

## Administrative Procedures Act Rules

### Title 11: Mississippi Department of Environmental Quality

#### Part 1: Administrative Regulations

#### Part 1, Chapter 1: Mississippi Commission on Environmental Quality Regulations Regarding the Delegation of Authority to the Executive Director of the Mississippi Department of Environmental Quality

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#### Rule 1.1 Delegations

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**Introduction:** Statutes regarding environmental and natural resources issues in Mississippi grant the Mississippi Commission on Environmental Quality ("Commission") broad discretion to delegate many of its statutory authorities to the Executive Director of the Mississippi Department of Environmental Quality ("MDEQ"). Since the creation of the Commission and its predecessor bodies, the Mississippi Air and Water Pollution Control Commission and the Mississippi Commission on Natural Resources, the Commission has delegated certain authorities to the Executive Director by agency action reflected in the minutes of the Commission. The Commission now consolidates these delegations, adds additional delegations, and promulgates these delegations as a regulation pursuant to the Mississippi Administrative Procedures Law.

The chart below describes specific delegations of authority and lists the most pertinent statutory authorization for the delegation. The Commission, however, also is given a broad general authority to delegate its authority by Miss. Code Ann. § 49-17-17(o). That section authorizes the Commission "to delegate in such manner as it sees fit the duties and powers relating to air and water quality and pollution control to the agency members presently engaged in the several fields of water or air control or pollution." Miss. Code Ann. § 49-17-17(n) authorizes the Commission to "exercise all incidental powers necessary to carry out the purposes of Sections 49-17-1 through 49-17-43 and Sections 17-17-1 through 17-17-47." The Commission interprets these statutes to allow the delegation of authority to the Executive Director to perform all actions within the jurisdiction of the Commission required to protect the quality and quantity of the state's water resources and the quality of the state's ambient air and to regulate solid nonhazardous and hazardous waste within the State. This delegation authority by definition allows delegation of authorities related to the three offices of MDEQ created by statute: The Office of Geology and Energy Resources, the Office of Land and Water Resources, and the Office of Pollution Control. *See* Miss. Code Ann. § 49-2-7.

The Commission also interprets these statutes as allowing the delegation to the Executive Director of authorities necessary to perform the day-to-day functions of MDEQ through the Office of Administrative Services, as created by Miss. Code Ann. § 49-2-17. Additionally, Miss. Code Ann. § 53-7-19(p) allows the Commission to authorize the director "to discharge or exercise any power or duty granted to the commission by the provisions" of the Surface Mining and

Reclamation Law. This regulatory action is not intended to revoke any authorization previously granted to the Executive Director and not listed in this regulation. Also, Miss. Code Ann. § 53-9-69(1) allows the executive director to issue orders under prescribed circumstances under the Mississippi Surface Coal Mining and Reclamation Law. § 53-9-69(1)(b) allows the executive director or the executive director's authorized representative on the basis of any inspection to order the cessation of surface coal mining and reclamation operations or that portion of those operations when it is determined that any condition or practices exist or that any permittee is in violation of the chapter or any regulation or written order of the commission promulgated or issued under this chapter or any condition of a permit and the condition, practice or violation also creates an imminent danger to the health and safety of the public, or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air or water resources. When on the basis of an inspection, the executive director or the executive director's authorized representative determines that the condition, practice or violation does not create an imminent danger, an order to the permittee shall be issued setting a reasonable time of not more than 90 days for the abatement of the violations or, if deemed necessary, an immediate cessation of activities violating or resulting in the violation of this chapter, the regulations or any condition or limitation of a permit. § 53-9-69 (1)(c).

The delegation of authority to the Executive Director does not require the Executive Director to exercise the authority delegated. The Executive Director may determine, on a case-by-case basis, that a decision within his or her authority to make should be referred to the Commission for consultation and/or decision.

*Rule 1.1. Delegations:* The Commission delegates the following powers to the Executive Director of MDEQ:

- A. To employ qualified professional personnel and technical and clerical staff as may be required for the operation of the Department.
- B. To organize the administrative units of the Department and alter such organizational structure and reassign responsibilities as he or she may deem necessary to carry out the policies of the Commission within the limits of Miss. Code Ann. § 49-2-7.<sup>1</sup>
- C. To delegate the authority to sign Commission Orders to the Chief of Staff, Head of the Office of Pollution Control, the Head of the Office of Geology and Energy Resources, the Head of the Office of Land and Water Resources and the General Counsel of MDEQ to the extent that the Executive Director is allowed to issue Orders pursuant to Miss. Code Ann. § 49-2-13(j).
- D. To issue Orders in accordance with Miss. Code Ann. § 17-17-227 approving or denying in whole or in part Solid Waste Management Plans and/or amendments thereof.
- E. To issue Administrative Orders:

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<sup>1</sup> Authorities listed in this rule are not inclusive and are in addition to authorities listed in the Introduction; Title 11, Part 1, Chapter 1.

- (1) To prohibit, control or abate discharges of contaminants and wastes into the air and waters of the State.
  - (2) To require appropriate remedial measures to prevent, control or abate air and water pollution or to cause the proper management of solid wastes.
  - (3) To impose penalties which the Respondent agrees to pay.
  - (4) To require compliance with permits, laws and regulations.
  - (5) To issue Emergency Orders pursuant to Miss. Code Ann. § 49-17-27.
- F. To execute all orders required by the Brownfields Statute that are not specifically required by Statute and/or Regulation to be issued by the full Commission.
- G. To issue Cease Pumping Orders and Orders Conditioning Permitted Water Withdrawal; to issue Cease and Desist Orders to Surface Mining Operators who are mining without the required Permit or Notice of Intent to Mine or who are otherwise operating in violation of Mississippi law, regulations or condition(s) of any Permit or other Order; and to issue the authorized Orders to Surface Coal Mining Operators who are operating in violation of Mississippi law, regulations, or condition(s) of any Permit or other Order.
- H. To make preliminary determinations necessary to file suit, file suit, conduct litigation, and settle all litigation matters on behalf of the Commission.
- I. To enter into all contracts, grants and cooperative agreements allowed by Miss. Code Ann. § 49-2-9(e).
- J. To delegate signature authority for Agency contracts, purchase orders, travel reimbursement authorizations, requisitions, personnel forms, and similar documents to the Chief of Staff, Head of the Office of Administrative Services and/or to the Division Chiefs within that Office.
- K. To grant continuances for scheduled Formal Hearings; to issue Non-dispositive rulings regarding contested matters (such as, Scheduling Orders and decisions on Interlocutory Motions), and to Stay pending Evidentiary Hearing on the effectiveness of a Commission Order upon a showing of good cause by any party.
- L. To issue, re-issue, deny, or revoke Asbestos Certifications and approve Asbestos Abatement Training Programs.
- M. To issue, re-issue, deny, or revoke Underground Storage Tank (UST) Certifications to individuals authorized to install, alter and /or close USTs.

- N. To issue, re-issue, deny, or revoke Landfill (Solid Waste) Operator and Class I Rubbish Site Operator Certifications.
- O. To issue, re-issue, deny, or revoke Wastewater Operator Certifications and approve Wastewater Training Programs.
- P. To issue, re-issue, deny, or revoke Water Well Driller Licenses.
- Q. To issue, re-issue, deny, or revoke Lead Certifications and approve Lead-Based Paint Activities Training Programs.
- R. To issue, re-issue, deny, or revoke Waste Tire Transporter Certificates.
- S. To requisition and use funds in the Pollution Emergency Fund, Nonhazardous Solid Waste Corrective Action Trust Fund, Waste Tire Abatement Funds and all other Funds created by Title 17 and Title 49 and within the jurisdiction of the Commission for the statutory purposes allowed by the Code.
- T. To discharge or exercise any power or duty granted to the Commission by the provisions of the Surface Mining and Reclamation Law and the Surface Coal Mining and Reclamation Law and their respective rules and regulations.
- U. To execute reciprocity agreements with other States whose Lead Based Paint Program requirements meet or exceed the Commission's requirements.
- V. To waive the late penalty for failure to pay UST fee upon sufficient demonstration that failure to pay timely was unavoidable due to financial hardship or otherwise beyond the control of the owner.
- W. To compile and publish compilations of the regulations of the Commission and Permit Board.
- X. To approve and award Local Governments Solid Waste Assistance Grants, Competitive Grants and Non-Competitive Grants), Local Governments Waste Tire Collection and Clean Up Grants, Local Governments Tire Derived Product Grants, Incentive Waste Tire Recycling and Research Grants, Local Governments Planning Grants, Right Way To Throw Away Grants (Local Hazardous Waste Amnesty/Collection Event Grants), Regional Recycling Cooperative Grants, Nonhazardous Solid Waste Corrective Action Trust Fund Cooperative Agreements, and Pollution Prevention/Recycling Grants otherwise allowed by Law.
- Y. To execute, approve and amend environmental covenants.
- Z. To issue administrative orders to require compliance to water well drillers who are operating in violation of Mississippi law, regulations, or other Orders.

AA. To enter into reciprocity agreements with other states related to certifications when so authorized by law or rules and regulations.

Source: Miss. Code Ann. §§ 21-27-207, 21-27-211, 49-2-5 (3), 49-2-9(e) and (f), 49-2-13 (c), (e), (j) and (k), 49-2-17, 49-17-17 (c),(n), and (o), 49-17-23, 49-17-44.1, 49-17-43(d), 49-17-68, 49-17-421, 49-17-429, 49-17-507, 49-17-531, 49-35-11(4), 17-17-63, 17-17-65, 17-17-227, 17-17-407(b), 17-17-425, 51-3-7, 53-7-19(l), (m) and (p), 37-138-9, 51-5-1(1) and (5), 49-31-1, et seq., 49-35-1, et seq., 49-2-1, et seq., 49-17-1, et seq., 17-17-1, et seq., 17-17-201, et seq., 17-17-401, et seq., 17-17-501, et seq., 51-3-1, et seq., 51-5-1, et seq., 53-7-1, et seq., 53-9-1, et seq. and 89-23-1, et seq.

**Part 1, Chapter 2: Mississippi Commission on Environmental Quality Regulations  
Regarding the Review and Reproduction of Public Records.**

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*Rule 2.1 Authority and Purpose.*

In 1983, the Mississippi Legislature passed the Mississippi Public Records Act (“the Act”), Miss. Code Ann. §§ 25-61-1 through 25-61-19 (Rev. 2010). The purpose of the Act is to provide the public full access to public records concerning the government’s conduct.

This document sets forth the rules and procedures that the Mississippi Department of Environmental Quality (“MDEQ”), the Mississippi Commission on Environmental Quality

(“Commission”), and the Mississippi Environmental Quality Permit Board (“Permit Board”) follow in order to provide full access to public records.

These rules provide information to people wishing to request access to public records of MDEQ and establish processes for both requestors and MDEQ Staff that are designed to best assist members of the public in obtaining such access. The Act and these rules will be interpreted in favor of disclosure. In carrying out its responsibilities of the Act, MDEQ will be guided by the provisions of the Act describing its purposes and interpretation.

Source: Miss. Code Ann. § 25-61-1, *et seq.*

#### *Rule 2.2 Definitions.*

- A. “Public body” means any department, bureau, division, council, commission, committee, subcommittee, board, agency and any other entity of the state or a political subdivision thereof, and any municipal corporation and any other entity created by the Constitution or by law, executive order, ordinance or resolution. The term “public body” includes the governing board of a charter school authorized by the Mississippi Charter School Authorizer Board. Within the meaning of this chapter, the term “entity” shall not be construed to include individuals employed by a public body or any appointed or elected public official.
- B. “Public records” means all books, records, papers, accounts, letters, maps, photographs, films, cards, tapes, recordings or reproductions thereof, and any other documentary materials, regardless of physical form or characteristics, having been used, being in use, or prepared, possessed or retained for use in the conduct, transaction or performance of any business, transaction, work, duty or function of any public body, or required to be maintained by any public body.

