

1 Board of Water and Soil Resources

2 Adopted Permanent Rules Relating to Watershed District Appeals

3 8415.0100 PURPOSE.

4 The rules of procedure in parts 8415.0100 to 8415.0120
5 govern appeals to the board pursuant to Minnesota Statutes,
6 section 103D.537.

7 8415.0110 DEFINITIONS.

8 Subpart 1. Scope. The terms used in this chapter have the
9 meanings given them in this part.

10 Subp. 2. Board. "Board" means the Minnesota Board of
11 Water and Soil Resources.

12 Subp. 3. Day. "Day" means a calendar day unless specified
13 otherwise. The day of the event must not be used in counting
14 any time period.

15 Subp. 4. Dispute resolution committee. "Dispute
16 resolution committee" means the committee of the board
17 established pursuant to Minnesota Statutes, section 103B.101,
18 subdivision 10.

19 Subp. 5. Executive director. "Executive director" means
20 the executive director of the Minnesota Board of Water and Soil
21 Resources.

22 Subp. 6. Person. "Person" means an individual,
23 partnership, joint venture, private or public corporation,
24 association, firm, public service company, cooperative,
25 political subdivision, municipal corporation, government agency,
26 public utility district, or any other entity, public or private,

1 however organized.

2 Subp. 7. Public transportation authority. "Public
3 transportation authority" means a state, county, city, or
4 township road authority.

5 8415.0120 APPEALS.

6 Subpart 1. Appeal of rules.

7 A. An interested person may appeal a rule made by the
8 managers of a watershed district by filing a petition with the
9 board.

10 B. An appeal is effective upon submittal of the
11 petition to the executive director with evidence that a copy of
12 the petition has been served upon the watershed district.

13 C. An appeal filed under this subpart must follow the
14 procedures in subpart 3.

15 Subp. 2. Appeal of permit decisions.

16 A. The watershed district must notify the public
17 transportation authority promptly of its permit decision, but no
18 later than ten days following the decision. A public
19 transportation authority may appeal a final permit decision of a
20 watershed district issued to it by filing a petition with the
21 board. The appeal must be filed within 30 days of the decision
22 by the watershed district managers pursuant to Minnesota
23 Statutes, section 103D.537.

24 B. An appeal is effective upon submittal of the
25 petition to the executive director with evidence that a copy of
26 the petition has been served upon the watershed district.

27 C. An appeal filed under this subpart must follow the

1 procedures in subpart 3 unless the public transportation
2 authority makes a request in the petition for an expedited
3 appeal hearing. The procedures in subpart 4 must be followed if
4 an expedited appeal hearing is requested in the petition.

5 Subp. 3. Board appeal procedures.

6 A. Within 30 days after receiving the petition with
7 evidence that the watershed district has been served with a copy
8 of the petition, the board or its dispute resolution committee
9 or executive director shall decide whether to grant the petition
10 and hear the appeal. The board or its executive director shall
11 grant the petition unless the appeal is deemed meritless,
12 trivial, untimely, or brought solely for the purposes of delay
13 or it is determined that the petitioner has not exhausted all
14 local administrative remedies.

15 B. The board or its executive director may remand the
16 appealed decision back to the watershed district if the
17 petitioner has not exhausted all local administrative remedies,
18 such as a public hearing, or if the watershed district's record
19 is not adequate. If an appeal is remanded, the watershed
20 district must make a decision within 60 days unless the remand
21 order, or a subsequent order, specifies a longer period.

22 C. After granting the petition, the appeal must be
23 heard by the dispute resolution committee and decided by the
24 board within 60 days after the filing of the watershed
25 district's record, submittal of the written briefs for the
26 appeal, and the hearing by the dispute resolution committee.
27 Parties to the appeal are the appellant and the watershed

1 district. For appeals of rules, interveners are allowed. For
2 appeals of permit decisions, interveners are not allowed unless
3 they have been granted intervener status by the watershed
4 district prior to the final permit decision.

5 D. Upon appeal, the watershed district shall forward
6 to the board the record on which it based its decision within 30
7 days of the granting of the petition. The board shall make its
8 decision on the appeal after hearing. Thirty days' notice of
9 the hearing must be given by the board to the parties. The
10 parties may present written and oral argument. When the
11 watershed district has made formal findings contemporaneously
12 with its decision or there is an accurate verbatim transcript of
13 the proceedings and the proceedings were fairly conducted, the
14 board shall base its review on the record. Otherwise it may
15 remand the matter.

16 E. In the case of appeals of watershed district rules
17 filed under subpart 1, the board shall affirm the watershed
18 district's decision to adopt the rule if there was a rational
19 basis to adopt the rule and if no procedural errors prejudicial
20 to a party were made.

21 F. In the case of appeals of watershed district
22 permit decisions filed under subpart 2, the board shall affirm
23 the watershed district's decision if substantial evidence
24 supports the findings of fact, if the watershed district
25 correctly applied the law, watershed district rule and the
26 watershed district's board-approved watershed management plan to
27 the facts, and if the watershed district made no procedural

1 errors prejudicial to a party. Otherwise, the board shall
2 reverse the decision, amend it, or remand it with instructions
3 for further proceedings.

4 Subp. 4. Expedited board appeal procedures.

5 A. A public transportation authority that requests an
6 expedited appeal hearing via a petition filed with the executive
7 director must include a written brief with the petition setting
8 forth the items in dispute and the reasons for seeking expedited
9 review, including the consequences of proceeding under subpart
10 3. A copy of the written brief must be provided to the
11 watershed district at the same time as the petition as specified
12 in subpart 2, item B.

13 B. Interveners are not allowed unless they have been
14 granted intervener status by the watershed district prior to the
15 final permit decision.

16 C. The watershed district must submit a copy of the
17 record as soon as possible and in no case later than in
18 conjunction with a written brief to the executive director and
19 the public transportation authority at least ten days before the
20 hearing. No further written submittals by the parties are
21 allowed unless specifically authorized by the board.

22 D. The board or its dispute resolution committee
23 shall hold a hearing within 30 days of receiving the petition.
24 The board shall make a decision within 30 days of the hearing
25 and apply the standard of review in subpart 3, item F, unless it
26 decides there is not sufficient basis to grant the request to
27 expedite the appeal in which case subpart 3 would apply.