

CHAPTER 4. RULES OF PRACTICE AND HEARINGS

SUBCHAPTER 1. GENERAL PROVISIONS

785:4-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"APA" means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S. 1981, §§301 et seq., as amended.

"Application" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"Board" means the Oklahoma Water Resources Board or any employee or agent or staff member thereof.

"Board Order" means an order issued by the Oklahoma Water Resources Board.

"Document" means a collection of text or other data that is maintained as unique and separate from others, including, but not limited to, any opinion, order, judgment, decree, petition, motion, pleading, form, instrument, record, exhibit, writ, transcript, or other item.

"Designated Case-Specific Email-Address" is the primary email address provided by a Person or Party in a specific case, matter, or application. Persons submitting an Application, Interested Persons, and all other Parties or Persons with Business before the Board, including permit holders and license holders or their attorneys or legal representatives, must provide a Designated Case-Specific Email Address at the time of making their initial filing or entry of appearance, or at the time of their next required report, renewal, or application, whichever is first.

"Electronic Filing (E-Filing, E-File, or E-Filed)" means the transmission by an Approved Electronic Method of any Document to or by the Board. This will include notices and orders created by the Board as well as pleadings, letters or protest, other Documents and attachments created by practitioners or parties.

"Executive Director" means the Executive Director of the Oklahoma Water Resources Board.

"Filer" means the interested person or interested party filing a Document with the Board.

"Hearing Examiner" means a person qualified, designated, and authorized to act in that capacity to preside in a hearing and otherwise exercise the authority of a Hearing Examiner as set forth in these rules.

"Interested party" means party.

"Interested person" means one whose interests could be adversely affected by any proceeding.

"Party" means a person or agency named and participating, or properly seeking and entitled by law to participate, in hearings other than hearings on Board rules, regulations and standards.

"Person" means any individual, firm, partnership, association, corporation, business or public trusts, federal agency, state agency, the State or any political subdivision thereof, municipalities, and any other duly constituted legal entity.

SUBCHAPTER 3. BOARD HEARINGS

785:4-3-4. Hearing Examiners

(a) **Who may be Hearing Examiners.** Hearings may be conducted by authorized and designated Hearing Examiners. Any Board member, the Board Executive Director or Assistant Director, any authorized Board staff member, staff attorneys, the Attorney General or Assistant Attorney General or any other Board authorized person may serve as Hearing Examiner.

(b) **General authority of Hearing Examiners.** Hearing Examiners are authorized to supervise, direct, preside over and conduct the hearing proceedings; to make and enter interlocutory rulings; to make and enter rulings on procedural or evidentiary questions or objections; to make and enter rulings on any other motions or objections arising during the course of the hearing; and, generally, to do all things necessary and incidental to conducting and completing the hearing and all other acts authorized under this Chapter.

(c) **Assistance.** Where deemed necessary, the Hearing Examiner may designate any Board staff member to assist the Hearing Examiner in the conduct of the proceedings or to aid the Hearing Examiner in an advisory capacity.

(d) **Discovery by Hearing Examiner.** The Hearing Examiner may request parties to an individual proceeding to produce evidence in support of their claims or defenses. The request may be made in advance, during, or after the hearing, and prior to the closing of the record.

SUBCHAPTER 5. PRE-HEARING ACTIONS AND PROCEEDINGS

785:4-5-4. Application protests; comments and objections

(a) **Who may file.** Any interested person may file a written protest, objection or comment to any permit application, petition or other matter subject of a hearing. Persons signing form letters, multiple letters containing substantially similar or duplicate text or information, or persons signing written submittals in petition format containing multiple signatures, may not be considered parties to a proceeding unless all requirements specified in subsection b are set forth for each person signing such letters or petitions.

(b) Requirements for protests; standing. Protests must be filed with the Board in writing and must contain the following information:

- (1) Name, telephone number, designated case-specific e-mail (if available), and postal address of the interested person;
- (2) The application to which the protest relates;
- (3) Specific information to show how approval of the application, petition or action proposed may directly and adversely affect legally protected interests of the person filing the protest; and
- (4) A statement of the relief sought by the interested person.

(c) Protest required for party status. To become a party and to facilitate reasonable notice to the applicant or petitioner, all protests must contain the information as set forth in paragraphs (1) through (4) of subsection (b) and be filed with the Board, and a copy must be provided to the applicant or petitioner via certified mail, return receipt requested, within the time period stated in the notice. Return receipts showing compliance with this requirement must be provided to Board Staff within (30) days of the end of the time period stated. In enforcement actions initiated by Board staff, all respondents named in the notice of hearing shall be deemed parties for purposes of participation in the proceedings. A person who fails to provide a copy of the protest with the applicant or petitioner within the time period stated may not be considered a party unless otherwise determined by the Hearing Examiner.

