

CHAPTER 7000
MINNESOTA POLLUTION CONTROL AGENCY
PROCEDURAL RULES

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7000.0100 DEFINITIONS.

Subpart 1. **Scope.** As used in this chapter the following words shall have the meanings given them.

Subp. 2. **Agency.** "Agency" means the Minnesota Pollution Control Agency, as constituted pursuant to Minnesota Statutes, section 116.02, subdivision 1.

Subp. 2a. **Commissioner.** "Commissioner" means the chief executive officer of the Minnesota Pollution Control Agency.

Subp. 3. **Days.** "Days" means calendar days.

Subp. 4. [Repealed by amendment, L 1987 c 186 s 15]

Subp. 5. **Emergency.** "Emergency" means imminent and substantial danger to the health and welfare of the people of the state, or any part thereof, as a result of the pollution of air, land, or water.

Subp. 6. **Administrative law judge.** "Administrative law judge" means the person assigned by the chief administrative law judge pursuant to Minnesota Statutes, section 14.50, to preside at a rulemaking hearing or contested case hearing.

Subp. 7. **Order.** "Order" means any written command or direction made by the agency or the commissioner, as provided by law.

Subp. 8. **Permit.** "Permit" means every discharge, emission, and disposal authorization, every construction, installation, or operation authorization, and every other agency authorization designated "permit" in Minnesota Statutes, chapters 115 and 116, as now in force or hereafter amended, including Minnesota Statutes, sections 115.03, subdivision 1; 115.07; 116.07, subdivision 4, clause (a); 116.081; and 116.091. "Permit" does not include an "order," "variance," or "stipulation agreement" as defined in this part, and does not include a "certification."

Subp. 9. **Person.** "Person" means any human being, any municipality or other governmental or political subdivision or other public department or agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agency, legal entity, other than a court of law, or any legal representative of any of the foregoing, but does not include the agency.

Subp. 10. **Public informational meeting.** "Public informational meeting" means a meeting called by the agency to solicit public comment and statements on a matter before the agency.

Subp. 11. **Schedule of compliance.** "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

Subp. 12. **Service; serve.** "Service" or "serve" means personal service or, unless otherwise provided by law, service by first class United States mail, postage prepaid, addressed to a person or party at his or her last known address. Service by mail is complete upon the placing of the item served in the mail. Agencies of the state of Minnesota may also serve by depositing the item to be served with the Central Mailing Section, Publications Division, Department of Administration.

Subp. 13. **Stipulation agreement.** "Stipulation agreement" means any agreement entered into between the agency and any person or persons establishing a schedule for com-

pliance with applicable statutes, rules, or standards by designated dates, or otherwise providing for settlement for noncompliance with applicable statutes, rules, or standards.

Subp. 14. **Variance.** “Variance” means an authorization from the agency that grants an exemption from the requirements of any rule or standard of the agency and which does not require compliance with the rule or standard for the duration of the authorization. “Variance” does not include permits, stipulation agreements, schedules of compliance, or any modifications thereto, or any order of the agency which allows interim operation during completion of a compliance program, nor does variance include a time extension of an existing variance.

Statutory Authority: *MS s 116.07 subd 3*

History: *L 1984 c 640 s 32; L 1987 c 186 s 15*

7000.0200 COMPUTATION OF TIME.

In computing any period of time prescribed by this chapter, the day of the last act, event, or default from which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday.

Statutory Authority: *MS s 116.07 subd 3*

7000.0300 DUTY OF CANDOR.

In all formal or informal negotiations, communications, proceedings, and other dealings between any person and any member, employee, or agent of the agency, it shall be the duty of each person and each member, employee, or agent of the agency to act in good faith and with complete truthfulness, accuracy, disclosure, and candor.

Statutory Authority: *MS s 116.07 subd 3*

History: *8 SR 243*

7000.0400 OFFICERS, COMMITTEES, AND DUTIES.

Subpart 1. **Officers.** The officers of the agency are the chairperson, vice chairperson, and commissioner.

Subp. 2. **Electing the chairperson.** The chairperson must be elected by a majority of all agency members at each annual meeting for a term of one year. No member elected to the office of chairperson may serve in that capacity more than two full terms consecutively.

