

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 706

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 6/1
DATE FOR REVIEW 6/10
DATE DUE 6/15

Adopted w/a hearing ____
Adopted w/o a hearing X
Temporary rule ____

Approved ____ Disapproved 6/15 Returned to Agency 6/16

Resubmitted 6/29
Approved 6/30 Disapproved ____ Returned to Agency ____

Due 7/9

Date filed w/Secretary of State 6/30

✓ Rule as Adopted

✓ Rule as Proposed see SR

✓ Order Adopting 5.21.81

✓ Notice of Intent to Solicit Outside Opinion 11.17.80

✓ Order for rulemaking
____ ~~Date of Hearing~~

✓ Certificate of Board's Authorizing Resolution

___ Notice of rulemaking
____ Sufficiency

✓ Affidavits of Mailing Notice of rulemaking
3.20.81 At least 30 days prior to ~~hearing~~/adoption

✓ 3 Affidavits of Mailing to Individuals, and Memos, Cover letters.
not submitted Mailing list Certificate

✓ Publication in State Register
3.30.81 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

N/A Chief Hearing Examiner's Report(s)
____ Approving H.E.'s Report
____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

___ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (~~includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials~~)

✓ Certificate of Compliance w/Rulemaking Procedures

___ Affidavit of Mailing Notice of Submission to Attorney General

___ Notice of Submission to the Attorney General

not submitted — no ref. to or indication there were any requests.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : ROBERT G. DUNN, Chairman
Waste Management Board

DATE: June 30, 1981

ATTN : Leroy C. Paddock
Special Assistant Attorney General

FROM : Jerry S. Anderson
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State Waste Management Board Governing Operating Procedures

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Please note that they have not been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages to the rules in the approved set.

If you have any questions in this regard, please contact me.

JSA:rjg

Enc.

cc: Susan Robertson
Duane Harves

ATTORNEY GENERAL

ROBERT G. DUNN, Chairman
Waste Management Board

6/15/81

Attn: LEROY C. PADDOCK
SAAG

JERRY S. ANDERSON
SAAG
G-25 Administration Building

6-4692

In the Matter of the Proposed Adoption of Rules of the State Waste Management Board Governing Operating Procedures

The rules in the above-captioned matter have not been approved by this office for the following reasons:

1. Minn. Stat. § 15.0412, subd. 4h (1980) provides that proposed rules "may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change." Sections 8.002 H, 8.015, and 8.016 add new material to these rules and section 8.009 F is a substantial modification of the proposed rule, none of which is supported by data or views submitted to the agency and made a part of the record. Therefore, sections 8.002 H, 8.015, and 8.016 must be deleted and section 8.009 F either rewritten to conform to the proposed language or deleted.

2. In section 8.010 B.2 the board inserted the word "substantial" pursuant to a comment on the rules received by the board. The addition of the word "substantial;" however, makes the rules vague and gives the board broad discretion in deciding what is substantial. Persons confronted with a board decision in this regard are given no guidance or indication as to the types of irregularities that will be sufficient to provide a new hearing. While this office agrees that not every minor irregularity should require a rehearing, the proposed rule is not clear as to what will. Thus, the rule must be rewritten to define more precisely the irregularities that will require a new hearing.

3. The following typographical errors should be corrected.

a. Section 8.001 A: Insert "or informal" after the word "formal."

b. Section 8.005: The citation to 2 MCAR § 2.012 A should read 2 MCAR § 2.011 A.

c. Section 8.011: In the first sentence, "reasonable" should be "reasonably."

After consideration of the above comments and board action, if any, these rules may be resubmitted for review. Upon resubmission, please include a copy of the board resolution, two copies of the new Order Adopting, and the original and two copies of the new Rules as Adopted. Also, please include a memorandum specifying that the rules are being resubmitted so that we may obtain our initial file in this matter.

If you have any questions concerning the issues raised in this memorandum, please do not hesitate to call me.

JSA/njh
Enclosure
cc: Susan Robertson
Duane Harves

Adopted ?

AG copy

changes to RasP shown by underlining, deletion

Rules as Proposed (all new material)

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PROPOSED RULES
WASTE MANAGEMENT BOARD
OPERATING PROCEDURES

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6 MCAR § 8.001 Duty of Candor

A. Duty. 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.

B. Violation of duty of 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.

C. Imposition of sanctions. 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.

6 MCAR § 8.002 Definitions

A. Act. "Act" means the Waste Management Act, Minn. Stat. ch. 115A.

B. Advisory council. "Advisory council" means any of the advisory councils established by the Act.

C. Advisory task force. "Advisory task force" means any task force of non-board members established by the chairperson to advise the Board.

D. Board. "Board" means the Waste Management Board.

E. Days. "Days" means calendar days.

F. 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. ~~The term "party" shall include the Board when the Board initiates a hearing pursuant to Section 8.001.~~ FofF 5

G. 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.

H. 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 of Service shall be made by the person making such service. Service by mail is complete upon the placing of 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, and General Services Publications Division, Department of Administration. FofF 6 ?

