

CHAPTER 7000

MINNESOTA POLLUTION CONTROL AGENCY

PROCEDURAL RULES

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7000.0100 DEFINITIONS.

[For text of subps 1 and 1a, see M.R.]

Subp. 2. **Agency or agency members.** "Agency" or "agency members" means the commissioner and the eight persons appointed to the Minnesota Pollution Control Agency, pursuant to Minnesota Statutes, section 116.02, subdivision 1.

[For text of subps 2a to 14, see M.R.]

Statutory Authority: *MS s 116 07*

History: *20 SR 2629*

7000.0400 OFFICERS, COMMITTEES, AND DUTIES.

Subpart 1. **Officers.** The officers of the agency are the commissioner, who serves as the agency chair as prescribed in Minnesota Statutes, section 116.02, subdivision 4, and vice-chair.

Subp. 2. [Repealed, 20 SR 2629]

Subp. 3 **Electing and term of the vice-chair.** Each year, at its annual meeting, the agency shall elect a vice-chair to serve a one-year term. The vice-chair must be elected by a majority of all agency members. No member elected to the office of vice-chair may serve in that capacity more than two full terms consecutively.

Subp. 4. **Duties.** The commissioner shall preside at all agency meetings. The vice-chair shall discharge the duties of the commissioner as chair during the absence or disability of the commissioner in carrying out the duties of the chair. The commissioner shall also have the duties prescribed by statute or by rule or delegation of the agency.

Subp. 5. **Vacancies.** If a vacancy occurs in the office of commissioner of the agency and no successor is appointed or no temporary commissioner is available or designated as prescribed in Minnesota Statutes, section 15.06, the vice-chair shall preside and carry out the duties as chair at agency meetings. If a permanent vacancy occurs in the office of vice-chair, the agency shall, as soon as possible after the permanent vacancy, elect a new vice-chair to fill out the term of the vacated office of vice-chair.

Subp. 6. **Removal.** The vice-chair may be removed from office by an affirmative vote of two-thirds of all agency members. The vote to remove a vice-chair shall be made at the next regular meeting of the agency following the meeting at which the removal motion is made.

[For text of subp 7, see M.R.]

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 commissioner and the vice-chair unless the agency authorizes some other form of signing.

Statutory Authority: *MS s 116.07*

History: *20 SR 2629*

7000.0500 AGENCY MEETINGS.

Subpart 1. **Regular and annual meetings.** Twelve regular monthly meetings of the agency shall be held each calendar year. The annual meeting, also conducted as a regular

meeting, shall be held during the month of July of each year. The date, time, and place of each regular meeting, including the annual meeting, shall be designated by the commissioner. The commissioner may direct that a regular meeting be postponed or advanced to accommodate a state holiday, weather emergency, or scheduling conflicts of agency members.

Subp. 2. Special meetings. Upon concluding that a special meeting would assist the agency in accomplishing its work or upon receiving a request for a special meeting from three agency members, the commissioner shall call a special meeting of the agency. The date, time, and place of the special meeting shall be designated by the commissioner. In setting the time and place of a special meeting, the commissioner shall consider the extent to which time is of the essence and whether it would be unreasonable or unfair to interested persons for the agency to postpone consideration of the agenda for the special meeting to allow as much notice as would be required for a regular meeting of the agency.

Subp. 3a. Committee meetings. The committee chair or the commissioner shall call a committee meeting when either concludes that a committee meeting would assist the agency in accomplishing its work or upon receiving a request for a committee meeting from a member of the agency committee. The date, time, and place of the committee meeting shall be designated by the commissioner after consultation with the committee chair.

Subp. 3b. Informational meetings. Part 7001.0120 addresses informational meetings on permits. For all other matters, the agency or commissioner shall call a public informational meeting upon concluding that a public informational meeting would provide the agency with information that would assist it in accomplishing its work or would otherwise be in the public interest. The date, time, and place of the informational meeting shall be designated by the commissioner.

[For text of subp 8, see M.R.]

Subp. 9. Presiding officer. The commissioner shall preside at all regular and special meetings of the agency. The vice-chair shall preside in the commissioner's absence. If the commissioner and vice-chair are both absent, the remaining members shall designate one of the agency members present to preside over the meeting until the commissioner or vice-chair arrives.

[For text of subps 10 to 17, see M.R.]

Subp. 18. Continuation or recess of agency meetings. The agency may continue or recess an agency meeting to a later time or date if necessary to allow for the drafting of findings of fact as directed by agency members or further discussion or deliberation concerning a matter on a meeting agenda. If an agency meeting is continued or recessed and the time, date, and place for reconvening is announced and recorded at the time the meeting is recessed or continued, no further notice of the reconvening is necessary. If the agency provided an opportunity for public comments on a specific matter before a meeting is recessed or continued, the commissioner may rule that no further comments will be heard when the meeting is reconvened. However, agency members may ask questions of agency staff and interested persons even when no further public comment is to be taken.