Subp. 3. **Electing the vice chairperson.** The vice chairperson must be elected by a majority of all agency members at each annual meeting for a term of one year. No member elected to the office of vice chairperson may serve in that capacity more than two full terms consecutively.

Subp. 4. **Duties.** The chairperson shall have the duties prescribed by rule of the agency. The vice chairperson shall discharge all duties of the chairperson during the absence or disability of the chairperson. The commissioner shall have the duties prescribed by statute or by rule of the agency.

Subp. 5. **Vacancies.** Upon a vacancy (for example, death, resignation, or removal) in the office of chairperson of the agency, the vice chairperson shall become the chairperson until such time as new officers are elected at the next annual meeting. Upon a vacancy in the office of vice chairperson, a special election shall be held at the next regular meeting, for a term ending at the next annual meeting.

Subp. 6. **Removal.** The chairperson or vice chairperson is removed from office by the affirmative vote of two-thirds of all members of the agency, this vote to be taken at the next regular meeting following the motion for removal.

Subp. 7. **Committees.** The agency may from time to time establish committees of agency members as it may deem necessary and desirable to facilitate its work. All committee recommendations shall be duly submitted to the agency for appropriate action.

Subp. 8. **Execution of documents.** Contracts, stipulation agreements, and other documents approved by the agency pursuant to law shall be executed on the agency's behalf by the chairperson and the commissioner.

Statutory Authority: *MS s 116.07 subd 3*

History: *L 1987 c 186 s 15*

7000.0500 AGENCY MEETINGS.

Subpart 1. **Regular meetings.** Twelve regular monthly meetings of the agency shall be held each calendar year. A date for each regular meeting shall be set by the agency. The annual meeting, also conducted as a regular meeting, shall be held during the month of July of each year. The time and place of each regular meeting, including the annual meeting, shall be designated by the chairperson. The chairperson may direct that any regular meeting, except the annual meeting, be postponed or advanced.

Subp. 2. **Special meetings.** The chairperson, or in the chairperson's absence the vice chairperson, or in their absence the commissioner of the agency, may call a special meeting of the agency when, in his or her opinion, a meeting is necessary or desirable. The chairperson shall call a special meeting upon receipt of a request from three members of the agency.

Subp. 3. **Notice of regular meetings.** The commissioner shall give written notice of the time and place of each regular meeting to all agency members at least ten days prior to any regular meeting.

Subp. 4. **Notice of special meetings.** The chairperson or the commissioner shall give as much notice as possible to all agency members prior to any special meeting. This notice shall state the time, place, and subject matter of the meeting. Except as provided in part 7000.0600, this notice shall be given at least two days prior to any special meeting.

Subp. 5. **Public notice of meetings.** The commissioner shall give public notice of the time and place of regular and special meetings in the manner provided in subpart 7.

Subp. 6. **Agenda preparation.** At least ten days prior to all regular meetings of the agency, the commissioner shall prepare a proposed agenda of business to be conducted at the meeting. Except when exigencies of time and circumstances warrant, an agenda must be prepared for all special meetings as far in advance of the special meeting as possible. The agenda must include a list of all matters to be considered at the meeting. Agency members may place items on the agenda by notifying the commissioner at least 14 days prior to a regular meeting. Citizens may request in writing that items be placed on the agenda by notifying the commissioner at least 14 days prior to a regular meeting. The commissioner may in his or her discretion determine whether to place a citizen item on the agenda, but the commissioner shall advise the agency of all items the commissioner decides not to place on the agenda. Items may be placed on the agenda for a special meeting in the same manner as for regular meetings.

Subp. 7. **Notice of agenda.** At least ten days prior to the regular meeting, the commissioner shall mail a copy of the agenda to every member of the agency, to each person directly affected by a decision of the agency on an agenda matter, and to each person the commissioner deems appropriate in the circumstances. The agenda for a regular meeting must be available for public inspection in the agency offices at least ten days prior to the regular meeting for which the agenda has been prepared. The agenda for a special meeting must be available for public inspection in the agency offices at least two days prior to the meeting, and as far in advance of the meeting as reasonably possible, except as provided in part 7000.0600.

Subp. 8. **Quorum.** A majority of the members of the entire agency constitute a quorum, and a quorum must be present for the transaction of business.

