

CHAPTER 9200
WASTE MANAGEMENT BOARD
RULES OF WASTE MANAGEMENT BOARD

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9200.0100 DEFINITIONS.

Subpart 1. Act. "Act" means the Waste Management Act, Minnesota Statutes, chapter 115A.

Subp. 2. Advisory council. "Advisory council" means any of the advisory councils established by the act.

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Subp. 3. **Advisory task force.** "Advisory task force" means any task force of nonboard members established by the chairperson to advise the board.

Subp. 4. **Board.** "Board" means the Waste Management Board.

Subp. 5. **Days.** "Days" means calendar days.

Subp. 6. **Party.** "Party" means any person whose legal rights, duties, or privileges may be determined in a hearing and any person who has properly intervened in a hearing.

Subp. 7. **Person.** "Person" means any natural person, any state, municipality, or other governmental or political subdivision or other public agency or instrumentality, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, and any other entity, but does not include the Waste Management Board.

Subp. 8. **Service; serve.** "Service" or "serve" means personal service, or, unless otherwise provided by law, service by first class United States mail, postage prepaid, addressed to a person or party at his last known address. An affidavit verifying service shall be signed by the person making service. Service by mail is complete upon placing the item served in the mail. Agencies of the State of Minnesota may also serve other agencies of the State of Minnesota by depositing the item to be served with the Central Mailing Section, Publications and General Services Division, Department of Administration.

Statutory Authority: *MS s 115A.06 subd 2*

9200.0200 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, it shall be the duty of each person and each member, employee, or agent of the board to act in good faith and with complete truthfulness, accuracy, disclosure, and candor. Any person who knowingly makes any material misstatement, act, or omission which results in a breach of the duty of candor may be subject to denial, suspension, or revocation of any permit, license, or approval which the person seeks or holds. In any case of an alleged violation of the duty of candor in which the board seeks to deny, suspend, or revoke a permit, license, or approval issued or granted by the board, a contested case hearing shall be held to determine whether a violation of the duty of candor has occurred.

Statutory Authority: *MS s 115A.06 subd 2*

9200.0300 BOARD MEETINGS.

Subpart 1. **Regular meeting.** Unless otherwise specified by the board, a regular meeting shall be held on the second and fourth Thursday of each month. The time and place of each regular meeting shall be designated by the chairperson. The chairperson may direct that any regular meeting be postponed or advanced.

Subp. 2. **Special meetings.** The chairperson, or in chairperson's absence, the vice chairperson, may call a special meeting of the board when the chairperson, or in the chairperson's absence, the vice chairperson, determines that a special meeting is necessary or desirable. The chairperson, or in the chairperson's absence, the vice chairperson, shall call a special meeting upon the request of a majority of the board members.

Statutory Authority: *MS s 115A.06 subd 2*

9200.0400 BOARD NOTICE OF MEETINGS.

Subpart 1. **Regular meetings.** The chairperson shall give written notice of the time and place of each regular meeting to all board members at least ten days prior to any regular meeting. The chairperson shall give written notice of the time and place of the meeting to all board members at least five days prior to the date of a regular meeting which is either advanced or postponed.

Subp. 2. **Special meetings.** The chairperson shall give as much notice as possible to all board members prior to any special meeting. The notice shall include the time and place of the meeting. Notice shall be given at least three days prior to any special meeting.

Statutory Authority: *MS s 115A.06 subd 2*

9200.0500 PUBLIC NOTICE OF MEETINGS.

The chairperson shall give the public the same notice of the time and place of regular and special meetings as is given to board members. The public shall be given notice by mailing a copy of the notice to each party to a proceeding upon which the board is scheduled to make a decision at the meeting and to the EQB Monitor, and by posting a copy of the notice in a conspicuous place in the board's offices. A copy of the agenda for a regular or special meeting shall serve as notice of a meeting if it includes the time and place of the meeting.

Statutory Authority: *MS s 115A.06 subd 2*

9200.0600 AGENDA.

Subpart 1. **Preparation.** A proposed agenda of business to be conducted shall be prepared by the chairperson for all regular meetings of the board. The agenda shall include a list of all matters to be considered at the meeting. Board members may place items on the agenda by notifying the chairperson of the items at least 14 days prior to a regular meeting. The chairperson shall determine whether or not an item should be placed on the agenda but the chairperson shall advise the board of all items not placed on the agenda. If the item is within the board's jurisdiction and is not placed on the agenda for the meeting requested, the chairperson shall place the item on the agenda for the next succeeding regular meeting. Items may be placed on the agenda for a special meeting in the same manner as for regular meetings provided the chairperson is notified of the item in time to place the item on the agenda. Discussion or informational items for which no decision will be made at the meeting in question may be added to the agenda of any board meeting by motion of a board member and the affirmative vote of a majority of the board members present.

Subp. 2. **Notice of agenda.** The chairperson shall mail a copy of the agenda for each regular meeting to every member of the board and to each party to a proceeding upon which the board is scheduled to act at the meeting and to those persons who request copies of the board's agenda, at least ten days prior to the regular meeting for which the regular agenda has been prepared. The agenda for a regular meeting shall be available for public inspection in the board offices at least ten days prior to the regular meeting for which the agenda has been prepared. The agenda for a special meeting shall be available for public inspection in the board offices as far in advance of the special meeting as is reasonably possible. The agenda shall be available at least three days prior to the special meeting.

Statutory Authority: *MS s 115A.06 subd 2*

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9200.0700 FILING OF WRITTEN MATERIAL.

All written material related to a matter to be decided by the board at a regular meeting must be delivered to the board's offices at least five days before a regular meeting and at least one day before a special meeting, unless otherwise specified in an order of the board.

Statutory Authority: *MS s 115A.06 subd 2*

9200.0800 VICE-CHAIRPERSON.

At its first meeting in July of each year the board shall by a majority vote elect a member to serve as vice-chairperson. It shall be the duty of the vice-chairperson, in the absence or disability of the chairperson, to preside at regular and special meetings, call special meetings, execute documents approved by the board, and perform such other duties as are assigned to the vice-chairperson by a majority vote of the entire board.

Statutory Authority: *MS s 115A.06 subd 2*

9200.0900 CONDUCT OF MEETINGS.

Subpart 1. **Quorum.** In all matters in which temporary board members are not participating, a majority of the permanent members of the board shall constitute a quorum, and a quorum must be present for the transaction of business.

Subp. 2. **Presiding officer.** The chairperson shall preside at all board meetings at which the chairperson is present. The vice-chairperson shall preside in the chairperson's absence. The remaining members shall elect a presiding officer among the members present whenever the chairperson and vice-chairperson are both absent. The presiding officer shall serve only for that meeting or until the chairperson or vice-chairperson arrives.

Subp. 3. **Agenda.** The first order of business at the meeting shall be adoption of the agenda, which may be amended or modified by the board prior to taking up other business.

Subp. 4. **Agenda items.** No matter shall be voted upon at a regular or special board meeting unless it has been placed on the agenda and all relevant public information has been made available for public inspection at least five days prior to a regular meeting and at least one day prior to a special meeting.

Subp. 5. **Voting.** The affirmative vote of a majority of all the members of the board shall be necessary to make any decision, including the adoption, amendment, or repeal of rules and orders. All members present, including the chairperson, shall vote or abstain on every matter presented for decision. Any board matter which does not receive a majority vote shall be placed on the agenda of the next regular monthly meeting or considered at a special meeting.

Subp. 6. **Decisions at open meetings.** All regular and special meetings of the board shall be open to the public, and all decisions of the board shall be made at such meetings.

Subp. 7. **Record of meetings.** The board shall keep full and accurate minutes of all meetings, including a record of all votes of individual members.

Subp. 8. **Discussion.** The chairperson shall determine the limits of time and the relevancy of discussion or debate on any matter before the board in accordance with Robert's Rules of Order.

Subp. 9. **Parliamentary procedure.** Except as specifically provided in these operating procedures, Robert's Rules of Order shall govern any question of parliamentary procedure which may arise at any meeting of the board.

Statutory Authority: *MS s 115A.06 subd 2*

9200.1000 EXECUTION OF DOCUMENTS.

The board shall review the need for any contracts exceeding \$10,000 with any single contractor. Contracts, stipulation agreements, orders, and other documents approved by the board pursuant to law shall be executed on the board's behalf by the chairperson.

Statutory Authority: *MS s 115A.06 subd 2*

9200.1100 STAFF.

The chairperson shall hire staff for the board. All board work assignments to staff shall be directed through the chairperson. In determining whether services to be rendered to the board constitute contractual services or an employer-employee relationship, the board shall utilize the guidelines set out in 2 MCAR S 2.011 A.

Statutory Authority: *MS s 115A.06 subd 2*

NOTE: 2 MCAR section 2.011 has been repealed.

9200.1200 TEMPORARY BOARD MEMBERS.

Subpart 1. Eligibility. Temporary board members shall be eligible to vote only on those issues which are authorized for their review under the act. The final determination as to whether temporary board members are eligible to vote on a particular issue shall be made by the chairperson. Whenever feasible, the chairperson shall arrange the board's agenda so that the issues on which temporary board members may vote are grouped together.

Subp. 2. Quorum. A majority of the total number of temporary and permanent board members eligible to vote on an issue shall constitute a quorum; however, at least six permanent board members must be present to constitute a quorum.

Subp. 3. Voting. The affirmative vote of a majority of all permanent and temporary board members eligible to vote on an issue shall be necessary to make any decision. All eligible members present, including the chairperson, shall vote or abstain on every matter presented for decision.

Statutory Authority: *MS s 115A.06 subd 2*

9200.1300 COMMITTEES.

The chairperson with the board's approval may from time to time establish committees of board members as the chairperson deems necessary or desirable to facilitate the board's work. All committee recommendations shall be submitted to the board for appropriate action.

Statutory Authority: *MS s 115A.06 subd 2*

9200.1400 ADVISORY COUNCILS AND ADVISORY TASK FORCES.

Subpart 1. Establishment of advisory task forces. In addition to the advisory councils established in the act, the chairperson may establish such advisory task forces as the chairperson, with the approval of the board, deems necessary or desirable. The chairperson shall dissolve any advisory task force when the advisory task force is no longer deemed necessary or desirable. Members of the advisory task forces shall be appointed by the chairperson and shall serve at the chairperson's pleasure.

Subp. 2. Purpose. Advisory councils and advisory task forces shall advise the board on various matters within their area of expertise and provide technical assistance as requested.

Subp. 3. Procedures. Each advisory council and advisory task force shall prepare and adopt its own set of operating procedures.

Subp. 4. Recommendations. Recommendations from advisory councils and advisory task forces shall be provided to the board through the board's chairperson. Advisory councils and advisory task forces may also supply a

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minority recommendation to the board on an issue. The board shall respond to each formal recommendation of an advisory council or advisory task force. The response shall indicate the board's reaction to the advisory council's or advisory task force's recommendation and the current status of the issue.

Statutory Authority: *MS s 115A.06 subd 2*

9200.1500 FINAL DECISIONS AND ORDERS.

Subpart 1. Decision. The board shall make all final decisions and orders in those matters for which a hearing has been held. When required by law, the board's decision or order shall be based solely on the record from the hearing.

Subp. 2. Findings and conclusion. The decision or order shall be accompanied by a concise statement of the findings and conclusions upon each contested issue of fact necessary to the decision. If the proposed statements of findings and conclusions submitted to the board are not acceptable, the board shall direct the staff to prepare additional findings and conclusions. Rejection of the proposed findings and conclusions shall be considered an interim decision. A final decision on the matter shall be made after the board has adopted a statement of findings and conclusions. If the board or its staff has prepared proposed findings of fact and conclusions prior to the board meeting, it shall make such proposed findings of fact and conclusions available to all parties to a matter at least ten days prior to the board meeting at which the board intends to announce its decision or order.

