

CHAPTER 8415
BOARD OF WATER AND SOIL RESOURCES
WATERSHED DISTRICT APPEALS

8415.0100 PURPOSE.
 8415.0110 DEFINITIONS.

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

Statutory Authority: *MS s 103D.537*

History: *31 SR 646*

8415.0110 DEFINITIONS.

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

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

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

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

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

Subp. 6. **Person.** "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, cooperative, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

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

Statutory Authority: *MS s 103D.537*

History: *31 SR 646*

8415.0120 APPEALS.

Subpart 1. **Appeal of rules.**

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

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

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

Subp. 2. **Appeal of permit decisions.**

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

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

C. An appeal filed under this subpart must follow the procedures in subpart 3 unless the public transportation authority makes a request in the petition for an expedited appeal hearing. The procedures in subpart 4 must be followed if an expedited appeal hearing is requested in the petition.

Subp. 3. Board appeal procedures.

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

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

C. After granting the petition, the appeal must be heard by the dispute resolution committee and decided by the board within 60 days after the filing of the watershed district's record, submittal of the written briefs for the appeal, and the hearing by the dispute resolution committee. Parties to the appeal are the appellant and the watershed district. For appeals of rules, interveners are allowed. For appeals of permit decisions, interveners are not allowed unless they have been granted intervener status by the watershed district prior to the final permit decision.

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

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

F. In the case of appeals of watershed district permit decisions filed under subpart 2, the board shall affirm the watershed district's decision if substantial evidence supports the findings of fact, if the watershed district correctly applied the law, watershed district rule and the watershed district's board-approved watershed management plan to the facts, and if the watershed district made no procedural errors prejudicial to a party. Otherwise, the board shall reverse the decision, amend it, or remand it with instructions for further proceedings.

Subp. 4. Expedited board appeal procedures.

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

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

C. The watershed district must submit a copy of the record as soon as possible and in no case later than in conjunction with a written brief to the executive director and

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the public transportation authority at least ten days before the hearing. No further written submittals by the parties are allowed unless specifically authorized by the board.

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

Statutory Authority: *MS s 103D.537*

History: *31 SR 646*