

DEPARTMENT OF ENVIRONMENTAL QUALITY

RESOURCE RECOVERY COMMISSION

GENERAL RULES

(By authority conferred on the department of natural resources by sections 33 and 63 of Act No. 306 of the Public Acts of 1969, as amended, being SS24.233 and 24.263 of the Michigan Compiled Laws)

PART 1. GENERAL PROVISIONS

R 299.5001 Purpose.

Rule 1. It is the purpose of these rules to establish policies and procedures of the resource recovery commission and the department of natural resources to implement the resource recovery act and prescribe the major functions of the commission and the department.

History: 1979 AC.

R 299.5002 Definitions.

Rule 2. (1) As used in these rules:

(a) "Commission" means the resource recovery commission of the department or its designated agent.

(b) "Department" means the department of natural resources.

(c) "Director" means the director of the department.

(d) "Environmental damage" means, in implementing the definition thereof in section 10 of the resource recovery act, a hazard or condition affecting the stable, natural environmental background of land, air, or the waters of the state.

(e) "Solid waste act" means Act No. 87 of the Public Acts of 1965, as amended, being S325.291 et seq. of the Michigan Compiled Laws.

(f) "Resource recovery act" means Act No. 366 of the Public Acts of 1974, being S299.301 et seq. of the Michigan Compiled Laws.

(g) "Waters of the state" means groundwaters, lakes, rivers and streams, and all other watercourses and waters within the confines of the state and also the Great Lakes bordering thereon.

(2) The terms defined in the resource recovery act shall have the same meaning when used in these rules.

History: 1979 AC.

PART 2. ORGANIZATION, OPERATIONS, AND PROCEDURES

R 299.5003 Commission; appointment and terms of members; vacancy; election of chairman and vice-chairman; quorum; transaction of business;

executive director; legal services; recall of chairman or vice-chairman.

Rule 3. (1) The commission, created by the resource recovery act, consists of the director of the department of natural resources and the state treasurer, or their designated representatives, and 9 members, appointed by the governor who represent the general public, environmentally aware and concerned citizens, townships, cities, counties, and private enterprise engaged in solid waste management or resource recovery. Of the members first appointed, 4 shall be appointed for 1 year, 3 for 2 years, and 2 for 4 years. A vacancy occurring other than by the expiration of a term shall be filled in the same manner as the original appointment for the balance of the unexpired term.

(2) The commission shall be organized to provide for annual election from its membership of a chairman and a vice-chairman. Six members constitute a quorum. All business is transacted by motion, support, and majority vote of those present and voting, including the chairman and vice-chairman, except for specific situations as may be otherwise required by law. The chairman, with approval of the commission, appoints an employee of the environmental protection branch of the department to serve as executive director to the commission. The attorney general provides the commission with legal service.

(3) Upon a satisfactory showing of wrongdoing, inefficiency, neglect of duties, or unethical conduct, the chairman or vice-chairman of the commission may be recalled from that respective elected office upon formal motion followed by a roll call vote with 8 members voting affirmatively therefor.

History: 1979 AC.

R 299.5004 Offices and meetings; schedules; agenda.

Rule 4. (1) The solid waste management division of the department shall maintain a central office in Lansing for the executive director.

(2) The commission shall meet at least once a month at various places in the state, either in or near Lansing, Michigan, or a pre-designated city elsewhere in the state. Each December, the commission shall post in the solid waste management division office for public inspection a schedule of its meeting dates and places for the calendar year. Changes in that schedule due to unforeseen circumstances shall be posted when established. Special additional meetings shall be held when necessary, with proper notification to directly affected persons, if any.

(3) The commission shall issue an agenda of each regular meeting at least 1 week before the meeting. It shall post a copy thereof in the solid waste management division office for public inspection, and copies are mailed to persons directly affected by matters thereon or to those requesting copies.

History: 1979 AC.

R 299.5005 Telephone votes or proxy votes prohibited; telephone poll; non-public discussions.

Rule 5. Business of the commission shall not be transacted except upon a vote publicly cast by the members of the commission who are present. Telephone votes or proxy votes shall not be permitted on any matter voted upon by the commission, except that a telephone poll of the time and location of meetings of the commission may be taken upon the discretion of the chairman.

History: 1979 AC.

R 299.5006 Availability of documents.

Rule 6. Documents of the commission shall be made available pursuant to part 6 of the general rules of the department entitled "Access to Documents," being R 299.3091 to R 299.3093 of the Michigan Administrative Code.

History: 1979 AC.

R 299.5007 Administration of resource recovery program.

Rule 7. The commission, pursuant to its authority as prescribed by the resource recovery act, shall administer a program that is designed to encourage, promote, and assist the development of resource recovery for solid waste throughout the state.

History: 1979 AC.

R 299.5008 Determination of unlawful pollution or environmental damage; proposed order and notice of hearing.

