

**UNIFORM RULES OF PROCEDURE FOR CONTESTED CASE AND OTHER
HEARINGS BEFORE THE SHELBY COUNTY GROUNDWATER QUALITY CONTROL
BOARD**

RULE I. SCOPE OF RULES - These rules shall govern the procedure for contested hearings before the Shelby County Groundwater Quality Control Board, including the review of a decision by the Department to grant, deny, suspend or revoke a permit, including the automatic appeal of the Department's decision to issue or deny a Class A well permit and any enforcement matter brought before the Groundwater Quality Control Board for determination. They shall also apply to the Board's consideration of any request to grant a variance to their rules and regulations. These rules shall be construed to secure the just, speedy and efficient determination of every action.

RULE II. DEFINITIONS. - As used in these rules:

1. "Code" means the Well Rules and Regulation for Shelby County as amended from time to time by the Shelby County Groundwater Quality Control Board.
2. "Board" means the duly appointed and approved Shelby County Groundwater Quality Control Board.
3. "Chairman" means the Board member who, through his or her role as elected Chairman, shall preside over the hearing and make procedural determinations consistent with these Rules or designate a hearing officer for that purpose.
4. "Department" means the representatives of Shelby County Health Department, who act pursuant to the authority bestowed upon them by the joint ordinances and/or resolutions of the Council of the City of Memphis, the various municipalities authorized to participate on this Board and the Board of Commissioners of Shelby County.
6. "Party" means any person or entity, including but not limited to, a licensed well driller or permit applicant, properly entitled or required to appear before the Board for a determination affecting his or her rights, privileges or obligations.
7. "Contested Case" means a proceeding, including a declaratory proceeding, in which the legal rights, duties or privileges of a Party are required to be determined by the Board. Such proceeding may include the grant, condition or denial of permits or the granting of variance from one or more of the rules and regulations,
8. "Enforcement Case" means a proceeding in which the Department's assessment of fines for violation of the rules and/or its suspensions or revocations of a permit, is considered by the Board, who may uphold the decision, modify the decision or reject the decision as to the party charged with the violation.

9. "Order" means a Board action, in writing, of particular applicability that determines the legal rights, duties, privileges, immunities or other legal interest of a party.

RULE III. CONSTRUCTION OF RULES - These Rules shall not be construed as in derogation of any law, but as remedial and procedural rules designed to clarify and bring uniformity to the procedures before the Board; and these Rules shall be given a liberal construction and any doubt as to the existence or the extent of a power conferred shall be resolved in favor of the existence of the power.

RULE IV. PRE-HEARING PROCEDURE - Prior to any meeting, the Director of the Shelby County Health Department or the Director's Designee, as Executive Secretary of the Board, shall notify all persons having any interest in any matter to be considered by the Board, including but not limited to, permit applications, that they should be present and available to appear before the Board regarding said application. The failure to appear may result in the Board denying such application. With respect to all such applications brought before the Board, same shall be submitted on such forms and in such manner as the Board, or as the Executive Secretary, with the acquiescence of the Board, shall determine. Failure to fully provide all necessary information and documentation to accompany said application may result in a denial of such application.

RULE V. DISQUALIFICATION OF BOARD MEMBERS.

1. With respect to any matter to come before the Board, any Board member may be subject to disqualification for bias, prejudice, interest (personal or financial) or any other cause which may prevent said Board member from rendering an unbiased decision.

2. The Hearing Officer and any Party present at any Board meeting may request the disqualification of a Board member upon discovering facts establishing grounds for disqualification.

3. Any person requesting a disqualification of a Board member shall not be allowed to question the Board member concerning the grounds for disqualification, unless ordered by the Chairman and agreed to by the Board member.

4. The Board member whose disqualification is requested shall determine whether to grant the request for disqualification. At the request of the party requesting the disqualification, the Board member shall state the facts and reasons for his determination.

RULE VI. REPRESENTATION - Whether or not participating in person, any Party may be advised and represented, at the Party's own expense, by counsel.

