



STATE OF WEST VIRGINIA
STATE WATER RESOURCES BOARD

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April 26, 1984

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The Honorable A. James Manchin
Secretary of State
State Capitol
Charleston, WV 25305

Attn: Mr. Robert Jackson,
Administrative Law Division

Dear Sir:

Pursuant to the provisions of Chapter 29A of the Code of West Virginia, 1931, as amended, enclosed please find two (2) copies each of the proposed changes/additions/amendments/deletions to Series IV of the Administrative Regulations of the State Water Resources Board (1984) - Procedural Requirements for Procedures in Appeals Before the Board (Chapter 29A-3-2) along with the required State Register Filing form.

Comments on above proposed regulations will be received until May 26, 1984 and can be mailed to the above address or delivered in person to the Board Office at 1260 Greenbrier Street, Charleston, WV.

Respectfully submitted,

Frances E. Hunter
Executive Secretary

enclosures

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

DATE April 26, 1984
Administrative Law Division



STATE OF WEST VIRGINIA
OFFICE OF THE SECRETARY OF STATE
CHARLESTON 25308

A. JAMES MANCHIN
SECRETARY OF STATE

STATE REGISTER FILING

I, Frances E. Hunter, Executive Secretary,
Title or Position

STATE WATER RESOURCES BOARD, hereby submit to record in
Department or Division

the State Register on 8 1/2 x 11" paper two (2) copies of

- () proposed rules and regulations concerning topics of material not covered by existing rules and regulations;
- ~~()~~ proposed rules and regulations superseding rules and regulations already on file;
- () notice of hearing;
- () findings and determinations;
- () rules and regulations; or
- () other - specify ()

This filing pertains to

Chapter 29A
 Article 3
 Series WRB Series IV
 Section _____
 Page No. _____

FILED IN THE OFFICE OF
 A. JAMES MANCHIN
 SECRETARY OF STATE
 THIS DATE 4-26-84
 Administrative Law Division

- () proposed rules and regulations are required to go to Legislative Rule Making Committee;
- ~~()~~ proposed rules and regulations are excluded from Legislative Rule Making Committee;

April 26, 1984
Date Submitted

Frances E. Hunter
Signature of Person Authorizing
this Filing

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE WATER RESOURCES BOARD

CHAPTER 29A - 3 - 2

SERIES IV
(1984)

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE

THIS DATE 4-26-84
Administrative Law Division

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE WATER RESOURCES BOARD

Chapter 29A - 3 - 2
Series IV
(1984)

SUBJECT: **Requirements for Procedures in Appeals Before the Board

TABLE OF CONTENTS		Page
Section 1.01	Scope	1
1.02	Authority	1
1.03	Effective Date	1
1.04	Filing Date	2
1.05	Forms	2
1.06	Filing and Service of Documents and Orders	2-3
1.07	Third Party Appellants	3
1.08	Hearing To Be De Novo; Presentation	4
1.09	Continuation of Hearings	4-5
1.10	Conduct at Hearings	5
1.11	Briefs, Oral Argument	5
1.12	Motions	6
1.13	Rules of Evidence and Procedures	6-7
1.14	Time for Filing	7
	Promulgation History	8
	Fiscal Note	9
	Appendix "A" - Notice of Appeal Notice of Hearing	

** Procedural Rule

FILED IN THE OFFICE OF
A. JAMES MANCHIN
SECRETARY OF STATE
THIS DATE 4-26-84
Administrative Law Division

REGULATIONS IMPLEMENTING CODE 29A-3-2

RULES OF PROCEDURE

WEST VIRGINIA STATE WATER RESOURCES BOARD

WHEREAS, pursuant to the provisions of Section 2, Article 3, Chapter 29A of the West Virginia Code, 1931, as amended, the State Water Resources Board is an agency required to promulgate regulations by which rules of procedure are established for appeals and other proceedings before the Board, and

WHEREAS, Article 5 and 5A of Chapter 20 of the West Virginia Code, 1931, as amended, and Article 5 of Chapter 29A of the West Virginia Code (1964) set forth certain requirements for procedures in appeals before the Board;

NOW, THEREFORE, BE IT PROMULGATED BY THE BOARD:

1.01 Scope and Purpose

The rules of procedure herein shall govern and apply to appeal hearings before the State Water Resources Board. The purpose of these rules is to provide a fair and orderly ascertainment of the facts and to promote the ends of justice and fairness in the administration and effectuation of the statutory purpose of the appeal.

1.02 Authority

These rules are promulgated pursuant to the authority of Article 3, Chapter 29A of the West Virginia Code, 1931, as amended, and Articles 5 and 5A of Chapter 20 of said Code, as amended.

