

ALABAMA DEPARTMENT OF ECONOMIC AND COMMUNITY AFFAIRS  
OFFICE OF WATER RESOURCES  
AND  
ALABAMA WATER RESOURCES COMMISSION  
ADMINISTRATIVE CODE

CHAPTER 305-7-7  
ADMINISTRATIVE HEARINGS AND APPEALS INVOLVING THE ALABAMA WATER  
RESOURCES COMMISSION AND THE OFFICE OF WATER RESOURCES

TABLE OF CONTENTS

305-7-7-.01	Application
305-7-7-.02	Definitions
305-7-7-.03	Right To Hearing
305-7-7-.04	Request For Hearing
305-7-7-.05	Notice Of Filing Of Request For Hearing
305-7-7-.06	Parties
305-7-7-.07	Intervention
305-7-7-.08	Consolidation And Severance
305-7-7-.09	Prehearing Procedure
305-7-7-.10	Notice Of Rearing
305-7-7-.11	Hearing Procedure
305-7-7-.12	Default
305-7-7-.13	Record
305-7-7-.14	Disposition Without Hearing
305-7-7-.15	Stay Of Action Pending Issuance Of Order
305-7-7-.16	Filing And Service
305-7-7-.17	Computation Of Time
305-7-7-.18	Ex Parte Communications
305-7-7-.19	Hearing Officers
305-7-7-.20	Order
305-7-7-.21	Majority Of Quorum Needed To Issue Order
305-7-7-.22	Mandatory Recusal
305-7-7-.23	Permissive Recusal

**305-7-7-.01      Application.**

Pursuant to the Act, the Commission hereby prescribes the following rules governing administrative hearings and appeals involving the Commission and the Office of Water Resources. These Rules are supplemental to the "Alabama Administrative Procedure Act" and should be read in conjunction therewith.

**Author:** Walter B. Stevenson, Jr

**Statutory Authority:** Code of Ala. 1975, §§9-10B-18, 9-10B-30.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993;  
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**305-7-7-.02      Definitions.**

The definitions set out in the Alabama Water Resources Act (Act) are incorporated by reference as a part of this Chapter. For purposes of this Chapter, the following words and phrases, unless a different meaning is plainly required by the context or the Act, shall have the following meanings:

(1) "Act" is defined as the Alabama Water Resources Act, Code of Ala. 1975, §§9-10B-1 through 30.

(2) "Administrative action" is defined as the issuance, modification, repeal, or denial of any certificate, citation, declaration, license, notice of violation, order, policy, regulation, rule, or standard by the Office of Water Resources or the Commission relating to the Act.

(3) "Aggrieved" is defined as having suffered a threatened or actual injury in fact.

(4) "Commission" is defined as the Alabama Water Resources Commission or its designated Hearing Officer.

(5) "Office of Water Resources" is defined as the Office of Water Resources as established by the Alabama Water Resources Act, Code of Alabama 1975, §§9-10B-1 through 30.

(6) "Person" is defined as any and all persons, natural or artificial, including any individual, firm, association, organization, partnership, business, trust, corporation, company, any federal agency, authority, or corporation created by the United States of America, and the state and all political subdivisions, regions, districts, municipalities, and public agencies thereof.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

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**305-7-7-.03      Right To Hearing.**

Upon a proper request made and filed in accordance with rule 305-7-7-.04 of these Rules, any person aggrieved by any administrative action shall be entitled to a hearing before the Commission.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §§9-10B-16, 9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993;  
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**305-7-7-.04      Request For Hearing.**

(1) Any person aggrieved by an administrative action, other than the issuance of an emergency order, may file with the Commission a request for a hearing to contest such action within fifteen (15) days after notice to the aggrieved person of such action, or if no notice to the aggrieved person is given or required by the Act, within thirty (30) days of such action.

(2) Any person aggrieved by the issuance of an emergency order may file with the Commission a request for an expedited hearing to contest such action.