6 MCAR § 8.003 Board Meetings and Officers

A. Board meetings.

1. Types.

a. 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.

b. 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.

2. Board notice of meetings.

a. Regular meetings. The chairperson shall give written notice of the time and place of each regular meeting to all Board members at least ten (10) 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 (5) days prior to the date of a regular meeting which is either advanced or postponed.

b. 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 (3) days prior to any special meeting.

3. 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.

4. Agenda.

a. 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 fourteen (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 the 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.

b. 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 (10) 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 (10) 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 (3) days prior to the special meeting.

5. 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 (5) days before a regular meeting and at least one(1) day before a special meeting, unless otherwise specified in an order of the Board.

6. 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.

7. Conduct of meetings.

a. 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.

b. 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.

c. 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.

d. 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 (5) days prior to a regular meeting and at least one (1) day prior to a special meeting.

e. 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.

f. 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.

g. Record of meetings. The Board shall keep full and accurate minutes of all meetings, including a record of all votes of individual members.

h. 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.

i. 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.

6 MCAR § 8.004 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.

6 MCAR § 8.005 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 § 2.012A. 2.011A

6 MCAR § 8.006 Temporary Board Members

A. 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.

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

C. 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.

6 MCAR § 8.007 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.

6 MCAR § 8.008 Advisory Councils and Advisory Task Forces

A. 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.

B. 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.

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

D. 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 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.

6 MCAR § 8.009 Final Decisions and Orders

A. 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. ~~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.~~

B. ~~Alternative f~~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 Board finds none of~~ the proposed statements of findings and conclusions ~~to be~~ submitted to the Board are not acceptable, the Board shall direct the staff to prepare additional findings and conclusions. Rejection of the ~~existing~~ proposed findings and conclusions shall be considered an interim decision. A final decision on the matter shall be made after the Board has ~~accepted~~ 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 (10) days prior to the Board meeting at which the Board intends to announce its decision or order.

C. 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.

D. 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. ~~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 at least ten (10) days prior to the Board meeting at which the Board intends to announce its decision or order.~~

E. Remand. The Board may remand the matter to the Hearing Examiner for further proceedings if the Board determines the record is inadequate.

F. 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~~ to the Board a request to be notified of the decision.

6 MCAR § 8.010 Reconsideration and Rehearing

A. 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.

B. Obtaining a rehearing.

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:

a. the name and address of the petitioner;

b. the Board designation for the matter; and

c. the reasons for the petition.

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 substantial irregularities in the hearing or 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.

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.

6 MCAR § 8.011 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.

6 MCAR § 8.012 Public Participation in Board Matters

A. 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.

B. Board meetings

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 (5) days before any regular meeting and one (1) 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 circumstances. The Board shall allow any person adversely affected by any oral or written statement submitted under this subsection additional time in which to respond if the Board determines that the person has not had an adequate opportunity to do so.

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 (5) 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.

6 MCAR § 8.013 Exparte 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.

6 MCAR § 8.014 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.

6 MCAR § 8.015 Computation of Time

Computation of time. In computing any period of time prescribed by these rules, 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 so computed shall be included, unless it is a Saturday, Sunday or a legal holiday.

6 MCAR § 8.016 Severability

The provisions of 6 MCAR §§ 8.001 - 8.016 are severable, and if any section, subsection, clause, sentence or other provision of the rules is held invalid for any reason, such invalidity shall not affect the validity of these rules as a whole or the validity of any other section, subsection, clause, sentence, or other provision, which can be given effect without the invalid provision.

SF-00006-01

STATE OF MINNESOTA

DEPARTMENT WASTE MANAGEMENT BOARD

Office Memorandum

TO : Jerry S. Anderson
Special Assistant, Attorney General
G-25 Admin. Building

DATE: June 29, 1981

FROM : Robert G. Dunn, Chairman
Waste Management Board

PHONE: 536-0816

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State Waste Management Board Governing Operating Procedures

Attached are the original and two copies of the Waste Management Board's Operating Rules which were modified pursuant to your comments and re-adopted by the Waste Management Board. Also attached is a copy of the Board Resolution adopting the Rules and two copies of the new Order adopting the Rules.

RGD:ci
Attachments

RECEIVED
JUN 29 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed) Adoption of Rules of the State) Waste Management Board Govern-) ing Operating Procedures)	Docket No. WMB-001-81 CERTIFICATE OF BOARD'S RESOLUTION ADOPTING RULES

I, Robert G. Dunn, do hereby certify that I am a member and the Chairman of the Waste Management Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Waste Management Board, duly and properly called and held on the 25th day of June, 1981, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> RESOLVED, that the rules relating to operating procedures as revised pursuant to the comments of the Attorney General's Office be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes 115A.06, subd. 2, and that Robert G. Dunn, the Chairman of the Waste Management Board, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 25th day of June, 1981.