Subp. 3. Time. The board shall reach a final decision or order on the matter as expeditiously as possible after receipt of the hearing examiner's recommendation.

Subp. 4. Manner. The chairperson shall place the matter on the agenda for a board meeting when the board is prepared to reach a decision. The decision or order shall be announced at the board meeting and in all cases the decision or order shall be entered in the minutes of the board meeting.

Subp. 5. Remand. The board may remand the matter to the hearing examiner for further proceedings if the board determines the record is inadequate.

Subp. 6. Notice. Every final decision or order in a matter for which a hearing has been held shall be served on all parties to the matter and on all persons who have submitted a statement into the record for whom the board has the person's mailing address.

Statutory Authority: *MS s 115A.06 subd 2*

9200.1600 RECONSIDERATION.

Any board member or any party to a matter may request the board to reconsider a final decision by notifying the chairperson within three days after the meeting at which the final decision on a matter was made. The affirmative vote of two-thirds of the members of the entire board shall be required to reconsider a matter.

Statutory Authority: *MS s 115A.06 subd 2*

9200.1700 OBTAINING A REHEARING.

Subpart 1. Petition for rehearing. At any time within three days after the final decision on a matter was made by the board, any party to the matter may request a rehearing by filing a petition for rehearing and a request for reconsideration. A petition for rehearing submitted after a final decision on the matter has been reached by the board shall not be acted upon unless the board has first decided to reconsider its decision. Such petition shall contain the name and address of the petitioner, the board designation for the matter, and the reasons for the petition.

Subp. 2. **Action.** The board shall grant or deny a petition for rehearing as part of the record of the decision. Such petition shall be granted upon a showing that there are irregularities in the hearing which affected the outcome of a hearing, errors of law, or that there is newly discovered material evidence of such importance it would have likely altered the outcome of the hearing. A rehearing petition shall also be granted upon a showing of good cause for failure to have answered or appeared at the hearing. Evidence and argument may be presented in written or oral form, or both, by any party to the matter regarding the granting or denial of the petition.

Subp. 3. **Rehearing.** A rehearing shall be noticed and conducted in the same manner as an original hearing on a matter, provided that the hearing examiner may permit service of the notice less than 30 days prior to the rehearing.

Statutory Authority: *MS s 115A.06 subd 2*

9200.1800 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 his impartiality or judgment in the matter, shall make known the interest and shall refrain from participating in, or voting upon, the matter. No employee or agent of the board, including the chairperson, shall engage in any outside employment or other conduct which is likely to affect adversely the effectiveness or efficiency of any functions or duties the person performs for the board.

Statutory Authority: *MS s 115A.06 subd 2*

PUBLIC PARTICIPATION

9200.1900 PUBLIC PARTICIPATION IN BOARD MATTERS.

Any person shall be permitted to participate in any matter in which the board is involved in carrying out its statutory duties and obligations. Participation shall include submitting statements, attending public meetings and conferences of the board, and sharing in the discussions at these meetings and conferences. Participation shall also include receiving notice of the progress of a matter before the board. Any person who wishes to receive notice of the progress of a board matter shall request in writing that the chairperson provide such notice. Thereafter, the chairperson shall give the person sufficient notice of pending events to permit participation. No action of the board shall, however, be held invalid by reason of the chairperson's failure to provide notice to persons who are not parties to a matter. Whenever any person submits a written statement or recommendation to the board on any matter, the board shall notify each person adversely affected by the statement or recommendation. The board shall, upon request, allow each person adversely affected an opportunity to respond, if the board determines that the person has not had an adequate opportunity to submit statements or recommendations on a matter.

Statutory Authority: *MS s 115A.06 subd 2*

9200.2000 PUBLIC PARTICIPATION AT BOARD MEETINGS.

Subpart 1. **Agenda items for which no public hearing was held.** Upon request made prior to a board meeting, any person who desires to present a statement on a matter which is on the agenda for the meeting and for which no public hearing was held, shall be afforded an opportunity to present statements to the board at the meeting, provided however, that all written statements must be submitted at least five days before any regular meeting and one day before any special meeting. Upon request made during a board meeting, any person who desires to present an oral statement on an agenda matter may do so, within such limits of time and manner as the chairperson may establish under the

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circumstances. The board shall allow any person adversely affected by any oral or written statement submitted under this subpart additional time in which to respond if the board determines that the person has not had an adequate opportunity to do so.

Subp. 2. **Agenda items for which a public hearing has been held.** When a public hearing has been held on an agenda matter, any person shall be permitted to submit written statements to the board at any time up to five days before the meeting or at such other time as provided in an order of the board. When the board's decision is limited to a record created at the hearing, written statements shall be limited to the comments or arguments regarding evidence in the record.

Statutory Authority: *MS s 115A.06 subd 2*

9200.2100 EX PARTE COMMUNICATION.

No party to a matter for which a hearing has been ordered by the board shall communicate with any board member concerning the matter except in writing, or orally as part of a presentation at a board meeting. Copies of any written communication shall be sent to all parties to the matter and to all board members.

Statutory Authority: *MS s 115A.06 subd 2*

9200.2200 REIMBURSEMENT FOR OUT-OF-STATE TRAVEL.

Reimbursement from board funds to any board member or staff member other than for expenses associated with authorized out-of-state travel shall be at the discretion and with the prior approval of the chairperson.

Statutory Authority: *MS s 115A.06 subd 2*

9200.2210 INSPECTION OF PUBLIC RECORDS.

All records and data of the board or copies thereof, which are public pursuant to Minnesota Statutes, sections 15.1611 to 15.1698 shall be 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 board offices. No public records shall be removed from the board's offices. Any inspection or copying of records shall be made in the presence of an officer, employee, or agent of the board. The board may charge and collect a reasonable fee, computed in accordance with part 1205.0300, subpart 4, items A to E, for the reproduction of any public records.

Statutory Authority: *MS s 115A.06 subd 2*

9200.2220 COMPUTATION OF TIME.

In computing any period of time prescribed by parts 9200.0100 to 9200.2210, the day of the last act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period computed shall be included, unless it is a Saturday, Sunday, or a legal holiday.

Statutory Authority: *MS s 115A.06 subd 2*

SOLID WASTE MANAGEMENT DISTRICTS

9200.2300 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 9200.2300 to 9200.3500, the following terms have the meaning given them, unless the context requires otherwise.

Subp. 2. **Terms defined in Minnesota Statutes, section 115A.03.** The following terms have the meaning given them in Minnesota Statutes, section 115A.03: agency, board, collection, disposal, disposal facility, metropolitan area, metropolitan council, person, processing, regional development commission, resource recovery, resource recovery facility, solid waste, solid waste management district or waste district, transfer station, waste facility, and waste management.

Subp. 3. **Alteration.** "Alteration" means a change in the geographic boundaries or the articles of incorporation of a solid waste management district.

Subp. 4. **Chairperson.** "Chairperson" means the chairperson of the Waste Management Board.

Subp. 5. **Director.** "Director" means the director of the Minnesota Pollution Control Agency.

Subp. 6. **Metropolitan county.** "Metropolitan county" means the following counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington.

Subp. 7. **Nonmetropolitan county.** "Nonmetropolitan county" means those counties within Minnesota which are not metropolitan counties.

Subp. 8. **Solid waste management advisory council.** "Solid waste management advisory council" means the council established pursuant to Minnesota Statutes, section 115A.12, subdivision 1.

Subp. 9. **Technical advisory council.** "Technical advisory council" means the council established pursuant to Minnesota Statutes, section 115A.12, subdivision 2.

Statutory Authority: *MS s 115A.63 subd 2*

9200.2400 ESTABLISHMENT, TERMINATION, AND ALTERATION OF SOLID WASTE MANAGEMENT DISTRICTS.

Parts 9200.2300 to 9200.3500 provide for the establishment, termination, and alteration of solid waste management districts as required by Minnesota Statutes, section 115A.63, subdivision 2. They govern the process by which local petitions to establish, alter, or terminate the boundaries, powers, or responsibilities of solid waste management districts are submitted to the Waste Management Board, and the process by which the Waste Management Board will review the petitions.

Statutory Authority: *MS s 115A.63 subd 2*

9200.2500 PETITION CONTENTS.

A petition requesting establishment or alteration of a solid waste management district shall contain the following:

- A. the name of the proposed solid waste management district;
- B. a physical description of the geographic area and a brief description of the social and economic characteristics of the political subdivisions within the proposed boundaries of the district or alteration to a district;
- C. a map which is of a sufficient scale to accurately identify the proposed boundaries of the district, including the political subdivisions contained within the proposed district;
- D. a resolution of support for the district's establishment or alteration from each petitioning county which endorses the proposed boundaries and articles of incorporation or the changes in the boundaries or articles of incorporation;
- E. a statement of the purposes for establishing or altering a district which describes in specific terms the solid waste management problems of the area encompassed by the district;
- F. a statement of the goals and objectives of the proposed new or altered district and a discussion of how achieving the goals and objectives will lead to resolving the solid waste problems within the district;
- G. a description of the solid waste management improvements and facilities which are envisioned, together with a discussion of the impact that the improvements and facilities will have on the solid waste management problems identified by the petitioners, and on the existing solid waste management system;
- H. the proposed articles of incorporation or proposed changes in the articles of incorporation signed by the chairperson of all petitioning county boards specifying which of the powers identified in Minnesota Statutes, sections

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115A.69 and 115A.71 the petitioners believe the district should exercise and any other powers which the petitioners believe are necessary or convenient to accomplishing the purposes, goals, and objectives of the district, together with a statement of why each proposed power is necessary or convenient to accomplishing the purposes, goals, and objectives of the district;

I. a resolution signed by the chairperson of the county board of each petitioning county which identifies the reasons why joint powers agreements under Minnesota Statutes, section 471.59 are not sufficient to provide the legal, planning, management, or administrative structures necessary to implement the solid waste management powers identified in the district's articles of incorporation;

J. an affidavit executed by the chairperson of the county board of each petitioning county which indicates that the local review and comment provisions of parts 9200.2600 and Minnesota Statutes, section 115A.64, subdivision 3, have been complied with;

K. a copy of the comprehensive solid waste management plan required by Minnesota Statutes, section 115A.63, subdivision 3; and

L. a statement setting out the relationship between the district and all affected counties with respect to solid waste management planning, administration, and enforcement functions.

Statutory Authority: *MS s 115A.63 subd 2*

9200.2600 ADDITIONAL LOCAL REVIEW REQUIREMENTS.

The notice of the petition published in newspapers of general circulation in the district as required by Minnesota Statutes, section 115A.64, subdivision 3 shall include a summary of purposes, goals, objectives, and proposed powers of the district. The notice shall state that comments on the petition may be submitted and provide the name and address of a person to whom comments may be submitted. The notice shall be published at least 60 days but no more than 120 days before the petition is submitted to the board. The petitioners shall submit a copy of the petition to the Metropolitan Council for review and comment, if the petition involves a district which includes or extends into a metropolitan county.

Statutory Authority: *MS 115A.63 subd 2*

9200.2700 PETITION REVIEW PROCEDURES.

Subpart 1. Petition for review presented to the board. The board shall accept a petition for review if it conforms to the requirements of part 9200.2500 and Minnesota Statutes, sections 115A.62 to 115A.72. Petitions involving a district which includes or extends into a metropolitan county shall, upon acceptance, be referred to the Metropolitan Council for review. If the Metropolitan Council does not approve the establishment or alteration of the district, the board shall dismiss the petition. The Metropolitan Council shall make its decision within 90 days after receiving the petition from the board.

Subp. 2. Public hearing. If comments have been received by the chairperson objecting to the establishment or alteration of the district, the chairperson shall request the Office of Administrative Hearings to conduct a public hearing on the petition. The hearing shall be held within 60 days after the board has accepted the petition.

