

Arizona Administrative Register
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5. The name and address of agency personnel with whom persons may communicate regarding the rule:
 Name: Scott Cooley
 Address: Department of Administration
 1400 West Washington, Suite 270
 Phoenix, Arizona 85007
 Telephone: (602) 542-2015
 Fax: (602) 542-1486
6. An explanation of the rule, including the agency's reason for initiating the rule:
 The Water Quality Appeals Board (Board) is updating and reorganizing its rules of procedure. The rules in 2 A.A.C. 1 are being repealed and replaced with new rules in a concurrent rulemaking, incorporating changes proposed in the last 5-year-review report.
7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
 Not applicable.
8. The summary of the economic, small business, and consumer impact:
 Modifications to the Chapter improving readability will make the rules easier to use. Individuals using the rules will benefit from this change.
9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):
 The timeline at the end of R2-1-732, inadvertently omitted, was copied and included in the text of the rules.
10. A summary of the principal comments and the agency response to them:
 No comments were submitted on the proposed rulemaking.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
 Not applicable.
12. Incorporations by reference and their location in the rules:
 Not applicable.
13. Was this rule previously adopted as an emergency rule?
 Not applicable.
14. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 1. DEPARTMENT OF ADMINISTRATION

**ARTICLE 7. WATER QUALITY APPEALS BOARD-
 RULES OF PROCEDURE Repealed**

Section		R2-1-714.	Duties of a hearing officer Repealed
R2-1-701.	Scope of Article; general considerations Repealed	R2-1-715.	Location of hearings Repealed
R2-1-702.	Definitions Repealed	R2-1-716.	Notice of hearing Repealed
R2-1-703.	Appearance and practice of parties before the Department Repealed	R2-1-717.	Consolidation Repealed
R2-1-704.	Commencement of a contested case; copies Repealed	R2-1-718.	Continuances Repealed
R2-1-705.	Docket, case number, information on pleadings, motions and other documents Repealed	R2-1-719.	Subpoenas Repealed
R2-1-706.	Service of pleadings, motions or other documents Repealed	R2-1-720.	Prehearing conferences Repealed
R2-1-707.	Time Repealed	R2-1-721.	Hearing Repealed
R2-1-708.	Contents of a notice of appeal Repealed	R2-1-722.	Evidence Repealed
R2-1-709.	Time for filing an answer to a notice of appeal Repealed	R2-1-723.	Recording hearings Repealed
R2-1-710.	Contents of an answer to a notice of appeal Repealed	R2-1-724.	Ex parte communications regarding matters related to a contested case Repealed
R2-1-711.	Depositions Repealed	R2-1-725.	Notification to each party of decisions and orders Repealed
R2-1-712.	Appointment of a hearing officer Repealed	R2-1-726.	Recommendations of the hearing officer Repealed
R2-1-713.	Qualifications of a hearing officer Repealed	R2-1-727.	Decision of the Board Repealed
		R2-1-728.	Motion for rehearing Repealed
		R2-1-729.	Final decision of the Board Repealed
		R2-1-730.	Judicial review of the final decision of the Board Repealed
		R2-1-731.	Record Repealed
		R2-1-732.	Forms Repealed

**ARTICLE 7. WATER QUALITY APPEALS BOARD
RULES OF PROCEDURE Repealed**

**R2-1-701. ~~Scope of Article; general considerations~~
Repealed**

- ~~A. These rules of procedure shall govern appeals to the Water Quality Appeals Board taken pursuant to A.R.S. § 49-323.~~
- ~~B. These rules shall be construed to secure the accurate, just, and speedy determination of every contested case.~~
- ~~C. The hearing officer may waive application of any of the rules in this Article upon a finding of good cause and if the waiver is not in conflict with the law and does not adversely affect the substantial interests of any party.~~
- ~~D. Where a procedure is set forth neither by law, by this Article, nor by an order of the hearing officer, the hearing officer may refer to the Arizona Rules of Civil Procedure for guidance, but the Arizona Rules of Civil Procedure shall not be binding upon the hearing officer or the parties unless so ordered by the hearing officer.~~

R2-1-702. Definitions Repealed

The definitions in A.R.S. §§ 41-1001, except for the definitions of "contested case" and "party," shall apply to this Article. In addition, the terms in this Article shall have the following meanings:

- ~~1. "Appellant" means the person who files a notice of appeal with the Clerk pursuant to A.R.S. § 49-323.~~
- ~~2. "Board" means the Water Quality Appeals Board appointed by the Governor pursuant to A.R.S. § 49-322.~~
- ~~3. "Clerk" means the Clerk of the Board. The Clerk shall be appointed by the Director.~~
- ~~4. "Contested Case" means any grant, denial, modification or revocation of any individual permit issued under Chapter 2 of Title 49, Arizona Revised Statutes, or from the establishment of numeric values and data gap issues for pesticides pursuant to A.R.S. §§ 49-303 and 49-304 from which a person who is or may be adversely affected by such action files a notice of appeal pursuant to A.R.S. § 49-323 and this Article.~~
- ~~5. "Department" means the Arizona Department of Administration.~~
- ~~6. "Director" means the Director of the Department or a Deputy Director of the Department who is duly authorized by the Director to act on the Director's behalf.~~
- ~~7. "Documents" includes, but is not limited to, writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated through detection devices into reasonably usable form when translation is practically necessary, books, documents, and other tangible things which constitute or contain matters within the scope of Rule 26(b) of the Arizona Rules of Civil Procedure, entitled "Discovery Scope and Limits."~~
- ~~8. "Hearing" means, generally, the full evidentiary hearing held on appellant's notice of appeal and includes any other hearing that the hearing officer may order relative to an appellant's notice of appeal.~~
- ~~9. "Hearing Officer" means a person appointed pursuant to this Article to hear a contested case and shall include the Board, if the Board elects to act as the hearing officer as provided in R2-1-712.~~
- ~~10. "Notice of appeal" is the notice of appeal filed by an appellant pursuant to A.R.S. § 49-323 and this Article.~~
- ~~11. "Party" means the appellant, the Department of Environmental Quality, all persons named by the appellant as interested persons as provided in R2-1-708(B)(5);~~

and any interested person the hearing officer has permitted to intervene in the appeal as a matter of right.

- ~~12. "Record" shall have the meaning found in A.R.S. § 41-1061(E).~~

R2-1-703. ~~Appearance and practice of parties before the Department~~ Repealed

~~Unless otherwise provided by law, a party may appear on his or her own behalf or be represented by counsel. A corporation or partnership may appear through a duly authorized representative.~~

R2-1-704. ~~Commencement of a contested case; copies~~ Repealed

- ~~A. Commencement of a contested case. A contested case shall commence by the appellant filing a notice of appeal with the Clerk. The notice of appeal shall be delivered or mailed to the Clerk of the Water Quality Appeals Board, in care of the Director of the Department of Administration. The notice of appeal shall be filed with the Clerk within 30 days after receipt by the appellant of notice of the action being appealed. The date of filing shall be the date the Clerk receives the notice of appeal.~~
- ~~B. Copies of the form of notice of appeal and of this Article. The Clerk shall make available to all persons copies of the Notice of Appeal Form of R2-1-732 and copies of this Article. The Clerk shall charge a fee for the cost of copies.~~

R2-1-705. ~~Docket; case number; information on pleadings, motions and other documents~~ Repealed

- ~~A. A docket of all contested cases shall be maintained by the Clerk. Each contested case shall be assigned a case number by the Clerk.~~
- ~~B. All pleadings, motions or other documents shall contain the case number and the name, address and telephone number of the party or party's attorney filing the pleading, motion or other document.~~

R2-1-706. ~~Service of pleadings, motions or other documents~~ Repealed

- ~~A. The original of all pleadings, motions or other documents shall be filed with the Clerk within the time limits for such filing. A copy shall be filed with the Clerk for the hearing officer. A copy shall be served on each party.~~
- ~~B. Service of pleadings, motions or other documents under this Article, except for subpoenas, shall be made by personal service on, or by mail addressed to the party. Service on a party shall be deemed made at the time of personal service of the document or upon deposit of the document in the United States mails, postage prepaid, in a sealed envelope, and addressed to the party being served, at the last known address filed with the Clerk.~~
- ~~C. Proof of service shall be made by filing with the Clerk and hearing officer a statement in writing that service has been made, stating whether service was made in person or by mail, and signed by the party. Such statement may be included with the pleading, motion or other document being filed.~~
- ~~D. Upon receipt of either the Notice of Appeal or an Answer of any party, or at such other time that the hearing officer finds that the interest of justice so requires, the hearing officer may order any party to publish an appropriate notice in a newspaper of general circulation in the community or communities that may be adversely affected if the appellant is granted the relief requested by the appellant in the appellant's Notice of Appeal. Such publication shall be made as provided in Rule 4(e)(3) and 4(h) of the Arizona Rules of Civil Procedure unless the hearing officer finds and orders that some other method of publication is more appropriate.~~

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R2-1-707. Time Repealed

Rule 6 of the Arizona Rules of Civil Procedure shall be followed unless the hearing officer or Board determines that a shorter time is required in order to comply with A.R.S. § 49-323.

R2-1-708. Contents of a notice of appeal Repealed

A. The notice of appeal shall:

1. State appellant's cause of action;
2. Provide the other parties with discovery as provided in this Section; and
3. Comply generally with the Notice of Appeal Form of R2-1-732. The Notice of Appeal Form of R2-1-732 may be used by the appellant, and where there is not enough space on the Form, the appellant may attach additional sheets of paper.