Statutory Authority: *MS s 116.07*

History: 20 SR 2629

7000.0650 PUBLIC PARTICIPATION IN AGENCY MEETINGS.

[For text of subps 1 to 4, see M.R.]

Subp. 5. Oral presentations at agency meetings. Consistent with the provisions of part 7000.0500, subpart 18, the agency shall afford interested persons a reasonable opportunity to make oral statements concerning matters on an agency meeting agenda. To ensure an opportunity for full and fair consideration of all views, the commissioner may limit the time and scope of each speaker's presentation and may require speakers with similar views to select a spokesperson. Oral statements must be relevant to the matter before the agency. Oral presentations following a rulemaking or contested case hearing must be limited to the record for the matter.

Subp. 6. Written materials. The agency shall consider timely, relevant written materials that interested persons submit concerning a matter on an agenda for an agency meeting. Recessing or continuing a meeting as provided under part 7000.0500, subpart 18, does not

create a new opportunity to submit written comments, unless the commissioner states otherwise and establishes a schedule for submittal of additional written materials. Written statements will be considered timely and relevant only if they meet the following conditions:

[For text of items A and B, see M.R.]

C. for matters for which a contested case hearing has not been held but a permit comment period has been established under chapter 7001 or 7007, any additional written permit comments must be served on the agency at least five days before the agency meeting, and must be limited to permit procedural mistakes or irregularities, errors of law, or newly discovered material issues of fact that could not have been discovered prior to the close of the permit comment period;

D. for all matters, the commissioner may establish a reasonable schedule for submitting written comments. If a schedule is established under this item and the commissioner serves notice of the schedule on interested persons, service is timely if made within the established deadlines; and

[For text of item E, see M.R.]

[For text of subp 7, see M.R.]

Statutory Authority: *MS s 116.07*

History: *20 SR 2629*

7000.0750 AGENCY RECORDS AND FINAL DECISION MAKING.

[For text of subps 1 to 3, see M.R.]

Subp 4. **Record upon which the agency makes other decisions.** The record upon which the agency shall make a final decision in all matters other than rulemaking and contested case hearings consists of the following:

[For text of items A to C, see M.R.]

D. written documents containing relevant information, data, or materials referenced and relied upon by agency staff in recommending a proposed action or decision; and

[For text of item E, see M.R.]

[For text of subps 5 to 8, see M.R.]

Subp. 9. **Stay of decision.** A person may petition for a stay of an agency decision. Petitions must comply with the requirements of part 7000.2100 relating to timing, serving of a petition, and petition contents. The agency's grounds for granting or denying a petition and the agency's consideration of the petition are the same as the requirements of part 7000.2100.

Statutory Authority: *MS s 116.07*

History: *20 SR 2629*

7000.0850 DELEGATION PROCEDURE.

The agency may delegate the exercise of specified authority or duties to the commissioner as follows:

[For text of items A to C, see M.R.]

D. the commissioner and the vice-chair must sign and date the delegation once it is given;

[For text of items E to H, see M.R.]

Statutory Authority: *MS s 116.07*

History: *20 SR 2629*

7000.1300 CONFIDENTIAL INFORMATION.

[For text of subps 1 and 2, see M.R.]

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 and agency staff 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.

[For text of subps 4 to 7, see M.R.]

Statutory Authority: *MS s 116.07*

History: *20 SR 2629*

7000.1750 CONTESTED CASE HEARINGS.

[For text of subpart 1, see M.R.]

Subp. 4. **Parties.** Any person whose legal rights, duties, or privileges are to 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 petition for a hearing, the person or persons petitioning for the hearing are parties to the matter. In any hearing on an application for a permit or variance, the applicant is a party. The deputy commissioner is a party in any hearing ordered by the agency. Any person who has properly intervened in the contested case under part 1400.6200 is a party.

[For text of subp 7, see M.R.]

Statutory Authority: *MS s 116 07*

History: *20 SR 2629*

7000.1800 PETITION FOR CONTESTED CASE HEARING.

Subpart 1. **Petition for contested case hearing.** Any person may petition the agency to hold a contested case hearing. To be considered by the agency, a petition must be submitted in writing, must contain the information specified in subpart 2, and must be timely. Timeliness shall be determined as follows:

A. for permit matters, a petition for a contested case hearing must be submitted during the public comment period established under parts 7001.0100 and 7007.0850;

B. for matters other than those covered by item A, the commissioner may establish deadlines for persons to petition for a contested case hearing. If the commissioner establishes deadlines to petition for a contested case hearing, petitions for a contested case hearing will be considered timely if they are served on all agency members, including the commissioner within the established deadlines, and

C. if item A does not apply and no deadlines are established as provided in item B, a petition for a contested case shall be considered timely as follows:

(1) for regular meetings of the agency and special meetings noticed ten or more days before the meeting, service is timely if all agency members, including the commissioner, are served five days before the meeting; and

(2) for special meetings of the agency noticed less than ten days before the meeting, service is timely if all agency members, including the commissioner, are served personally or by facsimile before the agenda item is scheduled to be heard.