Subp. 3. Advice and recommendations. Upon acceptance of a petition, the board shall transmit copies of the petition to the board's solid waste management advisory council and technical advisory council, and the director of the Pollution Control Agency for their advice and recommendations concerning the disposition of the petition.

Subp. 4. **Recommendations from the solid waste management advisory council.** The solid waste management advisory council shall make its recommendations to the board within 60 days after receipt of the petition. The technical advisory council shall make its recommendations to the board within 30 days after receiving the petition.

Subp. 5. **Report by the Pollution Control Agency.** The director of the Pollution Control Agency shall complete and submit to the board the report required by Minnesota Statutes, section 115A.64, subdivision 4, within 30 days after receiving the petition. In addition to the issues which the report must address under Minnesota Statutes, section 115A.64, subdivision 4, the report shall comment on whether the proposed articles of incorporation of the district provide the district with adequate solid waste management administrative, planning, and enforcement authority to properly and safely carry out the solid waste management programs which the district proposes to undertake.

Statutory Authority: *MS s 115A.63 subd 2*

9200.2800 WASTE MANAGEMENT BOARD DECISION ON ESTABLISHMENT OR ALTERATION OF DISTRICT.

Subpart 1. **Considerations for decisions.** Within 60 days after receiving the recommendations from the solid waste management advisory council, or, in the instance of a contested case proceeding, within 60 days after receiving the report from the hearing examiner, the board shall make its decision on whether establishment or alteration of the district is in the public interest and serves the purposes of Minnesota Statutes, sections 115A.62 to 115A.72. In making this decision the board shall consider:

A. whether the district will reduce the need for landfilling of solid waste or improve the operation of solid waste landfills;

B. whether the district will provide coordinated solid waste management by all or portions of two or more counties;

C. whether the establishment or alteration of a district will enhance the protection or preservation of natural resources of the state;

D. whether the district will increase the potential for resource recovery;

E. whether the delivery of solid waste management services, public or private, will be more efficient or more convenient; and

F. whether the articles of incorporation of the district provide the district with adequate solid waste management planning, administrative, and enforcement authority to properly and safely carry out the solid waste management programs which the district proposes to undertake.

Subp. 2. **Denial of petition.** If the board determines that the establishment or alteration of a district as proposed in the petition would not be in the public interest and would not serve the purposes of Minnesota Statutes, sections 115A.62 to 115A.72, the board shall notify the petitioners by certified mail of its intent to deny the petition. If a contested case hearing has not been held on the petition, and if the petitioners request a contested case hearing within 30 days after the board issues its notice of intent to deny the petition, the board shall request the Office of Administrative Hearings to conduct a hearing. The hearing shall be held within 60 days after the board receives the request for a hearing. The board shall make its final decision on the petition within 60 days after receiving the hearing examiner's report. In addition to the notification requirements of Minnesota Statutes, section 115A.64, subdivision 4, the board shall also notify the Minnesota Pollution Control Agency of its decision.

Statutory Authority: *MS s 115A.63 subd 2*

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RULES OF WASTE MANAGEMENT BOARD 9200.3100

9200.2900 PETITION REQUIREMENTS FOR TERMINATION OF A DISTRICT.

A petition to terminate a district shall include:

A. a statement identifying why the district is no longer in the public interest, addressing at least the issues specified in part 9200.2800;

B. a statement of the solid waste management alternatives which will be utilized to manage the waste stream in the absence of a district;

C. an affidavit executed by the chairperson of the county boards of each petitioning county which states that the notice provisions of part 9200.3000 and Minnesota Statutes, section 115A.66, subdivision 1, have been complied with; and

D. a copy of all written comments received by the petitioners on the petition.

Statutory Authority: *MS s 115A.63 subd 2*

9200.3000 ADDITIONAL LOCAL REVIEW REQUIREMENTS.

The notice of the petition published in newspapers of general circulation in the district pursuant to Minnesota Statutes, section 115A.66, subdivision 1, shall include a summary of the petition to terminate, including a brief discussion of the potential positive and negative impacts of terminating the district. The notice shall also state that comments may be submitted on the petition and provide the name and address of a person to whom comments may be submitted. The notice shall be published at least 60 days but not more than 120 days before the petition is submitted to the board. A copy of the petition shall be submitted to the appropriate regional development commission or commissions, or, if all or part of a metropolitan county is included within the district, to the Metropolitan Council for review and comments at least 60 days before submission of the petition to the board.

Statutory Authority: *MS s 115A.63 subd 2*

9200.3100 TERMINATION REVIEW PROCEDURES.

Subpart 1. Petition for review presented to the board. The board shall accept a petition for review if it conforms to the requirements of part 9200.2900 and Minnesota Statutes, section 115A.66. If the petition does not conform with part 9200.2900 or Minnesota Statutes, section 115A.66, the chairperson shall return it immediately to the petitioners with a statement identifying the deficiencies in the petition. The board may require the petitioners to republish the notice of termination and renotify political subdivisions if the board determines that significant changes to the original petition result from the corrected deficiencies.

Subp. 2. Hearing. If comments objecting to the termination of a district are included with the petition, the board shall request the Office of Administrative Hearings to conduct a hearing on the petition. The hearing shall be held within 60 days after the board accepts a petition.

Subp. 3. Advice and recommendations. Upon acceptance of a petition, the board shall transmit copies of the petition to the board's solid waste management advisory council and technical advisory council, and the director of the Pollution Control Agency, for their advice and recommendations concerning the disposition of the petition. Petitions to terminate a district which includes or extends into a metropolitan county shall be referred to the Metropolitan Council for review. The solid waste management advisory council and Metropolitan Council shall make their recommendations to the board within 90 days after receiving the petition. The technical advisory council and the director shall make their recommendations to the board within 30 days after receiving the petition.

Statutory Authority: *MS s 115A.63 subd 2*

9200.3200 WASTE MANAGEMENT BOARD DECISION ON TERMINATION OF DISTRICT.

Subpart 1. **Considerations for decision.** Within 60 days after receiving the solid waste management advisory council's recommendations, or in the instance of a contested case hearing, within 60 days after receiving the report of the hearing examiner, the board shall determine whether termination of the district is in the public interest. In determining whether the termination of a district is in the public interest the board shall consider:

A. whether the termination will reduce the need for landfilling of solid waste or in some manner improve the operation of solid waste landfills;

B. whether the termination will improve the coordination of solid waste management services in two or more counties;

C. whether the termination will enhance the protection or preservation of the natural resources of the state;

D. whether the termination will increase the potential for resource recovery;

E. whether the termination will provide for more efficient or more convenient delivery of public or private solid waste management services;

F. whether the purposes for which the district was established have been accomplished or are no longer necessary to accomplish; and

G. the impact the termination would have on the solid waste management system serving the district.

Subp. 2. **Denial of petition.** The board shall not approve the termination of any district which has outstanding bonds or obligations issued or incurred pursuant to the authority granted in Minnesota Statutes, section 115A.71. If the board determines that the termination of a district as proposed in the petition would not be in the public interest, the board shall notify the petitioners by certified mail of its intent to deny the petition. If a contested case hearing has not been held on the petition, and if the petitioners request a contested case hearing within 30 days after the board issues its notice of intent to deny the petition, the board shall request the Office of Administrative Hearings to conduct a hearing. The hearing shall be held within 60 days after the board receives the request for a hearing. Within 60 days after the receipt of the hearing examiner's report the board shall make its final decision on the petition. If the board determines that termination would be in the public interest, the board shall submit a certified copy of its findings and order to each political subdivision wholly or partly within the district, the director of the Minnesota Pollution Control Agency and to the Office of the Secretary of State.

Statutory Authority: *MS s 115A.63 subd 2*

9200.3300 DESIGNATION OF RESOURCE RECOVERY FACILITIES.

Articles of incorporation which would permit a district to require that all or any portion of the solid waste generated within the district's boundaries be taken to a designated facility pursuant to Minnesota Statutes, section 115A.70 shall not be effective prior to July 1, 1982. Districts which are established prior to July 1, 1982, may request authority to designate facilities on or after July 1, 1982. The request to designate facilities shall be considered a substantial change in the district's powers requiring a petition for alteration of the district. After July 1, 1982, review of articles of incorporation providing for designation of facilities shall be reviewed together with the review of the remainder of the petition for establishment of a district.

Statutory Authority: *MS s 115A.63 subd 2*

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9200.3400 EXTENSION OF REVIEW PERIODS.

Review periods established by parts 9200.2400 to 9200.3200 other than those specifically required by Minnesota Statutes, sections 115A.62 to 115A.72, may, upon request made prior to the expiration of the period, be extended by the board, if, based on the complexity or controversial nature of the petition, the requesting party is able to demonstrate the need for more time. If the time periods provided for review expire and no extension has been granted, the board may proceed in its review of the petition without the comments of the affected entity.

Statutory Authority: *MS s 115A.63 subd 2*

9200.3500 REQUESTS FOR ADDITIONAL INFORMATION.

The chairperson of the board may, upon his own initiative or upon the request of any person required to review the petition under parts 9200.2400 to 9200.3200 or Minnesota Statutes, sections 115A.62 to 115A.72, request the petitioners to supply additional information if the chairperson determines that the information would be necessary or useful in deciding whether the petition should be granted or denied.

Statutory Authority: *MS s 115A.63 subd 2*

SUPPLEMENTARY REVIEW

9200.3600 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 9200.3600 to 9200.5300, the following terms have the meanings given them unless the context requires otherwise.

Subp. 2. **Agency.** "Agency" means the Pollution Control Agency.

Subp. 3. **Board.** "Board" means the Waste Management Board.

Subp. 4. **Chairperson.** "Chairperson" means the chairperson of the Waste Management Board.

Subp. 5. **Person.** "Person" means any human being, any municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity, but does not include the Pollution Control Agency or the Waste Management Board.

Subp. 6. **Political subdivision.** "Political subdivision" means any municipal corporation, government subdivision of the state, local government unit, special district, or local or regional board, commission, or authority authorized by law to plan or provide for waste management.

Statutory Authority: *MS s 115A.32*

9200.3700 SUPPLEMENTARY REVIEW OF DECISIONS CONCERNING ESTABLISHMENT OF CERTAIN FACILITIES.

Parts 9200.3600 to 9200.5300 establish the procedures by which the Waste Management Board will review petitions for supplementary review. Under Minnesota Statutes, sections 115A.32 to 115A.39, the Waste Management Board may entertain a petition for supplementary review whenever an authorized applicant has received all necessary permits from the Pollution Control Agency for a proposed facility but a political subdivision has refused to approve the establishment or operation of the facility.

Statutory Authority: *MS s 115A.32*

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9200.3800 ELIGIBILITY FOR SUPPLEMENTARY REVIEW.

The following persons shall be eligible to request supplementary review by the board pursuant to Minnesota Statutes, sections 115A.32 to 115A.39:

A. a generator of sewage sludge within the state who has been issued permits by the agency for a facility to dispose of sewage sludge or solid waste resulting from sewage treatment, except that the Metropolitan Waste Control Commission shall not be eligible to request review for a sewage sludge disposal facility or for a solid waste facility with a proposed permitted life of longer than four years;

B. a political subdivision which has been issued permits by the agency, or a political subdivision acting on behalf of a person who has been issued permits by the agency, for a solid waste facility which is located outside the metropolitan area and which is no larger than 250 acres, not including any proposed buffer area, provided that if the petitioner is a political subdivision acting on its own behalf, the political subdivision shall have completed a plan conforming to the requirements of Minnesota Statutes, section 115A.46;

C. a generator of hazardous waste within the state who has been issued permits by the agency for a hazardous waste facility to be owned and operated by the generator, on property owned by the generator, and to be used by the generator for managing the hazardous wastes produced by the generator only;

D. a person who has been issued permits by the agency for a commercial hazardous waste processing facility at a site included within one of the areas on the board's inventory of preferred areas for such facilities adopted pursuant to Minnesota Statutes, section 115A.09; and

E. a person who has been issued permits by the agency for a disposal facility for the nonhazardous sludge, ash, or other solid waste generated by a permitted hazardous waste processing facility operated by the person.