Subp. 9. **Presiding officer.** The chairperson shall preside at all agency meetings. The vice chairperson shall preside in the chairperson's absence. The remaining members shall elect a presiding officer from among the members present whenever the chairperson and vice chairperson are both absent. The presiding officer shall serve only for that meeting or until the chairperson or vice chairperson shall arrive.

Subp. 10. **Agenda.** The first order of business at the meeting shall be adoption of the agenda, which may be amended or modified by the agency at this time.

Subp. 11. **Agenda items.** No matter may be considered at a regular agency meeting unless it has been placed on the agenda and all relevant public information has been made available for public inspection at least ten days prior to the regular meeting, except where the agency in its discretion by unanimous vote of those members present determines otherwise. Public information regarding matters to be considered at a special meeting must have been available for public inspection at least two days prior to the meeting, and as far in advance of the special meeting as reasonably possible, except as provided in part 7000.0600.

Subp. 12. **Voting.** Except as otherwise specifically provided, a majority vote of the entire agency is necessary to make any decision. All members present, including the presiding officer, shall vote or abstain on every matter presented for decision. If the final vote taken on an agenda item does not result in a decision, but half or more of the voting members vote affirmatively, the matter must be placed on the agenda of the next regular monthly meeting or considered at a special meeting, unless the agenda item concerns rescission of a decision.

Subp. 13. **Decisions at open meetings.** All regular and special meetings of the agency shall be open to the public, and all decisions of the agency shall be made at such meetings.

Subp. 14. **Reconsideration of decision.** Any decision of the agency may be reconsidered if an agency member who voted on the prevailing side makes a motion for reconsideration and if the motion for reconsideration is made during the course of the same meeting at which the original decision was made.

Subp. 15. **Rescission of decision.** Upon placement on the agenda by an agency member as provided in subpart 6 and upon the affirmative vote of two-thirds of the entire agency, any decision of the agency or commissioner may be rescinded.

Subp. 16. **Record of meetings.** The agency shall keep full and accurate minutes of all meetings, including a record of all votes of individual members.

Subp. 17. **Parliamentary procedure.** Except as specifically provided in this chapter, Robert's Rules of Order shall govern any question of parliamentary procedure that may arise at any meeting of the agency.

Statutory Authority: *MS s 116.07 subd 3*

History: 8 SR 243; L 1987 c 186 s 15

7000.0600 DECLARATION OF EMERGENCY.

Subpart 1. **Delegation to commissioner.** The agency herewith delegates to the commissioner the authority to exercise, in accordance with the limitations and procedures hereinafter enumerated, emergency powers granted to the agency by Minnesota Statutes, section 116.11.

Subp. 2. **Notification to agency.** If the commissioner anticipates that emergency conditions may be approaching, the commissioner shall keep the agency informed of these conditions by any means practicable. Upon declaration of an emergency by the commissioner, the commissioner shall immediately notify all agency members that an emergency has been declared, and shall poll the members on the action taken by the commissioner. Notification may be by telegram, telephone, or any other means practicable. The unavailability of any agency member shall not postpone the implementation of any emergency orders. If, pursuant to the poll, a majority of all members of the agency disapprove of the declaration of emergency, the declaration and the action taken shall be discontinued immediately. If, pursuant to the poll, a majority of all members of the agency disapprove of the action taken by the commissioner, but agree that an emergency exists, the action of the commissioner shall remain in effect until the agency orders different action to be taken.

Subp. 3. **Duration.** Any action taken by the commissioner pursuant to the declaration of emergency shall remain effective according to the following provisions:

A. for not to exceed three days, unless approved by a majority of the members of the agency pursuant to the poll required in item B;

B. if extended beyond three days, as provided in item A, then the period until the date of the next agency meeting, unless extended by the agency at the meeting;

C. items A and B notwithstanding, until notice, hearing, and determination are effected pursuant to law; or

D. until discontinued by the declaration of the commissioner or by majority vote of the agency.

Subp. 4. **Report.** Any action taken by the commissioner pursuant to a declaration of emergency must be included on the agenda of the next meeting of the agency, at which time the commissioner shall report to the agency on the status of the emergency.

Subp. 5. **Agency action.** The agency may by majority vote exercise its emergency powers. The action of the agency taken in an emergency situation shall remain effective until dis-

continued by majority vote of the agency or until notice, hearing, and determination are effected pursuant to law.

