

## 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Note: Chapter WCD 2 as it existed on March 31, 1973 was repealed, and a new chapter NR 2 was created, Register, March, 1973, No. 207, effective April 1, 1973.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 7921, Madison, Wisconsin 53707.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; am. Register, March, 1978, No. 267, eff. 4-1-78.

**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 7921, Madison, Wisconsin 53707.

History: Cr. Register, March, 1973, No. 207, eff. 4-1-73; am. Register, March, 1978, No. 267, eff. 4-1-78.

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**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:

- (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: -----

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

The reasons for the requested ruling are-----

The following are the names and addresses of all other persons other than the petitioner(s) upon whom it is sought to make the ruling binding:-----

Date-----

Name-----

Address-----

Signature-----

Verification-----

(4) SIX CITIZEN COMPLAINTS (section 144.537, Wis. Stats.). The complaint and answer in the proceeding shall conform with the requirements of the applicable provisions of chapter 263, Wis. Stats., and the complaint shall specifically contain:

(a) The name, address and description of the activities of the person who is causing or will be causing the alleged or potential environmental pollution.

(b) The facts supporting the contention that alleged or potential environmental pollution is or will be taking place.

(c) A description of the nature of the alleged or potential environmental pollution.

(d) A specific description of the relief sought by the complainants.

(e) Verification and the signatures of the 6 or more citizens filing the complaint.

(f) The name and address of a person within the state authorized to receive the service of answer and other papers on behalf of the complainants.

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

**NR 2.06 Notice of hearing.** (1) **FORM.** Notice of hearing shall be in writing, with a title identifying the matter to be set for hearing, and where appropriate, contain a docket number.

(2) **CONTENT.** The notice of hearing shall contain the following information:

(a) Date, time and location of the hearing.

(b) The statutory authority for the hearing.

(c) A short summary of the matter to be considered.

(d) Such other information as the department may deem appropriate.

(3) **SERVICE.** Except as otherwise specifically required, service of notice of hearing may be made by personal delivery or by mailing a copy thereof to the last known post office address of the person to be served in a sealed envelope with first class postage prepaid thereon and shall be deemed to have been served upon deposit thereof in the U.S. mails. The

department may require service by registered or certified mail when deemed appropriate and with the same effect.

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

**NR 2.065 Contested case designation.** Unless ordered by the examiner, all department contested case hearings are class 1 proceedings under section 227.01 (2), Wis. Stats., except hearings held under sections 30.03, 144.025, 144.35, 144.537 and 144.91, Wis. Stats., and those hearings which modify, revoke or suspend a license as defined in section 227.01 (3), Wis. Stats., issued by the department are class 2 proceedings.

History: Emerg. cr. eff. 11-1-76; cr. Register, March, 1977, No. 255, eff. 4-1-77.

**NR 2.07 Place of hearings.** Unless otherwise specifically provided by law or ordered by the department or the secretary, all hearings shall be held at the offices of the Department of Natural Resources, 4610 University Avenue, Madison, Wisconsin.

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

**NR 2.08 Persons entitled to participate in hearings. (1) PERSONS.** In addition to the parties named in the pleadings, divisions of the department, the public intervenor if authorized by section 165.07, Wis. Stats., and any member of the public may participate in all department hearings as parties in interest, including the right to offer testimony and when deemed appropriate by the hearing examiner to cross-examine witnesses.

(2) **APPEARANCE.** A person desiring to participate in a proceeding shall enter his appearance in person by giving his name and address and the name and address of any party he represents and in what capacity he is representing such party.

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

**NR 2.09 Changes in time or place of hearing; adjournments; failures to appear. (1) CHANGES.** Requests for changes in the time and place of a scheduled hearing will be granted only for good cause shown prior to any required newspaper publication of legal notice thereof.

(2) **ADJOURNMENT.** The hearing examiner may adjourn a hearing for good cause shown, the hearing to be reset or reconvened at the discretion of the department on 10 days' notice or at a time certain on stipulation of the parties.

(3) **FAILURE TO APPEAR. (a)** If an applicant for a permit or license fails to appear at a hearing following notice and publication, the department may dismiss the application. If an applicant fails to submit proof of publication and notice as required by statute, the department may dismiss the application and cancel the hearing.

(b) If a respondent in a proceeding fails to appear, the department shall take testimony and issue, modify or rescind the order as may be appropriate.