Statutory Authority: *MS s 115A.32*

9200.3900 REVIEW OF PETITIONS FOR SUPPLEMENTARY REVIEW.

Subpart 1. Acceptance of petition. The chairperson on behalf of the board shall accept a petition for review if it conforms to the requirements of subpart 2. If the petition does not conform to the requirements of subpart 2, the chairperson shall return it to the petitioners with a statement identifying the deficiencies in the petition.

Subp. 2. Contents of petition. A petition shall include:

A. the name, address, and telephone number of the petitioner;

B. the name, address, and telephone number of each owner or operator of the proposed facility if different from the petitioner specified in item A;

C. the street address and legal description of the location of the proposed facility;

D. a description of the proposed facility;

E. a list of the existing permits and pending permit applications for the proposed facility together with a copy of any permits which have been issued;

F. an estimate of the required construction time;

G. an estimate of the functional life of the proposed facility;

H. for processing facilities, a description of the types of processes to be used;

I. for processing facilities, a statement of the design capacity of each process;

J. for processing facilities, a description of the materials which will be treated at the proposed facility as specified in the agency permit application;

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K. a copy of the resolution, order, or other action of a political subdivision refusing to approve the establishment or operation of the proposed facility or a statement that the required approval has been refused;

L. for petitioners who qualify for review under part 9200.3800, item B, a copy of the required solid waste plan conforming to the requirements of Minnesota Statutes, section 115A.46; and

M. for petitioners who qualify for review under part 9200.3800, item D or E, a brief discussion showing how the proposed facility is consistent with the hazardous waste management plan required under Minnesota Statutes, section 115A.11, if the plan has been adopted at the time the petition is submitted.

Statutory Authority: *MS s 115A.32*

9200.4000 ADDITIONAL INFORMATION TO BE SUBMITTED.

The chairperson may request the petitioner to submit additional information whenever the chairperson determines that the information would be necessary or useful in deciding whether the petition should be approved or disapproved.

Statutory Authority: *MS s 115A.32*

9200.4100 PROCEDURE FOR SUPPLEMENTARY REVIEW.

Subpart 1. **First phase.** The first phase of the supplementary review process shall take place in the 90-day period following acceptance of a petition. In this phase of the review, temporary board members shall be appointed, the issues which will be the subject of review shall be identified, and mediation services shall be made available to the petitioner and the political subdivision.

Subp. 2. **Second phase.** The second phase of the supplementary review process shall commence with the board's decision on the scope and procedures for the review and shall extend for a period of 90 days following the decision. During the second phase of the review, the board shall hold any required public hearings and make its final decision on approving or not approving the proposed facility.

Statutory Authority: *MS s 115A.32*

9200.4200 IDENTIFICATION OF ISSUES.

Subpart 1. **Meetings with petitioner and political subdivision.** Within 40 days after the board has accepted a petition for review, the chairperson shall prepare a compilation of the issues which may be relevant to the supplementary review. To assist in the identification of these issues, the chairperson may meet with the petitioner and representatives of the political subdivision, either separately or together, or the chairperson may request a written statement of the issues which the petitioner and the political subdivision believe should be addressed in the review.

Subp. 2. **Public meetings.** Within 60 days after the board has accepted a petition for review, the board shall hold an informal public meeting in the area where the facility is proposed. The purpose of this meeting shall be to permit members of the public to discuss the issues which should be reviewed by the board.

Subp. 3. **Public meeting procedures.** The board shall announce the public meeting by providing press releases to newspapers and radio and television stations in the area where the facility is proposed and by letter to the political subdivisions within which the facility is proposed to be located. The meeting shall be held in the area in which the facility is proposed to be located. The meeting shall be conducted by the chairperson or his designee.

Copies of the compilation of issues prepared by the chairperson shall be available for review. Members of the public shall be given an opportunity to suggest additional issues which should be considered and present reasons why particular issues should or should not be considered. A summary of the issues

raised at the public meeting shall be prepared.

Statutory Authority: *MS s 115A.32*

9200.4300 APPOINTMENT OF TEMPORARY BOARD MEMBERS.

Subpart 1. Notification to political subdivision. Within ten days after a petition has been accepted for review, the chairperson shall notify the political subdivisions which have the responsibility to appoint temporary board members that a petition affecting their areas has been accepted.

Subp. 2. Appointment by political subdivision. The political subdivisions shall appoint temporary board members in accordance with Minnesota Statutes, section 115A.34 within 45 days after the date the petition was accepted by the board.

Subp. 3. Failure to appoint members. If a political subdivision fails to appoint the required temporary board members within 45 days after the date the petition was accepted by the board, the chairperson shall notify the governor's office within five working days of the failure to appoint. The appointment of the temporary board members shall then be made by the governor in accordance with Minnesota Statutes, section 115A.34.

Statutory Authority: *MS s 115A.32*

9200.4400 MEDIATION.

Subpart 1. Notice of mediation. Within ten days following acceptance of a petition for review, the chairperson shall notify both the petitioner and the political subdivision that the services of an impartial mediator will be made available to the petitioner and the political subdivision to assist in the resolution of the issues separating the petitioner and the political subdivision.

Subp. 2. Conditions for mediation. Mediation services shall be offered in every dispute involving supplementary review. The offer of mediation services shall terminate 25 days after a petition is accepted. Mediation services may be requested by either the petitioner or the political subdivision; however, the petitioner and the political subdivision must agree to mediation.

Subp. 3. Selection of mediator. A single impartial mediator shall be selected for each review. The petitioner and the political subdivision shall have a ten-day period after notification of an agreement to mediate to select a mediator acceptable to both parties. If an impartial mediator has not been selected within this ten-day period, a mediator shall be appointed by the chairperson.

Subp. 4. Length of mediation. Mediation shall be conducted for a period of 30 days following the appointment of a mediator by the chairperson unless the chairperson determines that continued mediation services will be beneficial to the resolution of the case.

Subp. 5. Termination of mediation. The mediator, the petitioner, or the political subdivision may terminate mediation at any time. The mediator shall immediately notify the chairperson of the termination of mediation.

Subp. 6. Compensation of mediator. The board shall pay the costs of mediation.

Subp. 7. Decision. If an agreement is reached by the close of the mediation period, the agreement shall be referred to the board for review.

Statutory Authority: *MS s 115A.32*

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9200.4500 RECOMMENDED STATEMENT OF ISSUES.

At least ten days before the board meeting held to determine the scope and procedures for review and to commence the supplementary review process, the chairperson shall prepare a recommended statement of the issues involved in the review. The chairperson shall make copies of the recommended statement available to members of the public. Copies of the recommended statement of issues shall be provided to the petitioner and the political subdivision.

Statutory Authority: *MS s 115A.32*

9200.4600 BOARD MEETING TO ESTABLISH SCOPE AND PROCEDURES FOR THE SECOND PHASE OF THE REVIEW.

Subpart 1. Scope and statement of issues. At the meeting held to commence the supplementary review process, the chairperson shall present the recommended statement of issues involved in the review to the board including the temporary board members. The board, after providing an opportunity for public comment, shall adopt a statement of issues for review.

Subp. 2. Procedures. If no mediated agreement has been reached, the board shall direct that a contested review be conducted under part 9200.4800. If a mediated agreement has been reached which may require the imposition of more stringent permit terms, conditions, or requirements, or if significant issues are identified in the statement of issues adopted by the board which were not addressed in the agreement, the board shall direct that a review hearing be conducted under part 9200.4700. If a mediated agreement has been reached which does not require the imposition of more stringent permit terms, conditions, or requirements, and if all significant issues which were identified in the statement of issues are addressed in the agreement, the board shall suspend the review pending final approval of the proposed facility by the political subdivision and shall dismiss the petition and terminate the review upon final approval of the proposed facility by the political subdivision.

Statutory Authority: *MS s 115A.32*

9200.4700 HEARING PROCEDURES FOLLOWING MEDIATED AGREEMENT.

Subpart 1. Timing of hearing. The public hearing on the mediated agreement shall be held within 45 days after the board meeting held to establish the scope and procedures for review.

Subp. 2. Notice of hearing. The board shall provide written notice of the hearing to each political subdivision in which the facility is proposed to be located. The board shall also publish notice of the supplementary review hearing in a newspaper or newspapers of general circulation in the area for two successive weeks ending at least 15 days before the date of the hearing. The published notice shall:

- A. specify the date, time, and location of the hearing;
- B. describe the proposed facility and its location;
- C. describe the permits which have been issued for the proposed facility;
- D. briefly set out the process by which the agreement was reached and the scope and procedures which will be used in the supplementary review;
- E. identify the location or locations within the city, town, or county where copies of the agreement, the permit applications, agency permits, and the board's scope and procedures for review are available for review; and
- F. include the name of a person on the board's staff to whom questions about the review may be directed.

Subp. 3. Location of hearing. The hearing shall be held in the county where the facility is proposed to be located and as near as practical to the site of the proposed facility.

Subp. 4. Procedures for the hearing. The hearing shall be conducted by a hearing examiner from the Office of Administrative Hearings. A majority of the permanent board members shall be present at the hearing. The hearing shall be opened by the hearing examiner who will explain the hearing procedures. A member of the board's staff shall explain the purpose of the hearing, the statement of issues adopted by the board, and any additional permit terms, conditions, or requirements which the board is considering to implement the agreement. The political subdivision and the petitioner shall explain the mediated agreement.

Members of the public shall have an opportunity to comment upon the agreement, the issues identified in the statement of issues, and any proposed additional permit terms, conditions, or requirements. Questions may be directed to any representative of the political subdivision or the petitioner regarding the mediated agreement and to any person who presents a statement at the hearing.

The chairperson may request any person who has information related to the hearing to present the information if the chairperson determines the information would be helpful in reaching a decision in the case. The hearing examiner may exclude testimony or disallow questions which are irrelevant, unduly repetitious, argumentative, harassing, or adversarial in nature. No person shall interfere with the conduct of the hearing or disrupt or threaten to disrupt the hearing. A transcript of the hearing shall be prepared.

Statutory Authority: *MS s 115A.32*

9200.4800 CONTESTED SUPPLEMENTARY REVIEW HEARING.

Subpart 1. Timing of hearing. A contested supplementary review hearing shall be held within 45 days after the board meeting held to establish the scope and procedures for review.

Subp. 2. Notice of hearing. Written notice of the hearing shall be provided to each political subdivision in which the facility is proposed to be located. The board shall also publish notice of a contested review hearing in a newspaper or newspapers of general circulation in the area for two successive weeks ending at least 15 days before the date of the hearing. The published notice shall:

- A. specify the date, time, and location of the hearing;
- B. describe the proposed facility and its location;
- C. describe the permits which have been issued for the proposed facility;
- D. briefly set out the scope and procedures which will be used in the supplementary review;
- E. identify the location or locations within the city, town, or county where copies of the permit applications, agency permits, and the board's scope and procedures for review are available for review and where copies may be obtained; and
- F. include the name of a person on the board's staff to whom questions about the review may be directed.

Subp. 3. Location of hearing. The hearing shall be held in the county where the facility is proposed to be located and as near as practical to the site of the proposed facility.

Subp. 4. Definition of party. "Party" for the purposes of parts 9200.4800, subparts 5 to 22 means the petitioner, the political subdivision which refused to authorize the facility, and any person who is granted intervention under subpart 9.