RULE VII. ENFORCEMENT CASE HEARINGS.

1. Charges of violations of the Board's Regulation against any owner, well driller or other person or entity subject to the provisions shall be brought by or through the Department. The hearing shall be open to public observation pursuant to the provisions of Tennessee Code Annotated §§ 8-44-101, *et seq.* unless otherwise provided by state or federal law. Said charge shall:

- a. Give notice in writing to the licensee or person or entity charged with a violation of the Code of the specific nature of the violation, so as to afford the charged licensee, person or entity with a reasonable opportunity to understand the nature of the charges.
- b. Refer to the particular applicable sections of the Code.
- c. Provide information on the fine levied and/or other action that the Department has determined is appropriate based on the facts it has determined exist.
- d. Advise the licensee, person or entity of its right to appeal this determination, the time available to do so, its right to be represented by legal counsel at the meeting of the Board if an appeal is taken.
- e. Said notice shall be effective upon mailing, by certified mail, to the last known address of any licensee or person or entity charged with a violation, as reflected in the records of the Department, or as otherwise known to the Department.
- f. If the charges are sustained, by a majority vote of members of the Board, it shall also make a determination as to the penalty to be assessed against the party.

2. If the charged Party is not present at the hearing and if the Board sustains charges against a charged Party, then written notice of the decision of the Board shall be transmitted to the charged party by the Technical Secretary of the Board.

RULE VIII. CONTESTED CASE HEARINGS INCLUDING REQUEST FOR VARIANCES.

1. The hearing shall be open to public observation pursuant to the provisions of Tennessee Code Annotated §§ 8-44-101, *et seq.* unless otherwise provided by state or federal law.
2. Prior to a hearing, the Board shall afford an appellant a full opportunity to file any pleadings, motions, objections, briefs or other documents which said appellant may request the opportunity to file. The Department, or an applicant if the appeal is filed by a third party opposed to the action taken by the Department for the applicant, shall also be given adequate time to respond to and file responses to said motions, objections, briefs or other documents. The timetable for filing such motions and responses shall be determined by the Hearing Office in a scheduling conference held by the Hearing Officer with all interested parties within 10 days of the filing of the notice of appeal. This schedule shall where applicable be based on the requirements of Section 14.02 (a) unless that time is waived by all parties to the appeal. The hearing officer shall consider the objective of the Board to have appeal completed within a 90 day time frame from the filing of the appeal.
3. The Hearing Officer shall further ensure in the scheduling order that relevant material provided by the Parties to the appeal, including pleadings, briefs, technical studies and other documents, are provided to Board Members at least five (5) business days prior to the scheduled hearing date. Such material may be provided electronically or by hard copy as requested by the Board Member.

4. At the hearing, the Chairman, or designated hearing officer, shall swear in all proposed witnesses.

5. Order of Evidence. Contested hearings shall adhere to the following order of proof, unless the Hearing Officer, for good cause stated, finds that an alternate order of proof is needed for a fair and equitable hearing.

a. Opening Statements - The Appellant or their counsel shall begin the hearing by giving a summary of the facts and issues to be presented to the Board. This will be followed by the Department providing its opening statement of the facts and issues to be presented. If the Hearing is one challenging the issuance of a permit, the applicant shall then provide its opening statement.

b. The appellant shall proceed to put on its case in chief by presenting witnesses who shall give testimony and other evidence as is relevant or material to its case.

c. The Department or its counsel shall present its witnesses who shall give testimony and other evidence as is relevant or material to its case. The appellant shall have the right to cross-examine all witnesses. In presenting its case, the representative of the Department may question the appellant directly.

d. If the contested case involves an action to contest a permit or other action provided to the Applicant, then the Applicant shall present its witnesses who shall give testimony and other evidence as is relevant or material to their case. The appellant and the Department shall have the right to cross-examine all witnesses.

e. At all stages, any member of the Board may question any witness or any other person present who has any information which any Board members believes to be relevant to the charges and a proper determination thereof.

f. At the close of evidence, all parties in interest shall have the opportunity to provide closing statements in the same order as established for opening statements. This shall include making recommendations to the Board.