B. For that purpose, the appellant's notice of appeal shall contain the following:

1. A statement substantially as follows: "This notice of appeal is being filed by the appellant pursuant to A.R.S. § 49-323 with the Clerk of the Water Quality Appeals Board."
2. A statement substantially as follows: "Pursuant to A.R.S. § 49-323 and R2-1-701 et seq., if you, a Respondent in this case, have an interest in the final decision that may result from this Notice of Appeal, you are required to file an Answer to this Notice of Appeal within 20 days from the date of service of this Notice of Appeal on you."
3. The name, address and telephone number of the appellant and, if the appellant is represented by an attorney, the name, address, telephone number and Arizona Bar number of the appellant's attorney. If appellant is a corporation, the appellant shall so state and shall name the state of incorporation; and if the appellant is not an Arizona corporation, whether the appellant is qualified to do business in the state by the Arizona Corporation Commission. If the appellant is a partnership, the appellant shall list the name, address and telephone number of each partner.
4. The names and mailing addresses of all the employees and agents of the Department of Environmental Quality known or believed by the appellant to be persons who may have participated in the action that is being appealed.
5. The names, mailing addresses and telephone numbers of all of the following interested persons:
 - a. The permittee, if the permittee is not the appellant; and
 - b. All persons who provided the appellant with a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing.
6. The names, addresses and telephone numbers of all witnesses the appellant believes the appellant may call at the hearing.
7. In reasonable detail, the specific action of the Department of Environmental Quality involving the grant, denial, modification or revocation of an individual permit issued under Chapter 2 of Title 49 of the Arizona Revised Statutes, or the establishment of numeric values and data gap issues for pesticides pursuant to A.R.S. §§ 49-303 and 49-304, which are the bases of the appeal.
8. The date of such action by the Department of Environmental Quality.
9. The date the notice of such action by the Department of Environmental Quality was received by the appellant.

10. The relief requested by the appellant.

11. The date of the notice of appeal.

12. The signature of the appellant or the appellant's attorney.

13. A verification that the appellant has served or caused to be served, before the date of the filing of the notice of appeal with the Clerk, a copy of the notice of appeal, including all documents, on the Department of Environmental Quality and all persons named by the appellant who may be adversely affected if the appellant is granted the relief requested by the appellant in the appellant's notice of appeal.

C. The appellant shall attach to the notice of appeal copies of all the documents in the possession of the appellant on or before the date of the filing of the notice of appeal that may be relevant to a decision on the appellant's appeal and which the appellant may want to introduce into evidence at the hearing. Such documents shall be a part of the notice of appeal.

R2-1-709. Time for filing an answer to a notice of appeal Repealed

The Department of Environmental Quality and all parties named by the appellant as persons who may be adversely affected if the appellant is granted the relief requested by the appellant in the appellant's notice of appeal shall file an answer to appellant's notice of appeal within 20 days from service of the notice of appeal on that party.

R2-1-710. Contents of an answer to a notice of appeal Repealed

A. The answer of each respondent shall:

1. State the answering party's response to appellant's cause of action; and
2. Provide the other parties with discovery as provided in this Section.

B. For that purpose, the answer of each respondent shall contain the following:

1. The name, address and telephone number of the respondent preparing the answer and, if the respondent is represented by an attorney, the name, address, telephone number and Arizona Bar number of the respondent's attorney. If the respondent is a corporation, the respondent shall so state and shall name the state of incorporation; and if the respondent is not an Arizona corporation, whether the respondent is qualified to do business in the state by the Arizona Corporation Commission. If the respondent is a partnership, the respondent shall list the name, address and telephone number of each partner.
2. The names and mailing addresses of all the employees and agents of the Department of Environmental Quality known or believed by the respondent to be persons who may have participated in the action that is being appealed.
3. The names, mailing addresses and telephone numbers of all of the following interested persons:
 - a. The permittee, if the permittee is not the appellant;
 - b. All persons who provided the Department of Environmental Quality with a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing; and
 - c. Chief officers of all communities who may be adversely affected if the appellant is granted the relief requested by the appellant in the appellant's notice of appeal, such as the mayor if the community is a city or town, or the chairman of the board of supervisors if the community is a county.

4. The names, addresses and telephone numbers of all witnesses the respondent believes the respondent may call at the hearing.
 5. In reasonable detail a response to the appellant's allegations relating to the action taken by the Department of Environmental Quality involving the grant, denial, modification or revocation of an individual permit issued under Chapter 2 of Title 49 of the Arizona Revised Statutes, or the establishment of numeric values and data gap issues for pesticides pursuant to A.R.S. §§ 49-303 and 49-304, which are the bases of the appeal.
 6. The relief requested by the respondent.
 7. The date of the answer.
 8. The signature of the respondent or the respondent's attorney.
 9. A verification that the respondent has served or caused to be served a copy of the answer, including all documents, on all other parties.
- C.** The respondent shall attach to the answer copies of all the documents in the possession of the respondent on or before the date of the filing of the answer that may be relevant to a decision on the appellant's appeal and which the respondent may want to introduce into evidence at the hearing. Such documents shall be a part of the answer.
- D.** In the case of the Department of Environmental Quality, it shall file with its answer a copy of all documents on which it based its action from which the appeal was taken.

R2-1-711. Depositions Repealed

The hearing officer may allow depositions to be taken, in the manner and upon the terms designated by the hearing officer, of a witness who cannot be subpoenaed or is unable to attend the hearing, if the hearing officer finds that:

1. The deposition will not prevent the hearing on appellant's notice of appeal from being conducted within 60 days after the appellant filed the notice of appeal;
2. The deposition is likely to reduce the time required for the hearing on the appellant's notice of appeal; and
3. The deposition is in the interest of arriving at a just decision on the appellant's notice of appeal.

R2-1-712. Appointment of a hearing officer Repealed

- A.** The Director shall appoint a hearing officer from a list of hearing officers previously appointed by the Director and approved by the Board.
- B.** The Board may direct the Director to delete a Hearing officer from the list of hearing officers.
- C.** The Board, on reviewing a notice of appeal, may elect to act as the hearing officer. In the event the Board elects to act as the hearing officer, the requirements of the hearing officer in this Article shall apply to the Board, except that the Board shall not make recommendations as required of the hearing officer but shall make its final decision.
- D.** In the event the Board is not acting as the hearing officer, the Board may elect to hear with the hearing officer such portions of the hearing that it determines necessary.

R2-1-713. Qualifications of a hearing officer Repealed

For an individual to be selected by the Board to be on a list of hearing officers, the individual shall have all the qualifications required by this Section. The Director may appoint the individuals from any list of hearing officers the Department may have for any state agency if the Arizona Procurement Code and rules promulgated thereunder permit:

1. The individual shall be a member of the State Bar of Arizona; and

2. The individual shall be free of any conflict of interest regarding all of the issues raised by the parties in the contested case to which the individual is to be appointed as the hearing officer.

R2-1-714. Duties of a hearing officer Repealed

- A.** The hearing officer shall have the following powers and duties:
1. Conduct the hearing in an impartial, orderly and informal manner.
 2. Regulate the course of the hearing and assure that the time limitations of A.R.S. § 49-323 are met.
 3. Rule upon procedural matters incidental to the hearing.
 4. Administer oaths to witnesses.
 5. Admit an oversized exhibit or an exhibit that cannot be photocopied only if the party offering the exhibit in evidence provides a duplicate of the exhibit. An oversized exhibit is an exhibit that is larger than 8 1/2 inches by 11 inches.
 6. Make written findings of fact and conclusions of law, separately stated, and recommendations to the Board. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
 7. Exercise the powers granted in A.R.S. §§ 41-1062(A) and 42-2212.
 8. Perform such other duties as requested by the Board.
- B.** The hearing officer may:
1. Exclude a witness from the hearing so the witness cannot hear the testimony of other witnesses.
 2. Set time limitations for arguments.
 3. Exclude a person from the hearing who is disruptive to the proceedings.
 4. Take judicial notice of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the hearing officer's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The hearing officer's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.
 5. Issue any orders necessary for the impartial, orderly and informal conduct of the hearing.
 6. Question any witness.

R2-1-715. Location of hearings Repealed

All hearings shall be held in the state in Maricopa County, unless the Board finds that it will be more cost effective for the Department and the parties to hold a hearing elsewhere, in which event the Board shall set the location of the hearing.

R2-1-716. Notice of hearing Repealed

- A.** Setting of the date of the hearing. Within five days from the filing of a notice of appeal, the Clerk shall set a date for the hearing, which date shall be within 35 to 45 days from the date of the filing of the appellant's notice of appeal. If the appellant requests the date to be set at the time the appellant files the notice of appeal, the Clerk may immediately prepare the notice of hearing. The Clerk may use the Notice of Hearing Form in R2-1-732.
- B.** Contents of the notice of hearing. The notice of hearing shall contain the following information:
1. The date, time and place of the hearing.

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2. That the hearing will be on the applicant's notice of appeal from an action of the Department of Environmental Quality.
3. That A.R.S. § 49-323 provides the authority and jurisdiction under which the hearing shall be held.
4. That the particular Sections of the statutes and rules involved are A.R.S. §§ 49-323 and 41-1061 through 41-1066, and R2-1-701 et seq.
5. That the hearing shall be a full evidentiary hearing and shall be for the purpose of reviewing the action of the Department of Environmental Quality resulting from the grant, denial, modification or revocation of any individual permit issued under Chapter 2 of Title 49 of the Arizona Revised Statutes or from the establishment of numeric values and data gap issues for pesticides pursuant to A.R.S. §§ 49-303 and 49-304.
6. The date the appellant filed the appellant's notice of appeal.
7. The name of the hearing officer if known at the time the notice of hearing is served.
8. That the hearing officer may issue subpoenas on behalf of any party, and the party requesting the issuance of a subpoena shall be responsible for the service of that subpoena.
9. That all parties may be represented by counsel, may introduce evidence through witnesses and documents, may cross-examine witnesses of other parties, and may have a court reporter present, which is the responsibility of the party desiring a court reporter.