Subp. 5. Duties of the hearing examiner. The hearing shall be conducted by a hearing examiner assigned by the chief hearing examiner. The hearing examiner will not prepare a report following the hearing. The hearing examiner shall perform the following duties:

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- A. hear and rule on motions;
- B. grant or deny requests for discovery including the taking of depositions;
- C. receive and act upon requests for subpoenas when appropriate;
- D. preside at the hearing;
- E. administer oaths and affirmations;
- F. examine witnesses when the hearing examiner deems it necessary to make a complete record;
- G. make preliminary, interlocutory, or other orders as the hearing examiner deems appropriate;
- H. rule on objections;
- I. do all things necessary and proper to the performance of items A to H; and
- J. perform other duties which may be delegated to the hearing examiner by the board.

Subp. 6. Disqualification of hearing examiner. The hearing examiner shall withdraw from participation in a contested review at any time if he deems himself disqualified for any reason. Upon the filing in good faith by a party of an affidavit of prejudice, the chief hearing examiner shall determine the matter as a part of the record. The affidavit must be filed no later than five days prior to the date set for hearing.

Subp. 7. Waste Management Board members. A majority of the permanent board members shall be present at the hearing. Members of the board may address questions to any witness or party.

Subp. 8. Right to counsel. Any party may be represented by legal counsel throughout the proceedings by a person of his choice or by himself if not otherwise prohibited as the unauthorized practice of law.

Subp. 9. Intervention. Any person who desires to intervene as a party shall submit a petition to intervene to the hearing examiner at least ten days before the hearing. Copies of the petition to intervene shall be served on the parties to the hearing. The petition shall state how the petitioner will be affected by the hearing, shall set forth grounds and purposes for which intervention is sought, and shall show that no other party is able to adequately represent the petitioner's interests at the hearing. At a time determined by the hearing examiner, but no later than the commencement of the hearing, the hearing examiner shall review any petitions for intervention and shall permit the parties to the hearing to present their objections to the intervention. Intervention shall be allowed unless the hearing examiner determines that the petitioner's interest is adequately represented by one or more parties participating in the case.

Subp. 10. Default. The board may decide a review adverse to a party which defaults. Upon default, the allegations and evidence provided by the nondefaulting party shall be deemed true without further evidence. A default occurs when a party fails to appear at a hearing, fails to comply with any interlocutory orders of the hearing examiner, or fails to timely prefile testimony, and is unable to demonstrate that good cause existed for any failure.

Subp. 11. Participation by the public. The hearing examiner may hear the testimony of and receive exhibits from any person at the hearing, but no person shall become, or be deemed to become, a party by reason of the person's participation. Persons offering testimony or exhibits may be questioned by parties to the proceeding.

Subp. 12. Prefiled testimony. The petitioner, the political subdivision which refused to approve the facility, and any party seeking to intervene shall file their testimony with the hearing examiner and the board at least ten days before the hearing unless the hearing examiner directs otherwise. Testimony in

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the hearing shall be limited to the issues identified by the board in its statement of issues.

Subp. 13. **Rights of parties.** Parties shall have the right to present evidence, rebut evidence, argue with respect to the issues, and cross-examine witnesses.

Subp. 14. **Witnesses.** Any party may be a witness or may present witnesses on the party's behalf at the hearing. All oral testimony shall be under oath or affirmation. The board may call its own witnesses if the board or the chairperson acting on behalf of the board determines that testimony from the witness would be helpful in reaching a decision in the case. The board's staff may also present evidence during the review.

Subp. 15. **Prehearing procedures.** The purpose of the prehearing conference is to obtain stipulations regarding foundation for testimony or exhibits, to consider the proposed witnesses for each party, and to consider other matters that may be necessary or advisable to consider. Upon the request of any party or upon his own motion, the hearing examiner may, in his discretion, hold a prehearing conference prior to each contested review hearing. The hearing examiner may require the parties to file a prehearing statement prior to the prehearing conference. The statement shall contain items the hearing examiner deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the hearing examiner. Agreements on any matters considered by the prehearing conference may be entered on the record or may be made the subject of an order by the hearing examiner. The hearing examiner shall hold any prehearing conferences in a manner and at a time which will not interfere with the completion of the review process in the time allowed by Minnesota Statutes, section 115A.35 and part 9200.4800.

Any application to the hearing examiner for an order shall be by motion, shall state the grounds for the order, and shall set forth the relief or order sought. A written notice of any motion shall be provided to all parties and to the board and shall be served five days prior to the submission of the motion except where impractical. All orders by the hearing examiner, other than those made during the course of the hearing, shall be in writing and shall be served upon all parties of record and the board. In ruling on motions where these procedures are silent, the hearing examiner shall apply the Rules of Civil Procedure for the district courts for the state of Minnesota to the extent that he or she determines that it is appropriate to do so in order to promote a fair and expeditious proceeding.

Subp. 16. **Discovery.** Discovery:

A. Each party shall, within ten days of a demand by another party, disclose the names and addresses of all witnesses that a party intends to call at the hearing. All witnesses unknown at the time of the disclosure shall be disclosed as soon as they become known. Each party shall also disclose any relevant written or recorded statements made by the party or by witnesses on behalf of a party. The demanding party shall be permitted to inspect and reproduce those statements. Any party unreasonably failing upon demand to make the disclosure required by this rule may, in the discretion of the hearing examiner, be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

B. A party may serve upon any other party a written request for the admission of relevant facts or opinions, or of the application of law to relevant facts or opinions, including the genuineness of any document. The request must be served at least 15 days prior to the hearing and it shall be answered in writing by the party to whom the request is directed within ten days of receipt of the request. The written answer shall either admit or deny the truth of the matters contained in the request or shall make a specific objection thereto. Failure to

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make a written answer shall result in the subject matter of the request being deemed admitted.

C. Upon the motion of a party, the hearing examiner may order discovery of any other relevant material or information, provided that privileged work product of attorneys, investigators, and similar people shall not be discoverable. The hearing examiner shall also recognize all other privileged information or communications which are recognized at law. Upon proper motion made to the hearing examiner, any means of discovery available pursuant to the Rules of Civil Procedure for the district courts of the state of Minnesota may be allowed provided that the request can be shown to be needed for the proper presentation of a party's case, can be completed within the time allowed in this rule, and the issues are significant enough to warrant extensive discovery. Upon the failure of a party to reasonably comply with this type of order by the hearing examiner, the hearing examiner may order that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order, or may refuse to allow the party failing to comply to support or oppose designated claims or defenses, or may prohibit him from introducing designated matters in evidence.

D. When a party is asked to reveal material which he considers to be proprietary information or trade secrets, he shall bring the matter to the attention of the hearing examiner who shall make protective orders which are reasonable and necessary or as otherwise provided by law.

E. Discovery shall be conducted in a manner to ensure the completion of the review in the time permitted by Minnesota Statutes, section 115A.35 and part 9200.4800. The hearing shall not be continued to permit additional time for discovery.

Subp. 17. Depositions to preserve testimony. Upon the request of any party, the hearing examiner may order that the testimony of any witness be taken by deposition to preserve the testimony in the manner prescribed by law for depositions in civil actions. The request shall indicate the relevancy of the testimony and shall make a showing that the witness will be unable or cannot be compelled to attend the hearing or show other good cause.

Subp. 18. Subpoenas. Requests for subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the hearing examiner, shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought, shall identify any documents sought with specificity, and shall name all persons to be subpoenaed. A subpoena shall be served in the manner provided by the Rules of Civil Procedure for the district courts of the state of Minnesota unless otherwise provided by law. The cost of service, fees, and expenses of any witnesses subpoenaed shall be paid by the party at whose request the witness appears. The person serving the subpoena shall make proof of service by filing the subpoena with the hearing examiner, together with his affidavit of service. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance with it, the hearing examiner may quash or modify the subpoena if he finds that it is unreasonable or oppressive.

Subp. 19. Rules of evidence. Rules of evidence:

A. The hearing examiner may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable prudent persons are accustomed to rely in the conduct of their serious affairs. The hearing examiner shall utilize the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, or unduly repetitious may be excluded.

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B. All evidence to be considered in the case shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

C. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the hearing examiner or upon agreement of the parties.

D. The hearing examiner or the board may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

E. A party may call an adverse party, his agent or employees, and interrogate him or them by leading questions and contradict and impeach him or them on material matters in all respects as if he had been called by the adverse party. The adverse party may be examined by his counsel upon the subject matter of the examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by his testimony.

F. Testimony in the hearing shall be limited to issues identified by the board in its statement of issues.

Subp. 20. **The record.** The board shall maintain the official record in each contested review hearing. The record in a contested review shall contain: all pleadings, motions, and orders; evidence received or considered; offers of proof, objections, and rulings on them; all memoranda or data submitted by any party in connection with the case; and the transcript of the hearing.

Subp. 21. **Conduct of hearing.** Unless the hearing examiner determines that the public interest will be equally served otherwise, the hearing shall be conducted substantially in the following manner:

A. The hearing examiner shall briefly review the procedural rules for the hearing.

B. Each party may make an opening statement in a sequence determined by the hearing examiner.

C. Each party may then present a summary of its prefiled testimony in a sequence determined by the hearing examiner.

D. Cross-examination of witnesses shall be conducted in a sequence determined by the hearing examiner.

E. When all parties and witnesses have been heard, opportunity shall be offered to present final argument in a sequence determined by the hearing examiner. Final argument may, in the discretion of the board, be in the form of written memoranda or oral argument. Written memoranda may, in the discretion of the board, be submitted simultaneously or sequentially and within time periods the board may prescribe; provided, however, that all written material shall be submitted at least 30 days before the close of the supplementary review period.

F. The record of the case shall be closed on the date set by the board for receiving the final written memorandum or late filed exhibits which the parties and the board have agreed should be received into the record, or upon receipt of the transcript of the hearing.

Subp. 22. **Completion of hearing.** The hearing examiner shall conduct the hearing in a manner to ensure its completion in the time required by Minnesota Statutes, section 115A.35 and part 9200.4800.

Statutory Authority: *MS s 115A.32*

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9200.4900 RECONCILIATION PROCEDURES.

At least 30 days before making its final decision in a review, the board shall make a determination as to whether a report should be made to the legislature and whether intervention should be requested as provided in Minnesota Statutes, section 115A.38.

Statutory Authority: *MS s 115A.32*

9200.5000 DECISION OF WASTE MANAGEMENT BOARD.

Subpart 1. The record. No factual information or evidence which is not a part of the hearing record shall be considered by the board in the determination of the case.

Subp. 2. Administrative notice. The board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence in the hearing record.

Subp. 3. Participation in decision. Board members not present at the hearing may participate in the final decision to approve or not approve the proposed facility following a review of the record of the hearing.

Subp. 4. Recommended disposition. In the case of a mediated agreement, the mediated agreement shall serve as the recommended decision. When an agreement has not been reached, the board's staff shall prepare and, at least ten days prior to the board's final decision in the case, distribute a recommended decision to each party to the proceeding and to any other person who has requested in writing a copy of the recommended decision.

Subp. 5. Basis of decision. In its decision to approve or not approve a proposed facility, the board shall consider and base its decision on the factors listed in items A to F. Neither the petitioner nor the political subdivision shall be deemed to have the burden of proof as to any of the factors. The factors are:

A. the risk and effect of the proposed facility on local residents, units of government, and the local public health, safety, and welfare, including such dangers as an accidental release of wastes during transportation to the facility; water, air, and land pollution; and fire or explosion, where appropriate; and the degree to which the risk or effect may be alleviated;

B. the consistency of the proposed facility with, and its effect on, existing and planned local land use and development, local laws, ordinances, and permits; and local public facilities and services;

C. the adverse effects of the facility on agriculture and natural resources and opportunities to mitigate or eliminate the adverse effects by additional stipulations, conditions, and requirements respecting the proposed facility at the proposed site;

D. the need for the proposed facility, especially its contribution to abating solid and hazardous waste disposal, the availability of alternative sites, and opportunities to mitigate or eliminate need by additional and alternative waste management strategies or actions of a significantly different nature;

E. whether, in the case of solid waste resource recovery facilities, the applicant has considered the feasible and prudent waste processing alternatives for accomplishing the purposes of the proposed project and has compared and evaluated the costs of the alternatives, including capital and operating costs and the effects of the alternatives on the cost to generators; and

F. any issue within the established scope of the supplementary review which is not addressed by items A to E.

Subp. 6. Final decision. The board shall review a mediated agreement and shall approve the agreement unless the agreement is clearly inappropriate based on the factors set out in subpart 5 and the record of the hearing, fails to address significant issues relevant to the review, or requires the imposition of permit

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terms, conditions, or requirements outside of the authority of the board. If the board disapproves a mediated agreement, the board shall direct the staff to prepare a recommended decision based on the hearing record. When no mediated agreement has been reached or when a mediated agreement has been rejected, the board shall base its decision to approve or not approve a facility on the factors set out in subpart 5 and the record of the hearing.

