

MINNESOTA RULES 2009

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CHAPTER 7000 MINNESOTA POLLUTION CONTROL AGENCY PROCEDURAL RULES

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7000.0050 PURPOSE.

This chapter describes how the board or commissioner makes decisions and clarifies the authority of both the commissioner and the board as established under Minnesota Statutes, sections 116.02 and 116.03, and how members of the public may involve themselves in board or commissioner decision making. The procedures and standards of conduct established in this chapter are intended to ensure an orderly and fair decision-making process, to preserve the integrity and independence of board or commissioner decisions, and to promote public confidence in those decisions.

Statutory Authority: *MS s 14.06; 116.07*

History: *19 SR 1310; 28 SR 1249*

7000.0075 DIVISION OF AUTHORITY.

The specific authority of the board is found in Minnesota Statutes, section 116.02, subdivision 6. All other responsibilities regarding the agency are within the commissioner's authority, pursuant to Minnesota Statutes, section 116.03, unless the board exercises its authority pursuant to the procedures specified in Minnesota Statutes, section 116.02, subdivision 8.

Statutory Authority: *MS s 116.07*

History: *28 SR 1249*

7000.0100 DEFINITIONS.

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

Subp. 1a. **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. 2. **Agency or agency members.** "Agency" or "agency members" means the Minnesota Pollution Control Agency in general and is used to refer to actions or functions

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of the Pollution Control Agency that are not necessarily those of the commissioner or board members as individuals.

Subp. 2a. **Board.** "Board" means the commissioner and eight members appointed by the governor, by and with the advice and consent of the senate as prescribed in Minnesota Statutes, section 116.02, subdivision 1.

Subp. 2b. **Commissioner.** "Commissioner" means the executive secretary and chief executive officer of the Minnesota Pollution Control Agency as prescribed in Minnesota Statutes, section 116.04.

Subp. 2c. **Contested case.** "Contested case" has the meaning given in Minnesota Statutes, section 14.02, subdivision 3.

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. 5a. **Interested person.** "Interested person" means persons who have submitted their names and addresses to the board or the commissioner for inclusion on a board or commissioner list of persons to receive notice concerning a specific board or commissioner matter. Persons can place their names and addresses on a board or commissioner list for a specific matter by:

A. making an oral presentation on the specific board matter at a board meeting and registering their names and addresses with the board or commissioner 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 board or commissioner 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 board or commissioner 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 board or commissioner decision.

Subp. 6. [Repealed, 19 SR 1310]

Subp. 7. **Order.** "Order" means any written command or direction made by the board 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 board or commissioner 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 board or the commissioner.

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

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; submittal; submit.** "Service," "serve," "submittal," or "submit" means personal service, service by mail, or service by facsimile as described in items A to C.

A. Personal service upon the board or commissioner 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 board 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 board members.

Subp. 13. **Stipulation agreement.** "Stipulation agreement" means any agreement entered into between the commissioner 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 board or commissioner 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 board or commissioner 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; 28 SR 1249*

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, in which event the period runs until the end of the next day which is not 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; 28 SR 1249*

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 board or commissioner,

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it shall be the duty of each person and each member, employee, or agent of the board or commissioner to act in good faith and with complete truthfulness, accuracy, disclosure, and candor.

Statutory Authority: *MS s 116.07*

History: *8 SR 243; 28 SR 1249*

7000.0400 OFFICERS, COMMITTEES, AND DUTIES.

Subpart 1. **Officers.** The officers of the board are the commissioner, who serves as the board 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 board shall elect a vice-chair to serve a one-year term. The vice-chair must be elected by a majority of all board 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 board 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 board.

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 board meetings. If a permanent vacancy occurs in the office of vice-chair, the board 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 board members. The vote to remove a vice-chair shall be made at the next regular meeting of the board following the meeting at which the removal motion is made.

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

Subp. 8. **Execution of documents.** Contracts, stipulation agreements, and other documents approved by the board pursuant to law shall be executed on the board's behalf by the commissioner and the vice-chair unless the board 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; 28 SR 1249*

7000.0500 BOARD MEETINGS.

Subpart 1. **Regular and annual meetings.** Twelve regular monthly meetings of the board 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 board members.

Subp. 2. **Special meetings.** Upon concluding that a special meeting would assist the board in accomplishing its work or upon receiving a request for a special meeting from three board members, the commissioner shall call a special meeting of the board. 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 board 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 board.