(3) A request for a hearing to contest an administrative action shall be made in writing and shall contain:

(a) the name, mailing address, and telephone number of the person making the request;

(b) a concise statement identifying the administrative action being contested;

(c) a concise statement of the threatened or actual injury suffered by the person as a result of the administrative action;

(d) a concise statement of the terms and conditions which the person proposes that the Commission should include in an order modifying or disapproving the administrative action; and

(e) the name, mailing address, and telephone number of the person's attorney, if represented by an attorney.

(4) A request for a hearing to contest an administrative action shall be filed with the Commission by delivering the same, either personally or by United States Postal Service to: Secretary, Alabama Water Resources Commission c/o Office of Water Resources Alabama Center for Commerce 401 Adams Avenue, Suite 360, Montgomery, Alabama 36104, by certified mail, return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993;  
Effective: February 22, 1994.

**305-7-7-.05      Notice Of Filing Of Request For Hearing.**

Within fifteen (15) days after the filing of a request for a hearing by any person to contest an administrative action, the Secretary shall serve a copy of such request upon the Office of Water Resources, Commission members, and such other persons as the Secretary deems appropriate

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993;  
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**305-7-7-.06      Parties.**

(1) In any hearing to contest an administrative action, the person making and filing a request for a hearing in accordance with rule 305-7-7-.04 of these Rules, shall be a party.

(2) The Office of Water Resources shall be a party in any hearing to contest an administrative action.

(3) In any hearing to contest an administrative action, any person whose application to intervene is granted by the Commission shall be a party.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993;  
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**305-7-7-.07      Intervention.**

(1) Upon timely application filed with the Commission, any person shall be permitted to intervene in any hearing to contest an administrative action when a statute confers an unconditional right to intervene, or when the applicant has an individual interest in the outcome of the hearing as distinguished from a public interest and the representation of the interest of the applicant by persons already made parties is inadequate.

(2) An application to intervene shall contain:

(a) the name, mailing address, and telephone number of the applicant;

(b) a concise statement identifying the administrative action being contested and, if possible, the name of the person who filed the request for a hearing to contest such action;

(c) a concise statement of the grounds for the application, including reference to any statute which confers an unconditional right to intervene or a statement of the individual interest of the applicant in the outcome of the hearing, and a statement as to why the representation of the interest of the applicant by persons already parties in the hearing is inadequate; and

(d) the name, mailing address, and telephone number of the applicant's attorney, if represented by an attorney.

(3) Within fifteen (15) days after the filing of an application to intervene in any hearing to contest an administrative action, the Secretary of the Commission shall serve a copy of such application upon each of the parties.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993; Effective: February 22, 1994.

### **305-7-7-.08      Consolidation And Severance.**

(1) The Commission may order consolidation, in whole or in part, of two or more hearings to contest an administrative action whenever it appears that such consolidation would expedite or simplify consideration of the issues and no party would be prejudiced thereby.

(2) The Commission may order severance, in whole or in part, of any hearings consolidated in accordance with paragraph (1) of this Rule whenever it appears that continued consolidation will not expedite or simplify consideration of the issues or will prejudice any party.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993; Effective: February 22, 1994.

### **305-7-7-.09      Prehearing Procedure.**

(1) The Commission may, on its own initiative or on the motion of any party, direct the parties to appear at a specified date, time and place for one or more conferences, prior to or during a hearing, to consider:

- (a) settlement of the contested matters;
- (b) identification, clarification, simplification, or limitation of the issues,
- (c) possibility of obtaining admissions of fact and of the genuineness of documents which will avoid unnecessary proof,
- (d) identification of facts, and the source thereof, of which official notice is proposed to be taken;
- (e) identification of persons with knowledge of any relevant matter;
- (f) identification of any expert witnesses expected to be called by any party to testify at the hearing and the substance of the facts and opinions to which the expert witnesses may be expected to testify and a summary of the grounds for each opinion;
- (g) possibility of submitting any evidence in verified form when the hearing will be expedited and the interests of the parties will not be prejudiced thereby, provided that the right of cross-examination of any witness shall not be denied; and
- (h) such other matters as may aid in the disposition of the contested actions.

