

MINNESOTA RULES 2001

7000.0100 PROCEDURAL RULES

2

A. making an oral presentation on the specific agency matter at an agency meeting and registering their names and addresses with the agency at that time;

B. submitting to the commissioner a written statement in which they request to be treated as an interested person and in which they provide their names and addresses and identify the specific agency matter in which they are interested;

C. registering their names and addresses for the purpose of receiving notice of all agency rulemakings pursuant to Minnesota Statutes, section 14.14, subdivision 1a; or

D. being named as a party to a contested case hearing for a specific agency matter.

In addition, for any matter regarding a permit, the permittee is an interested person.

Subp. 5b. **Material issue of fact.** A “material issue of fact” means a fact question, as distinguished from a policy question, whose resolution could have direct bearing on a final agency decision.

Subp. 6. [Repealed, 19 SR 1310]

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, service by mail, or service by facsimile as described in items A to C.

A. Personal service upon the agency is made by handing an item to the commissioner or by delivering the item to the office of the commissioner and leaving it with a person assigned to that office. Personal service upon an interested person or agency member is made by handing an item to that person or by delivering the item to the person’s last known home or business address and leaving it with a competent person residing or working at that address.

B. Service by mail is made by placing the item in first class United States mail, postage prepaid, addressed to the last known address of the person being served. Service by mail is complete upon depositing the item in the mail. A person may use an overnight delivery service to effect service by mail instead of using United States mail.

C. Service by facsimile is made by telefaxing a document to a person known to have a facsimile machine. Service by facsimile is complete upon receipt of the facsimile. Service by facsimile must be followed by personal service or service by mail within one day after a facsimile service.

Upon request, the commissioner will make available the names and service addresses of agency members.

Subp. 13. **Stipulation agreement.** "Stipulation agreement" means any agreement entered into between the agency and any person or persons establishing a schedule for compliance 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 14.06; 116.07*

History: *L 1984 c 640 s 32; L 1987 c 186 s 15; 19 SR 1310; 20 SR 2629*

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. When this chapter requires service within a certain number of days, the term "day" includes weekdays, weekend days, and holidays.

Statutory Authority: *MS s 14.06; 116.07*

History: *19 SR 1310*

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 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

MINNESOTA RULES 2001

7000.0400 PROCEDURAL RULES

4

made at the next regular meeting of the agency following the meeting at which the removal motion is made.

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

Statutory Authority: *MS s 14.06; 116.07*

History: *L 1987 c 186 s 15; 19 SR 1310; 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. 3. [Repealed, 19 SR 1310]

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.

Subp. 4. [Repealed, 19 SR 1310]

Subp. 5. [Repealed, 19 SR 1310]

Subp. 6. [Repealed, 19 SR 1310]

Subp. 7. [Repealed, 19 SR 1310]

Subp. 8. **Quorum necessary for regular and special meetings.** A majority of the members of the entire agency constitutes a quorum, and a quorum must be present for the transaction of business. A committee meeting or an informational meeting may be held with less than a quorum of the agency.

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.

Subp. 10. **Adoption of and consideration of matters on agency agenda.** As the first order of business at a regular, special, or committee meeting, the agency or committee shall review its proposed agenda, amend or modify it if appropriate, and then adopt it. Thereafter, the agency shall act on agency matters at the approximate times shown on its adopted agenda. However, by consensus of all agency members present, the agency may group noncontroversial agenda items or agenda items ministerial in nature for approval by a single agency vote.

Subp. 11. [Repealed, 19 SR 1310]

Subp. 12. [Repealed, 19 SR 1310]

Subp. 13. **Open meetings.** Except as provided by law, all meetings of the agency must be open to the public.

Subp. 14. [Repealed, 19 SR 1310]

Subp. 15. [Repealed, 19 SR 1310]

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, as amended, shall govern any question of parliamentary procedure that may arise at any meeting of the agency.

