

Chapter NR 2

PROCEDURE AND PRACTICE

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Note: Chapter WCD 2 as it existed on March 31, 1973 was repealed, and a new chapter NR 2 was created, Register, March, 1973, No. 207, effective April 1, 1973.

NR 2.01 Application of rules. These rules shall apply in all proceedings and hearings before the department of natural resources except as specifically provided otherwise.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73.

NR 2.02 Definitions for this chapter. (1) **DEPARTMENT.** Department means the department of natural resources.

(2) **SECRETARY.** Secretary means the secretary of the department of natural resources.

(3) **CONTESTED CASE.** Contested case means a proceeding before the department in which after hearing required by law, the legal rights, duties or privileges of any party thereto are to be determined or directly affected by a decision or order therein and in which the assertion of any such right, duty or privilege is denied or controverted by another party thereto.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73.

NR 2.03 Service on the department. All petitions for hearings, petitions for rules, petitions for declaratory rulings, answers and complaints required by any statute or rule shall be served on the secretary, either by delivery to the office of the secretary, or by mailing to the secretary by certified mail, at the following address: P. O. Box 450, Madison, Wisconsin 53701.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73.

NR 2.04 Service of pleadings. After a matter has been set for hearing, all further pleadings shall be served by delivery to the Bureau of Legal Services, Department of Natural Resources or by mail addressed at P. O. Box 450, Madison, Wisconsin 53701.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73.

NR 2.05 Forms of petitions. Petitions shall conform with the applicable statute as to form, content, number of signatories and verifications. Appropriate forms of petitions in various proceedings shall be as follows:

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(1) REVIEW OF SPECIAL ORDERS ISSUED PURSUANT TO SECTIONS 144.025 (2) (d) 1, 144.025 (2) (r) AND 144.35, Wis. Stats.

To the Department of Natural Resources:
The undersigned hereby petitions for a review of the department order dated -----, 19 ----, whereby it was ordered-----
. The grounds for this petition are -----
. The modification or change desired is -----
Date -----
Signature -----
Verification -----

(2) ADOPTION, REPEAL OR AMENDMENT OF RULES OR GENERAL ORDERS OF THE DEPARTMENT (section 227.015, Wis. Stats.)

(a) For adoption of general order or rule:

To the Department of Natural Resources:
The undersigned hereby petitions for the adoption of a rule relating to:-----
The grounds for this petition are-----
The petitioners' interest in the request is -----
The authority of the department to act is -----
Date -----
Signatures (5 needed unless petitioner is a municipality or corporation) -----
Verification -----

(b) For amendment of a general order or rule:

To the Department of Natural Resources:
The undersigned hereby petitions for the amendment of rule number ----- which provides as follows: -----
The grounds for this petition are-----
The modification or change desired is-----
The petitioners' interest in the request is -----
Date -----
Signatures (5 needed if the petitioner is not a municipality or a corporation) -----
Verification -----

(3) DECLARATORY RULINGS (section 227.06, Wis. Stats.)

To the Department of Natural Resources:
In the matter of the applicability of rule -----
(or regulation or statute) to the petitioner (s) -----
Said rule provides as follows: -----

2.155 Decisions in contested cases. (1) **EXAMINER DECISION.** The hearing examiner shall prepare findings of fact, conclusions of law and decision subsequent to each contested case heard. Said decision shall be the final decision of the department, but may be reviewed in the manner described in NR 2.20.

(2) **SECRETARY DECISION.** (a) Notwithstanding (1) the secretary prior to hearing, may direct that the record be certified to the secretary for decision in accordance with the provisions of section 227.09 (3) (b), Wis. Stats., without an intervening decision by the hearing examiner.

(b) Notwithstanding (1) the secretary prior to hearing may direct that the decision be made in accordance with the provisions of section 227.09 (2) or (4), Wis. Stats.

History: Cr. Register, December, 1976, No. 252, eff. 1-1-77.

NR 2.16 Reopening hearings. When a hearing in a contested case is closed, no further evidence shall be received, except by order of the department reopening a closed contested case for the taking of future evidence upon application of a party showing to the department's satisfaction that the evidence is newly discovered or was not available at the time of the hearing and that the evidence is necessary for a just disposition of the case.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73.

NR 2.17 Transcripts. (1) **METHOD AND COPIES.** Hearings in contested cases will be transcribed either stenographically or mechanically. A typed transcript will be made when deemed necessary by the department. If a transcript is made by the department, copies will be furnished to all persons upon request at a reasonable cost. If no transcript is deemed necessary by the department and a party requests that one be prepared, that party shall be responsible for all costs of transcript preparation. In lieu of a transcript the department will provide any person a copy of the tape recording of a public hearing upon request and at a reasonable cost. All requests pursuant to the above provision shall be made in writing and presented to the hearing examiner at the hearing.

(2) **FINANCIAL NEED.** Any person who by affidavit or other appropriate means can establish to the department's satisfaction that the person is impecunious may be provided a copy of a transcript without charge.

(3) **CORRECTIONS.** Any party, within 7 days of the date of mailing of the transcript, may file with the hearing examiner a notice in writing of any claimed error therein, and shall mail a copy of such notice to each party of record. Other parties may contest any claimed error within 12 days of the date of the mailing of the transcript by so notifying the hearing examiner and other parties of record. All parties will be advised by the hearing examiner of any authorized corrections to the record.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; am. Register, December, 1976, No. 252, eff. 1-1-77.