C. Service of notice of hearing:

1. The Clerk shall mail or deliver a copy of the notice of hearing to the Board and each party.
2. In the event a party notifies the Clerk of a change in that party's address, the Clerk shall mail the notice to the new address provided by that party.

R2-1-717. Consolidation Repealed

Upon the motion of any party or the hearing officer, the hearing officer may consolidate two or more contested cases involving a common question of law or fact or a common party other than the Department of Environmental Quality, when such consolidation may tend to avoid unnecessary costs or delay. No consolidation shall be made if the hearings for all consolidated cases cannot be conducted within 60 days after the Clerk received the notice of appeal for each contested case.

R2-1-718. Continuances Repealed

The hearing officer may order a change in the date for a hearing for good cause, but in no event can a continuance be granted which would result in the hearing not being conducted within 60 days after the appellant filed the notice of appeal as required by A.R.S. § 49-323(B).

R2-1-719. Subpoenas Repealed

- A. Pursuant to A.R.S. § 12-2212, subpoenas may be issued by the hearing officer to compel attendance of witnesses and production of documentary evidence. The hearing officer may administer oaths to witnesses in like manner as in civil actions in the superior court.
- B. A request for a subpoena shall be in writing, shall be filed at least 15 days prior to the date set for hearing, unless there is an accident or surprise which could not have been prevented by ordinary prudence, and shall clearly identify the person or documents to be subpoenaed.
- C. The person to whom a subpoena is directed shall comply with its provisions unless, prior to the date set for the hearing, a

written request to quash or modify such subpoena is filed. To be considered, the request shall state the reasons therefor.

- D. Service of a subpoena is the responsibility of the party requesting the subpoena. Subpoenas shall be served as required by the Arizona Rules of Civil Procedure.

R2-1-720. Prehearing conferences Repealed

- A. Upon a motion by a party or on the initiative of the hearing officer, the hearing officer may order a prehearing conference, if the hearing officer finds that a prehearing conference will assist the hearing officer:
 1. In conducting the hearing within the 60-day period prescribed by A.R.S. § 49-323(B), and
 2. In reaching a just, speedy and less expensive determination of the contested case.
- B. Any action taken by the hearing officer at or after a prehearing conference shall be a part of the record of the contested case.

R2-1-721. Hearing Repealed

- A. The hearing shall be a full evidentiary hearing. Any party may introduce both evidence that was or was not considered by the Department of Environmental Quality when it took the action from which the notice of appeal was filed.
- B. Pursuant to A.R.S. § 49-324(C), decisions by the Director of the Department of Environmental Quality shall be affirmed by the Board unless, considering the entire record before the Board, the Board concludes that the decision of the Director of the Department of Environmental Quality is arbitrary, unreasonable, unlawful, or based upon a technical judgment that is clearly invalid.

R2-1-722. Evidence Repealed

- A. Generally. All witnesses at a hearing shall testify under oath or affirmation. Pursuant to A.R.S. § 41-1062(A)(1), all parties shall have the right to present such oral or documentary evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The hearing officer shall receive relevant, probative and material evidence, rule upon offers of proof, and exclude all evidence determined to be irrelevant, immaterial or unduly repetitious. As provided in A.R.S. § 41-1062(A)(2), copies of documentary evidence may be received in the discretion of the hearing officer. Upon request, parties shall be given an opportunity to compare the copy with the original.
- B. Undisclosed witnesses and documents. Any party may call additional witnesses or introduce into evidence additional documents not disclosed by the party in its notice of appeal or answer if that witness or document was not or could not reasonably have been known to that party at the time the party filed its notice of appeal or answer.
- C. Arizona Rules of Evidence. The hearing officer may follow such portion of the Arizona Rules of Evidence as the hearing officer deems appropriate.

R2-1-723. Recording hearings Repealed

- A. The hearing shall be tape recorded by the hearing officer, unless the hearing officer determines there will be a court reporter and is able to obtain the funds for the cost of the court reporter. Proceedings held by the hearing officer shall be transcribed and the transcript shall be made available to the Board at the time the Board meets to consider its decision on the appeal.
- B. Any party at a hearing may use a court reporter that is acceptable to the hearing officer, but that party is responsible to make all arrangements for the court reporter to be present and is responsible for all costs of the court reporter. In such an

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event the court reporter's record shall be the record of the hearing.

R2-1-724. Ex parte communications regarding matters related to a contested case Repealed

- A. During a contested case a party shall not make or knowingly cause to be made an oral or written ex parte communication regarding any matter related to that contested case to the Board or hearing officer.
- B. During a contested case the Board or hearing officer shall not make or knowingly cause to be made an oral or written ex parte communication regarding any matter related to that contested case to a party.
- C. Any person who receives an oral or written communication prohibited by this Section shall file a notice of the communication with the Department and serve a copy on the hearing officer, the Attorney General, and all parties to the contested case. The notice shall include a copy of the communication, if written, or a summary of the communication, if oral.
- D. Upon receipt of a notice described in subsection (C), the hearing officer shall give all other parties reasonable opportunity to respond to the communication. The Board shall decide what, if any, action is required to be made as a result of such communication.

R2-1-725. Notification to each party of decisions and orders Repealed

The Clerk shall notify each party promptly by either delivering copies or mailing copies to each party's last known address of all decisions and orders, including the findings of fact, conclusions of law and recommendations of the hearing officer and the final decision of the Board.

R2-1-726. Recommendations of the hearing officer Repealed

- A. Within 2 days after the conclusion of the hearing, the hearing officer shall notify the Clerk in writing of the day the hearing concluded. Within 3 days after the date the Clerk receives notice of the day the hearing concluded, the Clerk shall notify the members of the Board so that the Board can set a date to meet to consider the hearing officer's findings of fact, conclusions of law and recommendations, and the transcript of the hearing.
- B. Within 15 days from the conclusion of the hearing, the hearing officer shall file the original of the hearing officer's findings of fact, conclusions of law and recommendations with the Clerk and shall mail or deliver a copy to each member of the Board.

R2-1-727. Decision of the Board Repealed

- A. Upon receipt by the Board of the findings of fact, conclusions of law and recommendations of the hearing officer, and the transcript of the hearing, if the Board finds that an issue of fact or law remains to be addressed by the hearing officer, the Board may order the contested case remanded to the hearing officer. In such an event the Board shall specifically identify the issue or issues of fact or law the Board wants clarified. An order of remand must be made by the Board within 30 days after the hearing. Such an order of remand shall re-open the hearing. Upon receipt of the order of remand, the hearing officer may hold additional hearings. Upon the conclusion of the hearing, the hearing officer shall proceed as required by R2-1-726 and shall file an amended findings of fact, conclusions of law and recommendations.
- B. Within 30 days after the hearing, the Board shall meet and render its decision on the appeal in writing. The Board's decision shall contain its findings of facts and conclusions of law,

separately stated, and its final decision. The Clerk shall mail or deliver a copy of the decision to the hearing officer.

- C. The Board's decision rendered pursuant to this Section shall contain a paragraph substantially as follows: "This is the decision of the Water Quality Appeals Board made pursuant to A.R.S. § 49-322(B). You may file a motion for rehearing of this decision pursuant to A.A.C. R2-1-728. If you file a motion for rehearing, you must file your motion within 15 days from the date a copy of this decision is served upon you. If you do not, this decision automatically shall become final. Unless a motion for rehearing is filed, no interested party may file an action to review by the Superior Court pursuant to the Judicial Review of Administrative Decisions Act, A.R.S. § 12-901 et seq."

R2-1-728. Motion for rehearing Repealed

- A. Pursuant to A.R.S. § 41-1062(B) and Rule 59 of the Arizona Rules of Civil Procedure, the following rules apply to rehearings:

- 1. Procedure; grounds. A decision of the Board may be vacated and new hearing granted on motion of the aggrieved party for any of the following causes materially affecting that party's rights:
 - a. Irregularity in the proceedings of the Board, hearing officer or prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
 - b. Misconduct of the prevailing party;
 - c. Accident or surprise which could not have been prevented by ordinary prudence;
 - d. Material evidence, newly discovered, which with reasonable diligence could not have been discovered and produced at the hearing;
 - e. Excessive or insufficient damages or penalties;
 - f. Error of law occurring at the hearing or during the progress of the proceeding; and
 - g. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- 2. Scope. A rehearing may be granted to all or any of the parties and on all or part of the issues in the proceeding for any of the reasons for which rehearings are authorized by law or rule of court. On a motion for a rehearing, the Board or on its direction, its hearing officer, may open the decision, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new decision.
- 3. Contents of motion; amendment; rulings reviewable.
 - a. The motion for rehearing shall be in writing, shall specify generally the grounds upon which the motion is based, and may be amended at any time before it is ruled upon by the Board.
 - b. Upon the general ground that the Board or the hearing officer erred in admitting or rejecting evidence, the hearing officer shall review all rulings during the hearing upon objections to evidence.
 - c. Upon the general ground that the findings of fact or decision is not justified by the evidence, the hearing officer shall review the sufficiency of the evidence.
- 4. Time for motion for rehearing. A motion for rehearing shall be filed not later than 15 days after entry of the decision.
- 5. Time for serving affidavits. When a motion for rehearing is based upon affidavits, they shall be served with the motion. The opposing party has ten days after such

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service within which to serve opposing affidavits, which period may be extended for an additional period not exceeding 20 days either by the hearing officer for good cause shown or by the parties by written stipulation. The hearing officer may permit reply affidavits.