[For text of subp 2, see M.R.]

Subp. 3. **Written responses to petitions for contested case hearings.** Any person may serve timely responses to a petition for a contested case hearing. Timeliness shall be determined as described in items A and B.

A. If the commissioner has established a schedule as provided in subpart 1, item A or B, responses to a petition for a contested case hearing must be submitted within the deadlines established.

B. If no schedule has been established, responses to a petition for a contested case hearing must be personally served on or facsimiled to all agency members, including the commissioner, at any time prior to the time at which the matter will be considered by the agency.

[For text of subp 4, see M.R.]

Statutory Authority: *MS s 116.07*

History: *20 SR 2629*

7000.2000 FINAL DECISIONS AND ORDERS IN CONTESTED CASES.

[For text of subpart 1, see M.R.]

Subp. 2. Service of comments and exceptions. Any person who serves written comments on or exceptions to the administrative law judge's report shall serve these comments or exceptions upon each agency member, including the commissioner, 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 oral comments and arguments, limited to evidence in the record, subject to time limitations and conditions that the commissioner prescribes in accordance with part 7000.0650, subpart 5.

[For text of subps 4 to 7a, see M.R.]

Subp. 8. Notice. The commissioner must serve a copy of every final decision or order in a matter for which a contested case hearing has been held on all parties to the matter and on all interested persons who have submitted to the agency a request to be notified of the decision.

Statutory Authority: *MS s 116.07*

History: *20 SR 2629*

7000.2100 PETITION FOR STAY AND REOPENING OF AGENCY'S FINAL DECISION FOLLOWING CONTESTED CASE HEARING.

Subpart 1. Petition for a stay and reopening. At any time up to ten days after the agency's final decision, any party to a contested case hearing may petition in writing the agency for an order that the agency's final decision be stayed and that the matter be reopened and, if necessary, remanded to the administrative law judge. The petition must be served upon all agency members, including the commissioner, and parties. Any response to the petition by other parties must be served any time up to seven days after receipt of the petition on all the agency members and parties to the matter.

[For text of subp 2, see M.R.]

Subp. 3. Grounds for granting or denying petition. The petition shall be granted upon a showing that there are irregularities in the hearing, errors of law, or newly discovered material issues of fact that could not have been discovered prior to the agency's final decision and of such importance as are likely to have altered the outcome of the decision.

[For text of subp 4, see M.R.]

Statutory Authority: *MS s 116.07*

History: *20 SR 2629*

7000.5000 DECLARATION OF EMERGENCY.

[For text of subpart 1, see M.R.]

Subp. 2. Notification to agency. If the commissioner anticipates that emergency conditions may be approaching, the commissioner shall keep agency members informed of these conditions by any means practicable. Upon declaration of an emergency by the commissioner, the commissioner shall immediately notify all agency members. Notification may be by telegram, telephone, or any other means practicable. The commissioner shall schedule a special meeting of the agency as soon as practicable, but no later than the next scheduled regular meeting of the agency after the declaration of an emergency. At the special meeting the agency shall determine whether to continue the emergency declaration and, if continued, under what conditions.

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

A. until the date of the special meeting and thereafter, until the date determined by the agency at the meeting;

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

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

[For text of subps 4 to 7, see M.R.]

Statutory Authority: *MS s 116.07*

History: *20 SR 2629*

7000.7000 VARIANCES.

[For text of subps 1 to 8, see M.R.]

Subp. 9. Notification. The commissioner must serve every decision of the agency on a variance application on the applicant and upon all interested persons who have submitted to the agency a request to receive a copy of the decision.

[For text of subps 10 to 13, see M.R.]

Statutory Authority: *MS s 116 07*

History: *20 SR 2629*

7000.9100 PROHIBITED EX PARTE COMMUNICATIONS.

[For text of subps 1 and 2, see M.R.]

Subp. 3. Disclosure of ex parte communication. If a person or party makes a prohibited oral ex parte communication to an agency member, the agency member must advise the person or party who makes the communication that the communication is prohibited and shall immediately terminate the communication. If a prohibited written or oral ex parte communication is received by an agency member, that agency member must promptly disclose the following information to the commissioner or vice-chair prior to any decision regarding the contested case or rulemaking proceeding that is the subject of the ex parte communication:

[For text of items A to D, see M.R.]

[For text of subps 4 and 5, see M.R.]

Statutory Authority: *MS s 116 07*

History: *20 SR 2629*