

Chapter H 85

R Reg June 1971

**PLEADING, PRACTICE, AND PROCEDURE IN THE
ADMINISTRATION OF SECTIONS 144.52 TO
144.57, WIS. STATS.**

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H 85.01 Definitions. (1) JOINT AGENCY. Joint agency, as used in these rules, means the state board of health (or the state health officer acting for the board under section 144.08 Wis. Stats.), acting jointly with the committee on water pollution (or its director acting under section 144.52 (2), Wis. Stats.).

(2) SPECIAL ORDERS. Special orders, as used in these rules, are orders of the joint agency which are not general in application.

(3) GENERAL ORDERS. General orders, as used in these rules, are orders of the joint agency which are general in application, and which constitute "rules" as defined in section 227.01 (2), Wis. Stats.

H 85.02 How proceedings initiated. (1) WHO MAY PETITION. Any person aggrieved by a special order of the joint agency entered under chapter 144, Wis. Stats., may file with said agency an original and eight copies of a verified petition setting forth specifically the modification or change desired in such order.

(2) FORM OF PETITION; VERIFICATION. Every such petition shall be in substantially the following form:

"To the state board of health and the committee on water pollution:

"The undersigned hereby petitions for a review of the order of this joint agency dated _____, 19 ____, whereby it was ordered _____

The grounds for this petition are _____

The modification or change desired is _____

"Date _____

"Verification _____"

(3) PROCEDURE. Upon the filing of the petition, the joint agency shall order a public hearing, shall fix a time for such hearing, and shall enter a decision accompanied by findings of fact and conclusions of law which shall affirm, repeal, or change the order in question. The decision of the joint agency shall be entered not more than 60 days after the close of the hearing.

(4) SERVICE AND FILING OF PAPERS. Unless otherwise provided by law, all orders, notices and other papers may be served by the joint agency by first class or registered mail addressed to the last known post office of the addressee. Papers required to be filed with the joint

agency may be mailed to the state board of health and the committee on water pollution at the following address:

1 W. Wilson Street
Madison 2, Wisconsin

(5) CONDUCT OF HEARINGS; CONTINUANCES; APPEARANCES; EXAMINATION OF WITNESSES. All hearings shall be conducted on behalf of the joint agency by any member designated by such joint agency to serve for that purpose, or by the director of the committee on water pollution. Continuances and adjournments may be granted by such presiding officer for cause shown. Witnesses competent to take an oath shall be sworn by the presiding officer or by a representative of the attorney general acting as counsel for such joint agency, or, with the permission of the presiding officer, by the petitioner or his attorney.

(6) SUBPOENAS. The presiding officer or other member of the joint agency may sign and issue subpoenas.

(7) ARGUMENTS. Except as provided in section 227.12, Wis. Stats., arguments shall be submitted to the board in writing, unless otherwise ordered. The number of copies of such argument and the time for filing shall be fixed by the presiding officer.

(8) VARIANCES. The provisions of section 263.28, Wis. Stats., shall apply to proceedings under these rules with reference to variances between allegations in the petition and proof.

H 85.03 General orders or rules. (1) PETITION. Any interested person or persons may petition the joint agency in writing for the adoption, repeal or amendment of any general order or rule which is within the scope of the rule-making powers of the joint agency.

(2) FORM OF PETITION.

(a) For adoption of joint general order or rule:

"To the state board of health and the committee on water pollution:

"The undersigned hereby petitions for the adoption of a rule relating to _____

"Date _____

Name _____

"Verification _____"

Address _____

(b) For repeal of a joint general order or rule:

"To the state board of health and the committee on water pollution:

"The undersigned hereby petitions for the repeal of rule (or regulation) number _____ which provides as follows:

The grounds for this petition are: _____

"Date _____

Name _____

"Verification _____"

Address _____

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(c) For amendment of a joint general order or rule:

"To the state board of health and the committee on water pollution:

"The undersigned hereby petitions for the amendment of rule (or regulation) number ----- which provides as follows:

The grounds for this petition are: -----

The modification or change desired is -----

"Date -----

Name

"Verification -----"

Address

(2) PETITION BY MORE THAN ONE PERSON. A petition may be for the adoption, amendment or repeal of more than one general order or rule, provided that each proposal shall be separately stated in conformity with paragraphs (a), (b), or (c) of Rule H 85.03 (2). The petition may be signed by more than one natural person.

(3) SUPPORTING DATA. Whenever the adoption, repeal or amendment of any rule is sought by reason of the existence of a factual situation which the petitioner claims exists, the petition shall be accompanied by a sworn statement or affidavit of at least one of the petitioners stating what facts the petitioner claims exist justifying the board in taking the action prayed for and stating what evidence of such facts the petitioner has in his possession and desires to present to the board. Any petition requiring such supporting data may in the board's discretion be summarily rejected if it does not conform to this rule.

(4) PROCEDURE. The procedure set forth in Rules H 85.02 (3), (4), (5), (6), (7), and (8) shall also apply where a petition has been made for the adoption, repeal or amendment of joint agency general orders or rules.

H 85.04 Declaratory rulings. (1) WHO MAY PETITION. Any person in interest or his duly authorized agent or attorney may petition the board or agency for a declaratory ruling with respect to the applicability to any persons, property or state of facts of any rule or statute enforced by the joint agency. Two or more persons similarly situated may join in a single petition and additional parties may intervene by petition. Whenever a petitioner desires a declaratory ruling as to a prospective course of action, the petition shall allege and proof must show that petitioner in good faith intends to pursue such course in the event of a favorable ruling. Whenever the petition or proof shows that the question presented is moot or hypothetical, or that petitioner has no legal interest therein, the joint agency may serve an order dismissing the petition, stating the grounds for such action.

(2) FORM OF PETITION; VERIFICATION. The form of a petition to the joint agency for a declaratory ruling shall be filed with the joint agency as provided in H 85.02 (1) and shall be in the following form:

“To the state board of health and the committee on water pollution:

“In the matter of the applicability of rule (or regulation or statute) _____ to the petitioner. Said rule (or regulation or statute) provides as follows: _____

The grounds for this petition are to determine the applicability of the above rule (or regulation or statute) to the petitioner because of the following state of facts:

Petitioner requests that the following declaratory ruling be entered:

“Date _____ Name _____
“Verification _____”

Address _____”

(3) INVESTIGATION; NOTICE OF HEARING. Upon the filing of such petition for a declaratory ruling, the joint agency may cause to be made an investigation of the facts alleged in the petition and may consult with the attorney general department as to legal questions involved. If any of the allegations of the petition be untrue or should be qualified, or if material facts may not have been alleged, said joint agency shall prepare and mail to the petitioner or intervener a notice of hearing at which the petitioner shall be required to produce evidence. If there are no questions of fact, the notice of hearing shall state that only issues of law will be considered. Notice of hearing shall be as soon as possible after the filing of the petition.

(4) PROCEDURE. The procedure set forth in H 85.02 (3), (4), (5), (6), (7), and (8) shall also apply to where a petition has been made for a declaratory ruling as to the applicability of any order, rule, regulation, or statute which is administered by the joint agency.

(5) AGENCY PROCEEDING SEPARATELY. The foregoing rules of pleading, practice and procedure before the state board of health and the committee on water pollution acting jointly shall likewise govern so far as applicable in the case of either of said agencies acting separately in the administration of chapter 144, Wis. Stats.