Subp. 6. **Notice.** The notice requirements of part 7000.0500 do not apply when the agency or the commissioner is considering the exercise of emergency powers, but the agency and the commissioner shall give such notice to the public as is possible under the circumstances.

Subp. 7. **Emergency powers.** Nothing contained in this chapter shall be construed to preempt, repeal, or conflict with this part or any other rule or statute that provides for acts to be taken or procedure to be followed by the agency or the commissioner in an emergency.

Statutory Authority: *MS s 116.07 subd 3*

History: *L 1987 c 186 s 15*

7000.0700 VARIANCES.

Subpart 1. **Scope.** This part governs the procedure for issuance of all variances by the agency, except to the extent otherwise specifically provided by statute or rule.

Subp. 2. **Written application.** In no case shall the agency grant a variance unless a written application has been made to the agency. The application must be served upon the commissioner.

The written application must contain:

A. the name and address of the applicant and the person who prepared the application;

B. the signature of the applicant or authorized representative;

C. a description, including the location, of the business, plant, system, or facility for which a variance is sought;

D. the nature of the variance sought, including an identification of the applicable rules or standards from which a variance is sought, the period of time for which it is sought, and the reasons relied upon by the applicant in requesting the variance;

E. if the applicant seeks a variance primarily on grounds of economic burden, financial statements prepared or approved by a certified public accountant, or other person acceptable to the agency, which shall fairly set forth the status of the business, plant, system, or facility for each of the three financial years immediately preceding the year of the application, and an analysis of the effect of such financial status if the variance is not granted (if the business, plant, system, or facility has not been in operation for this period, then the financial statements and analysis must be based on the most complete data available);

F. if the applicant seeks a variance on grounds that compliance is not technologically feasible, a report from a registered professional engineer, or other person acceptable to the agency, stating fully the reasons why compliance is not technologically feasible;

G. other additional data or information that is required by any applicable agency rule or standard; and

H. any other relevant data or information that the agency or the commissioner deems essential to a determination on the application, including but not limited to the following:

(1) a general description of the materials handled or processed by the applicant that are pertinent to the subject application, and a statement of the nature and quantity of the materials being discharged, emitted, or disposed of, and that can reasonably be expected to be discharged, emitted, or disposed of during the period of the proposed variance, and proposed methods for the control of these materials;

(2) a comprehensive proposed plan indicating the steps to be taken by the applicant during the period of the variance, even if the applicant is seeking a permanent variance, to reduce emission levels or discharges to the lowest limits practical;

(3) a concise statement of the effect upon the air, water, and land resources of the state and upon the public and other persons affected, including those residing in the area where the variance will take effect, which will result from agency approval of the requested variance;

(4) a statement of the alternatives to the proposed operation under the variance which have been considered by the applicant; and

(5) a concise statement of the effect on the establishment, maintenance, operation, and expansion of business, commerce, trade, traffic, and other economic factors that may result from approval and from denial of the requested variance.

Subp. 3. Review of applications. The commissioner shall review all variance applications for completeness. If the commissioner finds that the application is incomplete or otherwise deficient, the commissioner shall promptly advise the applicant of the incompleteness or deficiency. The commissioner shall suspend further processing of the portion of the application affected by the deficiency until the applicant has supplied the necessary information or otherwise corrected the deficiency.

Subp. 4. Preliminary determination; preparation of public notice. After a variance application is complete, the commissioner shall make a preliminary determination as to whether the variance should be issued or denied. The commissioner shall prepare a notice of the completed application and the preliminary determination. The notice must include a statement as to the manner in which the public may submit comments on the variance application and the manner in which a person may file a request pursuant to part 7000.1000, subpart 2 or 7000.1500, subpart 2 asking that a contested case hearing or public informational meeting be held on the variance application. The notice must provide the public 30 days in which to submit these comments or requests.

Subp. 5. Availability of public notice. The commissioner shall make a copy of the public notice available at the main agency office and at the applicable agency regional office.

Subp. 6. Mailing of public notice. The commissioner shall mail a copy of the public notice to the applicant, to all persons who have registered their names on the mailing list established under Minnesota Statutes, section 14.14, subdivision 1, and to any person upon request.

Subp. 7. Circulation of public notice. The commissioner shall circulate the public notice within the geographical area of the facility or activity that is the subject of the variance request. The commissioner shall designate the geographical area, which shall as a minimum include the county in which the facility or activity is or will be located.