Source: Miss. Code Ann. § 25-61-3 (Rev. 2010).

#### *Rule 2.3 Requesting Public Records.*

- A. Freedom of Information Officer. The Freedom of Information Officer (“FOI Officer”), located in MDEQ, is responsible for overseeing compliance with the Act. Persons requesting public records maintained by MDEQ must submit a public records request to the FOI Officer within the agency. Although the FOI Officer oversees compliance with the Act, other staff members may process the request. The public records request must be made and addressed specifically to MDEQ and not any other agency or other governmental entity.
- B. Format of Request. Any person requesting public records maintained by MDEQ must make a formal written request to the FOI Officer. The formal written request must include the following information:

1. Name of requestor;
2. Address of requestor;
3. Specifics<sup>1</sup> on the type of information requested;
4. Name of facility (if applicable);
5. City and county where facility is located (if applicable);
6. Other contact information, including telephone number and any e-mail address; and
7. The date and time of day of the request.

A variety of records are available on the MDEQ website at [http://www.deq.state.ms.us/mdeq.nsf/page/Main\\_Home?OpenDocument](http://www.deq.state.ms.us/mdeq.nsf/page/Main_Home?OpenDocument) and more specifically <http://opc.deq.state.ms.us/default.aspx>. Requestors are encouraged to view the documents available on the web-site prior to submitting a records request.

- C. Record Request Submission. Public record requests must be submitted either by mail, e-mail, or fax to one of the following locations:

Mail: Freedom of Information Officer  
Mississippi Department of Environmental Quality  
P.O. Box 2261  
Jackson, MS 39225

E-mail: FOI\_Mail@deq.state.ms.us

Fax: (601) 354-6356

Additional contact and other information can be found on MDEQ's web-site located at [http://www.deq.state.ms.us/mdeq.nsf/page/legal\\_foiaInquiries?OpenDocument](http://www.deq.state.ms.us/mdeq.nsf/page/legal_foiaInquiries?OpenDocument).

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*

*Rule 2.4 Processing Public Record Requests – General.*

- A. Providing access. MDEQ acknowledges that “providing access to public records is a duty” and that “any person shall have the right to inspect, copy or mechanically reproduce or obtain a reproduction of any public record” in accordance with these

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<sup>1</sup> As a general rule, the more specific a requestor is about a public records request, the more likely MDEQ will be able to locate those records in response to the request. If a request does not reasonably describe the records being requested, the agency's response to the request may be delayed.

policies. Miss. Code Ann. §§ 25-61-1 and 25-61-5 (Rev. 2010). The FOI Officer or his or her designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

- B. **Inspection Location and Appointment.** Public records requests are managed by MDEQ's FOI Officer. When an individual submits a written request, the FOI Officer, or his or her designee, determines the exact location of the records requested. All records normally will be reviewed at the MDEQ office location where the records are housed. If an individual seeks to review records that are housed at multiple MDEQ locations, the FOI Officer will work with other MDEQ staff and the individual requesting the record review to set up an appointment at the appropriate MDEQ location.
  
- C. **Records.** A requestor shall not take MDEQ records from MDEQ offices. If the requestor wishes to have copies of the records made instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records. Pursuant to Rule 2.8 of this regulation, standard photocopies will be provided at the approximate cost of searching, reviewing and/or duplicating the public records. The copying fee schedule will be posted at the FOI review room. The copying fee schedule may be amended and adjusted to cover the costs of complying with FOI requests.
  
- D. **Acknowledging receipt of request.** Within seven (7) working days of receipt of the request, the FOI Officer will do one or more of the following:
  - 1. Provide a reasonable estimate of when records will be available;
  - 2. Request clarification where a request is unclear or does not sufficiently identify the requested records. Such clarification may be requested and provided by telephone. As a result of a clarification, the FOI Officer or his or her designee may revise the time estimate of when the requested records will be available;
  - 3. Make the records available for inspection or copying in whole or in installments<sup>1</sup> (where applicable); or
  - 4. Deny the request.
  
- E. **Time Limit for Response.** MDEQ will strive to provide records not exempt from disclosure for review or reproduction as soon as practicable, but no later than seven (7)

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<sup>1</sup> Production of documents in installments is limited to situations where the requestor has made a large public records request which cannot reasonably be processed or produced within the required response time. See R. 2.4.E. for further information.



working days from the date of receipt of the request, as allowed by the Act. The seven (7) working day response period will not include the day the request was initially received. For time calculation purposes the seven (7) working days will begin on the next working day. If MDEQ is unable to produce the documents within the seven (7) working days from the date of the receipt of the request, MDEQ will provide a written explanation (which may be provided by e-mail) to the person making the request which indicates the records are being gathered and specifies with particularity why the records cannot be produced within the seven-day period.

1. If MDEQ is unable to produce a public record by the seventh working day after the date of the receipt of the request, MDEQ will provide the record no later than fourteen (14) working days from MDEQ's receipt of the original request after sending written notification to the requestor or at a later date upon mutual agreement of the parties. Requests for records in storage will be provided within seven (7) working days of availability of such records to MDEQ. If MDEQ determines the request would cause a disruption of business, the time period for production of records may be adjusted.
  2. Providing records in installments. When the request is for a large number of records, the FOI Officer or his or her designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty (30) days, the requestor fails to inspect the entire set of records or one or more of the installments, the FOI Officer or his or her designee may stop searching for the remaining records and close the request.
  3. Supplemental, Amended, or Additional Requests. MDEQ treats supplemental, amended, or new requests by the requestor as new requests for purposes of determining all applicable time limitations.
- F. Protecting the rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the FOI Officer may, prior to providing the records, provide notice to such others whose rights may be affected by the disclosure. The notice to the affected persons will include a copy of the request. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request. If necessary, the other person may seek a hearing on its confidentiality claim before the commission to prevent or limit the disclosure of the information pursuant to Rule 2.7.
- G. Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If MDEQ believes that a record is exempt from disclosure and should be

withheld, the appropriate personnel will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the appropriate personnel will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

#### H. Inspection of records.

1. Hours for Records Inspection. Public records are available for inspection and copying during MDEQ's normal business hours, Monday through Friday, 8:00 a.m. to 5:00 p.m., excluding legal holidays and any days when MDEQ is not open as a result of inclement weather, loss of power, electricity or water or other circumstances. The time, place and manner of inspection and copying of records will not be allowed to interfere with other essential duties of MDEQ. Where the requestor is unable to inspect and/or copy the files within the agency's hours of operations, as specified above, the FOI Officer will set up another reasonable time and date for inspection of the files with the requestor.
2. Inspection Location. Consistent with other demands, MDEQ shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes to copy.
3. Time Limitation. The requestor must claim or review the assembled records within thirty days of the MDEQ notification to him or her that the records are available for inspection or copying. MDEQ will notify the requestor in writing (which may be by e-mail) of this requirement and inform the requestor that he or she should contact MDEQ to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, MDEQ may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.
4. Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the FOI Officer or his or her designee will indicate that the MDEQ has completed a diligent search for the requested records and made any located nonexempt records available for inspection.

- I. Closing withdrawn or abandoned requests. When the requestor either withdraws the request or fails to fulfill his or her obligations to inspect the records or pay for the requested copies, the FOI Officer will close the request and indicate to the requestor that MDEQ has closed the request.
- J. Later discovered documents. If, after MDEQ has informed the requestor that it has provided all available records, MDEQ becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*, 25-61-2, 25-61-5.

*Rule 2.5 Processing Public Record Requests – Electronic Records.*

- A. Requesting electronic records. The process for requesting electronic public records is the same as for requesting paper public records.
- B. Providing electronic records. When a requestor requests records in an electronic format, the FOI Officer will provide the nonexempt records or portions of such records that are reasonably accessible in an electronic format that is used by the public body and is generally commercially available, or in a format that is reasonably translatable from the format in which the public body keeps the record. Costs for providing electronic records are governed by Rule 2.8.
- C. Customized access to data bases. With the consent of the requestor, MDEQ may provide customized access if the record is not reasonably locatable or not reasonably translatable into the format requested. MDEQ may charge the actual cost for such customized access.

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*, 25-61-10.

*Rule 2.6 Exemptions.* The Public Records Act, as well as other statutes and court decisions, provide that a number of types of documents are exempt from public inspection and copying. In addition, other statutes or rules of law, such as various privacy restrictions, may prohibit disclosure. Requestors should be aware of the following exemptions<sup>1</sup>, outside the Public Records Act, that restrict the availability of some documents held by MDEQ for inspection and copying:

- A. Attorney work product, examination, exemption, see § 25-1-102.
- B. Environmental self-evaluation reports, public records act, exemption, see § 49-2-71.

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<sup>1</sup> This list is in no way considered to be a complete list of the Public Records Act exemptions that may apply to public records requests.

- C. Insurance and insurance companies, risk based capital level requirements, reports exemption, see § 83-5-415.
- D. Personnel files exemption, see § 25-1-100.
- E. Public records and trade secrets, proprietary commercial and financial information, exemption, see §§ 75-26-1, et seq. and 79-23-1.
- F. Workers' compensation exemption, see § 71-3-66.
- G. Exemption for records subject to privilege, such as Attorney/Client, Physician/Patient, etc.

Some records are exempt from disclosure, in whole or in part as provided in Rule 2.4.G.

Source: Miss. Code Ann. §§ 25-61-1, et seq., 25-61-5, 25-61-11.

*Rule 2.7 Third Party Information and Trade Secrets.*

- A. Confidential or exemption claims. When any person files or submits documents with MDEQ which the filer contends are exempt from disclosure under the Public Records Act, the filer shall provide a written statement at the time of filing which shall describe the documents filed and which shall fully explain why the documents are designated as exempt from disclosure and must specifically cite any statute or other legal authority in support of such designation. Such written statement shall itself be a public record subject to disclosure.
- B. Clear Designation. Any document filed with MDEQ which contains trade secrets or confidential commercial or financial information subject to the protection of any applicable law or court decision shall be clearly designated as such by the filer on its face and accompanying cover letter at the time of filing and shall be placed in an envelope other than white. Each page of each document shall be marked confidential<sup>1</sup>.
- C. Confidential Information Claim Request. Pursuant to Miss. Code Ann. §§ 17-17-27 and 49-17-39, citizens and regulated entities providing information to MDEQ can request that the information be held confidential and not be made available for public inspection; trade secret information or confidential business information that does not concern environmental protection may be treated as confidential. This protection can be claimed properly, however, only for information that does not concern environmental protection.

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<sup>1</sup> Merely stamping a document "confidential" is not sufficient to allow the Commission to treat the document as confidential.

In order to satisfy these statutes, a request for confidentiality must be made in the following manner:

1. The request must be made, in writing, at the same time the information is submitted to MDEQ;
  2. The request must describe the information that the requestor would have treated as confidential and must explain the reason(s) why the information qualifies for confidential treatment; and
  3. The request must allow disclosure of the confidential information "to authorized department employees and/or the United States Environmental Protection Agency (EPA)."
- D. Prior to Filing. Any person filing documents with MDEQ shall, prior to filing, redact from the documents any social security numbers, account numbers or dates of birth not required to be listed. MDEQ shall determine on a case-by-case basis whether similar information may be redacted by the filer to prevent identity theft. In no event will MDEQ bear any responsibility for a filer's failure to redact such information which leads to or may lead to identity theft or other crime or loss.
- E. Commission approval or denial of Confidential Claim. In order for the claim of confidentiality to become effective against public review, the claim must be "determined by the Commission to be valid." This determination would be made (or denied) after an evidentiary hearing before the Commission held pursuant to Miss. Code Ann. § 49-17-35.
1. Initial Acceptance of Confidential Claim. The Commission has adopted the following policy in order to minimize the number of Commission hearings on confidentiality claims that need be pursued. When a citizen or regulated entity submits information under a claim of confidentiality, the claim will be honored initially by MDEQ if the claim regards information that arguably could be considered as not "concerning environmental protection" and if the claim meets the three requirements set forth above in Rule 2.7.C.