(d) Hearing examiner discretion on allowing presentation of protest. If an interested person appears at the hearing for purposes of presenting a protest to the application without first meeting the requirements set forth above, the Hearing Examiner may at the Examiner's discretion, reject the protest, receive the protest, orally or in writing, and proceed with the hearing, or may defer receiving such protest and direct a continuance of the hearing in order to allow the interested person an opportunity to file the protest in compliance with the requirements set forth above. In the last described instance, the Examiner may take into consideration the wishes of the applicant or petitioner with respect to proceeding with or continuing the hearing. The Hearing Examiner may allow any interested person to make a statement in support of or in opposition to an application or petition without cross examination if the statement is not intended as evidence, provided the Hearing Examiner may limit such presentations to avoid duplication. **Insufficient Protests Dismissed.** Any protest, comment, or objection failing to meet the requirements set forth in this section 4-5-4, may be dismissed by the Hearing Examiner on their own motion or upon motion from a Party.

(e) Record of protests, comments and objections.

- (1) All correspondence relating to an application, including all protest, objection and comment letters, shall be retained in the permanent application file.
- (2) Persons who submit objections or comments to an application or petition will not be deemed to be parties, but, as described in subsection (d), may be allowed to make statements at a hearing.
- (3) Abbreviated notice, including but not limited to notice by electronic mail, of further proceedings or of the availability of proposed findings, conclusions and order prepared after a hearing may be given to a person who files objections and comments or who makes a statement at a hearing.

(f) Hearing Fees. When an individual proceeding is required in response to protests received to an application, the applicant shall be required to pay a Hearing Fee as described in 785:5-1-16.

(1) Hearing Fees owed under this section must be paid by the party within fifteen (15) days of the mailing of the resulting invoice and Hearing Order.

(2) A Party failing to pay Hearing Fees owed under this section before the Proposed Order is presented to the Board for consideration shall be dismissed as a party. A party dismissed under this section will be considered to have been dismissed for lack of standing.

(3) No fee shall be charged to any person wishing to submit evidence, views or arguments at any public hearing (as differentiated from an individual proceeding) authorized by the Oklahoma Administrative Procedures Act concerning rules, regulations, licenses, permits, orders or any other proposed agency action. [75.315.1]

785:4-5-5. Pre-hearing continuances, informal disposition by stipulation, agreed settlement or consent order

(a) Continuances maymust be requested not more thanat least five (5) days prior to the hearing by telephone, followed by a written request to the Board and all parties, and may be granted by the Hearing Examiner if all parties of record agree or otherwise at the discretion of the Hearing Examiner.

(b) In enforcement actions initiated by Board staff, informal disposition of the matter subject of the hearing may be made by stipulation, agreed settlement or consent order. A proposed stipulation, agreed settlement or consent order, acceptable to Board staff and respondent, shall be presented to the Hearing Examiner for recommendation to the Board. The recommendation of the Hearing Examiner, along with the proposed stipulation, agreed settlement or consent order, shall be forwarded to the Board for consideration without further hearing or findings of fact and conclusions of law (see also 785:4-9-1).

785:4-5-6. Electronic mail notice

(a) The Board may allow protests, comments and objections to applications to be submitted through electronic mail to an e-mail address specified in the notice of application.

(b) Unless a request is made to provide notice to a U.S. Postal Service address, persons who submit protests, comments or objections by electronic mail will be given notice to the electronic mail address from which the protest, comment or objection was received, unless another electronic mail address is provided.

(c) Hard copies of electronic mail messages and attachments sent or received by the Board relating to applications, protests, comments and objections and will be made and placed in the application file.

785:4-5-7. Motions, requests and orders

- (a) Except for oral motions made in proceedings on the record, or where the Hearing Examiner otherwise direct, each motion shall:
- (1) Be in writing; and
 - (2) Contain a concise statement of supporting grounds.
- (b) Unless the Hearing Examiner orders otherwise, any party to a proceeding in which a motion is filed under (a) of this section shall have 15 days from service of the motion to file a statement in response.
- (c) Failure to make a timely motion or to file a statement in response may be construed as a waiver of objection.
- (d) The Hearing Examiner shall rule on all motions as expeditiously as possible.
- (e) Any person filing a motion or other request to the Board shall mail a copy of the motion or request to all parties of record. A certificate of such mailing shall be filed with the motion or request.
- (f) Unless otherwise directed within the interlocutory order, a copy of the interlocutory order relating to the motion or request shall be provided by the Board to the person filing the motion or request. That person shall mail a copy of the interlocutory order to all parties of record and file with the Board a Certificate of Mailing.
- (g) A written copy of the proposed final order of the Board prepared by the Hearing Examiner after the conclusion of any hearing shall be provided to the applicant, and the applicant shall be required to serve all other parties at least fifteen (15) days prior to Board meeting at which the proposed final order is scheduled to be considered.