Robert G. Dunn
(Officer of the Board)

Laurence E. Hunter
Attest by one other Board member

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

Resolution WMB-008-81

RESOLVED, that the rules relating to operating procedures as revised pursuant to the comments of the Attorney General's Office be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes 115A.06, subd. 2, and that Robert G. Dunn, the Chairman of the Waste Management Board, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law.

Dated: June 25, 1981

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed) Adoption of Rules of the State) Waste Management Board Govern-) ing Operating Procedures)	Docket No. WMB-001-81 FINDINGS OF FACT AND CONCLUSIONS

FINDINGS OF FACT

Notice of the proposed adoption of the above-referenced rules was published in the State Register on March 30, 1981. Notice of the proposed adoption of rules was also served upon all persons, associations, and other interested groups registered with the State Waste Management Board for that purpose.

After affording interested persons an opportunity to comment, having considered all of the evidence adduced upon the records, files, and proceedings, herein, the Waste Management Board makes the following:

1. By an Order dated February 12, 1981, the Chairman of the Waste Management Board directed that a Notice of Intent to Adopt Rules Without Public Hearing in the above-captioned matter be given to all persons who had registered their names with the Board and be published in the State Register.

2. The Notice of Intent to Adopt Rules Without Public Hearing was published in the State Register on March 30, 1981. See 5 S.R. 1542.

3. The Notice of Intent to Adopt Rules Without Public Hearing was sent to all persons who had registered their names with the Board.

4. Only one comment was received on the rules. There were no requests for a public hearing.

5. Section 8.002F. is changed by deleting the second sentence. In proceedings held by the Board, the Board is the decision making body. As such the Board should not be considered a "party" to the proceedings.

6. A subsection H is added to Section 8.002 which defines the terms "service" and "serve." The definition is necessary to clarify how the Board is to deliver certain documents to parties to hearings held by the Board.

7. Several changes are made in Section 8.009. These changes simply consolidate provisions relating to findings and conclusion in a single subsection and clarify the language in the section.

8. Section 8.009F. is altered by deleting the requirement that the Board serve a copy of its Final Decision or Order on all persons who submitted a statement into the record. Instead the Board is required to provide a copy of its Decision or Order to anyone who requests a copy. This change ensures that those persons interested in obtaining a copy of the Decision or Order will receive it without burdening the Board with providing copies of the Decision or Order to a large number of people who may not want a copy.

9. The phrase "on a matter" is added to the first sentence of Section 8.010B.1. for clarification purposes only.

10. Section 8.010B.2. is changed by adding the word "substantial" before the word "irregularities" in the second sentence. This change was recommended by the Office of Administrative Hearings. Minor irregularities in a hearing should not require rehearing of a decision which is in accordance with law and for which no substantial new evidence has been discovered.

11. New language is added to Section 8.010B.3. which conforms the section to the rules of the Office of Administrative Hearings, 9 MCAR § 2.219. This change was also suggested by the Office of Administrative Hearings.

12. Section 8.012B.1. is altered by adding the word "a" before the word "board" in the first sentence. This change is made for grammatical purposes.

13. The term "out-of-state" is added before the word "travel" in Section 8.014 to conform the provision with its title. ✓ p15

14. A new section, 6 MCAR § 8.015, is added which sets out the method of computing time periods established by the rules. The section utilizes the standard method for computing time and is similar to the Office of Administrative Hearings rule 9 MCAR § 2.209A. The addition of the section clarifies how the time periods specified in these rules should be calculated. ✓ p15

15. A section stating that the sections, subsections, sentences and other provisions of the rules are severable has also been added, 6 MCAR § 8.016. Severability provisions are a common method of ensuring that the invalidity of a single provision of a set of rules will not result in the entire set of rules being held invalid. ✓ p16

CONCLUSIONS

1. The modifications in the rules from the version published in the State Register on March 30, 1981, do not result in a substantial change in the proposed language.

2. The rules as adopted, including the modifications in the proposed language, are needed and reasonable.

3. The Waste Management Board has complied with the rulemaking procedures for non-controversial rulemaking set out in Minn. Stat. §§ 15.0412, subds. 4-4.

ROBERT G. DUNN
Chairman
Waste Management Board

Dated: May 21, 1981

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed)
Adoption of Rules of the State) ORDER ADOPTING RULES
Waste Management Board Govern-)
ing Operating Procedures)

Notice of the Board's intent to adopt the above-entitled rules without a public hearing was published in the State Register on March 30, 1981 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes Section 15.0412, subd. 4, on March 20, March 31, and April 17, 1981. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW THEREFORE, IT IS ORDERED that these rules identified as Operating Procedures are adopted this 21st day of May, 1981 pursuant to authority vested in the Board by Minnesota Statutes Section 115A.06, subd. 2.

STATE OF MINNESOTA

ROBERT G. DUNN
Chairman
Waste Management Board

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF ADMINISTRATIVE HEARINGS

RECEIVED

Office Memorandum

APR 9 1981

WASTE MANAGEMENT BOARD

TO : SHARON DECKER
Waste Management Board

DATE: 4/7/81

FROM : DUANE R. HARVES
Chief Hearing Examiner

PHONE: 296-8100

SUBJECT: Proposed Rules for Operating Procedures.