If a claim of confidentiality is judged to meet these three requirements, and the document is judged arguably to include information not concerning environmental protection, then that information will be treated as confidential *until and unless a member of the public requests to review the information*. At the time the information is placed in an MDEQ confidential file, a notice will be

placed in the entity's public record file indicating that additional information to which a claim of confidentiality attaches is included in a confidential MDEQ file.

- a. Notification of public record request. If and when a member of the public requests access to the information held by MDEQ under a claim of confidentiality, the supplier of the information will be notified of the request and will be given the option either to request a hearing before the Commission concerning the claim of confidentiality; work out a mutually agreeable arrangement with the requestor related to the information to be reviewed; or to allow all of the requested information to be reviewed.
  - b. Commission Hearing. If a hearing is requested, the information will be treated as confidential by MDEQ until the Commission makes a determination on the issue and during the time in which an appeal of that Commission determination could be taken (if the Commission determination is adverse to the person or entity claiming confidentiality).
2. Initial Denial of Confidential Claim. If an initial claim of confidentiality is judged by MDEQ as not meeting the requirements set forth above, and/or as containing information concerning environmental protection, then the person supplying the information will be notified promptly of MDEQ's conclusion and will be notified of his or her right to pursue the claim of confidentiality before the Commission at the next available Commission meeting.

The claimant will be given ten days from notification of deficiency by MDEQ in which either to correct any deficiency in the confidentiality claim (such as the lack of required permission for EPA review) or to request in writing a hearing before the Commission on the confidentiality claim. After that ten-day period, the information will be treated as public information by MDEQ if no adequate correction of the claim or written request for a hearing has been made. Again, if a timely written request for a hearing is received, MDEQ will treat the information in question as confidential until the Commission makes a final determination and the period for perfecting an appeal regarding that decision has run.

- a. Opportunity to Appeal. If the Commission denies the claim of confidentiality, the claimant may perfect an appeal of that decision to a

court of appropriate jurisdiction (by filing a notice of appeal with MDEQ, as required by Miss. Code Ann. § 49-17-41).

- b. Treatment of Information if appealed. MDEQ automatically will continue to treat the information at issue as confidential for thirty (30) days after the filing by MDEQ of the record on appeal with the appropriate court. Within those thirty (30) days, the claimant must apply to the court in which the appeal is lodged for any further protection of the information pending appeal (through an appeal with supersedeas, temporary restraining order, preliminary injunction, or similar relief). MDEQ will treat the information as public information after that thirty-day period unless a court of appropriate jurisdiction instructs MDEQ to hold the information as confidential or unless all parties to the matter agree otherwise.

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*, 25-61-9, 49-17-1, *et seq.*, 49-17-35, 49-17-39, 49-17-41, 49-17-17(i), 49-2-1, *et seq.*, and 17-17-1, *et seq.*, 17-17-27.

*Rule 2.8 Document Reproduction, Certification and Other Costs.* The schedule of charges and/or fees will be posted in the File Review Room and with the FOI Officer.

- A. MDEQ Staff and Contractor's Time. A requestor is responsible for paying the actual costs for the time staff and/or the time contractors allot to the requestor's public records request (this includes searching, reviewing and/ or duplicating the records). Costs will be calculated at the rate of the lowest level employee or contractor competent to respond to the request. This includes any costs associated with any public records request which involves a matter that MDEQ has contracted with outside attorneys on, which will require such attorneys' review prior to document production. MDEQ will collect these fees before providing the requested documents for review.
- B. Charges for searching, reviewing and redacting. The actual cost of searching for and reviewing and, if necessary, redacting exempt information from public records shall be based upon the hourly rate of compensation for the lowest paid agency employee qualified to perform the task, which shall be multiplied by the actual time to complete the task. This includes the actual costs required for searching, reviewing and redacting requested documents by contractors which have been contracted by MDEQ to work on the matters being requested.

- C. Copies. MDEQ allows individuals submitting a written request for records to copy documents that are not exempt from disclosure or to have the documents copied for them. In general, MDEQ is not staffed sufficiently to respond to requests for MDEQ personnel to copy documents for members of the public. Although MDEQ staff will attempt to facilitate document availability and review, MDEQ usually will (and reserves the right to) deny requests to assign MDEQ staff the task of copying records for members of the public. Copies can be made by the requestor or by an approved copier service.
- D. Costs for copies. Consistent with the copying fee schedule, MDEQ charges a specified amount for a standard black and white photocopy of a record, color copies and scanned copies selected by a requestor. A statement of the factors and the manner used to determine these charges are available from the FOI Officer.
- E. Costs for electronic records. There is generally no charge for e-mailing electronic records to a requestor or for supplying electronic copies via the requestor's storage device; however staff time and other actual costs may apply as fees or costs allowed under Miss. Code Ann. § 25-61-7(2) (Rev. 2010). Requestors may use their own new, in shrink wrap, storage device (clean and free of viruses or corruption) for electronic copies. Requestors must be aware that MDEQ is not responsible if the storage devices are lost, stolen, or damaged. Electronic media devices may be available to the requestor as agency supply permits; MDEQ is not required to supply requestors with electronic media devices. The cost of MDEQ providing an electronic media device will be the actual cost of the storage device. Any other type of electronic storage format charge, as technology advances permit, will be based on the actual cost of the storage device.
- F. Costs of mailing. MDEQ may also charge actual costs of mailing, including the cost of the shipping container.
- G. MDEQ shall require payment in advance for all costs before providing copies or access to records unless the requestor makes satisfactory prior billing arrangements for copying to ensure payment consistent with Rule 2.8.I.
- H. Certification of Hard-Copy and Electronic Documents. MDEQ public record files are working documents, and documents are added to the files regularly. No certification will be made that the records reviewed are the "complete" file, only that the document(s) reproduced are certified as a true copy of the records limited to the date the documents were produced. Certifications will be signed and dated either by the MDEQ Executive Director, his or her designee, or the FOI Officer or his or her supervisor.



- I. Payment and Copying Privileges. Payment may be made by check or money order to MDEQ. The costs of reproduction are payable by the requesting individual, firm, or their representative. In the event the individual, firm or representative making the copies has made prior arrangements for billing with MDEQ, MDEQ will mail a bill for payment for copies once the invoice is signed. Payment is due upon the receipt of the bill. Any individual, firm or their representative that has not made satisfactory arrangements to ensure payment through billing by invoice or purchase order must pay in advance or at the time of reproduction of the records. Failure to pay a bill will result in the individual, firm or their representative having to pay before the release of subsequent reproductions. Failure to timely pay for copies will result in the loss of future copying privileges until the outstanding bill is fully paid. Payment for the actual cost regarding MDEQ staff and/or contractor's time to search, redact (if applicable) and review the public records related to the request must be made to MDEQ prior to production of the requested documents.

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*, 21-61-5, 21-61-7.

*Rule 2.9 Review of Denials.*

- A. Review by the Ethics Commission. Pursuant to Miss. Code Ann. § 25-61-13, if MDEQ denies a requestor access to public records, the requestor may ask the Ethics Commission to review the matter. The Ethics Commission has adopted rules on such requests. They may be found at [www.ethics.state.ms.us](http://www.ethics.state.ms.us).
- B. Judicial review. Any person whose request for public records was denied may institute a suit in the chancery court of Hinds County, seeking to reverse the denial, as set forth in Miss. Code Ann. § 25-61-13.

Source: Miss. Code Ann. §§ 25-61-1, *et seq.*, 21-61-13.

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**Part 1, Chapter 3: Mississippi Commission on Environmental Quality Regulations Regarding Administrative Procedures Pursuant to the Mississippi Administrative Procedures Act. (Adopted November 17, 2005)**

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*Rule 3.1 Description of Mississippi Commission on Environmental Quality and Mississippi Department of Environmental Quality.* Reference is made to Miss. Code Ann. §§ 49-2-1, *et seq.*, and 49-17-1, *et seq.* (Rev. 2003), which create and set forth the duties and responsibilities of the Mississippi Commission on Environmental Quality (“Commission”) and the Mississippi Department of Environmental Quality (“Department”). The Commission is empowered to formulate environmental policy, adopt and enforce rules and regulations, receive funding, conduct studies for using the State's resources, and discharge duties, responsibilities and powers as necessary. The seven members are appointed by the governor. The Department serves as staff for the Commission. The Department staff is comprised of four (4) divisions: the Office of Administrative Services, the Office of Geology and Energy Resources, the Office of Land and Water Resources, and the Office of Pollution Control. The Executive Director of the Department serves as the Executive Director of the Commission.

Source: Miss. Code Ann. §§ 25-43-2.104, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et seq.* and 49-17-1, *et seq.*

*Rule 3.2 Oral Proceedings Will Be Scheduled on Proposed Rules.* Prior to the adoption, amendment, or repeal of rules and regulations administered by the Department, the Commission shall conduct a public hearing after public notice. Such notice shall be given by publication once a week for three (3) successive weeks in a newspaper having a general circulation throughout the state. The notice shall contain a description of the proposed regulation and the time, date, and place of the hearing.

Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, et seq., 49-17-17(i), 49-17-25, 49-2-1, et seq., and 49-17-1, et seq.

*Rule 3.3 Notification of Oral Proceeding for Proposed Rule-Making.* The date, time, and place of all oral proceedings for proposed rule-making shall be filed with the Office of the Secretary of State and, within three (3) days of such filing, mailed to anyone who makes a timely request. The oral proceedings shall be scheduled no earlier than twenty (20) days from the filing of this information with the Office of the Secretary of State. For at least twenty-five (25) days from the filing with the Office of the Secretary of State of the notice of proposed rule adoption, the Commission shall afford persons the opportunity to submit, in writing, argument, data, and any views on the proposed rule.

Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, et seq., 49-17-17(i), 49-17-25, 49-2-1, et seq. and 49-17-1, et seq.

*Rule 3.4 Presiding Officer.* The Executive Director of the Department, or his designee who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, et seq., 49-17-17(i), 49-17-25, 49-2-1, et seq., and 49-17-1, et seq.

*Rule 3.5 Public Presentations and Participation for Proposed Rule-Making.*

- A. At an oral proceeding on a proposed rule, persons may make oral statements and may make documentary and physical submissions, which may include views, comments, or arguments concerning the proposed rule.
- B. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own.
- C. Persons making oral presentations are discouraged from restating matters that already have been submitted in writing.
- D. There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may, in his or her discretion, interrupt

or end the participant's time for presentation where the orderly conduct of the proceeding so requires.

Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et seq.*, and 49-17-1, *et seq.*

*Rule 3.6 Conduct of Oral Proceeding for Proposed Rule-Making.*

- A. Presiding officer. The presiding officer shall have authority to conduct the proceeding for proposed rule-making in his or her discretion for its orderly conduct. The presiding officer may:
- (1) call the proceeding to order;
  - (2) allow for a brief synopsis of the proposed rule and a statement of the statutory authority for the proposed rule;
  - (3) call on those individuals who desire to speak for or against the proposed rule;
  - (4) allow for additional statements following all participants' comments; and
  - (5) adjourn the proceeding.
- B. Questions. Where time permits and to facilitate the exchange of information, the presiding officer may open the floor to questions or general discussion concerning the proposed rule. The presiding officer in his or her discretion may question participants and/or permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants; however, no participant shall be required to answer any question.
- C. Physical and Documentary Submissions. Submissions presented by participants in an oral proceeding with regard to proposed rule-making shall be submitted to the presiding officer. Such submissions become the property of the Commission and are subject to the Commission's public records request procedures.
- D. Recording. The Commission or Department may record oral proceedings for the purpose of rule-making by stenographic or electronic means, at its discretion.

Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et seq.*, and 49-17-1, *et seq.*

*Rule 3.7 Persons Who May Request Declaratory Opinions.* Any person with a substantial interest in the subject matter may request a declaratory opinion from the Commission by following the specified procedures. "Substantial interest in the subject matter" means: an individual, business group, or other entity that is directly affected by the Commission's administration of a statute, rule, or order within its primary jurisdiction.

Source: Miss. Code Ann. § § 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17 (i), 47-17-25, 49-2-1, *et seq.*, and 49-17-1, *et seq.*

*Rule 3.8 Subjects Which May Be Addressed In Declaratory Opinions.* The Department on behalf of the Commission will issue declaratory opinions regarding the applicability to specified facts of:

- A. a statute administered or enforceable by the Commission,
- B. a rule promulgated by the Commission, or
- C. an order issued by the Commission.

The Commission will not issue a declaratory opinion regarding a statute, rule, or order which is outside the primary jurisdiction of the agency. “Primary jurisdiction of the agency” means the agency has a constitutional or statutory grant of authority in the subject matter at issue.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et seq.*, and 49-17-1, *et seq.*

*Rule 3.9 Circumstances In Which Declaratory Opinions Will Not Be Issued.* The Department on behalf of the Commission may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

- A. lack of clarity concerning the question presented or situations in which the facts presented in the request are not sufficient to answer the question presented;
- B. pending or anticipated litigation, administrative action, or other adjudication or decision making which either may answer the question presented by the request or otherwise make an answer unnecessary;
- C. requests that fail to contain information required by these rules or in which the requestor failed to follow the procedures set forth in these rules;
- D. issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the application of the statute or rule;
- E. issues in which no present controversy exists, meaning that the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute or rule;
- F. questions concerning the legal validity of a statute or rule;

- G. requests not based upon facts calculated to aid in the planning of future conduct, but rather, adjudication of the correctness of past conduct or efforts to establish the effect of that conduct;
- H. questions involving the application of a criminal statute or sets of facts that may constitute a crime;
- I. questions the answer to which would require disclosure of information which is privileged or otherwise protected from disclosure by law;
- J. questions that are known to be currently the subject of an Attorney General's opinion request or which already have been answered by an Attorney General's opinion;
- K. questions on which a similar request is pending before the Commission, or concerning which a proceeding is known to be pending on the same subject matter before any agency, administrative or judicial tribunal;
- L. questions where issuance of a declaratory opinion may adversely affect the interests of the State, the Commission, or any of their officers or employees in any litigation pending or which reasonably may be expected to arise;
- M. questions that involve eligibility for a license, permit, certificate, or other approval by the Commission or some other agency, where there is a statutory or regulatory application process by which eligibility for said license, permit, certificate, or other approval would be determined; or
- N. requests not directed to the Executive Director of the Department.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et seq.*, and 49-17-1, *et seq.*

*Rule 3.10 Where to Send Requests.* All requests for declaratory opinions from the Commission must be in writing and mailed, e-mailed, delivered, or transmitted via facsimile specifically to the Executive Director of the Department. The facsimile telephone number for the Department may be found at its website, . No oral or telephone requests or requests for declaratory opinions will be accepted. Requests not directed to the Executive Director of the Department shall not be considered as requests for declaratory opinions under these rules, and a response to such requests shall not be provided.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et seq.*, and 49-17-1, *et seq.*

*Rule 3.11 Name, Address, and Signature of Requestor.* Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in these rules, including but not limited to, a full, complete, and accurate statement of

relevant facts. Such request shall also include the statement that, to the best of the requestor's knowledge, no related proceedings are pending before any other administrative or judicial tribunal. A request must be limited to a single transaction or occurrence.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et seq.*, and 49-17-1, *et seq.*

*Rule 3.12 Question Presented.* Each request shall contain the following:

- A. a clear and concise statement of all facts concerning which the opinion is requested, limited to a single transaction or occurrence;
- B. a citation to the statute or regulation or rule at issue;
- C. the question(s) sought to be answered in the opinion, stated clearly and concisely;
- D. the identity of all other, known persons involved in or impacted by the described facts, including their relationship to the facts, their names, mailing addresses and telephone numbers; and
- E. a statement to show that the person seeking the opinion has a substantial interest in the subject matter.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et seq.*, and 49-17-1, *et seq.*

*Rule 3.13 Time for Commission's Response.* Within forty-five (45) days after the receipt of a request which complies with the requirements of these rules, the Department on behalf of the Commission shall:

- A. issue a written declaratory opinion regarding the specified statute, rule, or order, as applied to the particular circumstances described in the request;
- B. decline to issue a declaratory opinion, stating the reasons therefore; OR
- C. agree to issue a declaratory opinion by a specified date, which shall be not later than ninety (90) days after receipt of the written request.

The forty-five (45) day period for response shall begin running on the State of Mississippi business day on which the request is received by the Executive Director of the Department on behalf of the Commission. A copy of the written declaratory opinion shall be mailed promptly to the requestor. The Department reserves the right to present the declaratory opinion to the Commission for final consideration.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et seq.*, and 49-17-1, *et seq.*

*Rule 3.14 Notice By Commission to Third Parties.* The Department on behalf of the Commission may, at its discretion, provide notice to any person, agency, or entity that a declaratory opinion has been requested, and it may receive or consider data, facts, arguments, and/or opinions from other persons, agencies, or other entities other than the requestor.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et seq.*, and 49-17-1, *et seq.*

*Rule 3.15 Public Availability of Requests and Declaratory Opinions.* Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public Records Act and the Commission's regulations concerning public records requests, known as Title 11, Part 1, Chapter 2. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests may be held confidential by the Commission within the provisions of Title 11, Part 1, Chapter 2 regarding confidentiality of records or if the information is exempt from disclosure under the Mississippi Public Records Act or other laws of the State, including but not limited to Miss. Code Ann. §§ 17-17-27(6) and 49-17-39 (Rev. 2003).

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 25-61-1, *et seq.*, 17-17-27, 49-17-25, 49-17-39, 49-17-41, 49-17-17(i), 49-2-1, *et seq.*, 49-17-1, *et seq.*, and 17-17-1, *et seq.*

*Rule 3.16 Effect of Declaratory Opinions.* The Commission will not pursue any civil or criminal action against a person who is issued a declaratory opinion from the Executive Director of the Department on behalf of the Commission and who, in good faith, follows the direction given in the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong and without any substantial support. Any declaratory opinion rendered by the Executive Director on behalf of the Commission or the Department shall be binding only on the Department and the Commission and the person to whom the opinion is issued. No declaratory opinion will be used as precedent for any other transaction or occurrence beyond that set of facts described in the original request.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-17(i), 49-17-25, 49-2-1, *et seq.*, and 49-17-1, *et seq.*

**Part 1, Chapter 4: Mississippi Environmental Quality Permit Board Delegation of Permitting Authority Pursuant to Miss. Code Ann. §§ 49-17-28(3), 49-17-29(3)(A), 51-3-15(1) And 53-7-41(6) (Adopted October 22, 1996; Revised March 27, 2001; Revised December 14, 2004)**

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Rule 4.2 Delegation and Reporting



## Rule 4.3 Appeal

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*Rule 4.1 Definitions.* As used in these regulations, the following terms shall have the following definitions:

- A. "Department" shall mean the Mississippi Department of Environmental Quality.
- B. "Executive Director" shall mean the Executive Director of the Mississippi Department of Environmental Quality.
- C. "Delegated Permit" shall mean an air pollution control permit, a water pollution control permit, a permit required under the Solid Waste Disposal Law of 1974 (Title 17, Chapter 17 of the Mississippi Code Annotated, as amended), a permit to withdraw surface water or ground water pursuant to Miss. Code Ann. § 51-3-1 through 51-3-55, any related general permit, a water quality certification issued pursuant to § 401 of the federal Clean Water Act and Miss. Code Ann. § 49-17-28(3) or the modification or renewal of any of the permit or certifications listed above. However, "Delegated Permit" shall not include any permit for a commercial hazardous waste management facility or for a municipal solid waste landfill or incinerator, or the modification or renewal of such a permit, or any permit which by law must be issued by the Mississippi Commission on Environmental Quality.
- D. "Delegated Surface Mining Permit" shall mean a permit for a surface mining operation pursuant to the Mississippi Surface Mining and Reclamation Act (Title 53, Chapter 7 of the Mississippi Code Annotated, as amended) including any general permit.
- E. "Modify," "Modified," or "Modification," shall include, but not be limited to, the transfer of any rights in a permit from one party to another.
- F. "Permit Board" shall mean the Mississippi Environmental Quality Permit Board, created by Miss. Code Ann. § 49-17-28.

Source: Miss Code Ann. §§ 49-17-28(3), 49-17-29(3)(A), 51-3-15(1) 53-7-41(6), 49-2-1, et seq., 49-17-1, et seq., 51-3-1, et seq., 53-7-1, et seq., and 17-17-1, et seq.

*Rule 4.2 Delegation and Reporting.*

- A. By the adoption of these regulations, the Permit Board, pursuant to Miss. Code Ann. § 49-17-29 and § 51-3-15(1), delegates to the Executive Director the authority to make decisions on the issuance, reissuance, denial, modification, or revocation of Delegated Permits. Pursuant to Miss. Code Ann. § 53-7-41(6), the Permit Board further delegates to the Executive Director the authority to make decisions on the issuance, reissuance, modification, rescission or cancellation of Delegated Surface Mining Permits. Delegated Surface Mining Permits may be cancelled at the request of the operator, if the operator

does not commence operations under the permit by stripping, grubbing or mining any part of the permit area. Delegated Surface Mining Permits may be rescinded if, because of a change in post-mining use of the land by the landowner, the completion of the approved reclamation plan by the operator is no longer feasible.

- B. As a further condition prescribed by the Permit Board of this delegation of authority to the Executive Director, the Permit Board directs the Executive Director to delegate the authority to issue, reissue, deny, modify, or revoke Delegated Permits and to delegate the authority to issue, reissue, modify, rescind or cancel Delegated Surface Mining Permits to senior staff personnel within the Department, in order that the delegation made in section II.A. of these regulations will not detract in a significant way from the Executive Director's performance of his or her other duties. Delegated Permits may be issued, reissued, denied, revoked, or modified and Delegated Surface Mining Permits may be issued, reissued, modified, rescinded or cancelled by the Executive Director, by the Head of the Office of the Department in which the permit action is taken, or by the Division Chief for the Division of the Department in which the permit action is taken. The Executive Director may, at his discretion, determine which of these Office Heads and Division Chiefs will be granted the authority to issue, deny, revoke or modify Delegated Permits and to issue, reissue, modify, rescind or cancel Delegated Surface Mining Permits. The Executive Director may, at his discretion, determine that any application for the issuance, reissuance, modification, denial or revocation of a Delegated Permit and any application for the issuance, reissuance, modification, rescission or cancellation of a Delegated Surface Mining Permit will be presented to and determined by the Permit Board rather than by the Executive Director or Department personnel.
- C. The Executive Director, in person or through his delegate, shall report to the Permit Board at its next regularly-scheduled meeting each action taken by him or by Department personnel listed above to issue, reissue, deny, modify, or revoke a Delegated Permit and to issue, reissue, modify, rescind or cancel a Delegated Surface Mining Permit. The Permit Board then shall vote to note and to record on its minutes the report of the Executive Director or his delegate. In determining whether to note and to record on its minutes the report, the Permit Board shall consider only whether the report accurately lists and describes the actions taken by the Executive Director or his delegate(s). The Permit Board shall not review any action regarding a permit taken by the Executive Director or his delegate(s) unless and until a formal hearing on the permit action is convened pursuant to Miss. Code Ann. § 49-17-29(4)(b).
- D. If the Department or Permit Board is required by any statute or regulation to notify the public of the receipt of an application for a permit or of the Department's intent to issue, reissue, deny, modify, or revoke a Delegated Permit or to issue, reissue, modify, rescind or cancel a Delegated Surface Mining Permit or to conduct a public hearing prior to taking any permit action, no Delegated Permit or Delegated Surface Mining Permit shall be issued by the Executive Director or his delegate until the statutory or regulatory public notice, hearing, and comment periods and procedures are completed as required for that permit action.