The commissioner shall circulate the public notice in one or more of the following ways: posting the notice in the post office, public library, or other buildings used by the general public in the designated geographical area; posting the notice at or near the entrance of the applicant's premises, if located near the facility that is the subject of the variance application; or publishing the notice in one or more newspapers or periodicals of general circulation in the designated geographical area.

Subp. 8. Agency decision. The agency shall make all final decisions on variance applications. The agency shall approve or deny each application. The agency may grant a variance upon such conditions as the agency may prescribe.

If a contested case hearing has been held, the agency shall act on each variance application as expeditiously as possible after receipt of the administrative law judge's recommendation, or after submission of the application if no hearing is held. Any person may submit to the agency an oral or written statement or recommendation regarding a variance application in accordance with part 7000.1500.

Subp. 9. Notification. Every decision of the agency on a variance application shall be served on the applicant and upon all persons who have submitted to the agency a request to receive a copy of the decision.

Subp. 10. Agency remedies preserved. During the pendency of a variance application, the agency may, in its discretion, avail itself of any legal, equitable, or administrative remedy provided by law for violation of Minnesota Statutes or rules.

Subp. 11. Amendment or modification. In the event a variance has been granted by the agency, the person holding the variance may file with the agency at any time a written application for modification or amendment of the variance. The application for modification or amendment, and the agency's consideration of the application, shall comply with the requirements of this chapter. This provision shall not apply to a time extension of an existing variance.

Subp. 12. Assignment. No variance may be assigned or transferred by the holder without the approval of the agency.

Subp. 13. **Violation by variance holder.** Any variance holder who violates a provision of the variance is subject to revocation or suspension of the variance, or other sanction as authorized or provided by law. No revocation, suspension, or other sanction may be imposed before notice to the variance holder and opportunity for a contested case hearing.

Statutory Authority: *MS s 116.07 subd 3*

History: *L 1984 c 640 s 32; L 1987 c 186 s 15*

7000.0800 STIPULATION AGREEMENTS.

Subpart 1. **Data or information.** Whenever any person or the agency proposes that a stipulation agreement be entered into, the person who is proposed as a signer of the stipulation agreement shall furnish such information or data as is deemed essential by the agency or the commissioner in making a determination regarding the proposed stipulation agreement.

Subp. 2. **Interim operation.** The agency may in its discretion provide under the terms of a stipulation agreement for the operation of existing systems pending completion of compliance under the schedule therefor, and under such further conditions as it may prescribe in the stipulation agreement. Completion of performance under the stipulation agreement shall not relieve any party thereto of any requirement of law or agency rules to apply for all necessary permits or variances.

Statutory Authority: *MS s 116.07 subd 3*

History: *L 1987 c 186 s 15*

7000.0900 INFORMAL COMPLAINTS.

Any person may file with the commissioner an informal complaint concerning a pollution source. The informal complaint may be either written or oral and must state the name and address of the person filing the informal complaint, the name and address of the alleged pollution source, and a description of the matter giving rise to the complaint. A person making an oral complaint may be asked to submit his or her complaint in writing. Upon receipt of this informal complaint, the commissioner shall make such investigation as is deemed necessary and appropriate. Within 20 days after the complaint is filed, the commissioner shall notify the person responsible for the alleged pollution source that an informal complaint has been filed. At any time after a complaint is filed, the agency may take whatever action it deems necessary and appropriate. The person who filed the complaint shall be notified of the disposition of his or her complaint. In all actions taken pursuant to this part, the commissioner shall comply with the provisions of Minnesota Statutes, sections 13.01 to 13.86.

Statutory Authority: *MS s 116.07 subd 3*

History: *L 1987 c 186 s 15*

7000.1000 CONTESTED CASE HEARINGS.

Subpart 1. **Objectives.** All contested case hearings required by statute or rule and all contested case hearings ordered by the agency shall be conducted in accordance with the procedures set forth in the rules of the Office of Administrative Hearings, parts 1400.5200 to 1400.8500, and in accordance with this part. No person's rights, privileges, or duties may be determined without regard for fundamental fairness. To that end, this part is intended to assure that all parties are provided a just and speedy contested case hearing.