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 board in accomplishing its work or upon receiving a request for a committee meeting from a member of the board 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 board or commissioner shall call a public informational meeting upon concluding that a public informational meeting would provide the board or commissioner 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 board 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 board.

Subp. 9. **Presiding officer.** The commissioner shall preside at all regular and special meetings of the board. 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 board members present to preside over the meeting until the commissioner or vice-chair arrives.

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

Subp. 14. [Repealed, 19 SR 1310]

Subp. 15. [Repealed, 19 SR 1310]

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

Subp. 18. **Continuation or recess of board meetings.** The board may continue or recess a board meeting to a later time or date if necessary to allow for the drafting of findings of fact as directed by board members or further discussion or deliberation concerning a matter on a meeting agenda. If a board meeting is continued or recessed and the time, date, and place for reconvening is announced and recorded at the time the meeting is recessed

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or continued, no further notice of the reconvening is necessary. If the board 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, board 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; 28 SR 1249*

7000.0550 AGENDA FOR BOARD MEETINGS.

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

Subp. 2. **Agenda preparation.**

A. The commissioner shall prepare an agenda for each regular, special, and committee meeting of the board. 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 board.

B. A board member may request, pursuant to Minnesota Statutes, section 116.02, subdivision 8, that the commissioner place an item on the agenda. Unless the request is withdrawn, the commissioner shall place the item on the agenda within 45 days after the date the request is made by the board member.

Subp. 3. **Board member notice of meetings.** The commissioner shall serve on each board member a copy of the proposed agenda for each board 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 board 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 board, service shall be made at least ten days before the meeting.

B. For a special meeting or committee meeting of the board, 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 board or commissioner under part 7000.5000.

Statutory Authority: *MS s 14.06; 116.07*

History: *19 SR 1310; 28 SR 1249*

7000.0600 [Renumbered 7000.5000]

7000.0650 PUBLIC PARTICIPATION IN BOARD MEETINGS.

Subpart 1. **Public inspection of board meeting agenda and related written materials.** The agenda and related written materials for board meetings 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 board 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 board 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 board 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 board. Service shall be made as described in items A and B.

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

B. For a special meeting or committee meeting of the board, 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 board 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 board meetings as described in subpart 7.

Subp. 3. **Petitions to place matters on a board agenda.** Any person who wishes to place a matter on the agenda for a board 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 board and the petitioner of the reasons for the denial.

Subp. 4. **Petition for informational meeting.**

A. Any person may petition the board or commissioner 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 board or commissioner 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 a board 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 board and the petitioner of the reasons for the denial.

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

Subp. 5. **Oral presentations at board meetings.** Consistent with the provisions of part 7000.0500, subpart 18, the board shall afford interested persons a reasonable opportunity to make oral statements concerning matters on a board 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 board.

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Oral presentations following a rulemaking or contested case hearing must be limited to the record for the matter.

Subp. 6. **Written materials.** The board shall consider timely, relevant written materials that interested persons submit concerning a matter on an agenda for a board 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 board at least five days before the board meeting during which the board 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 board at least five days before the board 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 board and special meetings noticed ten or more days before the meeting, service is timely if all board members and the commissioner are served at least five days before the meeting; and

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

Subp. 7. **Written presentations at board meetings.** Notwithstanding the restrictions of subparts 2 and 6, the board shall consider relevant written materials presented by an interested person or by agency staff at a board meeting if such consideration does not prejudice other interested persons and there is reasonable time for the board 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; 28 SR 1249*

7000.0700 [Renumbered 7000.7000]

7000.0750 BOARD RECORDS AND FINAL DECISION MAKING.

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

Subp. 2. **Rulemaking records upon which board makes its decision.** The record upon which the board 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 a board 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 where the board exercises authority pursuant to Minnesota Statutes, section 116.02, subdivision 8, the documents listed in part 1400.2310 and the administrative law judge's written statement of required modifications or disapproval, if any;

C. for rules adopted with a public hearing, the documents listed in parts 1400.2220, 1400.2230, and 1400.2240, 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 board makes its decision.** The record upon which the board 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 board makes other decisions.** The record upon which the board 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 a board 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 board at a board meeting.

Subp. 5. **Decisions and voting.** Except as otherwise specifically provided, a majority vote of the entire board is necessary to make any decision. All board 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 board shall be made at board committee meetings even if a quorum of the board is present.

