

TITLE 2. ADMINISTRATION

CHAPTER 17. WATER QUALITY APPEALS BOARD

(Authority: A.R.S. § 49-322 (D))

Editor's Note: The Water Quality Appeals Board rules were previously established under 2 A.A.C. 1, Article 7 (See Supp. 97-3 for former rules). They were repealed and this new Chapter was subsequently adopted in Supp. 98-1.

ARTICLE 1. APPEALS

Sections R2-17-101 through R2-17-128, and Appendices A & B, adopted effective January 8, 1998 (Supp. 98-1).

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ARTICLE 1. APPEALS

R2-17-101. Scope of Article; General Considerations

- A. These rules of procedure govern all appeals to the Water Quality Appeals Board taken under A.R.S. § 49-323.
- B. Where a procedure is not established by law, this Article, or an order of the Board, the Board may refer to the Arizona Rules of Civil Procedure for guidance, but the Arizona Rules of Civil Procedure are not binding on the Board or the parties unless the Board issues an order to that effect.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-102. Definitions

The definitions in A.R.S. §§ 41-1001 and 41-1092 apply to this Article. In addition, the terms in this Article have the following meanings:

1. "Appellant" means the person who files a notice of appeal with the Department of Environmental Quality under A.R.S. § 49-323.
2. "Board" means the Water Quality Appeals Board appointed by the Governor according to A.R.S. § 49-322, but includes an individual Board member or administrative law judge acting on behalf of the Board according to a lawful delegation of authority.
3. "Clerk" means the person designated as Clerk of the Board.
4. "Ex parte communication" means an oral or written communication, not on the public record, made without sufficient prior notice to permit all parties to participate in the communication.
5. "Party" means the appellant, the Department of Environmental Quality, all persons named by the appellant as interested persons as provided in R2-17-107 (B)(2), and any interested person the Board has permitted to intervene in the appeal as a matter of right.
6. "Record" has the meaning found in A.R.S. § 41-1092.10 (C).

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-103. Commencement of an Appeal; Copies; Informal Settlement Conference

- A. To commence an appeal, the appellant shall file a notice of appeal with the Department of Environmental Quality. The Department of Environmental Quality shall deliver or mail a copy of the notice of appeal to the Clerk of the Water Quality Appeals Board. The appellant shall file the notice of appeal within 30 days after receiving the notice of appealable agency action. The date of filing is the date the Department of Environmental Quality receives the notice of appeal.
- B. The Clerk shall make available to all persons copies of the Notice of Appeal form in Appendix A and copies of this Article. The Clerk shall charge a reasonable fee for the cost of copies.
- C. If an informal settlement conference is requested by the appellant under A.R.S. § 41-1092.06, the Department of Environmental Quality shall notify the Board in writing of the request and the outcome of the conference.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-104. Docket; Case Number; Information on Documents

- A. The Clerk shall maintain a docket of all appeals and assign each appeal a case number. For each appeal, the Clerk shall enter all of the following information on the docket:
 1. The case number;
 2. The case name;
 3. The filing date of the notice of appeal;
 4. The receipt date of any answer;
 5. The receipt date of any disclosures;
 6. The receipt date of prehearing motions, responses, and replies;
 7. The dates of the evidentiary hearing;

8. The dates of orders by the Board and the Board's decision;
 9. The receipt date of any motion for rehearing or review;
 10. The Board's decision on any motion for rehearing or review and the date of the decision; and
 11. The Board's final decision and the date of the final decision.
- B.** A party shall place the case number and the name, address, and telephone number of the party or party's attorney on all pleadings, motions, or other documents filed with the Board.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-105. Filing and Service of Pleadings, Motions, or Other Documents