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

**NR 2.10 Witnesses and subpoenas.** The hearing examiner may issue subpoenas to compel the attendance of witnesses at hearings or discovery proceedings pursuant to section NR 2.11. A subpoena duces tecum Register, March, 1978, No. 267

may be issued if the person requesting such subpoena specifies the documents to be presented by the subpoenaed witness. The provision of the statutes shall govern the payment of witness fees and expenses.

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

**NR 2.11 Preservation of testimony and discovery of evidence.** The department or any party in any contested case may obtain discovery and preserve testimony as provided by chapter 804, Wis. Stats. For good cause, the department's hearing examiner may allow a shorter or longer time for discovery or preserving testimony than is allowed by chapter 804, Wis. Stats.

**History:** Cr. Register, March, 1973, No. 207, eff. 4-1-73; am. Register, April, 1976, No. 244, eff. 5-1-76; am. Register, March 1978, No. 267, eff. 4-1-78.

**NR 2.115 Written interrogatories.** **History:** Cr. Register, April, 1976, No. 244, eff. 5-1-76; r. Register, March, 1978, No. 267, eff. 4-1-78.

**NR 2.12 Informal conferences.** (1) **CALL AND PURPOSE.** The department or the hearing examiner may call an informal conference at any time prior to or during the course of a hearing. The purposes of such conferences shall, insofar as applicable, be to consider:

- (a) Simplification of issues;
- (b) Amendments to the pleadings;
- (c) Admissibility of evidence; and
- (d) Such other matters as may aid in the disposition of the matter.

(2) **RECORDING STIPULATIONS.** The hearing examiner may record any stipulations made at such informal conferences, which shall bind the parties thereto in the proceedings.

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

**NR 2.13 Conduct of hearings.** (1) **PROCEDURE.** The hearing examiner will open the hearing and make a concise statement of its scope and purposes. Appearances then will be entered on the record. If the matter is contested, the examiner then will state the issues in the proceedings. Thereafter, parties may make motions or opening statements.

(2) **OPENING STATEMENTS.** When opening statements are made they shall be confined to:

- (a) A brief summary or outline in clear and concise form of the evidence intended to be offered; and
- (b) A statement of ultimate legal points relied upon.

(3) **ORDER OF PROCEEDING.** Applicants, petitioners and complainants shall proceed first with their evidence.

(4) **OFF RECORD.** Proceedings may be conducted off the record only when the hearing examiner permits. If a discussion off the record is deemed pertinent by the hearing examiner, he may summarize it on the record.

(5) **OBJECTIONS TO EVIDENCE.** Any argument before the examiner on objections to receipt of evidence or on motions to strike will be recorded and parties will be afforded the opportunity to make an offer of proof.

Register, March, 1978, No. 267

(6) **CONTEMPT.** Contemptuous conduct at a hearing shall be grounds for exclusion from the hearing.

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

**NR 2.14 Rules of evidence in contested cases.** (1) **RULES.** Rules of evidence in contested cases are governed by section 227.10, Wis. Stats.

(2) **ADMISSIBILITY.** Evidence submitted at the time of hearing need not be limited to matters set forth in pleadings, petitions or applications. If variances of this nature occur, then the pleadings, petitions or applications shall be considered amended by the record. The hearing examiner may, in his discretion, grant such continuances as may be necessary to give other parties adequate time to prepare evidence to rebut that involved in any such variances.

(3) **TECHNICAL DATA.** When evidence to be presented consists of technical figures so numerous as to make oral presentation difficult to follow, it may be presented in exhibit form and supplemented and explained by oral testimony.

(4) **PETITIONS, ETC.** Petitions or written communications not admissible as evidence may be filed with the hearing examiner but will not be part of the record.

(5) **EXHIBITS, ETC.** Parties offering documentary exhibits or prepared testimony may be ordered by the hearing examiner to furnish copies to all other parties in advance of the hearings and to provide such reasonable time as the hearing examiner may order to enable review of the prepared written testimony and exhibits. Upon compliance therewith, such written testimony and exhibits may be admitted in evidence as though given orally, providing the authors thereof are present and available for cross-examination.

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

**NR 2.15 Close of hearing.** (1) **CLOSING AND BRIEFS.** A hearing in a contested case shall be closed upon completion of the submission of all evidence and expiration of the period fixed for filing of briefs. If the time for filing briefs has expired and the brief of one or more parties shall not be filed within such time, the department may proceed to its determination of the case. Extension of time to file briefs may be granted by the hearing examiner upon good cause shown.

(2) **ADDITIONAL EVIDENCE.** If by stipulation of the parties, documentary evidence is permitted to be submitted after the close of testimony,