Subp. 2. **Public requests for contested case hearing.** Any person may request the agency to hold a contested case hearing on any matter. The person may submit this request at an agency meeting if the matter is on the agenda for consideration by the agency. If the matter is not on an agenda, the person shall request the commissioner to place the matter on the agenda for the next agency meeting. This request must be made pursuant to part 7000.0500, subpart 6. The agency shall not consider a request for a contested case hearing on a matter unless the matter is properly on the agenda for the agency meeting. The person requesting that a hearing be held shall accompany the request with a document stating the person's reasons for requesting the hearing, the manner in which the person has been aggrieved, and the relief requested.

Subp. 3. **Agency decision to hold contested case hearing.** The agency shall grant the hearing request or may order upon its own motion that a contested case hearing be held if it finds all three of the following:

A. that there is a material issue of fact or of the application of fact to law related to the matter pending before the agency;

B. that the agency has the jurisdiction to make determinations on the issue of fact or of the application of facts to law; and

C. that there is a reasonable basis underlying the issue of fact or of the application of facts to law such that the holding of a contested case hearing would aid the agency in making a final determination on the matter.

If the agency decides not to hold a contested case hearing the agency may, in its discretion, order that a public informational meeting be held as provided in part 7000.1500, subpart 3.

Subp. 4. Parties. Any person whose legal rights, duties, or privileges may be determined in the matter for which the contested case hearing is to be held is a party. When a contested case hearing is held pursuant to a request for a hearing, the person or persons requesting the hearing are parties to the matter. In any hearing on an application for a permit or variance, the applicant is a party. The commissioner is a party in any hearing to issue, reissue, modify, deny, revoke and reissue, revoke without reissuance, or suspend a permit or variance. Any person who has properly intervened in the contested case is a party.

Subp. 5. Ex parte communication. During the pendency of a contested case, beginning at the time that the agency initiates the contested case hearing and ending upon final disposition of the contested case, no agency member may communicate with or accept a communication from any person concerning the subject matter of the contested case hearing except under the following conditions:

A. if the communication is in writing, copies of the communication must have been sent to all parties to the matter and to all other agency members; or

B. if the communication is oral, it must take place at a public meeting after reasonable notice of the time and place of the meeting has been given to all parties and to all other agency members.

Subp. 6. Informal disposition. Informal disposition by stipulation, agreed settlement, or consent order may be made of any matter for which a contested case hearing is scheduled, or any contested issue, at any point in the hearing, subject to agency approval of this informal disposition or its terms.

Subp. 7. Consolidation. The agency may consolidate two or more matters for which contested case hearings are scheduled and hold a joint hearing. The requirements of these rules shall be followed when consolidation is ordered. Any party may object to consolidation by filing a petition for severance with the agency at least 20 days before the hearing. The agency may sever the matter to which the petitioner is a party from the joint hearing.

Subp. 8. Petition for reopening of hearing and remand to administrative law judge. At any time up to ten days after the agency's final decision, any party to a contested case hearing may request that the hearing be reopened and the matter be remanded to the administrative law judge by filing a petition. This petition shall contain the name and address of the petitioner, the agency designation for the matter, and the reasons for the petition.

The agency shall grant or deny a petition as part of the record. This petition shall be granted upon a showing that there are irregularities in the hearing, errors of law, or newly discovered material evidence of such importance as likely to have altered the outcome of the hearing. A petition may be granted upon a showing of good cause for failure to answer or appear at the hearing. Evidence and argument may be presented at the discretion of the agency in written or oral form, or both, by any party to the matter with respect to the granting or denial of the petition.

Subp. 9. Decision after reopening and remand. The decision after reopening of the hearing and remand to the administrative law judge must be made in the same manner prescribed for the decision after a contested case hearing.

Statutory Authority: *MS s 116.07 subd 3*

History: *8 SR 243; L 1984 c 640 s 32; L 1987 c 186 s 15*

7000.1100 FINAL DECISIONS AND ORDERS IN CONTESTED CASES.

Subpart 1. **Time for filing comments and exceptions.** The agency shall take no final action with respect to a matter for which a contested case hearing has been held for at least 20 days after the date of issuance of the administrative law judge's report. Any person may file written comments on or exceptions to the findings of fact, conclusions, and recommendations of the administrative law judge at any time up to ten days prior to the agency meeting at which the matter will be considered for final decision. However, these comments and exceptions must be based solely upon the record of the hearing.