Subp. 6. **Board deliberations.** During board deliberation and consideration of a specific agenda matter, board 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 board. As provided in part 7000.0500, subpart 18, the board may decide to continue or recess a meeting with instructions to counsel, agency staff, or interested persons to draft findings consistent with the board's directions. Upon reconvening to consider the findings, the board need not provide an opportunity for additional oral or written comments.

Subp. 7. **Reconsideration of decision.** Any decision of the board may be reconsidered during the course of the same meeting at which the original decision was made if a board

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member who voted on the prevailing side makes a motion for reconsideration before the board 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 a board member as provided in part 7000.0550 and upon the affirmative vote of two-thirds of the entire board, any decision of the board or a decision by the commissioner exercised under Minnesota Statutes, section 116.03, may be rescinded as permitted by applicable law.

Subp. 9. **Stay of decision.** A person may petition for a stay of a board or commissioner decision. Petitions must comply with the requirements of part 7000.2100 relating to timing, serving of a petition, and petition contents. The board's or commissioner's grounds for granting or denying a petition and the board's or commissioner'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; 28 SR 1249*

7000.0755 COMMISSIONER'S RECORDS AND FINAL DECISION MAKING.

Subpart 1. **General.** The commissioner shall make a final decision in all matters on behalf of the agency, except for those matters that are within the board's specific authority pursuant to Minnesota Statutes, section 116.02, subdivision 6, or those matters where the board has exercised its authority pursuant to Minnesota Statutes, section 116.02, subdivision 8. The record relating to the commissioner's final decisions shall consist of the records described in subparts 2 to 4.

Subp. 2. **Rulemaking records upon which commissioner makes a decision.** The record upon which the commissioner shall make a final decision concerning the adoption or amendment of a rule where there is no public hearing consists of the documents listed in part 1400.2310 and the administrative law judge's written statement of required modifications or disapproval, if any.

Subp. 3. **Contested case record upon which the commissioner makes a decision.** The record upon which the commissioner 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 commissioner makes other decisions.** The record upon which the commissioner shall make a final decision in all matters other than rulemaking and contested case hearings consists of the following:

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

B. written materials submitted to the commissioner or agency staff within a time period established by the commissioner; and

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

Statutory Authority: *MS s 116.07*

History: *28 SR 1249*

7000.0800 STIPULATION AGREEMENTS.

Subpart 1. **Data or information.** Whenever any person or the commissioner 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 commissioner in making a determination regarding the proposed stipulation agreement.

Subp. 2. **Interim operation.** The commissioner may, at the commissioner's 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 the commissioner 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*

History: *L 1987 c 186 s 15; 28 SR 1249*

7000.0850 DELEGATION PROCEDURE.

The commissioner may delegate any of the commissioner's powers, duties, and responsibilities as prescribed in Minnesota Statutes, section 116.03, subdivision 2.

Statutory Authority: *MS s 14.06; 116.07*

History: *19 SR 1310; 20 SR 2629; 28 SR 1249*

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, chapter 13 and section 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*

History: *28 SR 1249*

7000.1300 NOT PUBLIC INFORMATION.

Subpart 1. **Procedures to affirmatively request the agency maintain data as not public.** In order to maintain data for the confidential use of the agency, pursuant to Minnesota Statutes, section 116.075, or as nonpublic data not on individuals or private data as it relates to individuals, pursuant to Minnesota Statutes, section 13.37, a person must affirmatively request such recognition by providing to the commissioner a written request setting forth the statutory grounds and the reasons that justify the classification of the records or other information as not public. The commissioner must approve or deny in writing any request to keep records or information as not public. Whenever the commissioner denies a request, the commissioner shall notify the person submitting the request of the denial at least three working days prior to making the records or information available to the public, and provide an opportunity for the person to seek clarification of the classification of the

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data as provided in Minnesota Statutes, chapter 13. The person submitting the request may withdraw the records or information if such an option is available. The procedures in this subpart apply to any requests to recognize data as not public under statutory grounds not specifically identified in this subpart.

Subp. 2. **Filing.** All not public data must be appropriately identified and segregated at the offices of the agency.

Subp. 3. **Agency use.** Not public data may be used by the agency or commissioner in accordance with the Minnesota Government Data Practices Act as prescribed in Minnesota Statutes, section 13.05. Not public data 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 person requesting not public data classification.

Subp. 4. **Release authorization.** Not public data may be released when the agency is specifically authorized to do so by statute.

Subp. 5. [Repealed, 28 SR 1249]

Subp. 6. **Federal law.** Regardless of whether records or information are classified as not public data, 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 not public data pursuant to federal law, the commissioner shall notify the requester of this requirement at least three working days prior to making the records or information available to the public. The requester may withdraw this information if such an option is available.

