Title 11: Mississippi Department of Environmental Quality

Part 1: Administrative Regulations

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 re-open 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).