

## **274-1-.09 Scope of Initial Administrative Appeal Hearing.**

- (1) The issue for the decision by the hearing officer shall be:
- (a) whether, and the hearing officer shall order issuance of a Certificate of Need if, in the hearing officer's judgment, the application is consistent with the considerations as set forth in O.C.G.A. § 31-6-42 and the Department's Rules, as the hearing officer deems such considerations and Rules applicable to the review of the project;
  - (b) whether the Department committed prejudicial procedural error in its consideration of the application; and
  - (c) whether the appeal lacks substantial justification; and
  - (d) whether such appeal was undertaken primarily for the purpose of delay or harassment.
- (2) The following issues shall not be considered at an initial administrative appeal hearing and are immaterial to the hearing:
- (a) the correctness, adequacy, or appropriateness of the considerations, rules, or standards by which the proposed project was reviewed by the Department; and
  - (b) the determination of whether a proposed project is subject to review under O.C.G.A. § 31-6-1 *et seq.* and the Department's Rules.
- (3) The appeal hearing conducted by the Appeal Panel hearing officer shall be a de novo review of the decision of the Department.

Authority O.C.G.A. Secs. 31-5A, 31-6, 31-6-44. **History.** Original Rule entitled "Place of Hearing" adopted as ER. 274-1-0.1-.09. F. July 21, 1983; eff. July 20, 1983, the date of adoption. **Amended:** Permanent Rule entitled "Time of Hearing" adopted. F. Nov. 8, 1983; eff. Nov. 28, 1983. **Repealed:** New Rule entitled "Conduct of Initial Administrative Appeal Hearing" adopted. F. Dec. 19, 1994; eff. Jan. 8, 1995. **Amended:** F. Aug. 15, 2002; eff. Sept. 4, 2002. **Repealed:** New Rule of same title adopted. F. Dec. 16, 2004; eff. Jan. 5, 2005. **Repealed:** New Rule entitled "Scope of Initial Administrative Appeal Hearing" adopted. F. Sept. 25, 2008; eff. Oct. 15, 2008.