Source: Miss. Code Ann. §§ 49-17-28(3), 49-17-29(3)(A), 51-3-15(1), 53-7-41(6), 49-2-1, et seq., 49-17-1, et seq., 51-3-1, et seq., 53-7-1, et seq., and 17-17-1, et seq.

*Rule 4.3 Appeal:* The appeal of any issuance, reissuance, denial, modification, or revocation of a Delegated Permit and the appeal of any issuance, reissuance, denial, rescission or cancellation of a Delegated Surface Mining Permit by the Executive Director shall be appealable pursuant to Miss. Code Ann. § 49-17-29 in the same manner as a non-delegated permit or decision of the Permit Board. The time period in which an aggrieved party may file a request for a formal hearing before the Permit Board concerning a Delegated Permit action or a Delegated Surface Mining Permit action taken by the Executive Director or his delegate shall be calculated from the date of the Permit Board meeting at which the decision of the Executive Director or his delegate is accepted by the Permit Board. This time period shall be calculated in the manner prescribed by Mississippi Rule of Civil Procedure 6(a).

Source: Miss. Code Ann. §§ 49-17-28(3), 49-17-29(3)(A), 51-3-15(1), 53-7-41(6), 49-2-1, et seq., 49-17-1, et seq., 51-3-1, et seq., 53-7-1, et seq., and 17-17-1, et seq.

**Part 1, Chapter 5: Mississippi Environmental Quality Permit Board: Regulations Regarding Administrative Procedures Pursuant to the Mississippi Administrative Procedures Act (Adopted November 8, 2005, Amended April 10, 2018)**

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***Rule 5.1 Description of Mississippi Environmental Quality Permit Board.*** Reference is made to Miss. Code Ann. §§ 49-17-28 and 49-17-29 (Rev. 2012), which create and set forth the duties and responsibilities of the Mississippi Environmental Quality Permit Board ("Permit Board"). The Permit Board issues, reissues, modifies, denies, transfers, and revokes Mississippi environmental permits and certifications administered under the Clean Water Act, the Clean Air Act, the Resource Conservation and Recovery Act, the Surface Mining Control and Reclamation Act, state mining laws, and state water resource control laws. The membership of the Permit Board is set by Miss. Code Ann. § 49-17-28 (Rev. 2012).

Seven of the Permit Board members serve by virtue of the State office they hold ("Ex Officio Members"). Pursuant to Miss. Code Ann. § 49-17-28, the membership of the Permit Board shall be composed of the Chief of the Bureau of Environmental Health of the State Board of Health, or his designee; the Executive Director of the Department of Wildlife, Fisheries and Parks, or his designee; the Head of the Office of Land and Water Resources of the Department of Environmental Quality, or his designee; the Supervisor of the State Oil and Gas Board, or his designee; the Executive Director of the Department of Marine Resources, or his designee; the Head of the Office of Geology and Energy Resources of the Department of Environmental Quality, or his designee; and the Commissioner of Agriculture and Commerce, or his designee.

The remaining two members of the Permit Board are appointed by the Governor and are required to be a retired professional engineer knowledgeable in the engineering of water wells and a retired water well contractor, respectively. Pursuant to Miss. Code Ann. § 49-17-28, the retired professional engineer and the retired water well contractor shall only vote on matters pertaining to the Office of Land and Water Resources.

In accordance with 11 Miss. Admin. Code Pt. 2, Ch. 1, R. 1.1.B., at least a majority of the Ex Officio Members of the Permit Board shall represent the public interest and shall not derive any significant portion of their income from persons subject to permits under the federal Clean Air Act or enforcement orders under the federal Clean Air Act (CAA). Each Ex Officio Member of the Permit Board shall certify annually as to whether the member derives a significant portion of income from persons subject to permits under the CAA or enforcement orders under the CAA. If a majority of Ex Officio Members derives a significant portion of income from persons subject to permits under the CAA or enforcement orders under the CAA, then the Permit Board shall take such action as may be necessary to ensure the replacement of as many members of said majority as may be necessary with designates who do not derive a significant portion of income from persons subject to permits under the CAA or enforcement orders under the CAA. In order

to facilitate the replacement of an Ex Officio Member as may be necessary, the Bureau Chief, Executive Director, Office Head, Board Supervisor, or Commissioner who designated the member shall designate a replacement who does not derive a significant portion of income from persons subject to permits under the CAA or enforcement orders under the CAA.

The Mississippi Department of Environmental Quality (“Department”) serves as staff for the Permit Board. The Department staff is comprised of four (4) divisions: the Office of Administrative Services, the Office of Geology and Energy Resources, the Office of Land and Water Resources, and the Office of Pollution Control. The Executive Director of the Department serves as the Executive Director of the Permit Board. The Mississippi Commission on Environmental Quality (“Commission”) is empowered to formulate environmental policy, adopt and enforce rules and regulations, receive funding, conduct studies for using the state’s resources, and discharge duties, responsibilities, and powers as necessary. The Department also serves as staff for the Commission.

Source: Miss. Code Ann. §§ 25-43-2.104, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-1, *et seq.*

**Rule 5.2 When Oral Proceedings Will Be Scheduled on Proposed Rules.** Prior to the adoption, amendment, or repeal of rules and regulations administered by the Department, the Permit Board shall conduct a public hearing after public notice. Such notice shall be given by publication once a week for three (3) successive weeks in a newspaper having a general circulation throughout the state. The notice shall contain a description of the proposed regulation and the time, date, and place of the hearing.

Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-1, *et seq.*

**Rule 5.3 Notification of Oral Proceeding for Proposed Rule-Making.** The date, time, and place of all oral proceedings for proposed rule-making shall be filed with the Office of the Secretary of State and, within three (3) days of such filing, mailed to anyone who makes a timely request. The oral proceedings shall be scheduled no earlier than twenty (20) days from the filing of this information with the Office of the Secretary of State. For at least twenty-five (25) days from the filing with the Office of the Secretary of State of the notice of proposed rule adoption, the Permit Board shall afford persons the opportunity to submit, in writing, argument, data, and any views on the proposed rule.

Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-1, *et seq.*

**Rule 5.4 Presiding Officer.** The Executive Director of the Department, or his designee who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-1, *et seq.*

***Rule 5.5 Public Presentations and Participation for Proposed Rule-Making.***

- A. At an oral proceeding on a proposed rule, persons may make oral statements and may make documentary and physical submissions, which may include views, comments, or arguments concerning the proposed rule.
- B. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own.
- C. Persons making oral presentations are discouraged from restating matters that already have been submitted in writing.
- D. There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may, in his or her discretion, interrupt or end the participant's time for presentation where the orderly conduct of the proceeding so requires.

Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-1, *et seq.*

***Rule 5.6 Conduct of Oral Proceeding for Proposed Rule-Making.***

- A. Presiding officer. The presiding officer shall have authority to conduct the proceeding for proposed rule-making in his or her discretion for its orderly conduct. The presiding officer may:
  - (1) call the proceeding to order;
  - (2) allow for a brief synopsis of the proposed rule and a statement of the statutory authority for the proposed rule;
  - (3) call on those individuals who desire to speak for or against the proposed rule;
  - (4) allow for additional statements following all participants' comments; and
  - (5) adjourn the proceeding.
- B. Questions. Where time permits and to facilitate the exchange of information, the presiding officer may open the floor to questions or general discussion concerning the proposed rule. The presiding officer in his or her discretion may question participants and/or permit the questioning of participants by other participants about any matter

relating to that rule-making proceeding, including any prior written submissions made by those participants; however, no participant shall be required to answer any question.

- C. Physical and Documentary Submissions. Submissions presented by participants in an oral proceeding with regard to proposed rule-making shall be submitted to the presiding officer. Such submissions become the property of the Permit Board and are subject to the Commission's public records request procedures.
- D. Recording. The Permit Board may record oral proceedings for the purpose of rule-making by stenographic or electronic means, at its discretion.

Source: Miss. Code Ann. §§ 25-43-3.104, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-1, *et seq.*

**Rule 5.7 Persons Who May Request Declaratory Opinions.** Any person with a substantial interest in the subject matter may request a declaratory opinion from the Permit Board by following the specified procedures. "Substantial interest in the subject matter" means: an individual, business group, or other entity that is directly affected by the Permit Board's administration of a statute, rule, or order within its primary jurisdiction.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-1, *et seq.*

**Rule 5.8 Subjects Which May Be Addressed In Declaratory Opinions.** The Department on behalf of the Permit Board will issue declaratory opinions regarding the applicability to specified facts of:

- A. a statute administered or enforceable by the Permit Board,
- B. a rule promulgated by the Permit Board, or
- C. an order issued by the Permit Board. The Permit Board will not issue a declaratory opinion regarding a statute, rule, or order which is outside the primary jurisdiction of the Board. "Primary jurisdiction of the Board" means the Board has a constitutional or statutory grant of authority in the subject matter at issue.

Source: Miss. Code Ann. § 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-1, *et seq.*

**Rule 5.9 Circumstances In Which Declaratory Opinions Will Not Be Issued.** The Department on behalf of the Permit Board may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

- A. lack of clarity concerning the question presented or situations in which the facts presented in the request are not sufficient to answer the question presented;

- B. pending or anticipated litigation, administrative action, or other adjudication or decision making which either may answer the question presented by the request or otherwise make an answer unnecessary;
- C. requests that fail to contain information required by these rules or in which the requestor failed to follow the procedures set forth in these rules;
- D. issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the application of the statute or rule;
- E. issues in which no present controversy exists, meaning that the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute or rule;
- F. questions concerning the legal validity of a statute or rule;
- G. requests not based upon facts calculated to aid in the planning of future conduct, but rather, adjudication of the correctness of past conduct or efforts to establish the effect of that conduct;
- H. questions involving the application of a criminal statute or sets of facts that may constitute a crime;
- I. questions the answer to which would require disclosure of information which is privileged or otherwise protected from disclosure by law;
- J. questions that are known to be currently the subject of an Attorney General's opinion request or which already have been answered by an Attorney General's opinion;
- K. questions on which a similar request is pending before the Permit Board, or concerning which a proceeding is known to be pending on the same subject matter before any agency, administrative or judicial tribunal;
- L. questions where issuance of a declaratory opinion may adversely affect the interests of the State, the Permit Board, or any of its officers or employees in any litigation pending or which reasonably may be expected to arise;
- M. questions that involve eligibility for a license, permit, certificate, or other approval by the Permit Board, or some other agency, where there is a statutory or regulatory application process by which eligibility for said license, permit, certificate, or other approval would be determined; or
- N. requests not directed to the Executive Director of the Department.



Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, et seq., 49-17-28, 49-17-29, and 49-17-1, et seq..

**Rule 5.10. Where to Send Requests.** All requests for declaratory opinions from the Permit Board must be in writing and mailed, e-mailed, delivered, or transmitted via facsimile specifically to the Executive Director of the Department. The facsimile telephone number for the Department may be found at its website, <http://www.mdeq.ms.gov> No oral or telephone requests or requests for declaratory opinions will be accepted. Requests not directed to the Executive Director of the Department shall not be considered as requests for declaratory opinions under these rules, and a response to such requests shall not be provided.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, et seq., 49-17-28, 49-17-29, and 49-17-1, et seq.

**Rule 5.11 Name, Address, and Signature of Requestor.** Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in these rules, including but not limited to, a full, complete, and accurate statement of relevant facts. Such request shall also include the statement that, to the best of the requestor's knowledge, no related proceedings are pending before any other administrative or judicial tribunal. A request must be limited to a single transaction or occurrence.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, et seq., 49-17-28, 49-17-29, and 49-17-1, et seq.

