

## **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 **Repealed:** New Rule entitled "Conduct of Initial Administrative Appeal Hearing" adopted.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 **Repealed:** New Rule of same title adopted.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 **Repealed:** New Rule entitled "Scope of Initial Administrative Appeal Hearing" adopted.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.