Rule 8. The commission may determine that a municipality is causing, or is about to cause, unlawful pollution or environmental damage, in which case, 2 years after the municipality has its solid waste management plan approved, the commission may develop a proposed order and notice of hearing, incorporating the proposed following actions when applicable:

- (a) A specific finding of unlawful pollution or potential unlawful pollution.
- (b) A specific finding of environmental damage or potential environmental damage.
- (c) A specific finding establishing that a lack of reasonable progress to implement an approved solid waste plan has not been made.
- (d) Identification of all other reasons for a commission determination.
- (e) Specification of a date for a written response to the proposed order.
- (f) Service of the municipality of the proposed order.

History: 1979 AC.

R 299.5009 Request for declaratory ruling.

Rule 9. Request for declaratory rulings from the commission shall be pursuant to R 299.3095 of the Michigan Administrative Code.

History: 1979 AC.

R 299.5010 Hearings and informal conferences; minutes; record; hearing officer; notices; orders.

Rule 10. (1) At its meetings, the commission may hold public hearings and statutory hearings as required by law, and hold informal conferences with persons who are requesting assistance, or who are aggrieved by an action of the commission or the department initiated under the act. The commission shall keep official minutes of all meetings, and shall record verbatim all hearings and conferences. The commission, under rules adopted by the department, may employ a hearing officer to hear contested cases and to prepare a record of the proceedings and proposal for a decision including findings of fact and conclusions of law.

(2) The commission shall issue notices of determination and hearing, and shall make orders of determination and final orders of determination, as provided by law.

History: 1979 AC.

PART 3. HEARINGS

R 299.5011 Procedures.

Rule 11. Section 11 of the resource recovery act describes the procedures for hearings and contested cases. All hearing and contested case procedures are also conducted pursuant to Act No. 306 of the Public Acts of 1969, as amended, being S24.201 et seq. of the Michigan Compiled Laws.

History: 1979 AC.

R 299.5012 Service of notices and orders; appearances.

Rule 12. (1) Service of notices of determination and hearing, orders of determination, and final orders of determination shall be made by certified mail upon the parties named in proceedings.

(2) An appearance at a hearing or proceeding held pursuant to the resource recovery act shall be in person, by a duly authorized agent, or by counsel.

History: 1979 AC.

R 299.5013 Stipulation or consent order.

Rule 13. A person cited by the commission to appear at a hearing noticed pursuant to the resource recovery act, and who desires to dispose of the contested case by stipulation or consent order, may mail to the commission, not later than 10 days

before the date set for hearing, his written consent to the terms and conditions of the proposed order or other form of action as set forth in the notice of determination and hearing. Agreement between the parties on the terms and conditions of a stipulation or consent order constitutes sufficient cause for the commission to dispose of the case without further hearing.

History: 1979 AC.

R 299.5014 Referral to hearing officer; duties of hearing officer; filing record of proceedings and proposal; copy of proposal.

Rule 14. That part of a hearing in a contested case in which testimony and evidence are to be taken may be referred to a hearing officer who shall be designated and authorized by the commission to preside at the hearing. The hearing officer shall hear the evidence and prepare a record of the proceedings and a proposal for a decision, including findings of fact and conclusions of law. The hearing officer may permit the hearing record to remain open to receive additional written testimony for a period not to exceed 2 weeks. The record of the proceedings and proposal for decision shall be filed with the commission as early as possible after completion of the hearing. A copy of the proposal for decision shall be transmitted to each member of the commission and shall be served by certified mail on all other parties to the proceedings.

History: 1979 AC.

R 299.5015 Inspection of files and records; files and records as evidence.

Rule 15. The files and records of the commission relative to the hearing specified in notices of determination and hearing, except those materials exempted by section 22 of Act No. 306 of the Public Acts of 1969, as amended, being S24.222 of the Michigan Compiled Laws, shall be available for inspection before or at hearings held by the commission or the hearing officer, and the whole or part thereof may be offered at a hearing as evidence on behalf of the commission.

History: 1979 AC.

R 299.5016 Commission hearing; time; briefs or exceptions; oral argument; final orders; findings.

Rule 16. (1) The commission shall hold a hearing not less than 4 weeks after receipt by the commission members of a hearing officer's report on the proposal for decision, and on such arguments thereon, exceptions thereto, or appeals therefrom as may be filed timely in writing by either party. To be considered at the hearing, written briefs or exceptions shall be received at the office of the executive director of the commission in Lansing not later than 2 weeks before the date set for hearing. An opportunity to present oral argument to the commission may be provided at the hearing noticed for that purpose.

(2) A certified copy of a final order of determination adopted in a contested case shall be prepared and served by certified mail on the contesting parties or their attorneys, together with the commission's finding containing a resume of the facts and grounds for decision.

(3) A final order of determination or decision of the commission following a hearing shall be conclusive unless reviewed in accordance with and subject to section 11(3) of the resource recovery act, being S299.311(3) of the Michigan Compiled Laws.

History: 1979 AC.