- A.** Within the time limits for filing, a party shall file the original and 1 copy of all pleadings, motions, or other documents with the Clerk and serve a copy on each party and the administrative law judge, if the Board has delegated hearing powers and duties to the Office of Administrative Hearings.
- B.** A party shall serve documents other than subpoenas by personal service or by regular mail. A party is considered served at the time of personal service of the document or upon deposit of the document in the United States mail, postage prepaid, in a sealed envelope, addressed to the party being served, at the party's last address of record with the Department of Environmental Quality or the Board. If there is a discrepancy between the records of these agencies, the party serving the document shall use the last address of record with the Board. Each party shall inform the Board of any change of address within 5 days of the change.
- C.** A party shall demonstrate proof of service by filing with the Clerk a written statement, signed by the party, indicating that service was made in person or by mail. The statement shall be attached to the pleading, motion, or other document being filed.
- D.** After receiving the Notice of Appeal or an Answer of a party, or when the Board finds that the interest of justice so requires, the Board may order any party to publish an appropriate notice in a newspaper of general circulation in the community or communities that may be adversely affected if the appellant is granted the relief requested in the appellant's Notice of Appeal. The party shall publish the notice in the manner prescribed by the Arizona Rules of Civil Procedure, unless the Board determines that another method of publication is more appropriate.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-106. Computation of Time; Additional Time After Service by Mail

- A.** In computing any period of time prescribed or allowed by these rules or by order of the Board, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. When the period of time prescribed or allowed is less than 11 days, not including the time for mailing permitted in subsection (B), intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation. When that period of time is 11 days or more, not including the time for mailing permitted in subsection (B), intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.

- B.** Whenever a party has a right or is required to do some act or proceed within a prescribed period after the service of a notice or other document upon the party and the notice or document is served by mail, 5 calendar days shall be added to the prescribed period. This subsection does not apply when time is counted from the date that a party receives the notice or other document.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-107. Contents of a Notice of Appeal

- A.** The appellant may use the Notice of Appeal form in Appendix A and, where there is not enough space on the form, the appellant may attach additional sheets of paper. The notice of appeal shall contain the following statements:
1. "The appellant files this notice of appeal with the Department of Environmental Quality according to A.R.S. § 49-323."
 2. "Under A.R.S. § 49-323 and A.A.C. R2-17-101 et seq., if you, a Respondent in this case, have an interest in the final decision that may result from this Notice of Appeal, you are required to file an Answer to this Notice of Appeal within 20 days from the date of service of this Notice of Appeal on you."
- B.** The notice of appeal shall contain the following information:
1. The name, address, and telephone number of the appellant and, if the appellant is represented by an attorney, the name, address, telephone number, and Arizona Bar number of the appellant's attorney;
 2. The names, mailing addresses, and telephone numbers of all of the following interested parties:
 - a. The permittee or registrant, if the permittee or registrant is not the appellant;
 - b. All persons who filed a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing; and
 - c. The Department of Environmental Quality.
 3. The specific action of the Department of Environmental Quality involving the grant, denial, modification, or revocation of an individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. § 49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304;
 4. The date of the action by the Department of Environmental Quality;
 5. The date the notice of action by the Department of Environmental Quality was received by the appellant;
 6. The relief requested by the appellant and a concise statement of the reasons for the appeal;
 7. The date of the notice of appeal;
 8. The signature of the appellant or the appellant's attorney;
 9. A verification that the appellant has served or caused to be served, a copy of the notice of appeal on the Department of Environmental Quality and all parties named by the appellant.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-108. Time for Filing an Answer to a Notice of Appeal

The Department of Environmental Quality and all parties named by the appellant shall file an answer to appellant's notice of appeal within 20 days from service of the notice of appeal on that party.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-109. Contents of an Answer to a Notice of Appeal

The answer of each respondent shall contain the following information:

1. The name, address, and telephone number of the respondent preparing the answer and, if the respondent is represented by an attorney, the name, address, telephone number, and Arizona Bar number of the respondent's attorney;
2. A response to the appellant's allegations relating to the action taken by the Department of Environmental Quality involving the grant, denial, modification, or revocation of an individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. § 49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304;
3. The relief requested by the respondent;
4. The date of the answer;
5. The signature of the respondent or the respondent's attorney;
6. A verification that the respondent has served or caused to be served a copy of the answer on all other parties.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-110. Prehearing Disclosure