**Rule 5.12 Question Presented.** Each request shall contain the following:

- A. a clear and concise statement of all facts concerning which the opinion is requested, limited to a single transaction or occurrence;
- B. a citation to the statute or regulation or rule at issue;
- C. the question(s) sought to be answered in the opinion, stated clearly and concisely;
- D. the identity of all other, known persons involved in or impacted by the described facts, including their relationship to the facts, their names, mailing addresses and telephone numbers; and
- E. a statement to show that the person seeking the opinion has a substantial interest in the subject matter.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, et seq., 49-17-28, 49-17-29, and 49-17-1, et seq.

**Rule 5.13 Time for Permit Board's Response.** Within forty-five (45) days after the receipt of a request which complies with the requirements of these rules, the Department on behalf of the Permit Board shall:

The forty-five (45) day period for response shall begin running on the State of Mississippi business day on which the request is received by the Executive Director of the Department on behalf of the Permit Board. A copy of the written declaratory opinion shall be mailed promptly to the requestor. The Department reserves the right to present the declaratory opinion to the Permit Board for final consideration.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-1, *et seq.*

**Rule 5.14 Notice by Permit Board to Third Parties.** The Department on behalf of the Permit Board may, at its discretion, provide notice to any person, agency, or entity that a declaratory opinion has been requested, and it may receive or consider data, facts, arguments, and/or opinions from other persons, agencies, or other entities other than the requestor.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-1, *et seq.*

**Rule 5.15 Public Availability of Requests and Declaratory Opinions.** Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public Records Act and the Commission's regulations concerning public records requests, known as MCEQ-2. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests may be held confidential by the Permit Board within the provisions of MCEQ-2 regarding confidentiality of records or if the information is exempt from disclosure under the Mississippi Public Records Act or other laws of the State, including but not limited to Miss. Code Ann. §§ 17-17-27(6) and 49-17-39 (Rev. 2012).

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-1, *et seq.*

**Rule 5.16 Effect of Declaratory Opinions.** The Permit Board will not pursue any civil or criminal action against a person who is issued a declaratory opinion from the Executive Director of the Department on behalf of the Permit Board and who, in good faith, follows the direction given in the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong and without any substantial support. Any declaratory opinion rendered by the Executive Director on behalf of the Permit Board shall be binding only on the Department and the Permit Board and the person to whom the opinion is issued. No declaratory opinion will be used as precedent for any other transaction or occurrence beyond that set of facts described in the original request.

Source: Miss. Code Ann. §§ 25-43-2.103, 25-43-1.101, *et seq.*, 49-17-28, 49-17-29, and 49-17-1, *et seq.*

## **Part 1, Chapter 6: Rules of Practice and Procedure for Formal Evidentiary Hearings before the Mississippi Environmental Quality Permit Board**

*Rule 6.1 General.* These rules are adopted pursuant to Mississippi Code Annotated Section 49-17-29 (3)(d) which provides the Mississippi Environmental Quality Permit Board (“Permit Board”) may adopt rules of practice and procedure governing its proceedings consistent with the Mississippi Commission on Environmental Quality’s regulations. These Rules replace the previous “Procedures for Conducting Permit Board Evidentiary Hearings.”

Source: *Miss. Code Ann.* §§ 49-17-29 (3)(d); 49-17-1, *et seq.* (Rev. 2012).

*Rule 6.2 Formal Evidentiary Hearings.* These procedures govern formal evidentiary hearings before the Mississippi Environmental Quality Permit Board (“Permit Board”) held pursuant to Mississippi Code Annotated, Section 49-17-29 (4)(b) (Rev. 2012), and apply to all parties including the Mississippi Department of Environmental Quality.

Source: *Miss. Code Ann.* §§ 49-17-29 (4)(b); 49-17-1, *et seq.* (Rev. 2012).

*Rule 6.3 Severability.* If any provision, section, subsection, sentence, clause or phrase of any of these rules and regulations, or the application of same to any person or set of circumstances, is for any reason challenged or held to be invalid or void, the remaining regulations or their application to other persons or circumstances will remain valid.

Source: *Miss. Code Ann.* § 49-17-1, *et seq.* (Rev. 2012).

*Rule 6.4 Hearing Officer.*

- A. Permit Board. The Permit Board created by Mississippi Code Annotated Section 49-17-28 (Rev. 2012) is the exclusive administrative body to make decisions on permit issuance, reissuance, denial, modification, transfer, or revocation of air pollution control and water pollution control permits (Miss. Code Ann. § 49-17-1, *et seq.*) and permits required under the Solid Wastes Disposal Law of 1974 (Miss. Code Ann. § 17-17-1, *et seq.*) and all other permits within the jurisdiction of the Permit Board including, but not limited to the following: surface mining permits (Miss. Code Ann. § 53-7-1, *et seq.*); surface coal mining permits (Miss. Code Ann. § 53-9-1, *et seq.*); water withdrawal permits (Miss. Code Ann. § 51-3-1, *et seq.*; §401 water quality certifications; and dam safety permits (Miss. Code Ann. § 51-3-1, *et seq.*). The Executive Director of the Mississippi Department of Environmental Quality (“MDEQ”) is also the Executive Director of the Permit Board. Miss. Code Ann. § 49-17-29 (3)(b).
- B. Hearing Officer. The Permit Board may, through the Mississippi Department of Environmental Quality (“MDEQ”), designate a Hearing Officer to conduct the formal evidentiary hearing on all or any part of the issues on behalf of the Permit Board. The Hearing Officer may be an attorney from the Mississippi Attorney General’s Office,

another attorney who does not represent a party in the hearing, or a member of the Permit Board. MDEQ will notify the parties once the Hearing Officer has been designated.

1. Authority. The Hearing Officer shall have authority to conduct the hearing in his or her discretion for its orderly conduct. The Hearing Officer may perform functions including but not limited to the following:
  - a) call the proceeding to order;
  - b) allow a brief synopsis of the proposed action;
  - c) rule on procedural motions including motions to intervene;
  - d) allow the parties to the matter to make opening arguments;
  - e) rule on procedural and evidentiary matters;
  - f) allow for questioning of witnesses including cross-examination, redirect, and for questioning by the Permit Board;
  - g) allow the parties to the matter to make closing arguments;
  - h) advise the Permit Board of procedures for going into executive session, out of executive session, and return to regular session; and
  - i) close the evidentiary hearing.
2. Pre-hearing conference. The Hearing Officer may call a pre-hearing conference or conferences prior to any hearing to establish hearing guidelines and clarify issues, and to discuss scheduling deadlines and pre-hearing orders, if any. Any of the parties may request a pre-hearing conference.
3. Motion Hearing. The Hearing Officer may at the request of any party schedule a motion hearing to consider and decide non-dispositive motions prior to the formal evidentiary hearing. The Hearing Officer may hear dispositive motions and make recommendations to the Permit Board; however, the Permit Board will make the ultimate decision regarding all dispositive motions.

Source: *Miss. Code Ann.* §§ 49-17-1, *et seq.* (Rev. 2012); 17-17-1, *et seq.* (Rev. 2012); 51-3-1, *et seq.* (Rev. 2003); 53-7-1, *et seq.* (Rev. 2003); and 53-9-1, *et seq.* (Rev. 2003).

#### *Rule 6.5 Hearings.*

- A. Hearing request. Any interested party aggrieved by the Permit Board's issuance, denial, modification, transfer, revocation, or other permit action may request a formal evidentiary hearing in writing within 30 days after the date the Permit Board takes action upon permit issuance, denial, modification, transfer, revocation or other permit action as reflected on the Permit Board's minutes pursuant to *Miss. Code Ann.* § 49-17-29 (4)(b) (Rev. 2012); 51-3-15, (Rev. 2003); 53-7-41 (Rev. 2003); and 53-9-77 (Rev. 2003). Though the Permit Board's action is reflected in the Permit Board's minutes, which are written after the meeting, the manner for calculating the time in which to appeal is shown in Rule 6.5 B. and C.

- B. The time period in which an aggrieved party may file a request for a formal hearing before the Permit Board, concerning a permit action taken by the Permit Board, will be calculated from the date of the Permit Board meeting at which the Permit Board made the decision.
- C. Delegated Permits – Time Period. The time period in which an aggrieved party may file a request for a formal hearing before the Permit Board concerning a Delegated Permit action (as defined by 11 Miss. Admin. Code Pt. 1, R. 4.1.C) or a Delegated Surface Mining Permit action (as defined by 11 Miss. Admin. Code Pt. 1, R. 4.1.D) taken by the Executive Director or his or her delegate shall be calculated from the date of the Permit Board meeting at which the decision of the Executive Director or his or her delegate is accepted by the Permit Board. *See* 11 Miss. Admin. Code Pt. 1, R. 4.3.
- D. An interested party is any person claiming an interest relating to the property or project which is the subject of the permit action, and who is so situated that the person may be affected by the disposition of that action. Miss. Code Ann. § 49-17-29 (4)(b) (Rev. 2012); 51-3-15 (Rev. 2003); 53-7-41 (Rev. 2003); and 53-9-77 (Rev. 2003).
- E. Form of hearing request. Petitions or requests for hearing must be in writing and may be in the form of a letter, an email, or a facsimile transmission directed to the Executive Director of the Mississippi Department of Environmental Quality with a copy to the MDEQ legal staff. The petition should be brief and concise and must include the following: a statement of the matter upon which action of the Board is desired; a statement of the petitioner's interest in the matter; a statement of how the petitioner is so situated that he or she will be affected by the action; and a statement of the relief sought.
- F. Time and place of hearing. The Permit Board, through MDEQ, will schedule the time and place of such hearing and notify all parties, including the permittee, through a scheduling letter sent via certified mail.
- G. The Permit Board may, at its sole discretion, require all parties to submit written direct and rebuttal testimony, all documentary evidence and exhibits the parties plan to submit into evidence at the hearing, witness lists specifying the witnesses the parties plan to question at the hearing, and written motions and motion responses in advance of the hearing pursuant to deadlines specified in a scheduling letter. Any party may, upon good cause shown, make a written request to file documents after the rebuttal testimony deadline has passed. Such request may be submitted via email to the Hearing Officer with copies to legal counsel for all represented parties and directly to unrepresented parties. The Hearing Officer has the discretion to allow or reject the request. In the event a matter needs to be heard in an expedited manner, the Permit Board may also, in its sole discretion, hold an expedited evidentiary hearing. If the Permit Board decides to hold an expedited hearing, the Board may do so without requiring the parties to pre-file testimony, documents, and other information prior to the hearing. MDEQ staff will notify the parties in writing if the Permit Board decides to hold an expedited hearing and whether the Board will require pre-filing of testimony, documents, and other information.

#### H. Continuance of hearing.

1. Any party to the hearing, including a party who timely filed a motion to intervene, may request a continuance for good cause shown in writing at least seven days before the evidentiary hearing. The motion must be mailed, emailed, or delivered to the Executive Director of the Permit Board and a copy mailed, emailed, or delivered to each party and intervenor to the hearing. A movant for continuance of the evidentiary hearing must mail, email, or deliver a copy of the motion for continuance to the permittee or permit applicant even if the permittee or applicant is not a party to the evidentiary hearing. All motions for continuance of an evidentiary hearing must state the reason for the continuance. The Hearing Officer or the Permit Board may consider a request for a continuance which is made less than seven days before the evidentiary hearing if the requestor demonstrates extraordinary circumstances necessitating a continuance.
2. The permittee or permit applicant, MDEQ, and all interested parties who have requested a hearing or have intervened in the matter may agree to a continuance of the hearing and may waive the notice requirements. If the parties do not agree to a continuance, the matter will be referred to the Permit Board or its Executive Director for a ruling on a motion to continue.
3. The Permit Board, its Executive Director, or the Hearing Officer on behalf of the Permit Board may grant, deny, or reschedule a hearing on a motion for continuance. The Permit Board, its Executive Director, or the Hearing Officer on behalf of the Permit Board, may grant motions for continuance.

