

## ***MDEQ Proposes New Rules for Administrative Hearings***

The Michigan Department of Environmental Quality (MDEQ) Office of Administrative Hearings (OAH) has proposed regulations to set forth procedures for conducting “contested case” hearings under the Administrative Procedures Act.

Many Michigan statutes, including several environmental statutes, provide for a right to an administrative hearing, often called a “contested case,” in order to resolve disputes regarding administrative agency actions. The Administrative Procedures Act contains general provisions regarding contested case hearings. Such hearings generally take place before an Administrative Law Judge, who is an employee of a state administrative agency but who retains authority to make independent decisions. The MDEQ OAH, which conducts contested case hearings for MDEQ, has proposed regulations providing more detailed procedures for conducting contested case hearings than those specified in the Administrative Procedures Act.

The purpose of the proposed rules is set forth in proposed Rule 2: “These procedural rules shall be construed to secure a fair, efficient, and impartial determination of the issues presented in contested cases consistent with due process and safeguarding the rights of the parties.”

The proposed rules would govern all contested case proceedings before MDEQ, as well as requests for declaratory rulings.

The proposed rules specify the information that must be included in a petition for a contested case and when the hearing procedures commence. Other provisions specify how to disqualify an administrative law judge who may be personally biased or otherwise unqualified to render a fair decision.

Procedures for conducting prehearing conferences and other prehearing matters, including the filing of motions and setting a schedule for a hearing, are covered by the proposed rules. In addition, the proposed rules specify where hearings may be held, the types of evidence that are admissible, and the conduct of opening statements and closing arguments.

The proposed rules also prescribe the process for rendering a decision, including the issuance of a proposal for decision, an opportunity for the parties to submit written arguments supporting or opposing the proposal for decision, an opportunity to request oral argument on a proposal for decision and the issuance of a final decision after the appropriate procedures have been followed.

Declaratory ruling procedures are also specified in the proposed rules. A “declaratory ruling” is a decision “as to the applicability of a licensing statute, rule, or order administered by the department to an actual state of uncontested facts.” According to the proposal, “[r]equests regarding enforcement issues are not a proper subject for a declaratory ruling.”

MDEQ will make a final decision regarding these regulations after it reviews any public comments that were submitted by August 6, 2002. 2002 MR 12.

S. Lee Johnson