Subp. 7. **Use in contested case hearings.** Any otherwise admissible evidence containing information classified as not public offered by the commissioner, agency, or a party to the contested case hearing shall be made a part of the hearing record of the case, and the administrative law judge may conduct a closed hearing to discuss the information, issue necessary protective orders, and seal all or part of the hearing record pursuant to Minnesota Statutes, section 14.60.

Subp. 8. **Use in open meetings.** Pursuant to Minnesota Statutes, section 13D.05, a board meeting may not be closed to discuss data that is classified as not public data, except as expressly authorized by Minnesota Statutes, section 13D.05, subdivisions 2 and 3.

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; 28 SR 1249*

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 board or commissioner shall be conducted in accordance with the procedures set forth in the rules of the Office of Administrative Hearings, parts 1400.5200 to 1400.8401, 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 7000.2200 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.** For the purpose of this part, "party" means each person named as a party by the board or commissioner in the notice of and order for hearing pursuant to part 1400.5100, subpart 7, or persons granted permission to intervene pursuant to part 1400.6200. The board or commissioner is a party pursuant to part 1400.5100, subpart 7. When a contested case hearing is held pursuant to a petition for a hearing, the 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. The board may designate any person whose legal rights are affected as a party.

Subp. 5. [Repealed, 19 SR 1310]

Subp. 6. [Repealed, 19 SR 1310]

Subp. 7. **Consolidation.** The board or commissioner 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; 28 SR 1249*

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, except for matters where there is no public comment period, the petition must be submitted according to the procedures in item B. A petition for a contested case hearing shall be untimely if it is submitted after a permit is granted;

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 board 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 board and special meetings noticed ten or more days before the meeting, service is timely if all board members, including the commissioner, are served five days before the meeting; and

(2) for special meetings of the board noticed less than ten days before the meeting, service is timely if all board 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 a board or commissioner 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.

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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 board or commissioner.

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 sent by facsimile to all board members, including the commissioner, at any time prior to the time at which the matter will be considered by the board or commissioner.

Subp. 4. **Untimely petition for a contested case hearing.** The commissioner shall deny a petition for a contested case hearing if the petition is not timely served as provided in subpart 1. However, the board or commissioner 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; 28 SR 1249*

7000.1900 CRITERIA TO HOLD CONTESTED CASE HEARING.

Subpart 1. **Board or commissioner decision to hold contested case hearing.** The board or commissioner 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 board or commissioner;

B. the board or commissioner 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 board or commissioner in resolving the disputed facts in making a final decision on the matter.

Subp. 2. **Scope of contested case.** If the board or commissioner decides to hold a contested case hearing, the board or commissioner 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 board or commissioner 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.

Subp. 3. **Board or commissioner decision not to hold contested case hearing.** If the board or commissioner decides not to hold a contested case hearing, the board or commissioner 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; 28 SR 1249*

7000.2000 FINAL DECISIONS AND ORDERS IN CONTESTED CASES.

Subpart 1. **Time for filing comments and exceptions.** The board or commissioner 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 board meeting at which the matter will be considered for final decision by the board. Where the commissioner is to make a final decision, any person may serve upon the commissioner written comments on or exceptions to the findings of fact, conclusions, and recommendations of the administrative law judge. The written comments or exceptions must be submitted to the commissioner within ten days of the issuance of the administrative law judge's report. Any 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 board member, including the commissioner, and upon all parties.

Subp. 3. **Appearance at board meeting.** Any party may appear at the board 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. **Board decision.** The board shall make all final decisions and orders in those matters within its authority for which a contested case hearing has been held. The board'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. 4a. **Commissioner decision.** The commissioner shall make all final decisions and orders in those matters within the authority of the commissioner for which a contested case hearing has been held. The commissioner'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 board or commissioner 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 a board meeting. The decision or order must be announced at the board meeting, and in all cases the decision or order must be entered in the minutes of the board meeting.

Subp. 7. **Alternatives.** The board or commissioner may accept, modify, or reject the recommendation of the administrative law judge, in whole or in part. The board or commissioner 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 board or commissioner 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

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on all interested persons who have submitted to the board or commissioner 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; 28 SR 1249*

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

Subpart 1. **Petition for a stay and reopening.** At any time up to ten days after the board's or commissioner's final decision, any party to a contested case hearing may petition in writing the board or commissioner for an order that the board's or commissioner'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 board 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 board members, the commissioner, 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 board's or commissioner's final decision and of such importance as are likely to have altered the outcome of the decision.