#### I. Representation by counsel. Any party affected, or potentially affected, by a Permit Board decision may be advised and represented, at the party's own expense, by a licensed attorney or attorneys.

1. Any party affected by a Permit Board decision may represent himself or herself (*pro se*). In the case of a corporation or other artificial person recognized by law, the party may participate through a duly authorized representative, such as an officer, director or appropriate employee, whether or not that person is a licensed attorney. Under no circumstances may a *pro se* party represent the interests of other parties in a manner constituting unauthorized practice of law pursuant to Mississippi law including Miss. Code Ann. § 73-3-55 (Rev. 2012) and as defined by the Mississippi Supreme Court in *Darby v. Miss. State Bar*, 185 So.2d 684, 687-88 (Miss. 1966).
2. Entry of appearance by counsel may be made by:
  - a. signing any filing;
  - b. filing a notice of appearance; or
  - c. appearance as counsel at a Permit Board pre-hearing conference or hearing.

3. After counsel makes an appearance on behalf of a party, all orders, notices and filings must be served only upon such counsel unless otherwise requested.
  4. Counsel wishing to withdraw must provide written notice to the Executive Director, the Permit Board, or the Hearing Officer with a copy to the Legal Department, prior to the hearing.
  5. Foreign Attorneys. Attorneys not licensed to practice law in the State of Mississippi must request admission *pro hac vice* to appear and represent a party before the Permit Board pursuant to the procedures set forth in Rule 46(b) of the Mississippi Rules of Appellate Procedure.
- J. Abuse of process. The Permit Board may dismiss an evidentiary hearing request filed by a party who has previously abused the evidentiary hearing process by failing to attend or refusing to participate in past hearings requested by that party, or by leaving before the end of the hearing.

Source: *Miss. Code Ann.* § 49-17-1, *et seq.* (Rev. 2012).

*Rule 6.6 Interventions.* Any person who meets the statutory definition of “interested party” under *Miss. Code Ann.* § 49-17-29 (4)(b) and 11 *Miss. Admin. Code Pt. 1, R. 6.5.D* may file a written Motion to Intervene.

- A. Leave. Leave to intervene will entitle the intervenor to the status of a party and to participate as a party.
- B. Form. Motions to intervene shall set out clearly the facts from which the nature of the movant’s alleged right or interest can be determined, the grounds of the proposed intervention and any other pertinent facts. Movants will only be allowed to intervene if they meet the definition of “interested party” set forth in *Miss. Code Ann.* § 49-17-29 (4)(b) and *Rule 6.5.D* which is as follows: “any person claiming an interest relating to the property or project which is the subject of the permit action, and who is so situated that the person may be affected by the disposition of that action.” The motion to intervene must contain a certificate of service upon all parties of record. The movant shall file a proposed order allowing intervention with the motion to intervene. The MDEQ Legal staff will provide example forms, upon request, to any proposed intervenor.
- C. Time for. Motions to intervene must be filed on or before the date specified in the scheduling letter. An interested party who did not timely file a motion to intervene may not participate as a party at the evidentiary hearing except upon good cause shown.
- D. Failure to comply with time limitations. Motions to intervene not timely filed under this rule will only be allowed in the discretion of the Permit Board and only upon good cause shown. Except as otherwise ordered, a grant of an untimely motion to intervene must not be a basis for delaying or deferring any procedural schedule established prior to the grant

of that motion. The Permit Board may limit a late intervenor's participation to avoid delay and prejudice to the other participants.

- E. Service of Copies. Documents filed after a person is allowed to intervene must be served on the intervenor in the same manner as for parties.

Source: *Miss. Code Ann.* §§ 49-17-29 (4)(b); 49-17-1, *et seq.* (Rev. 2012).

*Rule 6.7 Subpoenas and Record Requests.*

- A. Subpoenas. The Permit Board may subpoena and any party to the hearing may request subpoenas for appearance of witnesses who may have relevant knowledge and the same will be issued by the Executive Director of the Permit Board and served by any lawful officer in the county of the person to whom the subpoena will be directed.
- B. Procedure. Upon the written request of any party or his or her attorney, no later than seven days prior to the evidentiary hearing, the Executive Director of the Permit Board may issue subpoenas. In issuing subpoenas, the original and all copies must show at whose instance the subpoena is issued. All persons responding to process issued under this rule will be entitled to the same *per diem* and mileage as witnesses attending the Circuit Courts in Mississippi. Such costs are to be borne by the party at whose instance the process is issued. Requesting parties are responsible for service of subpoenas on the subpoenaed witnesses.
- C. Subpoenas *Duces Tecum*. Subpoenas *duces tecum* will be issued upon the written request of a party or his or her attorney, issued and served no later than 14 days prior to the evidentiary hearing, on parties or witnesses other than MDEQ and then only when the motion sets forth as plainly as possible the books, accounts, papers or records desired to be produced and the purpose of their production. Requests for MDEQ documents must be made through a public records request pursuant to 11 Miss. Admin. Code Pt. 1, Ch. 2.
- D. Motion to Quash Subpoenas and Subpoenas *Duces Tecum*. The Permit Board or the Hearing Officer may consider motions to quash subpoenas and subpoenas *duces tecum*, including such motion made by a non-party served with a subpoena or subpoena *duces tecum*. The Hearing Officer may schedule an expedited hearing or conference call to consider a motion to quash a subpoena or subpoena *duces tecum*.
- E. Protection of Confidential Information. A party may file a motion to quash a subpoena *duces tecum* which seeks information concerning trade secrets pursuant to Miss. Code Ann. §§ 17-17-27(6) or 49-17-39 if the party properly asserted confidentiality over that information as described in those statutes and in 11 Miss. Admin. Code Pt. 1, Ch. 2.6. A party may alternatively produce the subpoenaed information with the trade secret information redacted. Challenges regarding the validity of a confidentiality claim may only be considered by the Mississippi Commission on Environmental Quality pursuant to Miss. Code Ann. §§ 17-17-29 and 49-17-39 and 11 Miss. Admin. Code Pt. 1, Ch. 2.6.



- F. Records Request. Requests for records from MDEQ may be made pursuant to the Mississippi Public Records Act through MDEQ's Freedom of Information Office pursuant to 11 Miss. Admin. Code Pt. 1, Ch. 2. If the party making a records request wishes to submit documents obtained as evidence at the evidentiary hearing, the documents must be submitted in accordance with Rule 6.3.G.

Source: *Miss. Code Ann.* §§ 49-17-29 (4)(b) and (5)(b); 49-17-1, *et seq.* (Rev. 2012); 17-17-27(6) (Rev. 2012); and 25-61-1, *et seq.* (Rev. 2010).

*Rule 6.8 Service of Process.* Subpoenas, subpoenas *duces tecum*, notices, orders, or other papers required to be served may be served in any manner provided by law. Any person serving such process is entitled to the same fees as are paid for like services in the courts of this state and the cost will be borne by the party at whose instance the process is served. It is the responsibility of the party seeking a subpoena, subpoena *duces tecum*, notice, orders, or other papers required to be served to arrange for service of process on the respective witness.

Source: *Miss. Code Ann.* §§ 49-17-29 (4)(b) and 49-17-1, *et seq.* (Rev. 2012).

*Rule 6.9 Preliminary Motions.* Any request for an action or ruling prior to a hearing on the merits in a contested permit must be made in writing.

- A. The request must state the grounds therefore and set forth the relief or order sought. The Permit Board, its Executive Director, or Hearing Officer may shorten or extend the time for filing preliminary motions. If a time for filing motions is specified in a scheduling letter, any party filing a motion must file and serve the motion on the date specified. The parties may also mutually agree to shorten or extend the time for filing motions.
- B. Any party opposing a preliminary motion must file and serve a response within the time specified in the scheduling letter. The Permit Board, its Executive Director, or Hearing Officer may shorten or extend the time for responding to any motion. If a time for responding to motions is specified in a scheduling letter, any party opposing a motion must file and serve a response on the date specified. The parties may also mutually agree to shorten or extend the time for filing responses.
- C. Any party may, in a preliminary motion or response, request oral argument or the presentation of oral testimony or the Permit Board, its Executive Director, or Hearing Officer may order argument or the presentation of oral testimony to a Hearing Officer or the Permit Board. If such a request is granted or such an order entered, the Permit Board, or its Executive Director, will set the date and time therefore and may order that the argument be heard by telephone conference call.
- D. Preliminary motions, responses, matters submitted in support thereof, and any orders with respect thereto must be filed with the Executive Director of the Permit Board and must be served on all parties, intervenors (if applicable), and the permittee or permit applicant if not a party.

Source: *Miss. Code Ann. § 49-17-1, et seq.* (Rev. 2012).

*Rule 6.10 Pre-hearing Conference.* Any party to an evidentiary hearing may request a pre-hearing conference.

Source: *Miss. Code Ann. § 49-17-1, et seq.* (Rev. 2012).

*Rule 6.11 Ex Parte Communications.* After the announcement of, or notice of intent to, request a formal evidentiary hearing before the Permit Board, there shall be no *ex parte* contacts relating to the facts or merits of the petitioner's request between any person in favor of or opposed to the hearing petition and the Hearing Officer or any Permit Board member. Any communications with the hearing Officer or any Permit Board member must be copied to all parties.

*Rule 6.12 Scheduling Letter.* The Permit Board, through MDEQ, may enter a scheduling letter which may include provisions for setting a pre-hearing conference, and which also may include instructions and deadlines for the parties to submit pre-filed direct and rebuttal testimony, documentary evidence, motions, responses, witness lists, and to exchange all exhibits expected to be introduced into the record of the evidentiary hearing. The scheduling letter will be sent certified mail to all parties and the permittee (or permit applicant), if not a party. Motions *in Limine*, if any, must be filed no later than seven days before the evidentiary hearing. Responses to Motions *in Limine* may be made on the day of the hearing prior to opening statements. The Hearing Officer may consider and rule upon Motions *in Limine*.

Source: *Miss. Code Ann. § 49-17-1, et seq.* (Rev. 2012).

*Rule 6.13 Filing of Documents.*

- A. Number of copies. The original and 10 copies of all petitions, pre-filed testimony, exhibits, motions, pleadings of any nature, and any other type of documents required or allowed to be filed must be filed with the Permit Board either by hand delivery to or by mailing to the following:

Executive Director's Office  
Mississippi Department of Environmental Quality  
P.O. Box 2261 (39225)  
515 E. Amite Street  
Jackson, Mississippi 39201

- B. Filing by email or facsimile. Parties may meet the filing requirement by submitting all petitions, pre-filed testimony, exhibits, motions, pleadings of any nature, and any other type of documents required or allowed to be filed via email or facsimile to the Executive Director, with copies to MDEQ's Legal Department and counsel for all parties by 5:00 p.m. on the date such documents are due. Parties who choose to meet the filing requirement by emailing documents must submit the original document and 10 hard copies of such emailed or faxed document to the Executive Director by the close of the following business day.

- C. Service of Copies. One copy of all documents or pleadings required or allowed to be filed under the provisions of these rules must be served upon all parties as defined in these rules and the permittee (or permit applicant), if not a party, either in person or by mail to such parties, permittee, or their respective attorneys.

Source: *Miss. Code Ann.* § 49-17-1, *et seq.* (Rev. 2012).