Subp. 7. Ex parte communication. No party to a hearing shall communicate with any board member concerning the hearing except in writing, or orally as part of a presentation at the hearing or at a board meeting. Copies of any written communication shall be sent to all parties to the hearing and to all board members.

Statutory Authority: *MS s 115A.32*

9200.5100 TERMS, CONDITIONS, AND REQUIREMENTS OF PERMITTING AGENCIES.

Subpart 1. Board action. The board shall resolve any conflicts between state agencies regarding terms, conditions, and requirements for a permit in favor of the more stringent terms, conditions, and requirements. Should there be a question as to which term, condition, or requirement is more stringent, the board shall make the determination of which term, condition, or requirement is more stringent.

Subp. 2. Addition of provisions. If, based on the factors set out in part 9200.5000, subpart 5, the board determines that more stringent permit terms, conditions, or requirements should be imposed in connection with the approval of a facility, the board shall direct that the terms, conditions, or requirements be added to the permit.

Subp. 3. Notification of decision. The board shall notify permitting agencies affected by the board's decision requiring the permitting agencies to impose more stringent terms, conditions, or requirements within ten days after the board's final decision.

Statutory Authority: *MS s 115A.32*

9200.5200 REVOCATION OF APPROVAL.

The board may revoke its approval of a facility if, following a contested case hearing under the Contested Case Procedures of Minnesota Statutes, sections 14.37, 14.46, and 14.48 to 14.70 the rules of the Office of Administrative Hearings relating to contested case proceedings in parts 1400.5200 to 1400.8500, it is determined that the petitioner knowingly made material false statements, representations, or certifications, or knowingly withheld material information in any application, record, report, or other document filed pursuant to the provisions of parts 9200.4500 to 9200.4800.

Statutory Authority: *MS s 115A.32*

9200.5300 COMPUTATION OF TIME.

In computing any period of time prescribed under parts 9200.3600 to 9200.5000, the date of the last act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so completed shall be included unless it is a Saturday, Sunday, or legal holiday.

Statutory Authority: *MS s 115A.32*

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EVALUATION OF APPLICANTS FOR PERMITS TO OPERATE HAZARDOUS WASTE PROCESSING FACILITIES

9200.7100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 9200.7100 to 9200.7700 the terms defined in this rule have the meanings given them.

Subp. 2. **Applicant.** "Applicant" means a person filing an application.

Subp. 3. **Application.** "Application" means the information submitted to the board pursuant to part 9200.7400.

Subp. 4. **Board.** "Board" means the Waste Management Board.

Subp. 5. **Chairperson.** "Chairperson" means the chairperson of the board.

Subp. 6. **Clearance.** "Clearance" means the board's approval of an application.

Subp. 7. **Commercial waste processing facility.** "Commercial waste processing facility" means a facility established and permitted to sell hazardous waste processing services to generators other than the owner and operator of the facility and located within an area in the board's inventory of preferred areas for hazardous waste processing facilities. For purposes of this definition processing means the treatment of waste after collection and before disposal and includes, but is not limited to, incineration, reduction, storage, separation, exchange, resource recovery, physical, chemical, or biological modification, and transfer from one waste facility to another.

Subp. 8. **Hazardous waste.** "Hazardous waste" has the meaning given it in Minnesota Statutes, section 116.06, subdivision 13.

Subp. 9. **Person.** "Person" means a natural person or a corporation, association, operation, firm, partnership, trust, or other form of organization.

Statutory Authority: *MS s 115A.10*

9200.7200 PURPOSE.

The purpose of parts 9200.7100 to 9200.7700 is to establish a procedure to assure that hazardous waste facility operators have the necessary technical and business competence. Parts 9200.7100 to 9200.7700 are not intended to duplicate the review required under pollution control agency permitting authority.

Statutory Authority: *MS s 115A.10*

9200.7300 REQUIREMENTS AND LIMITATIONS.

Subpart 1. **Clearance required.** A person who is required to obtain a pollution control agency permit for a commercial waste processing facility to be located within an area of the board's inventory of preferred areas for hazardous waste processing facilities established under Minnesota Statutes, section 115A.09, and which will begin operation after the effective date of parts 9200.7100 to 9200.7700 must obtain clearance prior to applying for a permit.

Subp. 2. **No property right or exclusive privilege.** Clearance does not convey property rights of any kind or an exclusive privilege.

Subp. 3. **Changed plans.** Clearance entitles an applicant to request a pollution control agency permit only for a commercial waste processing facility substantially similar to the facility described in the application. The applicant must supply the most recent plans for facility development available with the understanding that details of the plan may change as development progresses. If plans for the facility or for facility development change substantially prior to application for a pollution control agency permit, the applicant must submit a new application for clearance.

Subp. 4. **Acquisition or location of property.** Property to be used as the site for the proposed facility need not be acquired or identified by the applicant prior to clearance.

Statutory Authority: *MS s 115A.10*

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9200.7400 APPLICATION.

Subpart 1. **Applicants.** To obtain clearance, a person must complete, sign, and submit an application to the board. The application for clearance for a facility which will be owned by one person and operated by another must be signed by both the owner and the operator.

Subp. 2. **General contents.** An application must be in the form specified by the board and must contain the following information:

A. the complete name of the applicant, all other names under which the applicant has done business during the ten years prior to the application, and the approximate times during which those names were used;

B. the principal business address of the applicant, all other addresses from which the applicant has done business during the ten years prior to the application, and the approximate times during which those addresses were used;

C. the form of the applicant's business indicating the type of business association;

D. a general description of the types and amounts of hazardous waste the facility would be capable of handling and a general description of the proposed operation including methods of accepting, storing, and processing hazardous waste;

E. the names and addresses of all officers, partners, or directors of the applicant; and

F. the following information concerning any notices, stipulation agreements, administrative orders, license revocations, or permit revocations issued by any state or federal authority citing a violation of any administrative rule, regulation, or statute relating to hazardous waste management against the applicant or against any officer, director, or partner of the applicant within the last ten years, and any judgment or conviction under any state or federal rule, regulation, or statute or local ordinance concerning hazardous waste management entered against the applicant or against any officer, director, or partner of the applicant which has been issued within the last ten years:

(1) the name and address of the individual or company involved;

(2) the date and nature of the incident;

(3) the agency or individual taking the action; and

(4) the response made by the individual or company to correct or contest the violation.

Subp. 3. **Technical information.** An application must contain the following information:

A. the duties and responsibilities of subcontractors and the anticipated operating staff, including job descriptions and qualifications of technical management, supervisory, and operating employees, and an organizational chart of the applicant for operation of the proposed facility; and

B. a disclosure of hazardous waste management related business activities which the applicant, its parent corporation, any subsidiary of the applicant, or any other subsidiary of the parent corporation of the applicant is or has been engaged in during the ten years prior to the date of the application, including:

(1) the approximate times during which the activity has been engaged in; and

(2) if the activity involves operation and maintenance of a waste management facility:

(a) the location of each facility and a description of the type of facility;

(b) the processes used;

(c) the facility capacity and approximate amount of waste handled annually;

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(d) the date the operation began and the date it closed if the facility is no longer operating;

(e) any licenses or permits issued for the facility; and

(f) the reasons for discontinuing the activity if it has been discontinued.

Subp. 4. Development plan and financial information. An application must contain the following information:

A. a statement of the anticipated development plan for the proposed facility including the following:

- (1) facility design;
- (2) environmental reports;
- (3) hearings on permit application;
- (4) community relations activities;
- (5) marketing;
- (6) preparation of permit application;
- (7) site acquisition and preparation;
- (8) construction;
- (9) equipment and materials acquisitions;
- (10) operator recruitment and training;
- (11) first year operation;
- (12) monitoring;
- (13) insurance; and
- (14) contingencies;

B. a statement of the total anticipated expenditures for the project and an indication of how those expenditures will be financed;

C. for each of the items in the development plan, when applicable, whether the activity will be carried out by personnel currently employed by the applicant, by personnel who will be employed by the applicant in the future, or by independent contractors;

D. a description of potential or contingent liabilities which could materially alter the applicant's future financial position; and

E. a disclosure of any petition filed by the applicant or its parent corporation within the last five years under the Federal Bankruptcy Act or any state insolvency law.

Subp. 5. Additional information. The chairperson may require an applicant to submit additional information or may undertake additional investigations if the chairperson determines that the information would be necessary in deciding whether clearance should be granted.

Subp. 6. Deficient application. If an application does not conform to this part, the chairperson shall, within 30 days after receipt of the application, return it to the applicant with a statement identifying the deficiencies in the application.

Subp. 7. Acceptance of application. The chairperson shall accept a completed application on behalf of the board if it conforms to this rule.

Subp. 8. Notification of acceptance. Upon acceptance of a complete application, the chairperson shall promptly notify each political subdivision which contains an area on the board's inventory of preferred areas for processing facilities. The chairperson shall also publish notice of the application in a newspaper of statewide distribution. The notice must provide that comments on the application may be submitted to the board within 30 days of the date the application was accepted.

Subp. 9. Initial consideration. The board shall initially consider an application not less than 30 nor more than 60 days after its acceptance.

Statutory Authority: *MS s 115A.10*

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9200.7500 BOARD DECISION.

Subpart 1. **Reasons for disapproval.** The board shall grant clearance to an applicant unless it determines that:

A. the applicant's development plan is not sufficient to adequately operate and maintain the facility in a manner that will assure protection of the health and welfare of citizens of the state;

B. the applicant or its anticipated operating staff lacks the technical competence necessary to adequately operate and maintain the facility in a manner that will assure protection of the health and welfare of citizens of the state; or

C. the nature of past violations of state or federal environmental statutes or regulations and the applicant's response to these violations indicate an applicant could not be reasonably expected to operate and maintain the facility in a manner that will assure protection of the health and welfare of citizens of the state.

Subp. 2. **Written decision.** The board shall set forth in writing the basis for its decision.

Subp. 3. **Appeals.** If the board denies clearance, the applicant may request a contested case hearing within 21 calendar days of the board's decision. The board shall order a contested case hearing under Minnesota Statutes, chapter 14 and parts 1400.5200 to 1400.8500 if it receives a request. Following a review of the record of the hearing, the board shall make a final decision granting or denying clearance.

Statutory Authority: *MS s 115A.10*

9200.7600 NOTICE OF FINAL DECISION.

Notice of the board's final decision granting or denying clearance shall be sent to political subdivisions which contain areas included on the board's inventory of preferred areas for processing facilities and to the applicant.

Statutory Authority: *MS s 115A.10*

9200.7700 EXPIRATION OF CLEARANCE.

Clearance of an applicant expires 18 months after it is granted by the board if the applicant has not formally requested a pollution control agency permit during that period. An applicant whose clearance has expired may apply for clearance again without penalty or prejudice.

Statutory Authority: *MS s 115A.10*

9200.8100 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of parts 9200.8100 to 9200.9200, the following terms have the meanings given them, unless the context requires otherwise.