Subp. 2. **Service of comments and exceptions.** Any person who files written comments on or exceptions to the administrative law judge's report shall serve these comments or exceptions upon each individual agency member and upon all parties.

Subp. 3. **Appearance at agency meeting.** Any party may appear at the agency meeting at which the matter will be considered for final decision and present comments and arguments, limited to evidence in the record, subject to time limitations and conditions that the chairperson prescribes.

Subp. 4. **Agency decision.** The agency shall make all final decisions and orders in those matters for which a contested case hearing has been held. The agency's decision or order must be based solely on the record from the hearing. The decision or order must be accompanied by a concise statement of the findings and conclusions upon each contested issue of fact necessary to the decision.

Subp. 5. **Time.** The agency shall reach a final decision or order on the matter as expeditiously as possible after receipt of the administrative law judge's recommendation.

Subp. 6. **Manner.** The commissioner shall place the matter on the agenda for an agency meeting. The decision or order must be announced at the agency meeting, and in all cases the decision or order must be entered in the minutes of the agency meeting.

Subp. 7. **Alternatives.** The agency may accept, modify, or reject the recommendation of the administrative law judge, in whole or in part. The agency may remand the matter to the administrative law judge for further proceedings.

Subp. 8. **Notice.** Every final decision or order in a matter for which a contested case hearing has been held must be served on all parties to the matter and on all persons who have submitted to the agency a request to be notified of the decision.

Statutory Authority: *MS s 116.07 subd 3*

History: *L 1984 c 640 s 32; L 1987 c 186 s 15*

7000.1200 INSPECTION OF PUBLIC RECORDS.

All records and data of the agency that are public within the meaning of Minnesota Statutes, sections 13.01 to 13.86 and 116.075, or copies, are available for inspection and copying by any person, Monday through Friday, excluding legal holidays, between the hours of 9:00 a.m. and 4:00 p.m. at the agency offices. No public records shall be removed from agency offices. Any inspection or copying of records or data must be made in the presence of an officer, employee, or agent of the agency. The agency may charge and collect a reasonable fee for the reproduction of any public records.

Statutory Authority: *MS s 116.07 subd 3*

7000.1300 CONFIDENTIAL INFORMATION.

Subpart 1. **Certification.** In order to certify records, information, or objects for the confidential use of the agency, an owner, operator, or other person qualified by law, shall submit to the commissioner a written statement setting forth those statutory grounds that require the agency to keep the records, information, or objects confidential. Any certification of records or information that applies to water pollution sources must be approved by the commissioner. These records and information shall not be released unless the commissioner denies the certification request. Whenever the commissioner denies a certification request, the commissioner shall notify the certifier of the denial at least three working days prior to making the records or information available to the public. The certifier may withdraw the records or information if such an option is available.

Subp. 2. **Filing.** All certified records, information, or objects must be appropriately identified and segregated at the offices of the agency.

Subp. 3. **Agency use.** Certified records, information, and objects, when approved by the commissioner if required, are only for the confidential use of the agency. However, confidential information may be used by the agency in compiling or publishing analyses or summaries relating to the general condition of the state's water, air, and land resources so long as these analyses or summaries do not identify any owner or operator who has so certified.

Subp. 4. **Release authorization.** Confidential information may be released when the agency is specifically authorized to do so by statute.

Subp. 5. **Denial of request.** Certified records or information that apply to water pollution sources may be released if the commissioner denies the certification request. The provisions of subpart 1 apply to this release.

Subp. 6. **Federal law.** Regardless of whether records or information are certified confidential, the agency may disclose any information which it is obligated to disclose in order to comply with federal law and regulation, to the extent and for the purposes of such federally required disclosure. Whenever the agency is required to release certified information pursuant to federal law, the commissioner shall notify the certifier of this requirement at least three working days prior to making the records or information available to the public. The certifier may withdraw this information if such an option is available.

Subp. 7. **Use in contested case hearings.** Confidential information that is relevant to a matter for which a contested case hearing is being held and which has been made a part of the record, may be considered by the agency in reaching a decision on the matter, but must not be released to the public unless the agency is required by statute to release it. When the agency is required by statute to release the information at the public hearing, the person who certified the information may withdraw the information, but the information shall not be considered by the agency or the administrative law judge in reaching a decision or recommendation on the matter. Whenever confidential information is considered by the agency or an administrative law judge in reaching a decision or recommendation on a matter, that fact must be so stated on the record.