- 6. On initiative of the Board. Not later than 15 days after the date of the decision, the Board of its own initiative may order a rehearing for any reason for which it might have granted a rehearing on motion of a party. After giving the parties notice and an opportunity to be heard on the matter, the Board may grant a motion for a rehearing, timely served, for a reason not stated in the motion. In either case, the Board shall specify in the order the grounds therefor.
7. Questions to be considered in rehearing. A rehearing, if granted, shall be only a rehearing of the question or questions with respect to which the decision is found erroneous, if separable.
8. Number of motions for rehearing. Not more than two motions for rehearing shall be granted to any party in the same action.
9. Specifications of grounds of rehearing in order. An order granting a motion for rehearing shall specify with particularity the ground or grounds on which the rehearing is granted.

R2-1-729. Final decision of the Board Repealed

A. If a motion for rehearing is denied, the final decision denying the motion for rehearing shall be sent within 5 days after the denial to all parties.

R2-1-732. Forms Repealed

A. Notice of appeal form. The Notice of Appeal Form is as follows:

B. If the motion for rehearing was granted, after the rehearing is completed, a final decision shall be made and shall be sent within 5 days after the conclusion of the rehearing to all parties.

C. A final decision of the Board shall contain:

- 1. Findings of facts and conclusions of law, separately stated, and the decision; and
2. A paragraph substantially as follows: "This is the final decision of the Water Quality Appeals Board made pursuant to A.R.S. § 49-323. This decision may be reviewed by the Superior Court by the filing of an action to review pursuant to the Judicial Review of Administrative Decisions Act, A.R.S. § 12-901 et seq., within 35 days from the date when a copy of this final decision is served upon the party affected pursuant to A.R.S. § 12-904."

R2-1-730. Judicial review of the final decision of the Board Repealed

The final decision of the Board is the "administrative decision" of the Board as defined in A.R.S. § 12-901(2) and may be reviewed as provided by A.R.S. § 49-323 and Title 12, Chapter 7, Article 6, Judicial Review of Administrative Decisions Act, A.R.S. § 12-901 et seq.

R2-1-731. Record Repealed

The Clerk shall keep the record. The record shall be preserved for a minimum of 3 years.

(If this form does not give you adequate space, attach additional sheets of paper.)

BEFORE THE WATER QUALITY APPEALS BOARD
DEPARTMENT OF ADMINISTRATION
IN AND FOR THE STATE OF ARIZONA

Form with lines for Appellant, vs., DEPARTMENT OF ENVIRONMENTAL QUALITY, Respondents, and CASE NO., NOTICE OF APPEAL.

- 1. This Notice of Appeal is being filed by me, the appellant pursuant to A.R.S. § 49-323 and A.A.C. R2-1-701 et seq., with the Clerk of the Water Quality Appeals Board.
2. Pursuant to A.R.S. § 49-323 and A.A.C. R2-1-701 et seq., if you, a Respondent in this case, have an interest in the final decision that may result from this Notice of Appeal, you are required to file an Answer to this Notice of Appeal within 20 days from the date of service of this Notice of Appeal on you.
3. The name, address and telephone number of the appellant is:
Name:
Address:
Telephone:

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If I, the appellant, am represented by an attorney, the name, address, telephone number and Arizona Bar number of the appellant's attorney is:

Name: _____
Address: _____
Telephone: _____ Bar No. _____

Is the appellant a corporation? Yes _____ No _____ If the appellant is a corporation, the state of incorporation is _____. If the appellant is not an Arizona corporation, is the corporation qualified to do business in the state by the Arizona Corporation Commission? Yes _____ No _____ Is the appellant a partnership? Yes _____ No _____ If the appellant is a partnership, the following is a list of the names, addresses and telephone numbers of all the partners in the partnership:

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

4. The following is a list of the names and mailing addresses of all the employees and agents of the Department of Environmental Quality known or believed by me to be persons who may have participated in the action that is being appealed:

Name: _____
Address: _____

Name: _____
Address: _____

5. The following is a list of names, mailing addresses and telephone numbers of all of the following interested persons:

- a. The permittee, if the permittee is not the appellant, and
- b. All persons who provided the appellant with a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing.

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

6. In addition to myself, the following is a list of the names, addresses and telephone numbers of all witnesses I believe I may call at the hearing:

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

7. The specific action of the Department of Environmental Quality which is the basis of this appeal is the following:

a. _____

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b. _____

8. The date of the action complained of in the previous paragraph (7) is _____, 19____.
9. The date the appellant received notice of the action complained of in the previous paragraph 7 is _____, 19____. This Notice of Appeal is being filed with the Clerk of the Water Quality Appeals Board within 30 days of the date the appellant received notice of the action complained of in the previous paragraph (7).
10. I request the following relief:

11. Attached to this Notice of Appeal are copies of all the documents in my possession on or before the date of my filing this Notice of Appeal that may be relevant to a decision on my appeal and which I may want to introduce into evidence at the hearing.

DATED this _____ day of _____, 19____.

Signature of the Appellant or
the attorney for the Appellant

VERIFICATION

I verify that I have served or caused to be served a copy of this Notice of Appeal, including copies of all documents attached to this Notice of Appeal, on the Department of Environmental Quality and all the persons listed in paragraph (5) above.

DATED this _____ day of _____, 19____.

Signature of the Appellant or
the attorney for the Appellant

B. Notice of hearing form. The Notice of Hearing Form is as follows:

BEFORE THE WATER QUALITY APPEALS BOARD
DEPARTMENT OF ADMINISTRATION
IN AND FOR THE STATE OF ARIZONA

_____)	
Appellant,)	CASE NO. _____
vs.)	NOTICE OF APPEAL
DEPARTMENT OF ENVIRONMENTAL)	
QUALITY, _____)	
_____)	
_____)	
Respondents:)	
_____)	

TO ALL PARTIES:

1. The date of the hearing is _____, 19____, at the hour of _____ o'clock _____ M. at the location of _____
_____ Arizona.
2. The hearing will be on the appellant's Notice of Appeal from an action of the Department of Environmental Quality.
3. A.R.S. § 49-323 provides the authority and jurisdiction under which the hearing shall be held.
4. The particular Sections of the statutes and rules involved are A.R.S. § 49-323 and 41-1061 through 41-1066, and A.A.C. R2-1-701 et seq.
5. The hearing shall be a full evidentiary hearing and shall be for the purpose of reviewing the action of the Department of Environmental Quality resulting from the grant, denial, modification or revocation of any individual permit issued under Chapter 2 of Title 49 of the Arizona Revised Statutes or from the establishment of numeric values and data gap issues for pesticides pursuant to A.R.S. §§ 49-303 and 49-304.

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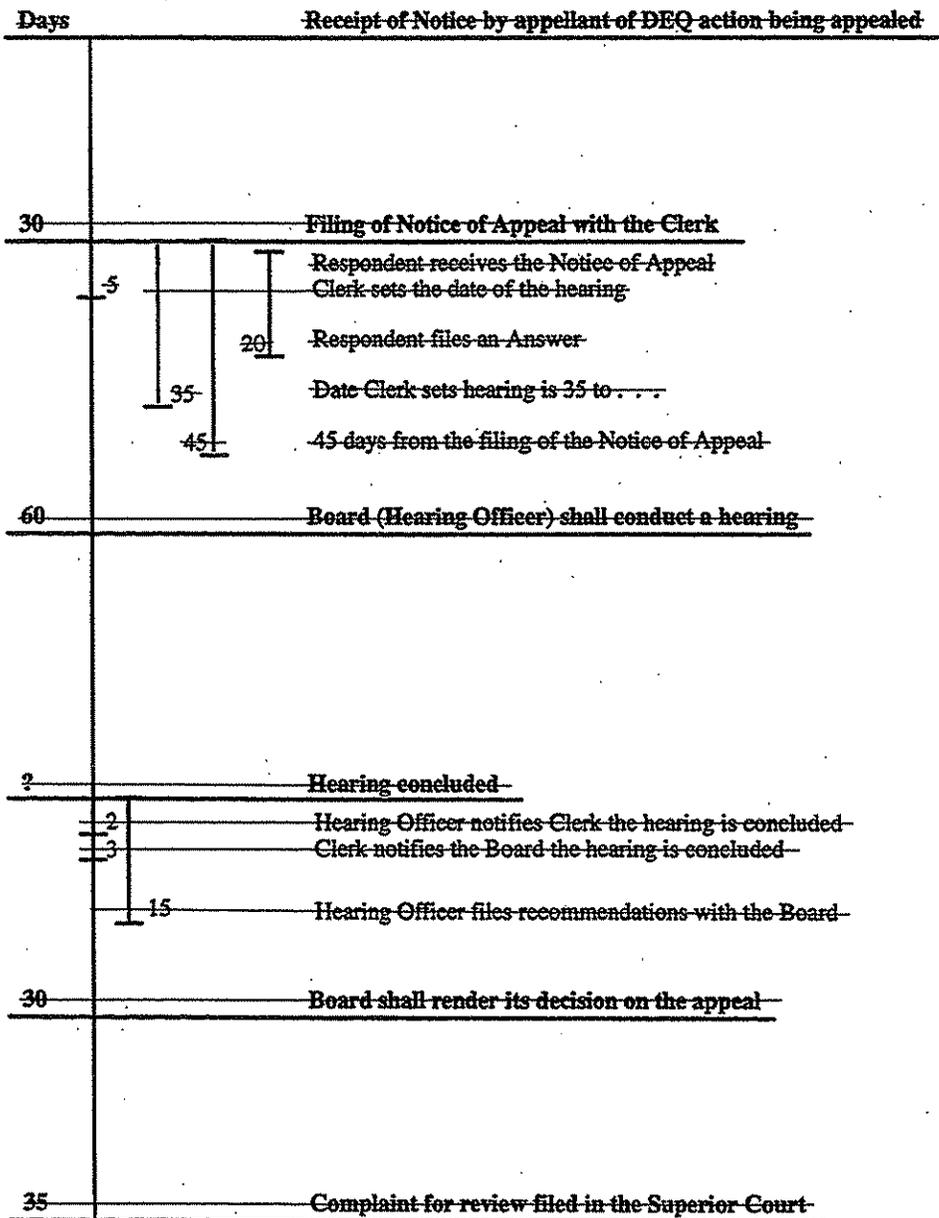
Notices of Final Rulemaking

6. The date the appellant filed the appellant's Notice of Appeal is _____, 19__.
7. If known, the name of the hearing officer is _____.
8. The hearing officer may issue subpoenas on behalf of any party. The party requesting the issuance of a subpoena shall be responsible for the service of that subpoena.
9. All parties may be represented by counsel, may introduce evidence through witnesses and documents, may cross-examine witnesses of other parties, and may have a court reporter present, which is the responsibility of the party desiring a court reporter.