Subp. 2. **Board.** "Board" means the Minnesota Waste Management Board established in Minnesota Statutes, section 115A.04.

Subp. 3. **Chairperson.** "Chairperson" means the chairperson and chief executive officer of the board.

Subp. 4. **Cities.** "Cities" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 4.

Subp. 5. **Comprehensive solid waste management plan.** "Comprehensive solid waste management plan" means a written plan conforming to the requirements of Minnesota Statutes, section 115A.46.

Subp. 6. **Disposal.** "Disposal" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 9.

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Subp. 7. **Final engineering/architectural plans.** "Final engineering/architectural plans" means those engineering drawings and specifications used to secure bids for construction or equipment.

Subp. 8. **Funding round.** "Funding round" means a six-month period.

Subp. 9. **Institutional arrangements.** "Institutional arrangements" means methods of financing, marketing, procurement, methods of securing the waste supply, or joint efforts between political subdivisions.

Subp. 10. **Mixed municipal solid waste.** "Mixed municipal solid waste" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 21.

Subp. 11. **On-site utilities.** "On-site utilities" means gas, electrical, water, and sewer facilities within the geographic boundaries of the waste processing facility.

Subp. 12. **Preliminary engineering/architectural plans.** "Preliminary engineering/architectural plans" means conceptual plans adequate to obtain preconstruction permits and to meet the needs of an environmental assessment.

Subp. 13. **Processing.** "Processing" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 25.

Subp. 14. **Recipient.** "Recipient" means an applicant who has received a grant or loan under the solid waste processing facilities demonstration program.

Subp. 15. **Resource recovery.** "Resource recovery" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 27.

Subp. 16. **Resource recovery facility.** "Resource recovery facility" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 28.

Subp. 17. **Solid waste.** "Solid waste" has the meaning given it in Minnesota Statutes, section 116.06, subdivision 10.

Subp. 18. **Solid waste disposal facilities and equipment.** "Solid waste disposal facilities and equipment" means structures, machinery, or devices at a disposal site necessary for efficient land disposal of solid wastes, including machinery or devices designed to move earth during burial of wastes or to increase the density of wastes buried or to be buried, and facilities in which solid waste is temporarily stored and concentrated prior to transport to a disposal site.

Subp. 19. **Solid waste management district.** "Solid waste management district" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 32.

Subp. 20. **Special waste stream.** "Special waste stream" means materials which are normally found in the solid waste stream in sufficient quantity to be recovered for subsequent use, if separated from the solid waste stream and processed separately. Examples of special waste streams include used tires, wood wastes, and agricultural wastes.

Subp. 21. **Statewide application or significance.** "Statewide application or significance" means that a project is capable of demonstrating a feasible alternative to disposal to other communities in the state.

Subp. 22. **Transfer station.** "Transfer station" has the meaning given it in Minnesota Statutes, section 115A.03, subdivision 33.

Subp. 23. **Waste processing equipment.** "Waste processing equipment" means machinery or devices acquired and used as an integral component of a waste processing facility.

Subp. 24. **Waste processing facility.** "Waste processing facility" means structures and equipment singly or in combination, designed, constructed, and used to separate, modify, convert, heat, prepare, or otherwise process solid waste so that materials, substances, or energy contained within the waste may be recovered for subsequent use.

Statutory Authority: *MS s 115A.49*

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9200.8200 SOLID WASTE PROCESSING FACILITIES DEMONSTRATION PROGRAM.

Parts 9200.8100 to 9200.9200 implement the solid waste processing facilities demonstration program created and described in Minnesota Statutes, sections 115A.49 to 115A.54, by establishing the substantive criteria and procedural conditions under which the board may award grants and loans for capital costs of projects which demonstrate the feasibility of waste processing technology or equipment or the feasibility of institutional arrangements in providing waste processing facilities.

Statutory Authority: *MS s 115A.49*

9200.8300 ELIGIBILITY CRITERIA.

Subpart 1. **Eligible applicants.** Eligible applicants are limited to cities, counties, and solid waste management districts established pursuant to Minnesota Statutes, sections 115A.62 to 115A.72.

Subp. 2. **Eligible projects.** Only projects which demonstrate feasible and prudent alternatives to disposal are eligible for loans and grants. To qualify as a demonstration project, a project must be conceptually and technically feasible but not now in operation in the state or not now in operation in a geographical area of the state with demonstrably different characteristics from those of the area where a facility is now in operation. A conceptually and technically feasible project may also qualify as a demonstration project if it involves institutional arrangements not previously utilized in the state, or not previously utilized in a geographical area of the state with demonstrably different characteristics from those in the area where a facility is now in operation. Five types of projects are eligible for loans and grants: waste to energy; materials recovery; chemical, physical, or biological modifications; transfer stations; and special waste streams.

Subp. 3. **Eligible costs.** Eligible costs under parts 9200.8100 to 9200.9200 shall be limited to the costs of waste processing equipment, structures necessary to house the waste processing equipment, appropriate and necessary on-site utilities, structures necessary to concentrate and temporarily store solid waste prior to transportation to a waste processing facility, and final design and engineering specifications.

Subp. 4. **Ineligible costs.** Ineligible costs include any costs related to acquisition of land, solid waste disposal facilities and equipment, structures for housing and maintenance of rolling stock, or any costs related to resource recovery studies, feasibility analyses, or preliminary design and engineering.

Statutory Authority: *MS s 115A.49*

9200.8400 INFORMATION REQUIRED ON GRANT AND LOAN APPLICATION.

Applications for grants and loans for waste processing facilities shall include the following information as required in the application forms supplied by the board:

- A. the name of each applicant making the grant or loan application;
- B. the name of each political subdivision affected by the project, located in the area studied in the project, or located in the area in which the project is intended to be implemented;
- C. resolutions from each applicant which demonstrate that the applicant is committed to implementing the project; providing necessary local financing; and accepting and exercising the government powers necessary to the project;
- D. the name, qualifications, and address of the project manager;
- E. the name and qualifications of the facility operator, if available;

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- F. the total capital cost of the project;
- G. the total grant- or loan-eligible cost of the project;
- H. the amount of grant or loan funding requested;
- I. the amount and sources of all other funding contributions, including the amount of funds to be contributed by the applicant;
- J. the type of assistance applied for (loan or grant and loan together);
- K. the type of waste processing facility for which a grant or loan is being applied for: waste to energy; materials recovery; chemical, physical, or biological modification; transfer stations; or special waste stream.

Statutory Authority: *MS s 115A.49*

9200.8500 DOCUMENTATION REQUIRED TO BE SUBMITTED WITH GRANT AND LOAN APPLICATION.

Applications for grants or loans for waste processing facilities shall include the following documentation:

A. a conceptual and technical feasibility report which includes at least the following analysis: description of alternative waste processing facilities, description of the institutional arrangements necessary for project implementation and operation, description of methods of procurement, and waste stream analysis;

B. a financial feasibility report including: an evaluation and analysis of all capital and operating costs of the proposed project, an evaluation and analysis of various financing mechanisms available to the applicant, an analysis of the ability of the community to continue operation of the facility over the life of the facility;

C. a comprehensive solid waste management plan conforming to Minnesota Statutes, section 115A.46, including consideration of solid waste management alternatives;

D. preliminary design and engineering plans or specifications of the proposed waste processing facility and equipment;

E. documentation that waste supplies will be committed to the project and that the applicant has the authority and mechanism to commit such wastes;

F. a marketability analysis of recovered materials/energy, including market commitments such as letters of intent or market contracts;

G. a detailed estimate of annual operating and maintenance costs;

H. a report on the proposed project's potential for statewide application or significance;

I. a report on the status of required permits from permitting agencies;

J. a report on time frames of project development;

K. resolutions complying with the requirements of Minnesota Statutes, section 115A.54, subdivision 3;

L. if the applicant seeks to qualify a project as demonstrating a technology or institutional arrangements in a geographical area of the state rather than the entire state, a report on how the area is demonstrably different from the characteristics of the area where a facility is now in operation;

M. if the project application proposes a waste processing facility that demonstrates institutional arrangements, a report which describes the institutional arrangements;

N. if the applicant requests priority based on any of the following conditions, documentation of the existence of the condition:

(1) the natural geologic and soil conditions which are claimed to be unsuitable for land disposal of solid waste;

(2) the available capacity of existing solid waste disposal facilities are claimed to be less than five years; or

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(3) the claim that the proposed project would service an area outside the metropolitan area and would serve more than one local government unit; and

O. if the applicant is seeking a grant, a report discussing the factor or factors in part 9200.9000, subpart 2 upon which the applicant is basing the request for a grant.

Statutory Authority: *MS s 115A.49*

9200.8600 GRANT AND LOAN APPLICATION PROCEDURES.

f Subpart 1. **Funding rounds.** There shall be four funding rounds. The first funding round commences on January 1, 1983 and subsequent funding rounds commence every six months thereafter. Each funding round entails a six-month period and consists of two three-month segments, the first being the application segment and the second being the review segment.

f Subp. 2. **Application segment.** The application segment of each funding round consists of the first three months of each funding round and commences each January 1 and July 1 and terminates each March 31 and September 30, respectively, of years 1983 and 1984. During the application segment, the applicant shall prepare or accumulate all of the information and documentation set out in parts 9200.8400 and 9200.8500. The applicant is encouraged to contact the chairperson and request a preapplication review of the proposed project. The applicant then must submit the grant or loan application to the board no later than March 31 or September 30, whichever date is appropriate for consideration during that funding round. If the grant or loan application is received later than March 31 or September 30, whichever date is appropriate to the specific funding round, the applications shall be returned.

f Subp. 3. **Review segment.** The review segment of each funding round consists of the second three months of each funding round and commences each April 1 and October 1 and terminates each June 30 and December 31, respectively, of years 1983 and 1984. During the review segment the chairperson or his designee shall conduct the initial review of all applications and the board shall evaluate and select projects and award the grants and loans.

Statutory Authority: *MS s 115A.49*

9200.8700 INITIAL REVIEW.

X Subpart 1. **Applications reviewed.** The chairperson or his designee shall review all applications received during the application segment of each funding round. Applications received after the last day of each application segment shall be returned to the applicant.

X Subp. 2. **Eligibility and completeness review.** Upon receipt of a timely filed application, the chairperson or his designee shall determine the eligibility of the applicant, the eligibility of the costs specified in the application, the eligibility of the project specified in the application, and the completeness of the application.

X Subp. 3. **Notice of determination.** Within 14 days after receiving the application, the chairperson shall notify each applicant of the chairperson's determinations. If the chairperson determines that the applicant or the project is not eligible, the application shall not be further considered and the applicant shall be notified of the determination. If the chairperson determines that any of the costs or any part of the project is not eligible or that the application is otherwise not complete, the chairperson shall return the application together with a statement of the reasons for rejecting the application. The applicant shall have 14 days after receipt of the rejection of the application or until two weeks following the final day of the application segment, whichever is later, to correct any inadequacies identified in the application. Applications which are not resubmitted within the time period allowed shall not be further considered during the funding round.

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Subp. 4. **Review of documentation.** If the applicant, the costs, and the project are determined to be eligible and the application is complete, the chairperson shall, within 45 days after the receipt of the application, review the application to determine whether the supporting documentation is adequate. In determining whether the documentation is adequate, the chairperson shall consider whether the documentation demonstrates:

A. that the project is conceptually and technically feasible;

B. that affected political subdivisions are committed to implementing the project, providing necessary local financing, and accepting and exercising the government powers necessary for project implementation and operation;

C. that operating revenues from the project, considering the availability and security of sources of solid waste and of markets for recovered resources together with any proposed federal, state, or local financial assistance, will be sufficient to pay all costs over the projected life of the project;

D. that the applicant has evaluated the feasible and prudent alternatives to disposal and has compared and evaluated the costs of the alternatives, including capital and operating costs, the effects of the alternatives on the cost to generators, and the effects of the alternatives on the solid waste management and recycling industry within the projects service area;

E. that the applicant has completed a comprehensive solid waste management plan conforming to the requirements of Minnesota Statutes, section 115A.46, including consideration of solid waste management alternatives; and

F. that the project demonstrates a technology that is of potential statewide application or significance.

Subp. 5. **Consultation with other agencies.** In determining the adequacy of the documentation, the chairperson shall consider any recommendations provided by the Pollution Control Agency, the appropriate regional development commission, the State Planning Agency, and, if appropriate, the Metropolitan Council.

