

WEST VIRGINIA ADMINISTRATIVE REGULATIONS

STATE WATER RESOURCES BOARD

Chapter 29A-3-2  
Series IV  
(1981)

Subject: Requirements for Procedures in Appeals Before the Board

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1.01 Scope - The procedures and rules of procedure herein shall govern and apply to appeal hearings before the West Virginia Water Resources Board.

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 29th day of June, 1981, and become effective on the 29th day of July, 1981.

1.04 Filing Date - These rules were filed in the Office of Secretary of State on the 29th day of June, 1981.

*obsolete  
valid July 29, 1981 to  
July 26, 1984*

Requirements for Procedures in Appeals Before the Board

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Appendix "A" - Notice of Hearing Form  
Notice of Appeal Form

REGULATIONS IMPLEMENTING CODE 29A-3-2

*SERIES IV*

RULES OF PROCEDURE

WEST VIRGINIA STATE WATER RESOURCES BOARD

WHEREAS, pursuant to the provisions of Section 2, Article 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, set forth certain requirements for procedures in appeals before the Board;

NOW, THEREFORE, BE IT PROMULGATED BY THE BOARD:

1.01 Scope

The procedures and rules of procedure herein shall govern and apply to appeal hearings before the West Virginia Water Resources Board.

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 29th day of June, 1981, and become effective on the 29th day of July, 1981.

OFFICE  
STATE  
SECY. OF

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RECEIVED

1.04 Filing Date

These rules were filed in the Office of the Secretary of State on the 29th day of June, 1981.

1.05 Forms

- a. Notice of Appeal
- b. Notice of Hearing

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 Secretary of the State of West Virginia, Water Resources Board, 1205 Greenbrier Street, Charleston, West Virginia 25311.

b. How to File: All filing may be accomplished by personal delivery or first class mail.

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 served upon or delivered to 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 to be de novo; Presentation

a. The Board shall hear the appeal de novo, 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 the Board or any other party to the appeal. At the conclusion of appellant's case, the appellee shall then present testimony and exhibits offered in support of his final order. After both initial presentations have been made, both the appellant and the appellee will be invited to present rebuttal evidence on the issues in the case, where such evidence is not cumulative 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 secretary 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 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 the time the proceeding is called for 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. 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

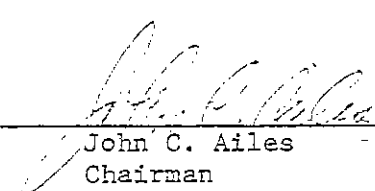
shall be made before or at the conclusion of the taking of evidence. It is the policy of the Board to encourage oral argument in lieu of filing of briefs. The requirements of this rule may be altered by agreement of the parties with the consent of the Board.

1.12 Time for Filing

Unless otherwise ordered by the Board or unless briefs are to be filed simultaneously, the appellant(s) shall have twenty (20) days after the receipt of a transcript of the evidence in which to file six (6) copies of its brief with the Board and to serve a copy thereof on each of the other parties to the case. The appellee shall have twenty (20) days after receiving said briefs within which to file six (6) copies of its brief with the Board and serve a copy thereof on each of the other parties to the proceedings.

Adopted this 29th day of June, 1981, by the West Virginia State Water Resources Board.

--- Attest:

  
\_\_\_\_\_  
John C. Ailes  
Chairman

These regulations to become effective thirty (30) days after filing with the Secretary of State.

APPENDIX "A"



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



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 \_\_\_\_\_

QUESTIONS OF FACT

QUESTIONS OF LAW

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Counsel for Appellant

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Appellant

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Address

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Counsel

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Address

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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