DATED this _____ day of _____, 19__.

Signature of the Clerk of
the Water Quality Appeals Board

**TIME LINE
FOR
WATER QUALITY APPEALS BOARD (A.R.S. § 49-322)**



6. An explanation of the rule, including the agency's reasons for initiating the rule:

The Water Quality Appeals Board (Board) is updating and reorganizing its rules of procedure. The old rules in 2 A.A.C. 1 are being repealed in a concurrent rulemaking. The new rules incorporate changes proposed in the last 5-year-review report. All rule sections have been updated to reflect current rule drafting style.

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

8. The summary of the economic, small business, and consumer impact:

Modifications to the Chapter improving readability will make the rules easier to use. Individuals using the rules will benefit from this change.

9. A description of the changes between the proposed rules, including supplemental notices, and final rules:

The changes between the proposed rules and the final rules are minimal. Various grammatical, punctuation and word choice changes were made throughout the package to make the rule more clear, concise, and understandable.

Changes to A.R.S. § 49-323 relating to A.R.S. Title 41, Chapter 6, Article 10

During the 1st regular session of the 43rd Legislature, A.R.S. § 49-323 was amended. The language was changed so that it would conform to A.R.S. Title 41, Chapter 6, Article 10, a portion of the Administrative Procedure Act that establishes the Office of Administrative Hearings and contains procedures for administrative hearings. The statutory changes necessitate corresponding revisions to the rules.

The amended statute indicates that an appeal to the Board may be taken as provided in A.R.S. § 41-1092.03. Laws 1997, Ch. 221, section 223. A.R.S. § 41-1092.03 refers to an "appealable agency action" rather than a "contested case" and the term "contested case" has been stricken from A.R.S. § 49-323. *Id.* Accordingly, references to "contested case" in the rules have been replaced with the term "appeal" or "appealable agency action."

Under A.R.S. § 41-1092.03(B), a party may obtain a hearing on an appealable agency action by filing a notice of appeal with the agency, in this case the Department of Environmental Quality. Laws 1997, Ch. 221, section 223. The provision of A.R.S. § 49-323 which required an appellant to initiate an appeal by filing a notice of appeal with the Board has been stricken. *Id.* R2-17-103 has therefore, been changed to require that the notice of appeal be filed with the Department of Environmental Quality. R2-17-103 also was changed to require the Department to notify the Board of any request for and the outcome of an informal settlement conference under A.R.S. § 41-1092.06.

A.R.S. § 41-1092.03 also requires that the notice of appeal contain a concise statement of the reasons for the appeal. This language has been added to R2-17-107, the rule governing the contents of the notice, and a corresponding change has been made to the notice form in Appendix A.

Other Significant Changes

The definitions of "department" and "director" were removed from R2-17-102 and "department" was replaced with "Board" in R2-17-114. The term "department" was only used once in the rules and the definition of "director" conflicts with a definition contained in A.R.S. § 41-1092.

The term "registrant" was added to R2-17-107(B)(2)(a) and R2-17-110(A)(6)(a) because A.R.S. §§ 49-303 and 49-304 use this term, rather than "permittee." The phrase "the issuance, denial, or revocation of a determination pursuant to A.R.S. § 49-241(B) and (C)" was added to R2-17-107(B)(3), R2-17-109(2), R2-17-115(B)(5), and Appendix B because the legislature recently added this new basis for an appeal to A.R.S. § 49-323.

The following provision was added to R2-17-115 after renumbering subsection (B)(10) to subsection (C): "The Clerk shall provide written notification that reasonable accommodation will be made for the disabled, if the accommodation is requested. The notification shall be served with the notice of hearing." The provision clarifies that the reasonable accommodation notification is not a part of the notice of hearing, but instead is a separate document served with the notice of hearing. The phrase "the administrative law judge, if any" was added to R2-17-115, after renumbering subsection (C) to subsection (D) so that any administrative law judge assigned to the matter would receive a copy of the notice of hearing.

10. A summary of the principle comments and the agency response to them:

No comments were submitted on the proposed rulemaking.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable.

12. Incorporations by reference and their location in the rules:

Not applicable.

13. Was this rule previously adopted as an emergency rule?

Not applicable.

14. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 17. WATER QUALITY APPEALS BOARD

ARTICLE 1. APPEALS

Section

- R2-17-101. Scope of Article: General Considerations
- R2-17-102. Definitions
- R2-17-103. Commencement of an Appeal; Copies; Informal Settlement Conference
- R2-17-104. Docket; Case Number; Information on Documents
- R2-17-105. Filing and Service of Pleadings, Motions, or Other Documents
- R2-17-106. Computation of Time; Additional Time After Service by Mail
- R2-17-107. Contents of a Notice of Appeal
- R2-17-108. Time for Filing an Answer to a Notice of Appeal
- R2-17-109. Contents of an Answer to a Notice of Appeal
- R2-17-110. Prehearing Disclosure
- R2-17-111. Depositions
- R2-17-112. Motions
- R2-17-113. Duties of the Board During a Hearing
- R2-17-114. Location of Hearings
- R2-17-115. Notice of Hearing
- R2-17-116. Consolidation
- R2-17-117. Continuances
- R2-17-118. Subpoenas
- R2-17-119. Prehearing Conferences
- R2-17-120. Hearing
- R2-17-121. Evidence
- R2-17-122. Recording Hearings
- R2-17-123. Ex Parte Communications
- R2-17-124. Notification of Decisions and Orders
- R2-17-125. Decision of the Board
- R2-17-126. Rehearing or Review of Decision
- R2-17-127. Judicial Review
- R2-17-128. Record
- Appendix A. Notice of Appeal Form
- Appendix B. Notice of Hearing Form

ARTICLE 1. APPEALS

R2-17-101. Scope of Article: General Considerations

- A. These rules of procedure govern all appeals to the Water Quality Appeals Board taken under A.R.S. § 49-323.
- B. Where a procedure is not established by law, this Article, or an order of the Board, the Board may refer to the Arizona Rules of Civil Procedure for guidance, but the Arizona Rules of Civil Procedure are not binding on the Board or the parties unless the Board issues an order to that effect.

R2-17-102. Definitions

The definitions in A.R.S. §§ 41-1001 and 41-1092 apply to this Article. In addition, the terms in this Article have the following meanings:

1. "Appellant" means the person who files a notice of appeal with the Department of Environmental Quality under A.R.S. § 49-323.
2. "Board" means the Water Quality Appeals Board appointed by the Governor according to A.R.S. § 49-322, but includes an individual Board member or administrative law judge acting on behalf of the Board according to a lawful delegation of authority.

3. "Clerk" means the person designated as Clerk of the Board.
4. "Ex parte communication" means an oral or written communication, not on the public record, made without sufficient prior notice to permit all parties to participate in the communication.
5. "Party" means the appellant, the Department of Environmental Quality, all persons named by the appellant as interested persons as provided in R2-17-107(B)(2), and any interested person the Board has permitted to intervene in the appeal as a matter of right.
6. "Record" has the meaning found in A.R.S. § 41-1092.10(C).

R2-17-103. Commencement of an Appeal; Copies; Informal Settlement Conference

- A. To commence an appeal, the appellant shall file a notice of appeal with the Department of Environmental Quality. The Department of Environmental Quality shall deliver or mail a copy of the notice of appeal to the Clerk of the Water Quality Appeals Board. The appellant shall file the notice of appeal within 30 days after receiving the notice of appealable agency action. The date of filing is the date the Department of Environmental Quality receives the notice of appeal.
- B. The Clerk shall make available to all persons copies of the Notice of Appeal Form in Appendix A and copies of this Article. The Clerk shall charge a reasonable fee for the cost of copies.
- C. If an informal settlement conference is requested by the appellant under A.R.S. § 41-1092.06, the Department of Environmental Quality shall notify the Board in writing of the request and the outcome of the conference.

R2-17-104. Docket; Case Number; Information on Documents

- A. The Clerk shall maintain a docket of all appeals and assign each appeal a case number. For each appeal, the Clerk shall enter all of the following information on the docket:
 1. The case number;
 2. The case name;
 3. The filing date of the notice of appeal;
 4. The receipt date of any answer;
 5. The receipt date of any disclosures;
 6. The receipt date of pre-hearing motions, responses, and replies;
 7. The dates of the evidentiary hearing;
 8. The dates of orders by the Board and the Board's decision;
 9. The receipt date of any motion for rehearing or review;
 10. The Board's decision on any motion for rehearing or review and the date of the decision; and
 11. The Board's final decision and the date of the final decision.
- B. A party shall place the case number and the name, address and telephone number of the party or party's attorney on all pleadings, motions, or other documents filed with the Board.

R2-17-105. Filing and Service of Pleadings, Motions or Other Documents

- A. Within the time limits for filing, a party shall file the original and 1 copy of all pleadings, motions, or other documents with

the Clerk and serve a copy on each party and the administrative law judge, if the Board has delegated hearing powers and duties to the Office of Administrative Hearings.