- A.** Within the times set forth in subsection (B), each party shall disclose in writing to every other party:
1. The factual basis of the appeal or response;
 2. The legal theory upon which the appeal or response is based, including citations of pertinent legal authorities;
 3. The names, addresses, and telephone numbers of all witnesses the party expects to call at the hearing, with a description of the substance of each witness' expected testimony;
 4. If a party is a corporation, the name of the state of incorporation. If the party is not an Arizona corporation, the party shall state whether it is qualified to do business in the state by the Arizona Corporation Commission;
 5. If the party is a partnership, the name, address, and telephone number of each partner;
 6. The names, mailing addresses, and telephone numbers of all of the following interested persons:
 - a. The permittee or registrant, if the permittee or registrant is not the appellant;
 - b. All persons who filed a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing;
 - c. The mayor of any city or town or the chair of the board of supervisors of any county that may be affected if the appellant is granted the relief requested;
 7. The name and address of each person whom the party expects to call as an expert witness at the hearing, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness and the name and address of the custodian of copies of any reports prepared by the expert;
 8. A list of documents which indicates the location, custodian, and a general description of any tangible evidence or relevant documents that the party plans to use during the hearing. Unless good cause is stated for not doing so, a copy of each document listed shall be served with the disclosure. If production is not made, the party shall indi-

cate the name and address of the custodian of the document. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.

- B.** The parties shall make the initial disclosure required by subsection (A) at least 15 days prior to the date set for hearing, unless the parties otherwise agree, or the Board shortens or extends the time for good cause. If feasible, counsel shall meet to exchange disclosures; otherwise, the parties shall serve the disclosures as prescribed in R2-17-105. At the same time the parties shall file with the Clerk the disclosures and 1 copy of each document listed.
- C.** The duties described in subsections (A) and (B) are continuing duties, and each party shall make additional or amended disclosures whenever new or different information is discovered or revealed. A party shall serve additional or amended disclosures seasonably, but in no event later than 3 days before the hearing, except by leave of the Board.
- D.** A party shall include in its disclosure, information and data in the possession, custody, and control of the parties as well as that which can be ascertained, learned, or acquired by reasonable inquiry and investigation.
- E.** Each party shall make the disclosure in writing under oath and sign the disclosure.
- F.** When information is withheld from disclosure or discovery on a claim that it is privileged or subject to protection as trial preparation materials, the party making the claim shall do so expressly and shall support the claim with a description of the nature of the documents, communications, or things not produced or disclosed that is sufficient to enable other parties to contest the claim.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-111. Depositions

The Board may allow the deposition of a witness who cannot be subpoenaed or is unable to attend the hearing, in the manner and upon the terms designated by the Board. The party requesting a deposition shall bear the expense of the deposition.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-112. Motions

- A.** To obtain an order or other relief from the Board, a party shall make a motion. Unless the motion is made during a hearing, the party shall make the motion in writing. For all motions, the party shall state the grounds on which the motion is based and the relief or order sought. The Board shall decide prehearing motions based on the written materials submitted by the parties.
- B.** Any party may file a response to a prehearing motion within 5 days after service of the motion and serve the response on all parties. The moving party has 2 days after service of a response to file a reply.
- C.** For a written motion, a party shall state the grounds on which the motion is based and the relief or order sought in a supporting memorandum. A party's supporting memorandum shall not exceed 15 pages, exclusive of pages containing the table of contents, the table of cases, statutes or other authorities, and the appendix, if any. A reply memorandum shall not exceed 5 pages.
- D.** A party shall support motion documents by affidavit or other satisfactory evidence if they contain facts not apparent in the record or facts that are not cognizable through judicial notice.
- E.** When the Board directly conducts an administrative hearing, the Board shall rule on all motions. When the Board uses the

services of the Office of Administrative Hearings, the administrative law judge shall rule on all motions.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-113. Duties of the Board During a Hearing