6. Deliberations by the Board

a. The Board, sitting in public deliberation, shall consider facts presented and apply said facts to the applicable Code sections and rules and determine whether the appeal, or any portion thereof, should be dismissed or sustained.

b. The determination by the Board as to the sustaining or dismissal of the appeal or granting or denial of the variance, shall be rendered by a majority of the Board members voting at the hearing.

c. If the Appellant is not present at the hearing and if the Board denies the appeal or variance, written notice of the decision of the Board shall be transmitted to the Appellant by the Technical Secretary.

7. In all cases, a formal written order setting forth the decision of the Board shall be prepared, within 15 days of the hearing by the prevailing party, and after his or her review and approval, signed by the Chairman or the designated Hearing Officer, and if either the Chairman or Hearing Officer so elects, by the members of the Board voting for said action.

8. All rulings, decisions, orders or actions of the Board shall, unless otherwise determined by the Board, be effective immediately upon the Board's vote rendering such ruling, decision, order or taking such action.

RULE IX. RULES OF EVIDENCE - In both Enforcement and Contested cases, the following rules of evidence shall apply.

1. The Board shall admit and give probative effect to evidence admissible in a court, and when necessary, to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

2. The Board shall give effect to the rules of privilege recognized by law and statutes of the State of Tennessee and shall exclude evidence which, in its judgment, is irrelevant, immaterial or unduly repetitious.

3. Affidavits.

a. At any time not less than seven (7) days prior to a hearing, any party may deliver to the opposing party a copy of any affidavit which is proposed to be introduced into evidence, together with a notice setting forth that the affidavit will be introduced in evidence.

b. Unless the opposing party prior to the first scheduled hearing on the matter, submits a written request to the other party and the Chairman to cross-examine the affiant, either before or at the time of the hearing, the affidavit will be accepted into evidence.

c. If the opportunity to cross-examine an affiant is not afforded after a proper request, the affidavit shall not be admitted into evidence. Delivery, for purposes of this section, shall mean actual deposit in the United States mail, properly addressed, postage prepaid.

d. Notwithstanding the above, the Chairman may admit affidavits not submitted in accordance with this section where necessary to prevent injustice.

4. Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or in incorporation by reference to material already on file with the Board. Upon request, parties shall be given an opportunity to compare the copy with the original, if reasonably available.

5. Official notice may be taken of:

a. Any fact that could be judicially noticed in the courts of this state;

- b. The record of other proceedings before the Board;
- c. Technical or scientific matters within the Board's specialized knowledge.

RULE X. RECORD - The Department, acting on behalf of the Board, shall maintain an official record of each matter brought before the Board. The records shall be maintained for a period of not less than seven (7) years.

1. The Board records shall consist solely of:

- a. Notice of all proceedings;
- b. Any motions, pleadings, briefs, petitions or other documents filed in conjunction with any hearing;
- c. Evidence received or considered;
- d. A tape recording, stenographic notes or symbols or transcript of the hearing;
- e. Any final orders;
- f. Any data submitted to the Board by the Department, which forms a basis for the Board's decision.

2. A record (which may consist of a court reporter's transcript, tape, video tape or similar electronic recording) shall be made of all oral proceedings. Such record or any part thereof shall be transcribed on the request of any party seeking review of the Board's decision. For the purpose of this rule, "review" means all stages or review, including final judicial determination.

RULE XI. JUDICIAL REVIEW - Any party may appeal any decision of the Board to a Court of competent jurisdiction in Shelby County in accordance with the applicable laws of the State of Tennessee governing review of actions of Boards, Authorities and Commissions.

RULE XII. PARLIMENTARY PROCEDURE - To the extent that they do not conflict with these Rules, the Board adopts Roberts Rules of Order with respect to its procedure.