(2) The Commission shall issue a written prehearing order reciting the action taken at the conference and the agreements made by the parties as to any of the matters considered. The order shall limit the issues for consideration at the hearing to those not disposed of by admissions or agreements of the parties. Such order, when entered, shall control the subsequent course of the hearing unless modified.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993, Adopted: December 9, 1993; Effective: February 22, 1994.

### **305-7-7-.10      Notice Of Rearing.**

(1) At least fifteen (15) days prior to the commencement of any hearing to contest an administrative action, other than the issuance of an emergency order, the Commission shall give written notice of the date, time, place, and nature of such hearing to the person requesting such hearing, to the Office of Water Resources, and to any others named or necessary parties. Such notice shall include a citation of the legal authority and jurisdiction under which the hearing is to be held, reference to the particular

sections of the statutes and Rules involved, and a concise statement of the matters asserted by the person requesting such hearing.

(2) Within such time as may be reasonable under the circumstances, the Commission shall give notice of the date, time, place, and nature of any hearing to contest the issuance of an emergency order to the person requesting such hearing and such other persons as the Commission deems appropriate.

(3) Any notice required by this Chapter to be given to any party shall be delivered to such party either personally, by registered mail, or certified mail return receipt requested.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993; Effective: February 22, 1994.

### **305-7-7-.11      Hearing Procedure.**

(1) A hearing to contest an administrative action shall be commenced when a reasonable time, not to exceed ninety (90) days, after the making and filing of a proper request for such hearing in accordance with rule 305-7-7-.04 of these Rules.

(2) The testimony of all parties and witnesses shall be made under oath administered by the Commission.

(3) All testimony or comments given in any hearing before the Commission shall be electronically or stenographically recorded, but need not be transcribed unless requested by any party who shall pay the cost of transcription, or as otherwise provided by this Chapter or the Act.

(4) The parties shall be bound by the rules of evidence prevailing in nonjury civil cases in the Circuit Court of the State of Alabama.

(5) Each party shall be entitled to respond and present evidence and arguments on all material issues involved in the hearing. The burden of going forward with the evidence shall be on the party requesting the hearing. Each party shall be entitled to present oral or written opening statements and closing arguments.

(6) A party may conduct cross-examinations as required for a full and true disclosure of facts, except as may be otherwise limited by law or the Alabama Rules of Civil Procedure.

(7) Each party shall be afforded an opportunity to contest facts proposed to be officially noticed.

(8) At any time after the commencement of a hearing to contest an administrative action the Commission may, on its own initiative or on the action of any party, adjourn the hearing to a later date, time and/or different location.

(9) A hearing to contest an administrative action is concluded on the date when all opening statements, evidence, other submissions, testimony, comments, and closing arguments have been received or heard by the Commission and all motions have been ruled upon.

(10) All hearings shall be open to the public, unless private hearings are otherwise provided by law.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §§9-10B-16, 9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993; Effective: February 22, 1994.

### **305-7-7-.12      Default.**

If a party fails to appear at a hearing after being given notice, the Commission may, if no adjournment is granted, proceed with the hearing and render a decision or dismiss the proceeding for failure to prosecute the appeal. Dismissal shall constitute a final determination of the contested matter.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993; Effective: February 22, 1994.