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

Statutory Authority: *MS s 14.06; 116.07*

History: *19 SR 1310; 20 SR 2629; 28 SR 1249*

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. **Commissioner authority.** The commissioner shall have the authority to exercise, in accordance with the limitations and procedures in this part, emergency powers granted to the agency by Minnesota Statutes, section 116.11, unless the board exercises its authority under Minnesota Statutes, section 116.02, subdivision 8.

Subp. 2. **Notification to board.** Upon declaration of an emergency by the commissioner, the commissioner shall notify all board members as soon as practicable. Notification may be by telephone or any other means practicable. The commissioner may decide to schedule a special meeting of the board to discuss the emergency declaration prior to the next regularly scheduled meeting.

Subp. 3. **Duration.** Any action taken by the commissioner pursuant to the declaration of emergency or any emergency declaration taken by the board pursuant to an exercise of

authority under Minnesota Statutes, section 116.02, subdivision 8, shall remain effective according to the following provisions:

A. until the date of the special meeting and thereafter until the date determined at the meeting by the board pursuant to authority exercised under Minnesota Statutes, section 116.02, subdivision 8;

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 board.

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 board, at which time the commissioner shall report to the board on the status of the emergency.

Subp. 5. **Board or commissioner action.** The commissioner or board, by majority vote, may exercise emergency powers. The action of the commissioner or board taken in an emergency situation shall remain effective until discontinued by the commissioner or majority vote of the board 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 board or the commissioner is considering the exercise of emergency powers, but the board 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 board 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; 28 SR 1249*

7000.7000 VARIANCES.

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

Subp. 2. **Written application.** In no case shall the board or commissioner grant a variance unless a written application has been made to the board or commissioner. 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 board 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 board or commissioner 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. **Board decision.** The board shall make all final decisions on variance applications pursuant to Minnesota Statutes, section 116.02, subdivision 6, clause (6), or subdivision 8. The board shall approve or deny each application. The board may grant a variance upon such conditions as the board may prescribe.

If a contested case hearing has been held, the board 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 board an oral or written statement or recommendation regarding a variance application in accordance with part 7000.1800.

Subp. 8a. **Commissioner decision.** The commissioner shall make final decisions on variance applications for those matters where the board does not have authority pursuant to Minnesota Statutes, section 116.02, subdivision 6, clause (6), or where the board does not exercise authority pursuant to Minnesota Statutes, section 116.02, subdivision 8. The commissioner shall approve or deny each application. The commissioner may grant a variance upon conditions the commissioner may prescribe, in accordance with Minnesota Statutes, chapter 14. If a contested case hearing has been held, the commissioner 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, but no later than 60 days after receipt of the report or submission of the application. Any person may submit to the commissioner a written statement or recommendation regarding a variance application in accordance with part 7000.1800. Any such submission shall be made within ten days following the receipt of the administrative law judge's report, or within ten days after submission of an application where no hearing is held.

Subp. 9. **Notification.** The commissioner must serve every decision of the board or commissioner 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.

Subp. 10. **Remedies preserved.** During the pendency of a variance application, the board or commissioner 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 board or commissioner, the person holding the variance may file with the board or commissioner at any time a written application for modification or amendment of the variance. The application for modification or amendment, and the board's or commissioner'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 board or commissioner.

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; 28 SR 1249*

ETHICAL CONDUCT AND STANDARDS

7000.9000 CONFLICT OF INTEREST.

Subpart 1. **Conflict of interest.** Any member of the board who has a direct and substantial financial or employment interest relating to any matter before the board, which interest is reasonably likely to affect the impartiality or judgment of the board 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. **Post board representation.** For one year after leaving the board, a board member must not represent an interested person or party before the board or appear on behalf of an interested person or party regarding a matter that previously was identified as an item on any board meeting agenda.

Statutory Authority: *MS s 14.06; 116.07*

History: *L 1987 c 186 s 15; 19 SR 1310; 28 SR 1249*

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 a board member or the commissioner 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 board members.** An oral or written ex parte communication must not be made or attempted to be made either directly or indirectly between a board 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 board decides to hold the contested case hearing or the date the rulemaking public hearing is ordered, until the board 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 a board member, the board 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 a board member, that board 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. **Board member abstention.** Any board 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 board members, based on a finding that a prohibited ex parte communication with a board 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; 28 SR 1249*