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 14.06; 116.07*

History: *8 SR 243; L 1987 c 186 s 15; 19 SR 1310; 20 SR 2629*

7000.0550 AGENDA FOR AGENCY MEETINGS.

Subpart 1. **Agenda items and related written materials.** No matter may be considered at a meeting of the agency unless it is on the agenda and related written materials have been made available as provided in part 7000.0650.

Subp. 2. **Agenda preparation.** The commissioner shall prepare an agenda for each regular, special, and committee meeting of the agency. The agenda shall identify the date and place of the meeting, and the approximate times for considering each item on the agenda. Each agenda must be prepared in sufficient time to allow for notice as specified in this chapter. Each agenda must identify all matters to be considered by the agency. Agency members may place items on the regular meeting agenda by notifying the commissioner at least 14 days prior to the meeting. Agency members may place items on the agenda of a special or committee meeting by notifying the commissioner at least ten days prior to a scheduled special or committee meeting.

Subp. 3. **Agency member notice of meetings.** The commissioner shall serve on each agency member a copy of the proposed agenda for each agency meeting, together with the related written materials for the items on the agenda. However, if the related written materials are so voluminous as to make it impractical to serve them on all agency members, the commissioner may provide a notice stating that there are additional related written materials for review at the offices of the agency. Service shall be made as described in items A and B.

A. For a regular meeting of the agency, service shall be made at least ten days before the meeting.

B. For a special meeting or committee meeting of the agency, service by mail shall be made at least six days before the meeting. Personal service or service by facsimile shall be made at least three days before the meeting. However, the notice provisions of this part do not apply to emergencies which are addressed by the agency or commissioner under part 7000.5000.

Statutory Authority: *MS s 14.06; 116.07*

History: *19 SR 1310*

7000.0600 [Renumbered 7000.5000]

7000.0650 PUBLIC PARTICIPATION IN AGENCY MEETINGS.

Subpart 1. **Public inspection of agency meeting agenda and related written materials.** The agenda and related written materials for meetings of the agency shall be available for public inspection at the central office of the agency as described in items A and B.

A. For regularly scheduled meetings, the agenda and related written materials shall be available at least ten days prior to the regular agency meeting.

B. For special or committee meetings, the agenda and related written materials shall be available as soon as possible and, in any event, no later than three days prior to the special or committee meeting. However, the inspection provisions of this part do not apply to emergencies which are addressed by the agency or commissioner under part 7000.5000.

Subp. 2. **Service on interested persons.** The commissioner shall serve on each interested person a copy of the proposed agenda for each agency meeting together with a copy of the agenda item prepared by agency staff. If the related written materials for the agenda item are not voluminous, the commissioner shall serve these materials, too. However, if the commissioner finds that the related written materials are so voluminous as to make it impractical for the commissioner to serve them on all interested persons, the commissioner shall serve on interested persons a notice stating that there are additional related written materials for the item in which the person is interested and that these additional related written materials can be viewed at the offices of the agency or can be requested from the agency. Service shall be made as described in items A and B.

A. For a regular meeting of the agency, service shall be made at least ten days before the meeting.

B. For a special meeting or committee meeting of the agency, service by mail shall be made at least six days before the meeting. Personal service or service by facsimile shall be made at least three days before the meeting. However, the notice provisions of this part do not apply to emergencies which are addressed by the agency or commissioner under part 7000.5000.

The agency does not intend the notice and service requirements of this chapter or any other requirements of this chapter to prevent it from seeking to recover reasonable copying and preparation costs as authorized under Minnesota Statutes, section 13.03, subdivision 3. This subpart does not limit the agency staff from presenting written materials at agency meetings as described in subpart 7.

Subp. 3. **Petitions to place matters on an agency agenda.** Any person who wishes to place a matter on the agenda for an agency meeting may submit a petition identifying the matter that person would like placed on the agenda and the reasons for placing it on the agenda. The petition must be served on the commissioner by mail at least 24 days before the meeting during which a petitioner would like the matter to be considered or by personal service or facsimile at least 21 days before the meeting. The commissioner shall grant or deny the petition. If the commissioner decides not to place

a matter on the agenda, the commissioner shall advise the agency and the petitioner of the reasons for the denial.