1.03 Effective Date

These rules were promulgated on the _____ day of _____, 1984, and become effective on the _____ day of _____, 1984.

1.04 Filing Date

These rules were filed in the Office of the Secretary of State on _____, 1984.

1.05 Forms

- a. Notice of Appeal
- b. Notice of Hearing
- c. Motions will generally follow the format used in civil cases in the Circuit Courts of West Virginia.

Copies of forms prescribed by the Board are contained in Appendix "A" to these Rules of Procedure.

1.06 Filing and Service of Documents and Orders

- a. Where to file: All documents required to be filed in an appeal under these rules shall be filed with the Executive Secretary of the State Water Resources Board, 1260 Greenbrier Street or mail address is, 1205 Greenbrier Street, Charleston, West Virginia 25311.
- b. How to file: All filing may be accomplished by personal delivery or first class mail and shall be in six (6) copies.
- c. When filing effective: Filing is effective upon delivery or upon mailing as determined by postmark.
- d. Copies to be served: Copies of all documents filed in an appeal under these rules shall be served upon all other parties.
- e. Method of service; service on attorney: Service of documents shall be accomplished by personal delivery or by registered or certified mail, return receipt requested, unless otherwise provided in these rules.

Whenever a party is represented by an attorney who has signed any document filed on behalf of such party or otherwise entered an appearance on behalf of such party, service thereafter shall be made upon the attorney.

f. When service effective: In the case of personal delivery, service is effective upon delivery. In the case of mailing, service is effective upon mailing.

g. Proof of service: Unless otherwise provided in these rules, all documents required to be served shall be accompanied by proof of service in the form of a certificate of service. The certificate of service shall include a statement of how service was accomplished.

h. Amendments: Upon motion of any party to an appeal and for good cause shown, the Board may within its discretion grant leave to amend the Notice of Appeal or any other documents filed in a proceeding before the Board.

1.07 Third Party Appellants

Where an appeal is filed by a party or parties who are not the holders of the permit, the issuance of which, or the terms and conditions of which, are being appealed, or where such third party appellant is not the person against whom the order of the Chief, Division of Water Resources, Department of Natural Resources, was issued, the third party appellant shall serve upon the holder of the permit or the person named in the order complained of a copy of the Notice of Appeal at the same time that such notice is filed with the Board. The holder of the permit or the person named in the order complained of shall be considered a party in interest in the appeal proceedings and shall have the right to intervene.

1.08 Hearing Presentation

a. The Board shall hear the appeal de nova, with appellant(s) opening the hearing and presenting their testimony and exhibits offered in support of the petition. Appellant's witnesses will be subject to cross-examination by any other party to the appeal or the Board. At the conclusion of appellant's case, the appellee may then present testimony and exhibits offered in support of his final order. After initial presentations have been made, both the appellant and the appellee may present rebuttal evidence on the issues in the case, where such evidence is not cumulative, repetitive or immaterial to the case. All witnesses shall be subject to cross-examination as previously set forth.

b. All appeal hearings shall be conducted in accordance with Article 5 of Chapter 29A of the West Virginia Code of 1931, as amended, as if the same were herein set out in full.

c. Written stipulations by the parties to some or all the facts may be filed with the Executive Secretary of the Board before the hearing of an appeal or may be read into the record at the time the hearing is held.

d. Closing statements and statements of position may be made by the parties to the appeal before the hearing is closed or at such time as designated by the Board. No order shall be made which is not supported by competent legal evidence as defined by West Virginia Code 29A-5-2.

e. Appeal hearings shall be open to the public.

1.09 Continuance of Hearings

After date for hearing has been set, continuances will not be granted by the Board except for good and sufficient cause. A party who desires a

continuance shall, immediately upon receipt of notice of the hearing, or as soon thereafter as facts requiring such continuance comes to his knowledge, file a written motion with the Board stating in detail the reasons why such continuance is necessary. Such motion shall be filed at least five (5) days prior to the date of hearing. In cases of hardship or other good cause, a party may by oral motion move for a continuance at any time up to the time of the hearing. The Board may grant such a continuance and may at any time order a continuance upon its own motion.

1.10 Conduct at Hearings

All parties to hearings, their counsel, and spectators, shall conduct themselves in a respectful manner. Demonstrations of any kind at hearings shall not be permitted. The Board may, at its discretion, recess or continue any hearing in which the parties, attorneys, witnesses or spectators conduct themselves in a disrespectful, disorderly or contemptuous manner which interferes with or prevents the proper conduct of such hearing.