- B.** A party shall serve documents other than subpoenas by personal service or by regular mail. A party is considered served at the time of personal service of the document or upon deposit of the document in the United States mail, postage prepaid, in a sealed envelope, addressed to the party being served, at the party's last address of record with the Department of Environmental Quality or the Board. If there is a discrepancy between the records of these agencies, the party serving the document shall use the last address of record with the Board. Each party shall inform the Board of any change of address within 5 days of the change.
- C.** A party shall demonstrate proof of service by filing with the Clerk a written statement, signed by the party, indicating that service was made in person or by mail. The statement shall be attached to the pleading, motion or other document being filed.
- D.** After receiving the Notice of Appeal or an Answer of a party, or when the Board finds that the interest of justice so requires, the Board may order any party to publish an appropriate notice in a newspaper of general circulation in the community or communities that may be adversely affected if the appellant is granted the relief requested in the appellant's Notice of Appeal. The party shall publish the notice in the manner prescribed by the Arizona Rules of Civil Procedure, unless the Board determines that another method of publication is more appropriate.

R2-17-106. Computation of Time; Additional Time After Service by Mail

- A.** In computing any period of time prescribed or allowed by these rules or by order of the Board, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or legal holiday. When the period of time prescribed or allowed is less than 11 days, not including the time for mailing permitted in subsection (B), intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation. When that period of time is 11 days or more, not including the time for mailing permitted in subsection (B), intermediate Saturdays, Sundays, and legal holidays shall be included in the computation.
- B.** Whenever a party has a right or is required to do some act or proceed within a prescribed period after the service of a notice or other document upon the party and the notice or document is served by mail, 5 calendar days shall be added to the prescribed period. This subsection does not apply when time is counted from the date that a party receives the notice or other document.

R2-17-107. Contents of a Notice of Appeal

- A.** The appellant may use the Notice of Appeal Form in Appendix A and, where there is not enough space on the Form, the appellant may attach additional sheets of paper. The notice of appeal shall contain the following statements:
 - 1.** "The appellant files this notice of appeal with the Department of Environmental Quality according to A.R.S. § 49-323."
 - 2.** "Under A.R.S. § 49-323 and A.A.C. R2-17-101 et seq., if you, a Respondent in this case, have an interest in the final decision that may result from this Notice of Appeal, you are required to file an Answer to this Notice

of Appeal within 20 days from the date of service of this Notice of Appeal on you."

- B.** The notice of appeal shall contain the following information:
 - 1.** The name, address, and telephone number of the appellant and, if the appellant is represented by an attorney, the name, address, telephone number, and Arizona Bar number of the appellant's attorney;
 - 2.** The names, mailing addresses, and telephone numbers of all of the following interested parties:
 - a.** The permittee or registrant, if the permittee or registrant is not the appellant;
 - b.** All persons who filed a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing; and
 - c.** The Department of Environmental Quality.
 - 3.** The specific action of the Department of Environmental Quality involving the grant, denial, modification or revocation of an individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. § 49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304;
 - 4.** The date of the action by the Department of Environmental Quality;
 - 5.** The date the notice of action by the Department of Environmental Quality was received by the appellant;
 - 6.** The relief requested by the appellant and a concise statement of the reasons for the appeal;
 - 7.** The date of the notice of appeal;
 - 8.** The signature of the appellant or the appellant's attorney;
 - 9.** A verification that the appellant has served or caused to be served, a copy of the notice of appeal on the Department of Environmental Quality and all parties named by the appellant.

R2-17-108. Time for Filing an Answer to a Notice of Appeal
The Department of Environmental Quality and all parties named by the appellant shall file an answer to appellant's notice of appeal within 20 days from service of the notice of appeal on that party.

R2-17-109. Contents of an Answer to a Notice of Appeal

- The answer of each respondent shall contain the following information:
- 1.** The name, address, and telephone number of the respondent preparing the answer and, if the respondent is represented by an attorney, the name, address, telephone number, and Arizona Bar number of the respondent's attorney;
 - 2.** A response to the appellant's allegations relating to the action taken by the Department of Environmental Quality involving the grant, denial, modification or revocation of an individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. § 49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304;
 - 3.** The relief requested by the respondent;
 - 4.** The date of the answer;
 - 5.** The signature of the respondent or the respondent's attorney;
 - 6.** A verification that the respondent has served or caused to be served a copy of the answer on all other parties.

R2-17-110. Prehearing Disclosure

- A.** Within the times set forth in subsection (B), each party shall disclose in writing to every other party:
1. The factual basis of the appeal or response;
 2. The legal theory upon which the appeal or response is based, including citations of pertinent legal authorities;
 3. The names, addresses, and telephone numbers of all witnesses the party expects to call at the hearing, with a description of the substance of each witness' expected testimony;
 4. If a party is a corporation, the name of the state of incorporation. If the party is not an Arizona corporation, the party shall state whether it is qualified to do business in the state by the Arizona Corporation Commission;
 5. If the party is a partnership, the name, address, and telephone number of each partner;
 6. The names, mailing addresses, and telephone numbers of all of the following interested persons:
 - a. The permittee or registrant, if the permittee or registrant is not the appellant;
 - b. All persons who filed a notice of appearance in the action before the Department of Environmental Quality that the appellant is appealing;
 - c. The mayor of any city or town or the chair of the board of supervisors of any county that may be affected if the appellant is granted the relief requested.
 7. The name and address of each person whom the party expects to call as an expert witness at the hearing, the subject matter on which the expert is expected to testify, the substance of the facts and opinions to which the expert is expected to testify, a summary of the grounds for each opinion, the qualifications of the witness and the name and address of the custodian of copies of any reports prepared by the expert;
 8. A list of documents which indicates the location, custodian, and a general description of any tangible evidence or relevant documents that the party plans to use during the hearing. Unless good cause is stated for not doing so, a copy of each document listed shall be served with the disclosure. If production is not made, the party shall indicate the name and address of the custodian of the document. A party who produces documents for inspection shall produce them as they are kept in the usual course of business.
- B.** The parties shall make the initial disclosure required by subsection (A) at least 15 days prior to the date set for hearing, unless the parties otherwise agree, or the Board shortens or extends the time for good cause. If feasible, counsel shall meet to exchange disclosures; otherwise, the parties shall serve the disclosures as prescribed in R2-17-105. At the same time the parties shall file with the Clerk the disclosures and 1 copy of each document listed.
- C.** The duties described in subsections (A) and (B) are continuing duties, and each party shall make additional or amended disclosures whenever new or different information is discovered or revealed. A party shall serve additional or amended disclosures seasonably, but in no event later than 3 days before the hearing, except by leave of the Board.
- D.** A party shall include in its disclosure, information and data in the possession, custody, and control of the parties as well as that which can be ascertained, learned, or acquired by reasonable inquiry and investigation.
- E.** Each party shall make the disclosure in writing under oath and sign the disclosure.

- E.** When information is withheld from disclosure or discovery on a claim that it is privileged or subject to protection as trial preparation materials, the party making the claim shall do so expressly and shall support the claim with a description of the nature of the documents, communications, or things not produced or disclosed that is sufficient to enable other parties to contest the claim.

R2-17-111. Depositions

The Board may allow the deposition of a witness who cannot be subpoenaed or is unable to attend the hearing, in the manner and upon the terms designated by the Board. The party requesting a deposition shall bear the expense of the deposition.

R2-17-112. Motions

- A.** To obtain an order or other relief from the Board, a party shall make a motion. Unless the motion is made during a hearing, the party shall make the motion in writing. For all motions, the party shall state the grounds on which the motion is based and the relief or order sought. The Board shall decide prehearing motions based on the written materials submitted by the parties.
- B.** Any party may file a response to a prehearing motion within 5 days after service of the motion and serve the response on all parties. The moving party has 2 days after service of a response to file a reply.
- C.** For a written motion, a party shall state the grounds on which the motion is based and the relief or order sought in a supporting memorandum. A party's supporting memorandum shall not exceed 15 pages, exclusive of pages containing the table of contents, the table of cases, statutes or other authorities, and the appendix, if any. A reply memorandum shall not exceed 5 pages.
- D.** A party shall support motion documents by affidavit or other satisfactory evidence if they contain facts not apparent in the record or facts that are not cognizable through judicial notice.
- E.** When the Board directly conducts an administrative hearing, the Board shall rule on all motions. When the Board uses the services of the Office of Administrative Hearings, the administrative law judge shall rule on all motions.

R2-17-113. Duties of the Board During a Hearing

- A. The Board shall:**
1. Conduct the hearing in an impartial, orderly, and informal manner;
 2. Regulate the course of the hearing;
 3. Rule upon procedural matters incidental to the hearing;
 4. Designate the order in which parties introduce their evidence; and
 5. Exercise the powers granted in A.R.S. §§ 41-1092.07 and 12-2212.
- B. The Board may:**
1. Exclude a witness from the hearing so the witness cannot hear the testimony of other witnesses;
 2. Set time limitations for arguments;
 3. Exclude a person from the hearing who is disruptive to the proceedings;
 4. Administer oaths and affirmations to witnesses; and
 5. Issue any orders necessary for the impartial, orderly, and informal conduct of the hearing.

R2-17-114. Location of Hearings

All hearings shall be held in Arizona, in Maricopa County, unless the Board finds that it will be more cost effective for the Board and the parties to hold a hearing elsewhere, in which event the Board shall set the location of the hearing.