- A.** The Board shall:
1. Conduct the hearing in an impartial, orderly, and informal manner;
 2. Regulate the course of the hearing;
 3. Rule upon procedural matters incidental to the hearing;
 4. Designate the order in which parties introduce their evidence; and
 5. Exercise the powers granted in A.R.S. §§ 41-1092.07 and 12-2212.
- B.** The Board may:
1. Exclude a witness from the hearing so the witness cannot hear the testimony of other witnesses;
 2. Set time limitations for arguments;
 3. Exclude a person from the hearing who is disruptive to the proceedings;
 4. Administer oaths and affirmations to witnesses; and
 5. Issue any orders necessary for the impartial, orderly, and informal conduct of the hearing.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-114. Location of Hearings

All hearings shall be held in Arizona, in Maricopa County, unless the Board finds that it will be more cost effective for the Board and the parties to hold a hearing elsewhere, in which event the Board shall set the location of the hearing.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-115. Notice of Hearing

- A.** If the Board conducts an administrative hearing, the Clerk shall set a date for the hearing no later than 60 days from the date the appellant filed the notice of appeal with the Department of Environmental Quality. The Clerk shall prepare and serve a notice of hearing as prescribed in A.R.S. § 41-1092.05. The Clerk may use the Notice of Hearing Form in Appendix B. If the Board uses the services of the Office of Administrative Hearings, the Clerk shall set the hearing date in consideration of and in conjunction with the Office of Administrative Hearings.
- B.** The notice of hearing shall contain the following information and statements:
1. The date, time, and place of the hearing;
 2. The hearing will be on the appellant's notice of appeal from an action of the Department of Environmental Quality;
 3. A.R.S. § 49-323 provides the authority and jurisdiction under which the hearing will be held;
 4. The particular sections of the statutes and rules involved in the substantive appeal are A.R.S. § 49-323 and A.A.C. R2-17-101 et seq. The parties should also refer to procedural statutes which may be applicable to this appeal, including A.R.S. §§ 41-1092.03 through 41-1092.11;
 5. The hearing will be a full evidentiary hearing for the purpose of reviewing the grant, denial, modification, or revocation of any individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. § 49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304;

6. The date the appellant filed the notice of appeal;
 7. The name of the administrative law judge, if any, when known at the time the notice of hearing is served;
 8. The Board may issue subpoenas on behalf of any party;
 9. All parties may be represented by counsel, may introduce evidence through witnesses and documents, and may cross-examine witnesses of other parties;
- C.** The Clerk shall provide written notification that reasonable accommodation will be made for the disabled, if the accommodation is requested. The notification shall be served with the notice of hearing.
- D.** At least 30 days prior to the date of the hearing the Clerk shall serve a copy of the notice of hearing on each Board member, the administrative law judge, if any, and each party.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-116. Consolidation

Upon the motion of a party, the Board may consolidate 2 or more appeals involving a common question of law or fact when consolidation will avoid unnecessary cost or delay.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-117. Continuances

- A.** A party applying for a continuance of a hearing shall file a motion with the Clerk and serve all parties no later than 10 days before the scheduled date of the hearing. The Board may accept a motion filed later than 10 days before the hearing for good cause. The motion shall state why the continuance is being requested, why a stipulation from adverse parties was not obtained, and the amount of time requested.
- B.** Any opposing party may, within 5 days after service of the motion, file and serve a response. The Board may permit a reply.
- C.** The parties may stipulate to a continuance. The Board is not required to accept the stipulation.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-118. Subpoenas

- A.** A party shall make a written request for a subpoena which clearly identifies the person, documents, or other evidence desired and the reason the evidence is relevant to the proceeding. The party requesting the subpoena shall file the request at least 15 days prior to the date set for hearing, provide the Board with a proposed subpoena for signature, and ensure that any subpoena issued is served in the manner prescribed by the Arizona Rules of Civil Procedure.
- B.** The person to whom a subpoena is directed shall comply with its provisions unless:
1. The person serving the subpoena has failed to comply with subsection (A) of this rule; or
 2. The person to whom the subpoena is directed, at least 10 days prior to the date set for the hearing, files a motion to quash or modify the subpoena and the motion is granted in whole or in part, prior to the hearing.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-119. Prehearing Conferences