Subp. 4. Petition for informational meeting.

A. Any person may petition the agency to hold a public informational meeting described in part 7000.0500, subpart 3b. The petition must identify the matter of concern and the reasons the agency should hold the informational meeting.

B. If the matter involves a permit for which a public notice has been issued under part 7001.0100, subpart 4, or 7007.0850, subpart 2, the petition must be submitted to the commissioner within the comment period established in the public notice and must conform to the requirements of parts 7001.0110 and 7001.0120.

C. If item B does not apply and the matter is not on the agenda for an agency meeting, the petition must be submitted to the commissioner. The commissioner shall grant or deny the petition. If the commissioner decides not to hold the meeting, the commissioner shall advise the agency and the petitioner of the reasons for the denial.

D. If item B does not apply and the matter is on the agenda for an agency meeting, the petition must be submitted to the agency in accordance with the time frames for submitting written materials set out in subpart 6. The agency shall grant or deny the petition.

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:

A. for matters for which a contested case hearing has been held, written comments must conform to the requirements and time limits of part 7000.2000;

B. for matters for which a rulemaking hearing has been held, written comments must be limited to the record of the rulemaking hearing and must be served on the agency at least five days before the agency meeting during which the agency is scheduled to act on the proposed rules;

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

E. for all matters except those under items A to D, service is 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 and the commissioner are served at least 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 and the commissioner are served personally or by facsimile before the agenda item is scheduled to be heard.

Subp. 7. **Written presentations at agency meetings.** Notwithstanding the restrictions of subparts 2 and 6, the agency shall consider relevant written materials presented by an interested person or by agency staff at an agency meeting if such consideration does not prejudice other interested persons and there is reasonable time for the agency to consider the materials during the course of the meeting. These materials may include, but are not limited to, materials responsive to relevant information that was not available prior to the established deadlines of subpart 6, written versions or summaries of oral presentations, letters, visual aids, and clarifications or corrections of written materials.

Statutory Authority: *MS s 14.06; 116.07*

History: *19 SR 1310; 20 SR 2629*

7000.0700 [Renumbered 7000.7000]

7000.0750 AGENCY RECORDS AND FINAL DECISION MAKING.

Subpart 1. **Final decisions of agency.** Final decisions of the agency shall be made at agency regular and special meetings. No final decisions shall be made on any agency matter unless it is on the adopted agency agenda at a regular or special meeting.

Subp. 2. **Rulemaking records upon which agency makes its decision.** The record upon which the agency shall make a final decision concerning the adoption, amendment, or repeal of a rule consists of the following:

A. the agenda and related materials for an agency meeting during which the proposed rule was considered and the minutes, transcripts, and recordings of the meeting;

B. for rules adopted without a public hearing, the documents listed in part 2010.0300 or, for emergency rules, part 2010.0400, and the attorney general's written statement of required modifications or disapproval, if any;

C. for rules adopted with a public hearing, the documents listed in part 1400.0900, including the report of the administrative law judge and the report of the chief administrative law judge, if any; and

D. written comments submitted to the agency as allowed by part 7000.0650, subpart 6, and recordings or transcripts of oral statements as allowed by part 7000.0650, subpart 5.

Subp. 3. **Contested case record upon which agency makes its decision.** The record upon which the agency shall make a final decision after a contested case hearing consists of the record as described in part 1400.7400.

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:

A. the agenda and related materials for an agency meeting during which the matter was considered and the minutes, transcripts, and recordings of the meeting;

B. relevant written materials submitted to the agency within an established comment period, including requests for an informational meeting and petitions for contested case hearings;

C. written materials submitted to the agency as allowed by part 7000.0650, subpart 6, and recordings or transcripts of oral statements as allowed by part 7000.0650, subpart 5;

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

E. all other relevant information or material received into the record and considered by the agency at an agency meeting.