### **305-7-7-.13      Record.**

The record of a hearing to contest an administrative action shall include:

(1) The request for a hearing filed in accordance with rule 305-7-7-.04 of these Rules;

(2) All pleadings, motions, applications and intermediate rulings and orders;

(3) All evidence received or considered and all other submissions; provided, in the event that evidence in any proceeding contains information which the Office of Water Resources or the Commission has determined to be confidential or otherwise not available to the public under any law, rule, or regulation administered by the Office of Water Resources, the Commission shall take such steps as are necessary to prevent public disclosure of that information;



- (4) A statement of all matters officially noticed;
- (5) All questions and offers of proof, objections, and rulings thereon;
- (6) All proposed findings and exceptions;
- (7) All staff memoranda or data submitted to the Commission in connection with the consideration of the case unless such memoranda or data is protected as confidential or privileged; provided, that if such memoranda or data contain information of a proprietary and confidential nature, it shall be protected from public disclosure by the Commission; and
- (8) Any report of the Hearing Officer.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993;  
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**305-7-7-.14      Disposition Without Hearing.**

(1) Any party who filed a request for a hearing to contest an administrative action before the Commission in accordance with rule 305-7-7-.04 of these Rules, may at any time before the commencement of a hearing, withdraw the request by filing a notice thereof with the Secretary of the Commission, the Commission, or the Hearing Officer if one has been designated by the Commission.

(2) Any party who filed a request for a hearing to contest an administrative action on accordance with rule 305-7-7-.04 of these Rules may, at any time after the commencement of a hearing, file a motion for voluntary dismissal of the contest with the Commission.

(3) The parties to any hearing to contest an administrative action may, at any time after the filing of the request for a hearing, file with the Commission a proposed consent order modifying, approving, or disapproving the administrative action with a motion that the Commission issue an order in accordance therewith.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993;  
Effective: February 22, 1994.

**305-7-7-.15      Stay Of Action Pending Issuance Of Order.**

(1) Pending issuance of the Commission's order and upon application therefor made by any party, the Commission may stay

the implementation of an administrative action in accordance with such terms and conditions as it may deem proper.

(2) An application for a stay of the implementation of an administrative action shall state the grounds therefor and shall be filed with the Secretary of the Commission as provided for in rule 305-7-7-.04 of these Rules.

(3) No stay of implementation of an administrative action shall be granted without prior notice to each party and an opportunity to be heard before the Commission.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993; Effective: February 22, 1994.

### **305-7-7-.16      Filing And Service.**

(1) Except as otherwise provided in this Chapter, the filing of any request, application, motion, or other writing or paper with the Commission shall be made by delivery of such request, application, motion, or other writing or paper to: Secretary, Alabama Water Resources Commission c/o Office of Water Resources, Alabama Center for Commerce, 401 Adams Avenue, Suite 360, Montgomery, Alabama 36104

(2) A copy of every motion or other writing or paper filed with the Commission concerning an administrative action shall be served upon each of the parties. Except as otherwise provided in this Chapter, service upon a party shall be in the same manner and form as provided in the Alabama Rules of Civil Procedure.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993; Effective: February 22, 1994.

### **305-7-7-.17      Computation Of Time.**

In computing any period of time prescribed by this Chapter or by the Code of Ala. 1975, 5541-22-1, et seq., the day the administrative action is taken 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. A legal holiday shall be a day recognized as a legal holiday by the State of Alabama and/or as designated by the Governor of the State of Alabama. Whenever a party has the right or is required to do some act or to take some proceedings within a prescribed period after the service of a notice or other paper

upon them and the notice or paper is served upon them by mail, three (3) days shall be added to the prescribed period.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993;  
Effective: February 22, 1994.

**305-7-7-.18      Ex Parte Communications.**

(1) A party, or their attorney, shall not communicate, or cause another to communicate, with the Commission, a Commission member or Hearing Officer as to any matter which concerns a contested administrative action then pending, except:

(a) in the course of official proceedings concerning the contested administrative action;

(b) in writing if they promptly serve a copy on each party; or

(c) orally upon adequate notice to each party or their attorney.

(2) No Commission member or Hearing Officer shall initiate, entertain, or consider any communication with any party, or their attorney, concerning a contested administrative action then pending unless such communication is permitted as provided in this rule.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993;  
Effective: February 22, 1994.