We have had an opportunity to review rules entitled, 6 MCAR §8.002, et al. The following comments are made for your consideration.

In 6 MCAR § 8.010 B.2., if you were to add the word "substantial" before the words "irregularities in the hearing" it might be more desirable. However, I do recognize that the word "substantial" is sometimes difficult to define and may create vagueness problems in the rule.

In 6 MCAR § 8.010 B.3., your rule would appear to be in conflict with our rule on contested cases (9 MCAR § 2.219). Obviously, this raises the question as to which rule would apply. Rather than face that question, we would suggest that your rule be amended to add the following: "Provided that the hearing examiner may permit service of the notice less than 30 days prior to rehearing." The addition of this language would bring the rule into conformity with our language. Additionally, because of the time frames within which you must conduct your business, your rule lacks flexibility and allowing a rehearing with less than 30 days notice would seem to be appropriate.

While it is not really our concern whether your rules for your internal operations are too strict, we certainly do not want to get caught in "rush" hearings because your internal rules prevented a matter from being placed on the agenda, et cetera.

Good luck with your rule adoption.

DRH:sw

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

Notice of Intent to Solicit Outside Opinion and Information Concerning Rules Governing the Operating Procedures of the Waste Management Board

Notice is hereby given that the Waste Management Board is seeking opinions and information from sources outside the agency for the purpose of preparing rules governing the operating procedures of the Waste Management Board. Such rules are authorized by 1980 Minn. Laws Ch. 564, Art. II, § 3.

Any person desiring to submit information or comment on the subject of the proposed rules may do either orally or in writing. All statements of information or comment must be received by December 31, 1980. Any written material received by this date will become part of the record of any rules hearing on this subject. Written or oral information or comment should be addressed to:

Waste Management Board
Attn: Mark Norgaard
123 Thorson Building
7323 - 58th Avenue North
Crystal, Minnesota 55428
612/536-0916

Dated: November 4, 1980

Robert G. Dunn, Chairman
Waste Management Board

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules of the State Waste Management Board Governing Operating Procedures	)))))	Docket No. WMB-001-81 ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 12th day of February, 1981, that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Waste Management Board for that purpose and be published in the State Register.

STATE OF MINNESOTA

ROBERT G. DUNN
Chairman, Waste Management Board

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules of the State Waste Management Board Governing Operating Procedures	)))))	Docket No. WMB-001-81 CERTIFICATE OF BOARD'S AUTHORIZING RESOLUTION

I, Robert G. Dunn, do hereby certify that I am a member and the Chairman of the Waste Management Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Waste Management Board duly and properly called and held on the 12th day of February, 1981, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that Robert G. Dunn, Chairman of the Waste Management Board, be and he hereby is granted the authority and directed to sign an Order of the Board directing that Notice be given of the Board's intent to adopt without a public hearing rules governing operating procedures to sign the Notice thereof, and to perform any and all acts incidental thereto. In the event a public hearing becomes necessary, he hereby is granted the authority and directed to call a hearing for the purpose of promulgating said rules as well as perform any and all acts incidental thereto, including but without being limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Board's representative at all hearings."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 12th day of February, 1981.

Robert G. Dunn

ROBERT G. DUNN
Chairman, Waste Management Board

Attest: Bernice E. Hunter

Waste Management Board

Proposed Rules Governing the Operating Procedures for the Waste Management Board

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the State Waste Management Board proposes to adopt the above entitled rules without a public hearing. The Waste Management Board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subd. 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, § 15.0412, subds. 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Waste Management Board
Attn: Sharon Decker
123 Thorson Building
7323-58th Avenue North
Crystal, MN 55428
(612) 536-0816

Authority for the adoption of these rules is contained in Minnesota Statutes, § 115A.06, subd. 2. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the Waste Management Board, Attn: Sharon Decker, 123 Thorson Building, 7323-58th Avenue North, Crystal, MN 55428, upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to the Waste Management Board, Attn: Sharon Decker, 123 Thorson Building, 7323-58th Avenue North, Crystal, MN 55428.

The rules proposed for adoption relate to the following matters: (1) duty of candor; (2) scheduling and noticing of meetings and preparation of agenda and filing of written material for meetings; (3) conduct of meetings including quorum requirements, voting requirements and general rules of parliamentary procedure; (4) procedures utilized when temporary members are appointed to the board; (5) the use of committees and advisory councils and task forces; (6) procedures for executing documents; (7) procedures for making final decisions and issuing final orders; (8) procedures for reconsidering and rehearing matters; (9) conflict of interest; (10) public participation in matters before the board; (11) *ex parte* communication; and (12) reimbursement for out-of-state travel expenses.

Copies of this notice and the proposed rules are available and may be obtained by contacting the Waste Management Board, Attn: Sharon Decker, 123 Thorson Building, 7323 - 58th Avenue North, Crystal, MN 55428.
March 13, 1981

Robert G. Dunn, Chairman
Waste Management Board

Rules as Proposed (all new material)

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Waste Management Board
Operating Procedures

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6 MCAR § 8.001 Duty of candor.