Subp. 5. Decisions and voting. Except as otherwise specifically provided, a majority vote of the entire agency is necessary to make any decision. All members present 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 as provided in subpart 8. No final decisions of the agency shall be made at agency committee meetings even if a quorum of the agency is present.

Subp. 6. Agency deliberations. During agency deliberation and consideration of a specific agenda matter, agency members may ask questions of agency staff, counsel, or interested persons, and may discuss and amend proposed findings, conclusions, and resolutions or propose alternative findings, conclusions, or resolutions based on the record before the agency. As provided in part 7000.0500, subpart 18, the agency may decide to continue or recess a meeting with instructions to counsel, agency staff, or interested persons to draft findings consistent with the agency's directions. Upon reconvening to consider the findings, the agency need not provide an opportunity for additional oral or written comments.

Subp. 7. Reconsideration of decision. Any decision of the agency may be reconsidered during the course of the same meeting at which the original decision was made if an agency member who voted on the prevailing side makes a motion for reconsideration before the agency moves on to its next agenda item or if all interested persons are present and given an opportunity to comment.

Subp. 8. Rescission of decision. Upon placement on the agenda by an agency member as provided in part 7000.0550 and upon the affirmative vote of two-thirds of the entire agency, any decision of the agency or commissioner may be rescinded as permitted by applicable law.

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 14.06; 116.07*

History: *19 SR 1310; 20 SR 2629*

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*

7000.0850 DELEGATION PROCEDURE.

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

MINNESOTA RULES 2001

7000.0850 PROCEDURAL RULES

10

A. at any time, the commissioner may request in writing that the agency delegate specified authority or duties. The request must be specific as to what authority or duty the agency is to delegate and why the delegation is appropriate;

B. the request must be placed on the agency meeting agenda in accordance with part 7000.0550;

C. the agency may grant, deny, or modify the request for the delegation as the agency deems reasonable and appropriate and shall state the conditions under which the delegated authority may be exercised;

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

E. all approved delegations must be filed with the Secretary of State;

F. the agency may review, modify, revoke, or approve a delegation at any time;

G. during the October meeting, the agency must review all delegations and must renew, amend, or revoke existing delegations and consider new delegations; and

H. the commissioner shall maintain records of all delegations and these records must be made available for public inspection.

Statutory Authority: *MS s 14.06; 116.07*

History: *19 SR 1310; 20 SR 2629*

7000.0900 INFORMAL COMPLAINTS.

Any person may file with the commissioner an informal complaint concerning a pollution source or environmental problem. 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 the complaint in writing. Upon receipt of this informal complaint, the commissioner shall make such investigation as is deemed necessary and appropriate. At an appropriate time, the commissioner shall notify the person responsible for the alleged pollution source that an informal complaint has been filed. At any time after an informal complaint is filed, the commissioner may take whatever action deemed 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, chapter 13.

Statutory Authority: *MS s 14.06; 116.07*

History: *L 1987 c 186 s 15; 19 SR 1310*

7000.1000 [Renumbered 7000.1750]

7000.1100 [Renumbered 7000.2000]

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 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.

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*

History: 8 SR 243; L 1984 c 640 s 32; L 1987 c 186 s 15; 17 SR 1279; 20 SR 2629

7000.1400 [Renumbered 7000.9000]

7000.1500 [Repealed, 19 SR 1310]

7000.1600 [Repealed, 19 SR 1310]

7000.1700 [Repealed, 8 SR 2278]

CONTESTED CASE HEARINGS

7000.1750 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

MINNESOTA RULES 2001

7000.1750 PROCEDURAL RULES

12

with the procedures set forth in the rules of the Office of Administrative Hearings, parts 1400.5010 to 1400.8400, and in accordance with parts 7000.1000 to 7000.1150, and in accordance with this part. No person's rights, privileges, or duties may be determined without regard for fundamental fairness. To that end, parts 7000.1750 to 7000.4000 are intended to assure that all parties are provided a just and speedy contested case hearing.

