rules of Evidence** - The rules of evidence and requirements of proof shall conform, to the extent practicable, with those in civil non-jury cases in the district courts. However, when necessary to do so in order to ascertain facts affecting the substantial rights of parties to the proceedings, the Committee may receive and consider evidence not admissible under such Rules if such evidence possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. The Committee shall give effect to the rules of privilege recognized by law. The Committee may exclude incompetent and unduly repetitious evidence. Documentary evidence may be received in the form of a copy or excerpt if the original is not readily available, but, upon request, the party shall be given an opportunity to compare the copy with the original.
5. **Application of Technical Knowledge** - The Committee may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence presented to it.
6. **Notice** - The Committee may take notice of general, technical, or scientific facts within its knowledge, but only if the fact so noticed is specified in the record or is brought to the attention of the parties before final decision and every party is afforded an opportunity to controvert the fact so noticed.



7. **Representation by Counsel** - Any party, or the agent, servant, or employee of any party, permitted or compelled to testify or to submit data or evidence shall be entitled to the benefit of legal counsel of his or her own choosing and at his or her own expense, but a person may appear for himself. An attorney who is a witness may not act as counsel for the party calling him or her as a witness. Any party, upon payment of a reasonable charge thereof, shall be entitled to a copy of the transcript of the record or any part thereof. Any person permitted or compelled to testify or to submit data or evidence shall be entitled to the benefit of legal counsel of his or her own choosing and, upon payment of a reasonable charge therefor, to procure a copy of the transcript of his or her testimony if it is recorded.
8. **Notice of Refusal to Accept for Filing** - Prompt notice shall be given of the refusal to accept for filing or the denial in whole or in part of any written applications or other request made in connection with any Committee proceeding or action, with a statement of the grounds therefor.
9. **Transcripts** - A full and complete record of all proceedings and testimony presented at the hearing shall be taken. Upon payment and receipt of any fees allowed therefor, a certified transcript of the whole or any part of the record shall be furnished to any party requesting the same.
10. **Additional Evidence** - The presiding officer may allow the parties to submit evidence not previously submitted under prehearing conference procedures, but only for good cause shown, such as where necessary for purposes of rebuttal.
11. **Order of Hearings** - All hearings shall be conducted in the following order unless otherwise directed by the Committee.
 - (a) Determination whether any Committee members have a conflict of interest
 - (b) Presentation of any stipulations or agreements of the parties, prehearing statements, proposed findings of fact, proposed conclusions of law, the prehearing order, and any other matter which was addressed at the prehearing conference
 - (c) Opening statement by the party filing the protest
 - (d) Opening statements by all other parties
 - (e) Presentation of case-in-chief by the party filing the protest
 - (f) Presentations by all other parties wishing to offer evidence in the order to be determined by the chairperson or the presiding officer at the hearing
 - (g) Rebuttal by the party filing the protest
 - (h) Closing statement by party filing the protest
 - (i) Closing statements by all other parties
 - (j) At the conclusion of any witness's testimony, or at the conclusion of the party's entire presentation, as may be determined by the chairperson or presiding officer, all other parties may then cross-examine such witness or witnesses. The order of cross examination shall be determined by the chairperson or presiding officer. The Committee may examine any witness called by any party.
12. **Maximum Time Allowed For Presentation** - Each party shall have thirty (30) minutes to present its case, to be divided as it sees fit among opening and closing statements, presentation of case in chief, witness testimony, rebuttal, etc. The Committee may allow additional time for presentations. If the Committee grants additional time to one party, the same amount of additional time will be offered to other parties.
13. **Ex Parte Communication Prohibited** - No ex parte communication shall take place during the course of any protest proceeding between any party, applicant for party status or other interested person, and the Committee or any of its members relating to the substance or procedure of the hearing. Requests from parties or applicants for party status for information concerning the proceedings shall be directed to the Committee chairperson. If such communication is procedurally or substantively significant the Committee chairperson shall file a description of the communication in the record of the hearing.



Section 9.0 - Final Action

1. **Decisions; Findings of Fact and Law; Based Upon the Record** - After due consideration of written and oral statements, the testimony, and the arguments presented at the hearing, the Committee shall make its findings and decision, based on evidence in the record, or make such determination of the matter as it shall deem appropriate consistent with Article 20.5, Title 8 of the Colorado Revised Statutes, and any rule, regulation, policy, or determination made by the Division of Oil and Public Safety or Committee pursuant thereto. The Committee shall proceed with reasonable dispatch to conclude any matter presented to it with due regard for the convenience of the parties or their representatives. Decisions of the Committee shall be final upon issuance. Decisions shall be served on each party by personal service or by mailing by first-class mail to the last address furnished in writing to the Committee or the Division of Oil and Public Safety.
2. **The Record** - The record of the hearing shall include all pleadings, applications, evidence, exhibits, and other papers presented or considered, matters officially noticed, rulings upon exceptions, any findings of facts and conclusions of law proposed by any party, and any written brief filed.