A. Duty. 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.

B. Violation of duty of 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.

C. Imposition of sanctions. 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.

6 MCAR § 8.002 Definitions.

A. Act. "Act means the Waste Management Act, Minn. Stat. ch. 115A.

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

C. Advisory task force. "Advisory task force" means any task force of non-board members established by the chairperson to advise the board.

D. Board. "Board" means the Waste Management Board.

E. Days. "Days" means calendar days.

F. 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. The term "party" shall include the board when the board initiates a hearing pursuant to Section 8.001.

G. 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.

6 MCAR § 8.003 Board meetings and officers.

A. Board meetings.

1. Types.

a. Regular meeting. Unless otherwise specified by the board, a regular meeting shall be held on the second and fourth Thursdays 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.

b. 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.

2. Board notice of meetings.

a. Regular meetings. The chairperson shall give written notice of the time and place of each regular meeting to all board members at least ten (10) 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 (5) days prior to the date of a regular meeting which is either advanced or postponed.

b. 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 (3) days prior to any special meeting.

3. 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.

4. Agenda.

a. 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 fourteen (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.

b. 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 (10) 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 (10) 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 (3) days prior to the special meeting.

5. 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 (5) days before a regular meeting and at least one (1) day before a special meeting, unless otherwise specified in an order of the board.

6. 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 majortiy vote of the entire board.

7. Conduct of meetings.

a. 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.

b. 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.

c. 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.

d. 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 (5) days prior to a regular meeting and at least one (1) day prior to a special meeting.

e. 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.

f. 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.

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

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h. 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.

i. 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.

6 MCAR § 8.004 Execution of documents. The board shall review the need for any contract 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.

6 MCAR § 8.005 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 § 2.012A.

6 MCAR § 8.006 Temporary board members.

A. 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.

B. 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.

C. 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.

6 MCAR § 8.007 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.

6 MCAR § 8.008 Advisory councils and advisory task forces.

A. 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.

B. 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.

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

D. 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 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.

6 MCAR § 8.009 Final decisions and orders.

A. 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. 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.

B. Alternative findings and conclusions. If the board finds none of the proposed statements of findings and conclusions to be acceptable, the board shall direct the staff to prepare additional findings and conclusions. Rejection of the existing findings and conclusions shall be considered an interim decision. A final decision on the matter shall be made after the board has accepted a statement of findings and conclusions.

C. 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.

D. 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. 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 at least ten (10) days prior to the board meeting at which the board intends to announce its decision or order.

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

F. 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 submitted a statement into the record for whom the board has the person's mailing address.

6 MCAR § 8.010 Reconsideration and rehearing.

A. Reconsideration. Any board member or any party to a matter may request the board to reconsider a final decision by notifying the chairperson within 3 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.

B. Obtaining a rehearing.

1. Petition for rehearing. At any time within 3 days after the final decision 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 on the matter. Such petition shall contain:

a. The name and address of the petitioner;

b. The board designation for the matter; and

c. The reasons for the petition.

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 or 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.

3. Rehearing. A rehearing shall be noticed and conducted in the same manner as an original hearing on a matter.

6 MCAR § 8.011 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 reasonable 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.

6 MCAR § 8.012 Public participation in board matters.

A. 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.

B. Board meetings.

1. Agenda items for which no public hearing was held. Upon request made prior to 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 (5) days before any regular meeting and one (1) day before any special meeting. Upon request

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

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 (5) 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.

6 MCAR § 8.013 *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.

6 MCAR § 8.014 Reimbursement for out-of-state travel. Reimbursement from board funds to any board member or staff member other than for expenses associated with authorized travel shall be at the discretion and with the prior approval of the chairperson.

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Employee Relations
Equal Opportunity Division

Adopted Rules Governing the Statewide Affirmative Action Program

The rules published and proposed at *State Register*, Volume 5, Number 16, pp. 627-633, October 20, 1980 (5 S.R. 627) are now adopted, with the following amendments:

Rules as Adopted

Chapter Eighteen: 2 MCAR §§ 2.201-2.269 Definitions.

2 MCAR § 2.201 "Affirmative action" means a management posture or point of view that all barriers to employment opportunity that are not based on specific job requirements should be identified and removed; further, that initial employment and advancement opportunities for persons in protected groups shown to be underutilized in an agency's work force should be facilitated so that the imbalance is redressed.

2 MCAR § 2.202 "Affirmative action plan" means a coherent set of management policies and procedures designed to find the barriers contributing to imbalance in an agency's work force and to foster the correction of any imbalances which are found to exist.

2 MCAR § 2.203 "Agency."

2 MCAR § 2.204 "Agency promotional list."

2 MCAR § 2.205 "Agency subdivision," for purposes of affirmative action, means a state hospital/nursing home, state school, state university, community college, correctional facility or regional or district office under the jurisdiction of a state agency, which is geographically separate and which has an appointing authority.