Subp. 2. [Repealed, 19 SR 1310]

Subp. 3. [Repealed, 19 SR 1310]

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.

Subp. 5. [Repealed, 19 SR 1310]

Subp. 6. [Repealed, 19 SR 1310]

Subp. 7. **Consolidation.** The agency may consolidate two or more matters for which contested case hearings are scheduled and hold a joint hearing if no party objects to the consolidation.

Subp. 8. [Repealed, 19 SR 1310]

Subp. 9. [Repealed, 19 SR 1310]

Statutory Authority: *MS s 14.06; 116.07*

History: *8 SR 243; L 1984 c 640 s 32; L 1987 c 186 s 15; 19 SR 1310; 20 SR 2629; 26 SR 391*

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.

Subp. 2. **Contested case petition contents.**

A. A petition for a contested case hearing shall include the following information:

(1) a statement of reasons or proposed findings supporting an agency decision to hold a contested case hearing pursuant to the criteria in part 7000.1900, subpart 1; and

(2) a statement of the issues proposed to be addressed by a contested case hearing and the specific relief requested or resolution of the matter.

B. To the extent known by the petitioner, a petition for a contested case hearing may also include the following information:

(1) a proposed list of prospective witnesses to be called, including experts, with a brief description of proposed testimony or summary of evidence to be presented at a contested case hearing;

(2) a proposed list of publications, references, or studies to be introduced and relied upon at a contested case hearing; and

(3) an estimate of time required for petitioner to present the matter at a contested case hearing.

C. A petitioner is not bound or limited to the witnesses, materials, or the estimated time identified in the petition if the requested contested case is granted by the agency.

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.

Subp. 4. Untimely petition for a contested case hearing. The agency shall deny a petition for a contested case hearing if the petition is not timely served as provided in subpart 1. However, the agency may consider a petition that is not timely if the petition contains the information listed in subpart 2, and the petitioner demonstrates that the petition could not have been submitted to the agency any earlier because it relies on newly discovered material facts that could not have been discovered until after the petition period ended.

Statutory Authority: *MS s 14.06; 116.07*

History: *19 SR 1310; 20 SR 2629*

7000.1900 AGENCY CRITERIA TO HOLD CONTESTED CASE HEARING.

Subpart 1. Agency decision to hold contested case hearing. The agency must grant the petition to hold a contested case hearing or order upon its own motion that a contested case hearing be held if it finds that:

A. there is a material issue of fact in dispute concerning the matter pending before the agency;

B. the agency has the jurisdiction to make a determination on the disputed material issue of fact; and

C. there is a reasonable basis underlying the disputed material issue of fact or facts such that the holding of a contested case hearing would allow the introduction of information that would aid the agency in resolving the disputed facts in making a final decision on the matter.

Subp. 2. Scope of contested case. If the agency decides to hold a contested case hearing, the agency shall identify the issues to be resolved and limit the scope and conduct of the hearing in accordance with applicable law, due process, and fundamental fairness. Alternatively, the agency may request the administrative law judge to identify the issues and determine the appropriate scope and conduct of the hearing in accordance with applicable law, due process, and fundamental fairness.

MINNESOTA RULES 2001

7000.1900 PROCEDURAL RULES

14

Subp. 3. **Agency decision not to hold contested case hearing.** If the agency decides not to hold a contested case hearing, the agency may hold a public informational meeting as provided in part 7000.0550, subpart 4.

Statutory Authority: *MS s 14.06; 116.07*

History: *19 SR 1310*

7000.2000 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 ten days after the date of issuance of the administrative law judge's report. Any person may serve written comments on or exceptions to the findings of fact, conclusions, and recommendations of the administrative law judge at any time up to five 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 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.

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 report and 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. 7a. **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 proceeding, subject to agency approval of this informal disposition and its terms.