NR 2.18 Briefs. (1) **TIME FOR BRIEFS.** In contested cases, parties shall indicate on the record after the close of testimony whether they desire to file briefs. The party or parties having the affirmative shall file affirmative briefs within 15 days after date of mailing of transcript. Other parties 8 days thereafter shall file answer briefs, which

may be replied to within 5 days. The hearing examiner in his discretion may establish an alternate schedule for the filing of briefs.

(2) **NUMBER.** Five copies of all briefs shall be filed with the department together with a certification showing when and upon whom copies have been served. Briefs which contain a summary of evidence or facts relied upon shall include reference to specific pages of the record containing such evidence.

(3) **EFFECT OF EARLY FILING.** The filing of briefs in less time than applies shall not change the due dates for the remaining briefs.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73.

NR 2.19 Confidential information. (1) **APPLICABILITY.** This section applies in those cases where the department is expressly authorized by law to treat information obtained by it as confidential

(2) **APPLICATION FOR CONFIDENTIAL STATUS.** Any person seeking confidential treatment of information obtained by the department shall file with the department a written application for confidential status containing:

- (a) The name, address and interest of the applicant;
- (b) The specific information for which confidential status is sought;
- (c) The facts alleged to constitute the basis for granting confidential treatment;
- (d) Whether the applicant elects to proceed under subsections (5) or (6) of this section if the department determines that additional facts or information is required.

(3) **DECISION ON APPLICATION.** (a) Any decision issued under this section shall be in writing and shall state the basis for granting confidential status or the reasons for denial of the request. The department may grant or deny the request in whole or in part. The decision shall be final unless an adjudicatory hearing is requested within 14 days following its issuance. If a hearing is requested, the department shall schedule a hearing at which the applicant shall appear and present evidence or testimony supporting its position. The department may also appear and present evidence regarding the application. The hearing will be before a hearing examiner, and testimony shall be under oath and cross-examination allowed. The hearing will not be open to the public. The department shall issue a final decision based upon the record of hearing.

(b) No information for which confidential status was requested shall be disclosed to the public for 30 days following issuance of the final decision under paragraph (a). Information supplied by the applicant, not otherwise required by the department, shall be treated as confidential. Unless judicial review is requested, the information shall be returned to the applicant following the 30-day period after issuance of the final decision.

(4) **INFORMATION SUFFICIENT.** If the information in the application for confidential status provides an adequate basis for determining confidentiality, the department shall notify the applicant of its decision within 20 days.

(5) **WRITTEN INTERROGATORIES.** When elected under subsection (2) (d), the following procedure shall apply:

(a) The department shall, within 30 days after receiving a request for confidentiality, mail to the applicant a list of written interrogatories the answers to which are necessary for a determination under this section.

(b) If the applicant fails to answer all interrogatories within 30 days, the department shall deny the application.

(c) Within 20 days after receipt of the answers, the department shall notify the applicant of its decision.

(6) **APPEARANCE BEFORE THE DEPARTMENT.** When elected under subsection (2) (d), the following procedure shall apply:

(a) Within 30 days of receipt of the application, the department shall notify the applicant of a time and place to make an appearance before the department. The applicant shall answer questions of the department and may present information and testimony regarding the request for confidentiality. The appearance shall not be open to the public.

(b) Based on the information presented and reports from department personnel reviewing the request for confidentiality, the department shall issue its decision within 20 days after the appearance.

(c) The appearance under this subsection is not a contested case.

History: Emerg. cr. eff. 1-1-75; Cr. Register, May, 1975, No. 233, eff. 6-1-75.

NR 2.20 Review of contested case decision. (1) **FILING.** Any party to a contested case who is adversely affected by a final decision of the department rendered after a public hearing on the matter, may within 10 days after entry of the decision, file a written petition for review by the secretary. Said petition shall specify in detail the grounds for the review, the relief which petitioner seeks and citation to supporting authorities which petitioner feels aids petitioner's case. The secretary shall not delegate the review to anyone who has had prior involvement in either the hearing or decision-making process.

(2) **SERVICE.** Said petition for review shall be served either personally or by registered or certified mail upon the secretary and upon all other parties to the action.

(3) **DECISION.** Within 14 days of the receipt of the petition, the secretary shall decide whether or not to grant the requested review. If the secretary decides to grant the review, the secretary may order the filing of briefs, presentation of oral argument, or a rehearing of all or part of the evidence presented at the original public hearing (or any combination thereof).

(4) **APPEAL.** A petition for review pursuant to this section shall not be a prerequisite for appeal or review under sections 227.15 to 227.16, Wis. Stats.

(5) **SUSPENSION OF ORDERS.** The filing of a petition for review shall not suspend or delay the effective date of an order, and the order shall take effect on the date fixed by the department and shall continue in effect unless provisions of the order are specifically suspended or

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delayed by the secretary in writing. Petition for such suspension of the effective date of an order shall be clearly specified in the petition for review.

History: Cr. Register, February, 1976, No. 242, eff. 3-1-76.