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules of the State Waste Management Board) Governing Operating Procedures	AFFIDAVIT OF MAILING Docket No. WMB-001-81

Sharon Decker, being first duly sworn deposes and says:

That on the 20 day of March, 1981, at the City of Crystal, County of Hennepin, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the United States mail at said City of Crystal, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Waste Management Board for the purpose of receiving notice of the proposed adoption of rules by this Board.

Sharon L Decker

Subscribed and sworn to before
me this 20th day of March, 1981.

Lucinda M. Iskierka

LUCINDA M. ISKIERKA
NOTARY PUBLIC—MINNESOTA
HENNEPIN COUNTY
My Comm. Expires Mar 26, 1987

3/19/81

MINNESOTA
WASTE MANAGEMENT BOARD

DISTRIBUTION LIST FOR NOTIFICATION OF RULEMAKING

Mr. Joseph D. Bizzano, Jr.
Ms. JoAnn MCGuire
Northern States Power, Law Dept.
414 Nicollet Mall
Minneapolis, MN 55401

Dr. Roger V. Blomquist
Environmental Research Group, Inc.
4663 W. Chatsworth St.
St. Paul, MN 55112

Bernard L. Brommer
Executive Vice President
Minnesota AFL-CIO
175 Aurora Avenue
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Charles A. Schaffer
Mn. Dept. of Economic Development
480 Cedar St.
St. Paul, MN 55101

R. A. Garvey
North Star Steel Company
P.O. Box 43189, 1678 Red Rock Rd.
St. Paul, MN 55164

Dr. Robert A. Reid
Manager, Corporate Environmental Health
Honeywell, Inc.
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Minneapolis, MN 55435

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Federal-State Reports, Inc.
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Falls Church, Virginia 22041

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Rochester Public Utilities
506 First Ave. NE Box 6057
Rochester, MN 55901

General Mills, Inc.
ATTN: Dr. J. W. Haun-45W
P.O. Box 1113
Minneapolis, MN 55440

Mn. Dept. of Transportation
ATTN: Cheryl Heide
Rm 807, Transportation Bldg.
John Ireland Boulevard
St. Paul, MN 55155

Patricia Jensen
Governor's Office Rm 130
State Capitol
St. Paul, MN 55155

Craig Waldron
Region Nine Development Commission
410 South Fifth Street
P. O. Box 3367
Mankato, MN 56001

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules of the State Waste Management Board Governing Operating Procedures	AFFIDAVIT OF MAILING Docket No. WMB-001-81

Marguerite H. Richards, being first duly sworn deposes and says:

That on the 31st day of March, 1981, at the City of Crystal, County of Hennepin, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the United States mail at said City of Crystal, a copy thereof, properly enveloped, with postage prepaid, on: Craig Waldron, Region Nine Development Commission, 410 South Fifth Street, P. O. Box 3367, Mankato, Minnesota 56001.

Marguerite H. Richards

Subscribed and sworn to before
me this 31st day of March, 1981.

Lucinda M. Iskierka

LUCINDA M. ISKIERKA
NOTARY PUBLIC—MINNESOTA
HENNEPIN COUNTY
My Comm. Expires Mar 26, 1987

March 31, 1981

Craig Waldron
Region Nine Development
Commission
410 South Fifth Street
P. O. Box 3367
Mankato, MN 56001

Dear Mr. Waldron:

Enclosed herewith please find one copy of Notice of Intent to Adopt Rules Without a Public Hearing, WMB-001-81.

Sincerely,

LEROY C. PADDOCK
Special Assistant
Attorney General

121 Thorson Building
7323 - 58th Avenue North
Crystal, MN 55428
612/536-0978

LCP:ci

Enclosure

SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Operating Rules Pleadings File

DATE: 4/1/81

FROM : LeRoy C. Paddock
Special Assistant
Attorney General

PHONE:

SUBJECT: The Rulemaking Notice List

Following the mailing of the Notice of Intent to Adopt Rules Without Public Hearing to all of the persons on the agency's Rulemaking Notice List which was in effect on March 20, 1981, it was discovered that one person, Craig Waldron of the Region Nine Development Commission had been left off from the Rulemaking Notice List. The reason for this omission was that Mr. Waldron's letter to the Board asking to be placed on the Notice List was first of all sent to the wrong agency and then filed by Marguerite when it did reach the Board. As a result, Sharon Decker did not have Mr. Waldon's name. On March 31, 1981 a copy of the Notice of Intent to Adopt Rules without Public Hearing was sent to Mr. Waldon and his name was placed on the Rulemaking Notice List for future rulemaking notices. Since we cannot assume that Mr. Waldron will receive the Notice until at least April 2, the comment period on the Rules should extend through May 2, 1981. This should not present any problems since the Board will not be in a position to act on the Rules until May 14, 1981.

LCP:ci

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

TELEPHONE
(612) 296-6196

April 17, 1981

Mr. Robert S. Burk
4344 IDS Center
Minneapolis, Minnesota 55402

Dear Mr. Burk:

Enclosed herewith please find one copy of Notice of Intent to Adopt Rules Without a Public Hearing, WMB-001-81.