*Rule 6.14 Written Pre-filed Testimony.*

- A. When filed. If required by the Permit Board or its Executive Director, written pre-filed testimony must be filed prior to hearing in accordance with deadlines specified in the scheduling letter sent by the Permit Board or its designee. The parties may also mutually agree to shorten or extend the time for filing written pre-filed testimony.
- B. Form. Written pre-filed testimony must be submitted in affidavit form which must be sworn and notarized.
- C. Exhibits. Any exhibits which may be used at hearing, including paper and electronic documents, photographs, videos, etc., must be attached to the pre-filed testimony or provided prior to the evidentiary hearing in accordance with the deadlines established in the scheduling letter.
- D. Who may submit pre-filed testimony. Any party to the proceeding may submit pre-filed testimony.
- E. Limitation of pre-filed testimony. A *pro se* party may submit pre-filed testimony on his or her own behalf, but not on behalf of any other party. Alternatively, the parties may retain legal counsel, at their own expense, to file pre-filed testimony on their behalf and to represent their interests. Upon request, MDEQ's Legal Staff will provide any party, including a *pro se* party, with an example affidavit which may be used as a template for pre-filed testimony.
- F. Submission of pre-filed direct testimony. All parties who wish to file pre-filed direct testimony and exhibits must file the testimony and exhibits with the Executive Director of the Permit Board on or before the date specified in the scheduling letter. A copy of any pre-filed direct testimony must be mailed to all parties and the permittee or permit applicant, if not a party, by the deadline for filing specified in the scheduling letter.
- G. Submission of pre-filed rebuttal testimony. All parties who wish to file pre-filed rebuttal testimony and exhibits must file same with the Executive Director of the Permit Board on or before the deadline specified in the scheduling letter. A copy of any pre-filed rebuttal testimony must be mailed to all parties, and the permittee or permit applicant if not a party, by the deadline for filing specified in the scheduling letter. Pre-filed rebuttal testimony is limited to the scope of direct testimony that it is offered to rebut.

- H. Submission of motions and motion responses. All parties must file any motions and motion responses with the Executive Director of the Permit Board on or before the deadline specified in the scheduling letter. A copy of any motions and motion responses must be mailed to all parties and the permittee or applicant, if not a party, by the deadline for filing specified in the scheduling letter.
- I. Waiver and modification. The Permit Board, or its Executive Director, has the discretion to waive or modify the pre-filed document requirements.
- J. Copies of pre-filed testimony, motions, responses, and witness lists. All parties must file the original and 10 copies of any pre-filed direct testimony, pre-filed rebuttal testimony, motions, responses, witness lists, and exhibits with the Executive Director of the Permit Board pursuant to the deadlines established in the scheduling letter and in accordance with Rule 6.13.
- K. Procedure after Permit Board waiver. If the Permit Board, or its Executive Director, in its discretion waives the requirements for pre-filed testimony, then at least seven days before the hearing, all parties involved in the proceedings shall exchange a list of all witnesses each party anticipates will be called during the hearing, accompanied by a brief statement of the testimony expected from each. All parties must also exchange copies of all exhibits and documents they expect to introduce as evidence at the evidentiary hearing at least seven days prior to the hearing. Any motions will be considered prior to opening statements. The Hearing Officer may rule upon non-dispositive motions. At the hearing, each party may make opening and closing statements. Witnesses will be subject to direct examination, cross examination, and redirect examination. Re-cross examination will be allowed at the discretion of the Hearing Officer or the Permit Board. The Permit Board members and the Hearing Officer may question the witnesses at any time during the hearing.
- L. Witness and exhibit list. A list of witnesses each party intends to call for direct and cross-examination and a copy of all exhibits and documents to be used at the hearing must be filed with the Executive Director of the Permit Board and a copy provided to all parties and the permittee (or permit applicant), if not a party, by the date specified in the scheduling letter or, if the Permit Board waived the requirement for pre-filed direct and rebuttal testimony, by the deadlines specified in Rule 6.14.K.
- M. Failure to follow procedural rules. Failure to submit pre-filed testimony, exhibits, and documents in the manner set forth by these rules without expressed waiver or modification by the Permit Board or the Hearing Officer is grounds for exclusion of such testimony, exhibits, and documents from the evidentiary hearing.

Source: *Miss. Code Ann.* § 49-17-1, *et seq.* (Rev. 2012).

*Rule 6.15 Hearing Procedures.*

- A. Commencement. The Hearing Officer will open the hearing by identifying each of the

parties and describing the subject of the hearing.

- B. Rules of evidence. The strict rules of evidence will not apply; however, all objections must be timely made. The Hearing Officer may limit or exclude testimony which is redundant or not relevant to the issues before the Permit Board. While the Permit Board will not be bound by the strict rules of evidence, it must base all of its determinations on sufficient evidence.
- C. Sequestration. Any party to the hearing may move to invoke the rule of sequestration and the Hearing Officer may rule on the motion.
  - 1. If the rule is invoked, no witnesses found improperly present in the hearing room during the hearing may testify.
  - 2. The Hearing Officer may waive a violation of a sequestration order if all opposing parties consent to a waiver, or if the presence of the witness sequestered from the hearing does not substantially affect any other party.
  - 3. Each party may have one corporate, agency, or other representative remain throughout the hearing and that representative may also testify as a witness.
- D. Motions, responses, preliminary matters. The Permit Board may consider motions, responses, and any other preliminary matters prior to opening statements.
- E. Order of proof. MDEQ staff will first present its proof and analysis and may give a recommendation with regard to the permit in question, followed by presentation of proof by the non-objecting party, if any, and subsequently by the objecting party.
- F. Opening statements. Each party will be allowed to make a brief opening statement. Opening statements will be given prior to presentation of the party's evidence to the Permit Board. The statement may include a brief statement regarding the party's case and the evidence by which the party expects to support his or her case.
- G. Questioning of witnesses.
  - 1. Pre-filed testimony. Unless the Permit Board or its Executive Director allows an evidentiary hearing without requiring submission of pre-filed testimony, each witness will testify through his or her pre-filed testimony. A witness may present live testimony in the beginning of his or her testimony, as a summary of their pre-filed testimony, for up to 15 minutes.
  - 2. Other testimony. A witness who has not submitted pre-filed testimony in an evidentiary hearing in which it is required will not be allowed to testify unless the witness is a subpoenaed adverse witness or unless the Permit Board so allows or unless all parties to the evidentiary hearing agree to allow the testimony. Such

witness will testify, if allowed, through examination by the party sponsoring the testimony.

3. Cross-examination. The Hearing Officer will allow cross-examination which will be limited to the subject matter of the direct examination and matters affecting the credibility of the witness.
4. Redirect testimony. Redirect testimony will be limited to the scope of the cross-examination testimony and will be offered to rebut any allegation or inconsistency raised on cross-examination.
5. Further re-cross examination and rebuttal. The Hearing Officer must permit cross-examination, and redirect examination limited to matters raised on cross-examination, and may permit re-cross-examination limited to matters raised during redirect examination.
6. Questions by Permit Board and Hearing Officer. The Permit Board members and the Hearing Officer may question a witness at any time during the hearing.
7. Re-cross examination will be allowed at the discretion of the Hearing Officer or the Permit Board.

H. Witness availability. All witnesses who provide pre-filed testimony must be made available for cross-examination by all other parties and for questioning by the Permit Board.

1. Failure to make witness available. The Hearing Officer may, upon motion of a party to the hearing, strike the pre-filed testimony of a witness who fails to attend the evidentiary hearing from the hearing record. The Hearing Officer, in his or her discretion, may allow pre-filed testimony of an absent witness if the witness is absent due to death or extenuating circumstances to be made part of the record. Parties may agree to allow pre-filed testimony of an absent witness to be introduced into the hearing record.
2. Exception for adverse or impeachment witnesses. Parties are not required to submit pre-filed testimony for adverse witnesses or witness called solely for impeachment purposes (i.e., to attack the credibility of a witness), but these witnesses must be identified in the witness list as specified in the scheduling letter.

I. Objections - offers of proof. Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. If the objection to the evidence offered is sustained, a proffer may be made for the record which consists of a statement of the substance of the excluded evidence. When a party objects to the admission of evidence, the Hearing Officer will rule on the objection.

- J. Closing statements. At the conclusion of all testimony, each party may make a brief closing statement.

Source: *Miss. Code Ann.* § 49-17-1, *et seq.* (Rev. 2012).

*Rule 6.16 Failure to Appear at the Hearing – Default.* If the hearing petitioner fails to appear at the scheduled time and place set for the formal evidentiary hearing, the Permit Board may dismiss the petition for a formal evidentiary hearing.

Source: *Miss. Code Ann.* § 49-17-1, *et seq.* (Rev. 2012).

*Rule 6.17 Executive Session.* The Permit Board may recess into executive session to deliberate in accordance with the following procedure:

- A. During the open meeting, a Permit Board member may move for a closed determination whether or not to declare an executive session. During the open meeting, the Permit Board must vote by a majority vote to close the meeting to determine the necessity of going into an executive session.
- B. If a majority of the Permit Board votes for a closed determination, the Permit Board meeting must be closed for a preliminary determination of the necessity for an executive session. During the closed meeting, the Permit Board may not conduct other business until it discusses the matter of declaring an executive session and votes, by three-fifths of the Permit Board members present, to declare an executive session.
- C. The vote whether or not to go into executive session will be recorded on the Permit Board's minutes.
- D. If the Permit Board votes to declare an executive session, the Board chairman will reopen the meeting and publicly state the reason for going into executive session.
- E. The Permit Board will then go into executive session to deliberate.
- F. The Permit Board's return to the open meeting ends the executive session.
- G. The Permit Board will state during the open meeting what, if any, decision it made during executive session.

Source: *Miss. Code Ann.* § 25-41-7 (Rev. 2010).

*Rule 6.18 Determinations and Findings of Fact and Conclusions of Law.*

- A. The Permit Board may make its decision immediately upon the conclusion of evidence and closing arguments. The Permit Board may take the matter under advisement and may postpone its final determination until a later Permit Board meeting. All final rulings affirming, modifying, or reversing a prior decision to issue, deny, modify, transfer or

revoke a permit must be based on sufficient evidence and be entered into the Permit Board's meeting minutes. The Permit Board, as the exclusive administrative body mandated by statute to make decisions regarding permit issuance, reissuance, denial, modification, or revocation of permits within its jurisdiction, may accept or reject the MDEQ staff recommended action.

- B. MDEQ will prepare proposed draft Findings of Fact and Conclusions of Law ("FOFCOLs"), and submit them to all of the parties to the evidentiary hearing for comments. Parties may submit comments to the draft FOFCOLs within seven days of receipt of the draft FOFCOLs. MDEQ will then submit its proposed FOFCOLs and any comments by the parties to the Permit Board for consideration. The Permit Board may accept the FOFCOLs as drafted or may reject the proposed FOFCOLs with instructions to MDEQ to resubmit the proposed FOFCOLs with corrections specified by the Permit Board. Should the Permit Board adopt the proposed FOFCOLs by a majority vote of the present Permit Board members, the proposed FOFCOLs will become the Permit Board's decision and the Permit Board will record the FOFCOLs supporting its decision in its minutes. All parties will be notified in writing of the Permit Board's decision and furnished a copy of the Permit Board's findings of fact and conclusions of law through certified mail.

Source: *Miss. Code Ann.* § 49-17-1, *et seq.* (Rev. 2012).

*Rule 6.19 Finality and Appeal.* All Permit Board rulings are final and conclusive unless appealed to the Chancery Court of the county of the *situs* in whole or in part of the subject matter within 20 days of the date the Permit Board votes to adopt and record the FOFCOLs into its minutes. "As recorded in the minutes of the Permit Board" means the date of the Permit Board meeting at which the Permit Board adopted the FOFCOLs.

Source: *Miss. Code Ann.* §§ 49-17-29 (5)(b) and 49-17-1, *et seq.* (Rev. 2012).

*Rule 6.20 Hearing Record.* The hearing record for the formal evidentiary hearing consists of all transcripts of evidentiary hearings, motion hearings, arguments, and other proceedings on the record and of all exhibits, admitted as part of the record at the hearing or hearings, and of all papers filed by the parties in the case file at the Permit Board, and all pre-filed testimony and attached exhibits of all the parties filed by the parties, and Permit Board minutes.

*Rule 6.21 Hearing Transcript.* The Permit Board, in its discretion, may not require a transcription of the evidentiary hearing record, except all evidentiary hearings after appeal will be transcribed.

Source: *Miss. Code Ann.* § 49-17-1, *et seq.* (Rev. 2012).