R2-17-115. Notice of Hearing

- A.** If the Board conducts an administrative hearing, the Clerk shall set a date for the hearing no later than 60 days from the date the appellant filed the notice of appeal with the Department of Environmental Quality. The Clerk shall prepare and serve a notice of hearing as prescribed in A.R.S. § 41-1092.05. The Clerk may use the Notice of Hearing Form in Appendix B. If the Board uses the services of the Office of Administrative Hearings, the Clerk shall set the hearing date in consideration of and in conjunction with the Office of Administrative Hearings.
- B.** The notice of hearing shall contain the following information and statements:
1. The date, time, and place of the hearing;
 2. The hearing will be on the appellant's notice of appeal from an action of the Department of Environmental Quality;
 3. A.R.S. § 49-323 provides the authority and jurisdiction under which the hearing will be held;
 4. The particular sections of the statutes and rules involved in the substantive appeal are A.R.S. § 49-323 and R2-17-101 et seq. The parties should also refer to procedural statutes which may be applicable to this appeal, including A.R.S. §§ 41-1092.03 through 41-1092.11;
 5. The hearing will be a full evidentiary hearing for the purpose of reviewing the grant, denial, modification, or revocation of any individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. § 49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304;
 6. The date the appellant filed the notice of appeal;
 7. The name of the administrative law judge, if any, when known at the time the notice of hearing is served;
 8. The Board may issue subpoenas on behalf of any party;
 9. All parties may be represented by counsel, may introduce evidence through witnesses and documents, and may cross-examine witnesses of other parties;
- C.** The Clerk shall provide written notification that reasonable accommodation will be made for the disabled, if the accommodation is requested. The notification shall be served with the notice of hearing.
- D.** At least 30 days prior to the date of the hearing the Clerk shall serve a copy of the notice of hearing on each Board member, the administrative law judge, if any, and each party.

R2-17-116. Consolidation

Upon the motion of a party, the Board may consolidate 2 or more appeals involving a common question of law or fact when consolidation will avoid unnecessary cost or delay.

R2-17-117. Continuances

- A.** A party applying for a continuance of a hearing shall file a motion with the Clerk and serve all parties no later than 10 days before the scheduled date of the hearing. The Board may accept a motion filed later than 10 days before the hearing for good cause. The motion shall state why the continuance is being requested, why a stipulation from adverse parties was not obtained, and the amount of time requested.
- B.** Any opposing party may, within 5 days after service of the motion, file and serve a response. The Board may permit a reply.
- C.** The parties may stipulate to a continuance. The Board is not required to accept the stipulation.

R2-17-118. Subpoenas

- A.** A party shall make a written request for a subpoena which clearly identifies the person, documents, or other evidence desired and the reason the evidence is relevant to the proceeding. The party requesting the subpoena shall file the request at least 15 days prior to the date set for hearing, provide the Board with a proposed subpoena for signature, and ensure that any subpoena issued is served in the manner prescribed by the Arizona Rules of Civil Procedure.
- B.** The person to whom a subpoena is directed shall comply with its provisions unless:
1. The person serving the subpoena has failed to comply with subsection (A) of this rule; or
 2. The person to whom the subpoena is directed, at least 10 days prior to the date set for the hearing, files a motion to quash or modify the subpoena and the motion is granted in whole or in part, prior to the hearing.

R2-17-119. Prehearing Conferences

- A.** Upon a motion by a party or on the initiative of the Board, the Board may order a prehearing conference, if the Board finds that a prehearing conference will assist the Board to:
1. Conduct the hearing within the 60-day period prescribed by A.R.S. § 41-1092.05(A); or
 2. Reach a just, speedy, and less expensive determination of the appeal.
- B.** If the Board takes any action at or after the prehearing conference, the Board shall prepare a written order reciting the action taken. The order shall become a part of the record of the appeal.

R2-17-120. Hearing

- A.** The Board shall conduct a full evidentiary hearing. A party may introduce new evidence or evidence that was considered by the Department of Environmental Quality when it took the action being appealed.
- B.** The Board shall use the standard of review prescribed in A.R.S. § 49-324(C) to decide an appeal.
- C.** Noncompliance with any order of the Board or disruption of any hearing is improper conduct and grounds for exclusion from the hearing.

R2-17-121. Evidence

- A.** All witnesses at a hearing shall testify under oath or affirmation. All parties shall have the right to present evidence and to conduct cross-examination as may be required for a full and true disclosure of the facts. The Board shall receive relevant, probative, and material evidence, rule upon offers of proof, and exclude all evidence determined to be irrelevant, immaterial, or unduly repetitious.
- B.** Any party may call additional witnesses or introduce into evidence additional documents not disclosed by the party in its notice of appeal, answer, initial prehearing disclosure, or an additional or amended disclosure if that witness or document was not or could not reasonably have been known to that party at the time the party filed its notice of appeal, answer, initial prehearing disclosure, and additional or amended disclosure.
- C.** The Board may conduct a hearing in an informal manner and without adherence to the rules of evidence required in judicial proceedings or follow that portion of the Arizona Rules of Evidence that the Board deems appropriate.
- D.** The Board may question any witness.
- E.** The Board may take judicial notice of judicially cognizable facts. In addition, the Board may take notice of generally recognized technical or scientific facts within the board members' specialized knowledge. The Board shall notify the

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parties either before or during the hearing, by reference in a preliminary report or otherwise, of the material noticed, including any staff memoranda or data. The parties shall be afforded an opportunity to contest the noticed material. The board members' experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

R2-17-122. Recording Hearings

- A. The Board shall tape-record the hearing unless it determines there will be a court reporter and is able to obtain state funds for the cost of the court reporter.
- B. Any party may use a court reporter to produce a record of the hearing, but that party shall pay for all costs of the court reporter. Where a hearing is recorded by a party's court reporter, the Board shall determine whether the tape recording or the court reporter's recording will be used to prepare the hearing transcript. The Clerk shall ensure that the proceedings are transcribed and provide copies of the transcript to the Board at the time the Board meets to consider its decision on the appeal.
- C. Any party that requests a transcript of the proceeding from the Board shall pay the Clerk a fee for the cost of copying the transcript.

R2-17-123. Ex Parte Communications

- A. In any appeal before the Board, except to the extent required for disposition of ex parte matters as authorized by law or these rules of procedure:
 - 1. An interested person shall not make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any Board member, administrative law judge, or employee of the State of Arizona who is or may reasonably be expected to be involved in the decision making process.
 - 2. A Board member, administrative law judge, or employee of the State of Arizona who is or may reasonably be expected to be involved in the decision making process shall not make or knowingly cause to be made an ex parte communication relevant to the merits of the proceeding to any interested person.
- B. A Board member, administrative law judge, or employee of the State of Arizona who is or may reasonably be expected to be involved in the decision making process and receives, makes, or knowingly causes to be made a communication prohibited by this Section shall place all written communications and all written responses to the communications in the public record of the proceeding and by oral testimony on the record state the substance of all oral communications.
- C. Any interested person who receives a communication prohibited by this Section shall file a notice of the communication with the Clerk and serve a copy on the Solicitor General and all parties to the appeal. The interested person shall attach to the notice a copy of the communication, if written, or a summary of the communication, if oral.
- D. When the Board is made aware under subsections (B) or (C) of a communication prohibited by this Section, the Board shall give all parties a reasonable opportunity to respond to the communication. The Board, to the extent consistent with the interests of justice and the policy of the underlying statutes and rules, may require the person responsible for the communication to show cause why the person's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.

- E. The provisions of this section apply to an appeal from the date the notice of appeal is filed to the date on the Board's final administrative decision, unless the person responsible for the communication knew the appeal would be noticed, in which case the prohibition applies from the time that the person acquired the knowledge.

R2-17-124. Notification of Decisions and Orders

The Clerk shall notify each party promptly by either delivering or mailing copies of all decisions and orders, including the findings of fact, conclusions of law, and the final administrative decision of the Board to each party's last known address.

R2-17-125. Decision of the Board

- A. If the Board uses the services of the Office of Administrative Hearings, the Board will receive a copy of the administrative law judge's decision under A.R.S. § 41-1092.08. Within 30 days after receipt, the Board may review the decision and accept, reject or modify it.
 - 1. If the Board does not make a decision within 30 days, the Board has accepted the administrative law judge's decision as the final administrative decision.
 - 2. If the Board reviews the administrative law judge's decision, it shall request the record of the hearing, described in A.R.S. § 41-1092.10(C), and may accept, reject or modify the decision. If the Board rejects or modifies the decision, the Board shall file with the Office of Administrative Hearings a copy of the administrative law judge's decision with the rejection or modification and a written justification setting forth the reasons for the rejection or modification. Under the circumstances in this subsection, the decision of the Board is the final administrative decision.
- B. If the Board directly conducts an administrative hearing, the Board shall meet and render its final administrative decision on the appeal in writing within 15 days after the hearing. The Board's decision shall contain its findings of fact and conclusions of law, separately stated, and its decision.
- C. The Board's final administrative decision shall contain the following statement: "This is a final administrative decision of the Water Quality Appeals Board, made according to A.R.S. § 49-323. You may file a motion for rehearing or review of this decision under R2-17-126. If you file a motion for rehearing or review, you shall file your motion within 30 days after service of this decision. You are not required to file a motion for rehearing or review before seeking judicial review. This decision may be reviewed by the Superior Court if you file a complaint in the manner prescribed in A.R.S. §§ 41-1092.10 and 41-1092.11."
- D. The Board may incorporate by reference findings, conclusions, or a decision previously made by an administrative law judge.
- E. When the Board has rendered a final administrative decision, it shall serve a copy of the decision on all parties.

R2-17-126. Rehearing or Review of Decision

- A. Except as provided in subsection (H), any party to an appeal before the Board may file a motion for rehearing or review within 30 days after service of the final administrative decision. The party shall attach a supporting memorandum, specifying the grounds for the motion. The party is not required to file a motion for rehearing or review of the decision in order to exhaust the party's administrative remedies.
- B. Any other party may file a response within 5 days after service of a motion for rehearing or review. The party shall support the response with a memorandum, discussing legal and factual issues.