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 14.06; 116.07*

History: *L 1984 c 640 s 32; L 1987 c 186 s 15; 19 SR 1310; 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.

Subp. 2. **Petition contents.** The written petition shall contain the name and address of the petitioner, the agency designation for the matter, and the specific grounds as described in subpart 3 for staying and reopening the matter.

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.

Subp. 4. **Agency's consideration of petition.** Within 30 days of the agency's final decision, the agency must schedule a meeting to determine whether or not to deny or grant the petition submitted under subpart 1.

Statutory Authority: *MS s 14.06; 116.07*

History: *19 SR 1310; 20 SR 2629*

7000.2200 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 in part 7000.2000.

Statutory Authority: *MS s 14.06; 116.07*

History: *19 SR 1310*

EMERGENCY AND VARIANCE PROCEDURES

7000.5000 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 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.

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

MINNESOTA RULES 2001

7000.5000 PROCEDURAL RULES

16

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

Subp. 6. **Notice.** The notice requirements of parts 7000.0550 and 7000.0650 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 14.06; 116.07*

History: *L 1987 c 186 s 15; 19 SR 1310; 20 SR 2629*

7000.7000 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 serve a request pursuant to part 7000.0650, subpart 4 or 7000.1800, 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 report and 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 7007.1800.

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.

MINNESOTA RULES 2001

7000.7000 PROCEDURAL RULES

18

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 14.06; 116.07*

History: *L 1984 c 640 s 32; L 1987 c 186 s 15; 19 SR 1310; 20 SR 2629*

ETHICAL CONDUCT AND STANDARDS

7000.9000 CONFLICT OF INTEREST.

Subpart 1. **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.

Subp. 2. **Outside employment.** 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.

Subp. 3. **Postagency representation.** For one year after leaving the agency, an agency member must not represent an interested person or party before the agency on behalf of an interested person or party regarding a matter that previously was identified as an item on any agency meeting agenda.

Statutory Authority: *MS s 14.06; 116.07*

History: *L 1987 c 186 s 15; 19 SR 1310*

7000.9100 PROHIBITED EX PARTE COMMUNICATIONS.

Subpart 1. **Ex parte communication.** "Ex parte communication" means an oral or written, off-the-record communication made between an agency member and a person or party, without notice to other interested persons or parties, that is directed to the merits or outcome of a contested case proceeding or rulemaking proceeding after public hearing. This term does not include procedural, scheduling, and status inquiries or other inquiries or for information that have no bearing on the merits or outcome of the proceeding.

Subp. 2. **Communication with agency members.** An oral or written ex parte communication must not be made or attempted to be made either directly or indirectly between an agency member and a person or party concerning a material issue of fact during a pending contested case proceeding or rulemaking public hearing, from the date the agency decides to hold the contested case hearing or the date the rulemaking public hearing is ordered, until the agency issues its final order or makes a final decision.

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:

A. to the extent known, the name and address of the person making the communication and the relationship, if any, to the parties to or interested persons in the pending matter or proceeding;

B. the date and time of the communication, its duration, and the means by and circumstances under which it was made;

C. a copy of the written document or a written summary of the matters discussed; and

D. whether the person or party making the prohibited communication persisted after being advised that the communication was prohibited.

Subp. 4. **Record of ex parte communication.** The commissioner must make the tape recording or meeting transcript showing disclosure of ex parte contacts and all disclosed written ex parte communications part of the record of the proceeding to which those communications relate.

Subp. 5. **Agency member abstention.** Any agency member not disclosing information regarding a prohibited ex parte communication may voluntarily abstain or may be required to abstain from voting on the matter that is the subject of the prohibited communication. A determination of an abstention must be made by a majority of agency members, based on a finding that a prohibited ex parte communication with an agency member occurred and was not disclosed in accordance with subpart 3.

Statutory Authority: *MS s 14.06; 116.07*

History: *19 SR 1310; 20 SR 2629*