785:4-5-8. Electronic Filing, Service, and Signature

- (a) Electronic Filing. Whenever these rules require a pleading, application, motion, document, notice, or other instrument to be filed or delivered to the Board, such requirement may be satisfied by electronic filing as authorized by these rules.
- (b) Electronic Service. Whenever these rules require a pleading, application, motion, document, notice, or other instrument to be served, mailed, transmitted, or issued, such requirement may be satisfied by electronic methods as authorized by these rules, and any other applicable statute or rule. As used in these rules, the term "mail" "mailing" or "mailed" shall include transmission by electronic mail, unless otherwise specified in applicable statute, rule, notice, order, or form provided by the Board.
- (c) Electronic Signature.
- (1) Whenever these rules require a pleading, application, motion, document, notice, or other instrument to be signed, verified, certified, or otherwise authenticated, such requirement may be satisfied by electronic methods as authorized by these rules, applicable statute, or Board Order.
 - (2) Pleadings, motions, affidavits, waivers, or other instruments that are signed under the penalty of perjury or notarized may be filed electronically, pursuant to these rules. Waivers or other instruments which are signed and witnessed may be electronically filed in the same manner as notarized documents.
 - (3) Originals Retained. The filer of any document shall retain the original document(s) or other evidence of the original signature(s) for future production.

785:4-5-9. Documents Filed Electronically

- (a) Signature Block. All E-Filed Documents must include a signature block and must set forth the user's name, bar number (where applicable), address, telephone number, and Designated Case-Specific Email Address. The name of the party submitting the Document must be preceded by an "/s/" and typed in the space where the signature would otherwise appear.
- (b) Multiple Signatures. The Filer of any Document requiring two or more signatures (e.g., stipulations, joint status reports) must list thereon all the other signatories' names by means of an "/s/" signature block for each signatory. By submitting such a Document, the Filer certifies that each of the other signatories has expressly agreed to the form and substance of the Document and that the Filer has their actual authority to submit the Document electronically. It shall be the responsibility of the Filer to retain records evidencing this concurrence for future production. Unless a longer time is prescribed by court rule or statute, a non-filing signatory or party who disputes the authenticity of an electronically filed Document containing multiple signatures must file an objection to the Document within ten (10) days of the date the signatory or party knows, or should know, the Document is filed.
- (c) Documents signed under penalty of perjury or requiring a notary public's signature. Documents required by law to include a signature under penalty of perjury, or the signature of a notary public, may be E-Filed in place of the original Document. The declarant and/or notary public must sign the original Document. The original Document shall be converted into an E-Document, if necessary, and E-Filed in a format that accurately reproduces the original signatures and contents of the Document. The Filer shall retain the original Document, or other evidence of the original signature(s), for future production.
- (d) When an E-Filed Document is Deemed Filed. A Document submitted to the Board shall be deemed filed upon the date it is accepted by the Board, as evidenced by a confirmation email containing the date of acceptance sent to the Filer.

785:4-5-10. Electronic filing and delivery

- (a) All Parties or Persons with business before the Board, including applicants, permit holders, or license holders, and protestants, are required to designate at the time of their initial filing or at the time of their next filing or report to the Board, whichever is first, a Designated Case-Specific E-mail Address. The Board shall keep a record of the Designated Case-Specific E-

mail Address. Except for initial filings and as otherwise provided by rule, statute, or order, the Designated Case-Specific Email shall be the primary method of contact for official notices and communications from the Board.

(b) Any Party or Person may decline to receive communications via Electronic Mail, either formally in writing or by failing to provide a Designated Case-Specific Email-Address. Persons declining to receive communications via Electronic Mail may be charged a fee for the postage required as a result of their failing to consent to Electronic Mail communication; provided that no fee shall be charged for postage if the cost is less than five dollars (\$5.00) for any individual letter.

785:4-5-11. Hearing materials kept and provided, fees and costs

(a) Hearing Materials, including but not limited to application files, exhibits, notices, and all other records, documents, or materials part of the hearing record, shall be kept electronically by the OWRB hearings clerk. Digital copies of hearing materials, in their native file format, shall be provided upon written request.

(b) Hard copies of the hearing materials shall only be provided on written request and shall require the advance payment of a copy and postage fees as follows:

(1) Certified copies. A fee of \$1.00 per copied page is charged for each copy of an order, application, or other document on file with the Board certified by the Secretary, in addition to the other fees applicable in this and other sections.

(2) Non-Certified copies - \$0.25 per page.

(3) Postage -actual cost.

(4) Hearing Binder – containing certified copies of all board exhibits to a hearing, application file, and other records and Documents bound in a three-ring binder with dividers - \$50.00 plus \$1.00 per page after the first 20 pages.