**305-7-7-.19      Hearing Officers.**

(1) The Commission may hire or employ one or more Hearing Officers to conduct hearings of contested administrative actions. Such Hearing Officers shall be attorneys licensed to practice in the State of Alabama and shall be paid an amount prescribed by the Commission from Office of Water Resources funds, but shall not be subject to the authority, direction, or discretion of the Division Chief of the Office of Water Resources or any other person subject to the authority, direction, or discretion of the Division Chief of the Office of Water Resources.

(2) The Commission may delegate to a Hearing Officer, the power to conduct hearings of contested administrative actions of the Office of Water Resources and the Commission and all proceedings related thereto, in the same manner as provided in this Chapter for the conduct of such hearings and proceedings before the Commission.

The power to conduct hearings of contested administrative actions shall include the power to do all things which the Commission might do under this Chapter, except to issue an order modifying, approving, or disapproving an administrative action.

(3) The Hearing Officer shall prepare and submit to the Commission, within sixty (60) days after the conclusion of any hearing, a report containing findings of fact, conclusions of law, recommendations, and the record, including a transcript of all testimony or comments given in such hearing, for the consideration of the Commission. The report of the Hearing Officer shall also state the date on which the hearing was concluded.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993; Effective: February 22, 1994.

### 305-7-7-.20      Order.

(1) Within sixty (60) days after the conclusion of a hearing conducted by the Commission contesting an administrative action, or within sixty (60) days of the receipt by the Commission of a Hearing Officer's report, the Commission shall issue an appropriate order modifying, approving, or disapproving the contested administrative action.

(2) Any order of the Commission modifying, approving, or disapproving an administrative action shall be in writing and shall include findings of fact and conclusions of law,

(3) A copy of the order of the Commission shall be served upon each of the parties either personally, by registered mail, or by certified mail return receipt requested or by facsimile (fax) and shall be presumed received three (3) days after the date of mailing or in other cases the date of transmission of such order.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993; Effective: February 22, 1994.

### 305-7-7-.21      Majority Of Quorum Needed To Issue Order.

The Commission may not issue an order modifying, approving, or disapproving an administrative action without the concurrence of a majority of a quorum present at a regular or special meeting of the Commission, except that a determination made pursuant to §§9-10B-21 and 9-10B-22 of the Act shall require a favorable vote of at least 13 members of the Commission. A quorum shall be a

majority of the Commission. Recusal of a member of the Commission shall not affect the quorum.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993;  
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### 305-7-7-.22      Mandatory Recusal.

(1) Any Commission member who was not present at a hearing to contest an administrative action or who has not read the record, including a transcript of all testimony or comments given in a hearing and contained in the Hearing Officer's report, shall recuse themselves from voting to issue any order modifying, approving, or disapproving such administrative action and from participating in any discussions with other Commission members concerning the issuance of any such order.

(2) Any party to a hearing contesting an administrative action may file a timely motion to compel the recusal of any Commission member from voting to issue an order modifying, approving, or disapproving such administrative action, or to disqualify a Hearing Officer from conducting a hearing contesting such administrative action. Such motion shall be supported by a sufficient affidavit, made on personal knowledge, asserting conflict of interest, personal bias, or other matters contained in these Rules. The Commission shall determine the matter as part of the record of the hearing; however, the Commission member against whom conflict of interest, personal bias, or disqualification is asserted, shall recuse themselves from such determination.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993;  
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### 305-7-7-.23      Permissive Recusal.

Any Commission member may recuse themselves from voting to issue any order modifying, approving, or disapproving an administrative action, or from participating in any discussions with other members of the Commission concerning the issuance of any such order, if they believe themselves to have a conflict of interest or personal bias such as would prevent their fair and impartial consideration of the merits of the contest.

**Author:** Walter B. Stevenson, Jr.

**Statutory Authority:** Code of Ala. 1975, §9-10B-18.

**History:** Filed: October 20, 1993; Adopted: December 9, 1993;  
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