- A.** Upon a motion by a party or on the initiative of the Board, the Board may order a prehearing conference, if the Board finds that a prehearing conference will assist the Board to:

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1. Conduct the hearing within the 60-day period prescribed by A.R.S. § 41-1092.05(A); or
 2. Reach a just, speedy, and less expensive determination of the appeal.
- B.** If the Board takes any action at or after the prehearing conference, the Board shall prepare a written order reciting the action taken. The order shall become a part of the record of the appeal.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-120. Hearing

- A.** The Board shall conduct a full evidentiary hearing. A party may introduce new evidence or evidence that was considered by the Department of Environmental Quality when it took the action being appealed.
- B.** The Board shall use the standard of review prescribed in A.R.S. § 49-324(C) to decide an appeal.
- C.** Noncompliance with any order of the Board or disruption of any hearing is improper conduct and grounds for exclusion from the hearing.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-121. Evidence

- A.** All witnesses at a hearing shall testify under oath or affirmation. All parties shall have the right to present evidence and to conduct cross-examination as may be required for a full and true disclosure of the facts. The Board shall receive relevant, probative, and material evidence, rule upon offers of proof, and exclude all evidence determined to be irrelevant, immaterial, or unduly repetitious.
- B.** Any party may call additional witnesses or introduce into evidence additional documents not disclosed by the party in its notice of appeal, answer, initial prehearing disclosure, or an additional or amended disclosure if that witness or document was not or could not reasonably have been known to that party at the time the party filed its notice of appeal, answer, initial prehearing disclosure, and additional or amended disclosure.
- C.** The Board may conduct a hearing in an informal manner and without adherence to the rules of evidence required in judicial proceedings or follow that portion of the Arizona Rules of Evidence that the Board deems appropriate.
- D.** The Board may question any witness.
- E.** The Board may take judicial notice of judicially cognizable facts. In addition, the Board may take notice of generally recognized technical or scientific facts within the board members' specialized knowledge. The Board shall notify the parties either before or during the hearing, by reference in a preliminary report or otherwise, of the material noticed, including any staff memoranda or data. The parties shall be afforded an opportunity to contest the noticed material. The board members' experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-122. Recording Hearings

- A.** The Board shall tape-record the hearing unless it determines there will be a court reporter and is able to obtain state funds for the cost of the court reporter.
- B.** Any party may use a court reporter to produce a record of the hearing, but that party shall pay for all costs of the court reporter. Where a hearing is recorded by a party's court reporter, the Board shall determine whether the tape recording or the court reporter's recording will be used to prepare the

hearing transcript. The Clerk shall ensure that the proceedings are transcribed and provide copies of the transcript to the Board at the time the Board meets to consider its decision on the appeal.

- C.** Any party that requests a transcript of the proceeding from the Board shall pay the Clerk a fee for the cost of copying the transcript.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-123. Ex Parte Communications

- A.** In any appeal before the Board, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure:
1. An interested person shall not make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any Board member, administrative law judge, or employee of the State of Arizona who is or may reasonably be expected to be involved in the decision making process.
 2. A Board member, administrative law judge, or employee of the State of Arizona who is or may reasonably be expected to be involved in the decision making process shall not make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any interested person.
- B.** A Board member, administrative law judge, or employee of the State of Arizona who is or may reasonably be expected to be involved in the decision making process and receives, makes, or knowingly causes to be made a communication prohibited by this Section shall place all written communications and all written responses to the communications in the public record of the proceeding and by oral testimony on the record state the substance of all oral communications.
- C.** Any interested person who receives a communication prohibited by this Section shall file a notice of the communication with the Clerk and serve a copy on the Solicitor General and all parties to the appeal. The interested person shall attach to the notice a copy of the communication, if written, or a summary of the communication, if oral.
- D.** When the Board is made aware under subsections (B) or (C) of a communication prohibited by this Section, the Board shall give all parties a reasonable opportunity to respond to the communication. The Board, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the person responsible for the communication to show cause why the person's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.
- E.** The provisions of this Section apply to an appeal from the date the notice of appeal is filed to the date on the Board's final administrative decision, unless the person responsible for the communication knew the appeal would be noticed, in which case the prohibition applies from the time that the person acquired the knowledge.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-124. Notification of Decisions and Orders