Subp. 6. **Determination of sufficient documentation.** If the chairperson determines that the documentation in the application is adequate, the application shall be considered final and the applicant shall be so notified. The application shall then be referred to the board to be evaluated as provided in part 9200.8800. If the chairperson determines that the documentation in the application is inadequate, the chairperson shall return the application together with a statement of the reasons for rejecting the application. The applicant shall have 14 days after receipt of the rejection of the application or two weeks after the final day of the application segment, whichever time period is greater, to correct the inadequacies in the documentation. Applications which are not resubmitted within the time periods allowed shall not be further considered during the funding round.

If the inadequacies in the documentation are corrected within the time allowed, the application shall be considered final and the applicant shall be so notified. The application shall then be referred to the board to be evaluated as provided in part 9200.8800.

Statutory Authority: *MS s 115A.49*

9200.8800 PROJECT TYPE EVALUATION.

Subpart 1. **Process of evaluation.** Upon completion of the chairperson's initial review of the application as set out in part 9200.8700, the board shall compare projects of similar technology based on the factors set out in this part and select the top project in each category for further evaluation.

Subp. 2. **General factors.** In evaluating all five types of projects the board shall, to the extent the factor is relevant to the project, consider:

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A. operating capacity measured in tons of waste processed per day, percent of total waste stream to facility, area serviced, number of communities served, operating hours per day, and operating days per year;

B. market viability determined by the distance the market is from the facility, the existence of expressions of interest or contracts, the length of time the market has been in existence, and the likelihood the market will remain in existence;

C. percent of input that is residual waste; and

D. whether the method of securing waste is in place or planned.

Subp. 3. Waste-to-energy facility factors. For waste-to-energy facilities, the board will consider:

A. energy production effectiveness measured in Btu output per tons of waste input;

B. whether variations in energy demand are matched to variations in waste supply;

C. cost effectiveness measured in Btu's delivered to customer per year per dollar capital cost, and Btu's delivered to customer per year per dollar annual cost; and

D. revenue per million Btu's delivered, total annual revenue from energy sales, and revenue as percent of total annual cost.

Subp. 4. Materials recovery factors. For materials recovery facilities, the board will consider:

A. energy effectiveness determined by identifying types and quantity of product recovered;

B. cost effectiveness measured by the value of recovered materials per year per dollar of capital cost and the value of recovered materials per year per dollar of annual cost; and

C. revenue per unit weight of products, the total annual revenue from recovered products, and revenue as a percent of total annual cost.

Subp. 5. Chemical, physical, or biological modification factors. For chemical, physical, or biological modification facilities, the board will consider:

A. product description, including quality and probable uses;

B. cost effectiveness measured by the value of the product per year per dollar capital cost and the value of product per dollar annual cost;

C. revenue per unit of product, total annual revenue from product sales, and revenue as a percent of total annual cost; and

D. other materials required or used in process by describing and identifying sources, certainty of supply, and any benefits in consuming other materials.

Subp. 6. Transfer stations factors. For transfer stations, the board will consider:

A. cost effectiveness measured by the total fuel cost savings per year per dollar capital cost and total waste hauling cost savings per year per dollar total annual cost; and

B. mileage and fuel savings measured by the total miles saved per year and gallons of fuel and total fuel cost savings per year.

Subp. 7. Special waste stream factors. For special waste stream facilities, the board will consider:

A. product effectiveness measured by the product selling price and competitive product selling price;

B. operating factors measured by input waste stream quantity as a percent of total waste stream and resolution of problems encountered in landfilling the special waste;

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C. cost effectiveness measured by the value of product per year per dollar capital cost and value of product per year per dollar annual cost; and

D. revenue per year from products or sales of processed waste and revenue as a percent of total annual cost.

Statutory Authority: *MS s 115A.49*

9200.8900 EVALUATION OF PROJECTS SELECTED FROM EACH CATEGORY.

Subpart 1. Evaluation process. Following the selection of the top project in each category, the board shall compare the projects on the basis of the priorities and factors listed in subparts 2 and 3. The board shall then list the projects in order of preference based on the results of the comparison.

Subp. 2. Legislative priorities. The board shall give priority to projects where:

A. the natural geologic and soil conditions are unsuitable for land disposal of solid waste;

B. the capacity of existing solid waste disposal facilities is less than five years; or

C. projects outside of the metropolitan area, the project serves more than one political subdivision.

Subp. 3. General program factors. The board shall compare the projects in relation to the following factors:

A. the market for recovered resources, its location relative to the proposed facility, and any commitments which have been made to purchase the recovered resource;

B. the proportion of the total waste stream that will be processed by the facility and the extent that the facility will extend the life of existing landfills in the area;

C. the capital cost of the facility, the estimated cost per ton of waste processed compared to the current cost per ton of waste disposed of in the area, the projected annual cost per unit of landfill capacity abated, and the projected annual cost per unit of material or energy recovered;

D. the projected revenue per ton of waste processed, the projected profitability of the facility throughout its operating life, the need for revenue sources in addition to operating revenue, and the availability of additional revenue sources.

E. the existence of other projects of the type proposed which have been funded by the board; and

F. the degree to which the technology or institutional arrangements demonstrated by the project are applicable to other cities, counties, or solid waste management districts in the state.

Statutory Authority: *MS s 115A.49*

9200.9000 AWARD OF GRANTS AND LOANS.

Subpart 1. General procedure. The board shall award a loan, or a grant and loan if the board determines a grant should be awarded under subpart 2, to the project which receives the top rating under part 9200.8900. The board shall then award loans and grants, if applicable, to the extent funds remain available, to the other top-rated projects in order of preference. If all of the top-rated projects identified under part 9200.8900 are funded, the board shall select the second highest rated project in each category identified under part 9200.8900 and shall further evaluate those projects as provided for in part 9200.8900. The board shall then award grants or loans to the projects in the same manner and order as it did for the top-rated projects.

Subp. 2. **Factors in awarding grants.** In making its determination on whether to award grants and loans, the board shall consider whether the project involves a significant risk to the local unit of government; whether the local unit of government has made a substantial commitment of its own funds to the project; and, in view of the applicant's financial capacity, whether a grant would affect the decision or ability to undertake the project.

Subp. 3. **Amount of awards.** The board shall determine the amount of the loans and grants it awards based on a review of the factors set out in part 9200.8900 and the degree to which the project serves to demonstrate the uses of technology involved in Minnesota.

Subp. 4. **Maximum awards.** The maximum loan award shall be 50 percent of the eligible costs specified in the application or \$700,000, whichever is less. The maximum grant award shall be 50 percent of the eligible costs specified in the application or \$300,000, whichever is less.

Subp. 5. **Limitations.** No funds shall be awarded for costs for which the applicant has applied for and received funds from another source.

No grant or loan shall be disbursed until the board has determined the total cost of the project and ascertained that financing of the cost is assured by funds provided by the state, by an agency of the federal government within the amount of funds then appropriated to that agency and allocated by it to projects within the state, by any person, or by the appropriation of proceeds of bonds or other funds of the recipient to a fund for the construction of the project.

Grants and loans shall be awarded to cover the eligible costs of only those tasks which are undertaken and completed during the grant and loan period established in the grant and loan agreement.

Grants and loans shall not be awarded to cover any cost associated with tasks performed prior to the award of a grant and loan or after the expiration of the grant and loan agreement.

Statutory Authority: *MS s 115A.49*

9200.9100 GRANT AND LOAN AGREEMENT.

Subpart 1. **Requirements.** The grant and loan agreements must:

A. contain the resolutions required under Minnesota Statutes, section 115A.54, subdivision 3;

B. incorporate by reference the final grant and loan application submitted to the board in accordance with part 9200.8600;

C. establish the term of the grant and loan. All grants awarded under this rule shall have a maximum term of two years. All loans awarded under this rule shall have a loan life determined by considering facility type, expected life of equipment, capital cost of the project, and loan amount;

D. in the case of a loan agreement, include schedules for the repayment of principal and interest;

E. provide that the recipient shall be authorized to enter into contracts to complete the work specified in the agreement;

F. provide that any cost overruns incurred in the development of the proposed facility shall be the sole responsibility of the recipients;

G. provide that the board will not accept amendments requesting additional grant and loan funds; and

H. require that the recipient provide a report on the developmental and operational history of the project so that knowledge and experience gained from the project may be made available to other communities in the state.

Subp. 2. **Rescission of grants and loans.** Grants and loans not completed in accordance with the terms and conditions of the respective agreements,

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including time schedules, shall be rescinded unless the board determines that the variances from the respective agreements are due to factors outside the control of the grant or loan recipient.

Subp. 3. **Disbursement.** The board shall disburse grants in accordance with the payment schedule set out in the grant agreement.

Subp. 4. **Interest payments.** Interest payments on the loan shall be due annually and shall begin to accrue from the date the loan agreement is signed. The first repayment of the principal amount of the loan shall be due one year after the facility becomes operational or two years after the date the loan agreement is executed, whichever is earlier. The board shall consider the facility operational at the point where the facility meets all vendor guaranteed operating specifications. Subsequent repayments of principal and interest shall be due annually on the anniversary date of the first repayment.

Subp. 5. **Due and payable clause.** The loan agreement shall stipulate that if the recipient sells the facility to a private enterprise, all outstanding loan obligations to the board shall become due and payable upon the sale to the private enterprise.

Subp. 6. **Repayment of grant if facility sold to private enterprise within three years.** The grant agreements shall require repayment of the grant if the facility is sold to a private enterprise within three years of the date the grant was made. Beginning on the third anniversary of the grant, the amount of the grant which must be repaid shall be reduced ten percent each year. The sale agreement between the recipient and the private enterprise shall transfer the responsibilities outlined in subpart 1, item H to the private enterprise.

Statutory Authority: *MS s 115A.49*

9200.9200 APPORTIONMENT.

Subpart 1. **In general.** For grants and loans to be awarded over the life of this program, the board shall apportion funds allocated to it by the legislature for this program as set out in Article VI of the Waste Management Act, Minnesota Statutes, sections 115A.49 to 115A.54, as follows in subparts 2 to 5. A

Subp. 2. **Percentage of loans and grants.** Of the money appropriated for the purposes of the demonstration program, at least 70 percent shall be distributed as loans, and the remainder shall be distributed as grants.

Subp. 3. **Number of funding rounds.** The board shall distribute the money appropriated for the purposes of the demonstration program during four funding rounds commencing on January 1, 1983. Each funding round entails a six-month period of time. A

Subp. 4. **Amount distributed per round.** During each funding round, the board shall distribute one-fourth of the money appropriated for the purposes of the demonstration program, and of the money distributed each funding round, at least 70 percent shall be distributed as loans and the remainder shall be distributed as grants. In the event that projects awarded loans are not eligible for grants, during a specific funding round, the board may use the unobligated grant money to award additional loans or may carry the unobligated grant money forward for use in the next funding round. R

Subp. 5. **Differences between application requests and available funds.** If the board receives more applications which are eligible for grant or loan assistance in a specific funding round than the board has funds available, those eligible applicants not receiving funding may resubmit applications in future funding rounds. If the board does not receive enough eligible applications for grant and loan assistance in a specific funding round to fully obligate the funds available for that funding round, the balance shall carry forward and be available as additional funds in the following funding round. R

Statutory Authority: *MS s 115A.49*