Sincerely,

LEROY C. PADDOCK
Special Assistant
Attorney General

121 Thorson Building
7323 - 58th Avenue North
Crystal, Minnesota 55428
612/536-0978

LCP:mhr

Enclosure

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

TELEPHONE
(612) 296-6196

April 17, 1981

Mr. G. Robert Johnson
4344 IDS Center
Minneapolis, Minnesota 55402

Dear Mr. Johnson:

Enclosed herewith please find one copy of Notice of Intent to Adopt Rules Without a Public Hearing, WMB-001-81.

Sincerely,

LEROY C. PADDOCK
Special Assistant
Attorney General

121 Thorson Building
7323 - 58th Avenue North
Crystal, Minnesota 55428
612/536-0978

LCP:mhr

Enclosure

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

TELEPHONE
(612) 296-6196

April 17, 1981

Mr. John A. Knapp
Hessian, McKasy & Soderberg
1500 Midwest Plaza Building
Minneapolis, Minnesota 55402

Dear Mr. Knapp:

Enclosed herewith please find one copy of Notice of Intent to Adopt Rules Without a Public Hearing, WMB-001-81.

Sincerely,

LEROY C. PADDOCK
Special Assistant
Attorney General

121 Thorson Building
7323 - 58th Avenue North
Crystal, Minnesota 55428
612/536-0978

LCP:mhr

Enclosure

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules of the State Waste Management Board) Governing Operating Procedures	AFFIDAVIT OF MAILING Docket No. WMB-001-81

Marguerite H. Richards, being first duly sworn deposes and says:

That on the 17th day of April, 1981, at the City of Crystal, County of Hennepin, State of Minnesota, he served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the United States mail at said City of Crystal, a copy thereof, properly enveloped, with postage prepaid, on:

Mr. John A. Knapp
Hessian, McKasy & Soderberg
1500 Midwest Plaza Building
Minneapolis, Minnesota 55402

Marguerite H. Richards

Subscribed and sworn to before
me this 20th day of April, 1981.

Lucinda M. Iskierka

LUCINDA M. ISKIERKA
NOTARY PUBLIC—MINNESOTA
HENNEPIN COUNTY
My Comm. Expires Mar 26, 1987

SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Operating Rules Pleadings File

DATE: 4/20/81

FROM : LeRoy C. Paddock
Special Assistant
Attorney General

PHONE: 536-0978

SUBJECT: The Rulemaking Notice List

On April 17, 1981, it was brought to my attention that three requests to be placed on the Agency's Rulemaking Notice List had been inadvertently misfiled by the Agency last summer. As a result, the individuals who requested to be placed on the Notice List were not placed on the list. To insure that there is no problem with the adoption of the Operating Rules I believe the adoption of the Rules should be delayed until the second meeting of the Board in May so that the 30-day Notice and opportunity to comment on the Rules may be provided to the three individuals not on the Rulemaking List.

LCP:ci

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed) Adoption of Rules of the State) Waste Management Board Govern-) ing Operating Procedures)	Docket No. WMB-001-81 CERTIFICATE OF BOARD'S RESOLUTION ADOPTING RULES

I, Robert G. Dunn, do hereby certify that I am a member and the Chairman of the Waste Management Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Waste Management Board, duly and properly called and held on the 21st day of May, 1981, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> RESOLVED, that the rules relating to operating procedures be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes 115A.06, subd. 2, and that Robert G. Dunn, the Chairman of the Waste Management Board, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 21st day of May, 1981.

Robert G. Dunn
(Officer of the Board)

Louise Kudelka
Attest by one other Board member

Statement of Need and Reasonableness
Operating Procedures for
Waste Management Board

6 MCAR § 8.001-8.015

The procedural rules for the Waste Management Board are proposed to provide an orderly and predictable method to conduct the business of the Board. It is particularly important that this Board has procedural rules because the Board will be making a number of difficult decisions on a very controversial subject and within a forum which encourages participation by the public. These rules have been drafted to extend the procedures in Robert's Rules of Order to accommodate the particular situations this Board may face.

These rules will follow the procedure for non-controversial rule making.

6 MCAR § 8.001 Duty of candor

It is crucial to the effective functioning of the Board that it receive accurate information from those persons who interact with the Board. This section, therefore, requires truthfulness and candor from all persons dealing with the Waste Management Board. To ensure that accurate information is provided, this section also establishes the types of penalties the Board may impose if the duty of candor is violated. These penalties are stated in general terms and could vary according to the offense and the authority of the Board. Finally, an orderly and open method (a contested case hearing)

is provided to determine if a violation of duty in 8.001A has occurred.

6 MCAR § 8.002 Definitions

Definitions are provided to clarify references to specific terms which are made throughout the rules.