The Clerk shall notify each party promptly by either delivering or mailing copies of all decisions and orders, including the findings of fact, conclusions of law, and the final administrative decision of the Board to each party's last known address.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-125. Decision of the Board

- A.** If the Board uses the services of the Office of Administrative Hearings, the Board will receive a copy of the administrative law judge's decision under A.R.S. § 41-1092.08. Within 30 days after receipt, the Board may review the decision and accept, reject, or modify it.
1. If the Board does not make a decision within 30 days, the Board has accepted the administrative law judge's decision as the final administrative decision.
 2. If the Board reviews the administrative law judge's decision, it shall request the record of the hearing, described in A.R.S. § 41-1092.10(C), and may accept, reject, or modify the decision. If the Board rejects or modifies the decision, the Board shall file with the Office of Administrative Hearings a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification. Under the circumstances in this subsection, the decision of the Board is the final administrative decision.
- B.** If the Board directly conducts an administrative hearing, the Board shall meet and render its final administrative decision on the appeal in writing within 15 days after the hearing. The Board's decision shall contain its findings of fact and conclusions of law, separately stated, and its decision.
- C.** The Board's final administrative decision shall contain the following statement: "This is a final administrative decision of the Water Quality Appeals Board, made according to A.R.S. § 49-323. You may file a motion for rehearing or review of this decision under R2-17-126. If you file a motion for rehearing or review, you shall file your motion within 30 days after service of this decision. You are not required to file a motion for rehearing or review before seeking judicial review. This decision may be reviewed by the Superior Court if you file a complaint in the manner prescribed in A.R.S. §§ 41-1092.10 and 41-1092.11."
- D.** The Board may incorporate by reference findings, conclusions, or a decision previously made by an administrative law judge.
- E.** When the Board has rendered a final administrative decision, it shall serve a copy of the decision on all parties.
2. Misconduct of the Board, its staff, an administrative law judge, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding; or
 6. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- E.** The Board may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.
- F.** When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 5 days after service, serve opposing affidavits.
- G.** Not later than 15 days after the date of the decision, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion.
- H.** If the Board makes specific findings that the immediate effectiveness of a decision is necessary for the preservation of the public health and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue a final administrative decision without an opportunity for rehearing or review. A party may seek judicial review of the decision under A.R.S. §§ 41-1092.10 and 41-1092.11.
- I.** The Board shall rule on the motion for rehearing or review within 15 days after it has been received. If a rehearing is granted, the Board shall hold the rehearing within 90 days after the issue date on the order granting the rehearing.
- J.** If a motion for rehearing or review is denied, the Clerk shall serve a notice of denial on all parties within 15 days after the denial.
- K.** If the motion for rehearing or review is granted, the Clerk shall serve the Board's final administrative decision on all parties within 15 days after the Board renders the decision.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-126. Rehearing or Review of Decision

- A.** Except as provided in subsection (H), any party to an appeal before the Board may file a motion for rehearing or review within 30 days after service of the final administrative decision. The party shall attach a supporting memorandum, specifying the grounds for the motion. The party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.
- B.** Any other party may file a response within 5 days after service of a motion for rehearing or review. The party shall support the response with a memorandum, discussing legal and factual issues.
- C.** The moving party, the responding party, or the Board may request oral argument.
- D.** The Board may grant a rehearing or review for any of the following causes materially affecting a party's rights:
1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, that deprived the moving party of a fair hearing;

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-127. Judicial Review

The final administrative decision of the Board may be reviewed as provided by A.R.S. §§ 41-1092.10, 41-1092.11, 49-323 and A.R.S. § 12-901 et seq. (Title 12, Chapter 7, Article 6, Judicial Review of Administrative Decisions Act).