1.11 Briefs, Oral Argument

A party may file a brief before the Board. If a brief is filed a copy will be served on all parties to the appeal. The Board may require the filing of briefs and reply briefs or the presentation of oral argument or both by the parties. Requests for the filing of briefs or oral arguments shall be made before or at the conclusion of the taking of evidence. It is the policy of the Board to encourage oral argument in lieu of filing of briefs. The requirements of this rule may be altered by agreement of the parties with the consent of the Board.

1.12 Motions

The Board may in its administrative discretion and in the interests of fairness and justice, rule on motions which tend to regulate the course of the hearing, simplify the issues and dispose of procedural requests or similar matters.

Such motions may include, but are not limited to, questions regarding jurisdiction, sufficiency of service of process, failure to state a claim upon which relief can be granted, summary judgement, for a more definite statement, change of hearing location, amendment of appeal, dismissal of action or particular items on appeal. Any application to the Board, following the initial appeal, shall be by motion.

Unless made during the hearing all motions shall be in writing, stating with particularity the grounds thereof and stating the relief or order sought. The motion may be accompanied by a memorandum or affidavit. The proponent of the motion shall serve it on the Board and all parties to the appeal.

A party shall have ten (10) days to respond to a motion unless the parties and the Board agree to an extension.

1.13 Rules of Evidence and Procedures

The rules of evidence as applied in civil cases in the Circuit Courts of West Virginia will be followed in appeal hearings before the Board. (See W. Va. Code § 29A-5-2). The differences in the functions of courts and administrative boards preclude the "wholesale transportation" of the Rules of Civil Procedure to the Board's hearings; however some informal rules must be followed to effectively manage the proceeding.

As a matter of policy then and to assure fairness, it is reasonable to utilize appropriate Rules of Civil Procedure as guidelines in appeals before the Board to ascertain facts upon which the Board will make decisions in the interest of justice and to achieve its statutory purpose.

1.14 Time for Filing

After receipt of a transcript of the evidence, the appellant(s) may file six (6) copies of its brief with the Board and serve a copy on all other parties. The time schedule for filing and for the reply will be established by the Board.

Adopted this _____ day of _____, 1984, by the West Virginia State Water Resources Board.

PROMULGATION HISTORY

These proposed procedural regulations were filed in the Office of the Secretary of State on May 19, 1981, and publicly noticed on the same date, with the comment period closing on June 18, 1981.

The required number of copies were then filed with the Secretary of State on June 29, 1981 with an effective date of June 29, 1981.

Proposed changes/additions/amendments/deletions to Series IV of the Board's Administrative Regulations were duly filed in the Office of the Secretary of State on April 26, 1984 for inclusion in the State Register, comment period closing on May 26, 1984.

FISCAL NOTE

The proposed changes/additions/amendments/deletions to Series IV of the Administrative Regulations of the State Water Resources Board are not expected to require any additional requirement of State funds for their implementation.

APPENDIX "A"



STATE OF WEST VIRGINIA
WATER RESOURCES BOARD
CHARLESTON 25305

NOTICE OF APPEAL

Appeal No.

Case No.

Appellant (s)

vs.

CHIEF, DIVISION OF WATER RESOURCES,
STATE DEPARTMENT OF NATURAL RESOURCES,

Appellee

TO THE WATER RESOURCES BOARD:

The Appellant _____ above named respectfully represent _____ that _____

_____ aggrieved by _____

(Describe order, failure or refusal, or permit and give date of order or permit)

The Appellant _____ therefore pray _____ that this matter be reviewed and that _____

(Describe relief sought)

This _____ day of _____, 19____

Appellant

Address

Counsel

Address

The appellant will furnish the information as indicated by the following captions:

ORDER, FAILURE OR REFUSAL, OR TERMS, AND CONDITIONS COMPLAINED OF

NATURE AND GROUNDS OF APPELLANT'S CLAIM

QUESTIONS OF FACT

QUESTIONS OF LAW

Counsel for Appellant



STATE OF WEST VIRGINIA
WATER RESOURCES BOARD
CHARLESTON 25305

NOTICE OF HEARING

Date: _____

To:

and

Chief, Division of Water Resources
State Department of Natural Resources
Charleston, West Virginia 25305

A hearing in the case of _____

vs. Chief, Division of Water Resources, State Department of Natural Resources, Appeal No. _____, Case No. _____, will be held on the _____ day of _____, 19____, beginning at _____ o'clock _____, or as soon thereafter as the matter may be heard, in the City of _____, _____ County, West Virginia, in _____

concerning the matters set forth in the Notice of Appeal filed in this case, which Notice of Appeal is hereby made a part hereof with like effect as if the same were set forth herein.

By: _____
Secretary