Statutory Authority: *MS s 116.07 subd 3*

History: *8 SR 243; L 1984 c 640 s 32; L 1987 c 186 s 15; 17 SR 1279*

7000.1400 CONFLICT OF INTEREST.

Any member of the agency who has a direct and substantial financial or employment interest relating to any matter before the agency, which interest is reasonably likely to affect the impartiality or judgment of the agency member in the matter, shall make known this interest and shall refrain from participating in or voting upon the matter.

No employee or agent of the agency, including the commissioner, shall engage in any outside employment or other conduct that is likely to affect adversely the effectiveness or efficiency of any functions or duties performed for the agency.

Statutory Authority: *MS s 116.07 subd 3*

History: *L 1987 c 186 s 15*

7000.1500 PUBLIC PARTICIPATION IN AGENCY MEETINGS.

Subpart 1. **Agenda items for which no hearing was held.** Upon request made prior to or at an agency meeting, any person who desires to present a statement on a matter that is on the agenda for the meeting, and for which no contested case or rulemaking hearing was held, must be afforded an opportunity to present an oral statement to the agency at the meeting. The chairperson may, depending on the circumstances, limit the time and manner of this statement.

Persons who desire to present a written statement on the matter may do so if, at least five days before the meeting, they have served a copy of the written statement upon the commissioner. The commissioner shall then promptly provide a copy of the statement to each agency member.

The agency may allow any person adversely affected by these oral or written statements additional time to respond.

Subp. 2. **Request for public informational meeting.** Any person may request the agency to hold a public informational meeting on any matter. The person may submit this

request at an agency meeting if the matter is on the agenda for consideration by the agency. If the matter is not on the agenda, the person may request the commissioner, pursuant to part 7000.0500, subpart 6, to place the matter on the agenda as a citizen item for the next agency meeting.

The agency shall not consider a request for a public informational meeting on a matter unless the matter is properly on the agenda for the agency meeting. The agency shall grant or deny the request. This part does not limit the right of the agency to order, upon its own motion, that a public informational meeting be held on a matter, and does not limit the right of the commissioner to hold public meetings.

Subp. 3. Agenda items for which contested case hearing has been held. When a contested case hearing has been held on an agenda item the participation of the public and of the parties in the matter is governed by parts 7000.1000 and 7000.1100.

Subp. 4. Agency items for which rulemaking hearing has been held. When a rulemaking hearing has been held, the agency shall take no final action with respect to the matter for at least 20 days after the date of issuance of the administrative law judge's report. Any person may file written comments or exceptions to the findings of fact, conclusions, and recommendations of the administrative law judge at any time up to ten days prior to the agency meeting at which the matter will be considered for final decisions. However, these comments and exceptions must be based solely upon the record of the hearing.

Any person who files written comments on or exceptions to the administrative law judge's report shall serve these comments or exceptions upon each individual agency member and upon the commissioner.

Any person may appear at the agency meeting at which the matter will be considered for final decision, and may present comments and arguments limited to evidence in the record, within limits of time and manner as the chairperson may establish under the circumstances.

Statutory Authority: *MS s 116.07 subd 3*

History: *L 1984 c 640 s 32; L 1987 c 186 s 15*

7000.1600 PUBLIC PARTICIPATION IN COMMISSIONER'S ACTIVITIES.

Subpart 1. Extent of participation. Any person may participate in the activities of the commissioner. Participation in the commissioner's activities includes the right to submit statements, the right to attend meetings and conferences and share in discussions, and the right to receive sufficient notice of progress in the matter to adequately exercise these rights.

However, if a meeting of the commissioner involves information that is not public within the meaning of Minnesota Statutes, sections 13.01 to 13.86 or 116.075, the commissioner shall conduct a closed meeting to discuss the nonpublic information.

Subp. 2. Notice of progress. Any person who wishes to receive notice of progress in an agency matter shall so advise the commissioner. Thereafter, the commissioner shall give this person adequate notice of pending events in the matter.

Statutory Authority: *MS s 116.07 subd 3*

History: *L 1987 c 186 s 15*

7000.1700 [Repealed, 8 SR 2278]