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

R2-17-128. Record

The Clerk shall keep the record and ensure that it is preserved for a minimum of 5 years from the date of the final administrative decision.

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

Appendix A. Notice of Appeal

(If this form does not give you adequate space, attach additional sheets of paper.)

BEFORE THE WATER QUALITY APPEALS BOARD
DEPARTMENT OF ADMINISTRATION
IN AND FOR THE STATE OF ARIZONA

Appellant,)
)
) CASE NO. _____
vs.)
) NOTICE OF APPEAL
)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
)
)
Respondents.)
_____)

- 1. The appellant files this Notice of Appeal with the Department of Environmental Quality according to A.R.S. § 49-323.
2. Under A.R.S. § 49-323 and A.A.C. R2-17-101 et seq., if you, a Respondent in this case, have an interest in the final decision that may result from this Notice of Appeal, you are required to file an Answer to this Notice of Appeal within 20 days from the date of service of this Notice of Appeal on you.
3. The name, address, and telephone number of the appellant is:

Name:
Address:
Telephone:

If I, the appellant, am represented by an attorney, the name, address, telephone number, and Arizona Bar number of my attorney is:

Name:
Address:
Telephone: Bar No.

- 4. The following is a list of names, mailing addresses, and telephone numbers of all of the following interested parties:
a. The permittee, if the permittee is not the appellant;
b. All persons who filed a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing; and
c. The Department of Environmental Quality.

Name:
Address:
Telephone:
Name:
Address:
Telephone:
Name:
Address:
Telephone:

- 5. The specific action of the Department of Environmental Quality which is the basis of this appeal is the following:
a.

b.

- 6. The date of the action complained of in the previous paragraph (5) is (month) (day), (year).
- 7. The date the appellant received notice of the action complained of in the previous paragraph (5) is (month) (day), (year).
- 8. I request the relief below for the following reasons:

DATED (month) (day), (year)

 Signature of the Appellant or
 the attorney for the Appellant

VERIFICATION

I verify that I have served or caused to be served a copy of this Notice of Appeal on the Department of Environmental Quality and all the persons listed in paragraph (4) above.

DATED (month) (day), (year)

 Signature of the Appellant or
 the attorney for the Appellant

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).

Water Quality Appeals Board

Appendix B. Notice of Hearing

BEFORE THE WATER QUALITY APPEALS BOARD
DEPARTMENT OF ADMINISTRATION
IN AND FOR THE STATE OF ARIZONA

Appellant,)
)
)
vs.)
)
DEPARTMENT OF ENVIRONMENTAL)
QUALITY,)
)
)
Respondents.)
_____)

CASE NO. _____

NOTICE OF HEARING

TO ALL PARTIES:

- 1. The date of the hearing is (month) (day), (year), at _____ o'clock ____M. at the following address:
2. The hearing will be on the appellant's notice of appeal from an action of the Department of Environmental Quality.
3. A.R.S. § 49-323 provides the authority and jurisdiction under which the hearing will be held.
4. The particular Sections of the statutes and rules involved in the substantive appeal are A.R.S. § 49-323 and A.A.C. R2-17-101 et seq.
5. The hearing will be a full evidentiary hearing for the purpose of reviewing the grant, denial, modification, or revocation of any individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. § 49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304.
6. The date the appellant filed the Notice of Appeal is (month) (day), (year).
7. If known, the name of the administrative law judge, if any, is _____.
8. The Board may issue subpoenas on behalf of any party.
9. All parties may be represented by counsel, may introduce evidence through witnesses and documents, and may cross-examine witnesses of other parties.

DATED this (month) (day), (year)

Signature of the Clerk of the
Water Quality Appeals Board

Historical Note

Adopted effective January 8, 1998 (Supp. 98-1).