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- C. The moving party, the responding party, or the Board may request oral argument.
- D. The Board may grant a rehearing or review for any of the following causes materially affecting a party's rights:
 1. Irregularity in the proceedings of the Board, or any order or abuse of discretion, that deprived the moving party of a fair hearing;
 2. Misconduct of the Board, its staff, an administrative law judge, or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceeding; or
 6. That the findings of fact or decision is not justified by the evidence or is contrary to law.
- E. The Board may affirm or modify the decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection (D). An order modifying a decision or granting a rehearing shall specify with particularity the grounds for the order.
- F. When a motion for rehearing or review is based upon affidavits, they shall be served with the motion. An opposing party may, within 5 days after service, serve opposing affidavits.
- G. Not later than 15 days after the date of the decision, the Board may grant a rehearing or review on its own initiative for any reason for which it might have granted relief on motion of a party. The Board may grant a motion for rehear-

ing or review, timely served, for a reason not stated in the motion.

- H. If the Board makes specific findings that the immediate effectiveness of a decision is necessary for the preservation of the public health and safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue a final administrative decision without an opportunity for rehearing or review. A party may seek judicial review of the decision under A.R.S. §§ 41-1092.10 and 41-1092.11.
- I. The Board shall rule on the motion for rehearing or review within 15 days after it has been received. If a rehearing is granted, the Board shall hold the rehearing within 90 days after the issue date on the order granting the rehearing.
- J. If a motion for rehearing or review is denied, the Clerk shall serve a notice of denial on all parties within 15 days after the denial.
- K. If the motion for rehearing or review is granted, the Clerk shall serve the Board's final administrative decision on all parties within 15 days after the Board renders the decision.

R2-17-127. Judicial Review

The final administrative decision of the Board may be reviewed as provided by A.R.S. §§ 41-1092.10, 41-1092.11, 49-323 and A.R.S. § 12-901 et seq. (Title 12, Chapter 7, Article 6, Judicial Review of Administrative Decisions Act).

R2-17-128. Record

The Clerk shall keep the record and ensure that it is preserved for a minimum of 5 years from the date of the final administrative decision.

Appendix A

Notice of Appeal Form

(If this form does not give you adequate space, attach additional sheets of paper.)

BEFORE THE WATER QUALITY APPEALS BOARD
DEPARTMENT OF ADMINISTRATION
IN AND FOR THE STATE OF ARIZONA

Appellant,

CASENO.

vs.

NOTICE OF APPEAL

DEPARTMENT OF ENVIRONMENTAL
QUALITY.

Respondents.

1. The appellant files this Notice of Appeal with the Department of Environmental Quality according to A.R.S. § 49-323.
2. Under A.R.S. § 49-323 and R2-17-101 et seq., if you, a Respondent in this case, have an interest in the final decision that may result from this Notice of Appeal, you are required to file an Answer to this Notice of Appeal within 20 days from the date of service of this Notice of Appeal on you.
3. The name, address, and telephone number of the appellant is:
Name:
Address:
Telephone:

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VERIFICATION

I verify that I have served or caused to be served a copy of this Notice of Appeal on the Department of Environmental Quality and all the persons listed in paragraph (4) above.

DATED (month) (day), (year)

Signature of the Appellant or
the attorney for the Appellant

Appendix B

Notice of Hearing Form

BEFORE THE WATER QUALITY APPEALS BOARD

DEPARTMENT OF ADMINISTRATION

IN AND FOR THE STATE OF ARIZONA

Appellant

CASE NO. _____

vs.

NOTICE OF HEARING

DEPARTMENT OF ENVIRONMENTAL
QUALITY,

Respondents.

TO ALL PARTIES:

1. The date of the hearing is (month) (day), (year), at _____ o'clock _____ M. at the following address:
2. The hearing will be on the appellant's notice of appeal from an action of the Department of Environmental Quality.
3. A.R.S. § 49-323 provides the authority and jurisdiction under which the hearing will be held.
4. The particular Sections of the statutes and rules involved in the substantive appeal are A.R.S. § 49-323 and R2-17-101 et seq. The parties should also refer to procedural statutes which may be applicable to this appeal, including A.R.S. §§ 41-1092.03 through 41-1092.11.
5. The hearing will be a full evidentiary hearing for the purpose of reviewing the grant, denial, modification or revocation of any individual permit issued under A.R.S. Title 49, Chapter 2, the issuance, denial, or revocation of a determination pursuant to A.R.S. § 49-241(B) or (C), or the establishment of numeric values and data gap issues for pesticides under A.R.S. §§ 49-303 and 49-304.
6. The date the appellant filed the Notice of Appeal is (month) (day), (year).
7. If known, the name of the administrative law judge, if any, is _____.
8. The Board may issue subpoenas on behalf of any party.
9. All parties may be represented by counsel, may introduce evidence through witnesses and documents, and may cross-examine witnesses of other parties.

DATED this (month) (day), (year)

Signature of the Clerk of the
Water Quality Appeals Board

NOTICE OF FINAL RULEMAKING

TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

PREAMBLE

1. Sections Affected Rulemaking Action
R19-2-332 New Section
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statute: A.R.S. §§ 5-104(A)(2) and 5-104(T)
Implementing statute: A.R.S. §§ 5-113(F) and 5-114(C) and (E)
3. The effective date of the rules:
January 6, 1998
4. A list of all previous notices appearing in the Register addressing the final rule:
Notice of Rulemaking Docket Opening: 3 A.A.R. 2033, August 1, 1997
Notice of Proposed Rulemaking: 3 A.A.R. 2589, September 26, 1997
5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Paul Ryneveld
Address: Arizona Department of Racing
3877 North 7th Street, Suite 201
Phoenix, Arizona 85014
Telephone: (602) 277-1704
Fax: (602) 277-1165
6. An explanation of the rule, including the agency's reasons for initiating the rule:
The rules will clarify procedures for certifying a greyhound Arizona Bred.
7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable.
8. The summary of the economic, small business, and consumer impact:
The rule in accordance with procedures already in place with the Department of Racing and the Greyhound industry. There are no additional effects economically on small businesses or consumers.
9. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):
Several minor grammatical changes were made to the final text at the request of the Governor's Regulatory Review Council. Additional changes were made to subsections (F) and (G) and are listed in the Concise Explanatory Statement.
10. A summary of the principle comments and the agency response to them:
None.
11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
None.
12. Incorporations by reference and their location in the rules:
None.
13. Was this rule previously adopted as an emergency rule?
No.
14. The full text of the rules follows:

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TITLE 19. ALCOHOL, HORSE AND DOG RACING, LOTTERY, AND GAMING

CHAPTER 2. ARIZONA RACING COMMISSION

ARTICLE 3. GREYHOUND RACING

Section

R19-2-332. Certifying a Greyhound Arizona Bred

ARTICLE 3. GREYHOUND RACING

R19-2-332. Certifying a Greyhound Arizona Bred

- A. A breeder shall be properly licensed pursuant to A.R.S. § 5-107.01(B) in order to certify an Arizona-bred greyhound.
- B. Within 10 days of whelping, the breeder shall provide notice of whelping to the Department on a Department-approved form. This notice shall include the names of all owners or lessees of the dam at the time of whelping who will be entitled to breeders' awards at a later date. The breeder shall also provide a copy of the Breeding Acknowledgment Form returned to the breeder by the National Greyhound Association (NGA).
- C. Within 90 days of whelping, the breeder shall provide tattoo numbers of greyhounds from the litter to the Department on a Department-approved form.
- D. The breeder shall apply for Arizona-bred certification by submitting to the Department the completed application form provided by the Department and a National Greyhound Association Individual Registration Application. The application shall include the names of all owners or lessees of the dam at the time of whelping who shall be entitled to breeders' awards.
- E. The breeder shall comply with the following rules in order to be eligible for Arizona-bred certification:
 - 1. A greyhound must be present in Arizona for not less than 6 months of its 1st year.
 - 2. During the greyhound's 1st year, the breeder shall notify the Department whenever the greyhound is removed from the state.
 - 3. The Department may conduct inspections at any time to ensure that greyhounds meet the residency requirement.

- E. The breeder shall make the litter available for inspection by the representatives of the Department at any time. The Department representative shall conduct the inspection of the litter at a location licensed by the Department and designated on the Breeding Acknowledgment Form within 30 days of whelping. The Department representative may conduct additional inspections of the litter to verify tattoo numbers and ensure compliance with requirements of A.R.S. § 5-114(C).
- G. If the greyhound and its breeder qualify by meeting requirements set forth in subsections (A) through (E), the Department shall certify that the greyhound is Arizona bred and mail all necessary documents, including the National Greyhound Association Individual Registration Application form, to the NGA. A greyhound is considered Arizona bred as of the date indicated on the Department's certificate.
- H. If the Breeder is ineligible for breeders' awards, the Director shall send a letter to the applicant explaining the ineligibility.
- I. The Department shall retain a copy of the NGA registration certificate and mail the original to the registered breeder.
- J. Denial. The Director may deny an application for Arizona-bred certification for any of the following reasons:
 - 1. Failure to notify the Department of whelping as required by subsection (B).
 - 2. Failure to provide the greyhound tattoo numbers as required in subsection (C).
 - 3. Failure to meet the residency requirements in subsection (E)(1) or failure to meet the notification requirement of subsection (E)(2), and
 - 4. Material misstatement by the breeder.
- K. The Department shall use information contained in applications and notices submitted to the Department in the event of a conflict between Department records and records of another organization.
- L. An applicant may appeal a decision of the Director by following the requirements in R19-2-322.