6 MCAR § 8.003 Board meetings and officers

A. Board meetings.

1. Types

a. Regular meeting. Regular meetings are scheduled for twice a month to allow the Board adequate time to complete the tasks required under the Act, while providing enough time between meetings to allow adequate public notification and staff work prior to each meeting. Designation of the time, place, and advancement or postponement of the regular meetings by the Chairperson allows some flexibility in the meeting schedule to respond to the various situations that may arise and is in accord with 115A.05, subd. 2.

b. Special meetings. The provision for special meetings allows for further flexibility to respond to the need for additional meetings, especially on short notice. With the numerous requirements of the Board in the Act and the sensitive nature of the decisions the Board must make, it is likely that the Chairperson will need to call special meetings of the Board.

2. Board notice of meetings.

a. Regular meetings. Requires that all Board members are provided with adequate notice of all regular meetings to reasonably enable them to prepare for and attend each meeting.

b. Special meetings. Provides that the Board members should be given at least 3 days notice of special meetings so that they have a reasonable amount of time to prepare for the meeting.

3. Public notice of meetings. Provides that the public will receive sufficient notice of regular and special Board meetings to allow them to prepare for and attend Board meetings. The notification required under this section constitutes the minimum notification requirement for Board meetings. The Board's practice has been to also provide notice of meetings to many other entities and the news media.

4. Agenda

a. Preparation. An agenda, prepared in advance of a Board meeting, will serve to alert the public of the issues to be discussed and decided at the Board meeting and to allow the Board members to prepare for the meeting. This rule also provides that any agenda item suggested by a Board member will be placed on the agenda for either the immediate or succeeding meeting. Board members are therefore assured that items of particular interest to them will be discussed by the Board.

b. Notice of agenda. Provides that the public

and Board members will receive an agenda of an upcoming Board meeting in time to prepare for the meeting.

5. Filing of written material. Provides that the Board will have a reasonable amount of time to review relevant materials before a decision on an issue must be made.

6. Vice Chairperson. Provides for leadership for the Board if the Chairperson is unable to perform his Board functions.

7. Conduct of meetings.

a. Quorum. Provides a minimum number of Board members which are required to transact business but allows some members to be absent without precluding the Board from conducting business.

b. Presiding officer. Provides for the orderly selection of leadership for the Board.

c. Agenda. Provides for the orderly conduct of business at Board meetings.

d. Agenda items. Provides that the public will have an opportunity to be informed of any issue on which the Board will vote. Although the Board may discuss issues that have not received such publicity, no vote on the matter may be taken without prior public notification.

e. Voting. Provides for the orderly conduct of decisions to be made by the Board. The requirement that a majority vote of all members is necessary for a decision ensures that a minority position will not prevail simply

because opposing Board members were absent from a meeting.

f. Decisions at open meetings. Provides that Board meetings and Board decisions will be made in an open and public forum.

g. Record of meetings. Minutes taken at Board meetings will provide the Board with an accurate record of past decisions and discussions and provide the public with a record of previous Board activities.

h. Discussion. Gives the Chairperson the authority, with the agreement of the Board, to limit debate and discussion before the Board. This helps to ensure that Board meetings will be conducted in an orderly, but fair, manner and that irrelevant debate will not keep the Board from completing its scheduled work.

i. Parliamentry procedure. Provides for the orderly conduct of Board meetings.

6 MCAR § 8.004 Execution of documents

Provides the Board with the opportunity to review the need for major contracts. However the actual execution of the contracts and other documents may involve a great deal of detailed study which could monopolize the Board's limited time. Therefore, the authority to execute contracts resides with the chairperson.

7 MCAR § 8.005 Staff

Centralizes the hiring and direction of staff through

the Chairperson. This promotes coordination of staff and Board efforts, provides the staff with greater predictability in work direction and is in accord with 115A.05, subd. 2.

6 MCAR § 8.006 Temporary Board members

A. Eligibility. Specifies that temporary Board members will be permitted to vote only on those issues that are within the authority granted in 115A.05, subd. 3. The arrangement of the agenda and the authority of the Chairperson to determine which issues are applicable to temporary Board members will allow for more orderly meetings.

B. Quorum. Provides that at least six permanent Board members must be present for a quorum on issues where temporary Board members are eligible to vote. (Five is a quorum of Board members for meetings or portions of meetings where only permanent Board members are eligible to vote.) The quorum requirements ensure that there are at least as many permanent Board members as there are temporary Board members available to participate in any vote.

C. Voting. Provides for orderly decision making when temporary and permanent members are eligibile to make decisions.

6 MCAR § 8.007 Committees. Provides the Chairperson with the opportunity to create committees of Board members to pursue issues that may not be appropriately studied by the Board as a whole.

6 MCAR § 8.008 Advisory councils and advisory task forces

A. Establishment of advisory task forces. Provides for an orderly method to establish advisory task forces.

B. Purpose. Establishes a purpose for the advisory councils and task forces to help clarify their goals and to guide their activities.

C. Procedures. Allows the advisory councils and task forces the flexibility to establish their own operating procedures.

D. Recommendations. Establishes an orderly system for the Board to receive and respond to the recommendations from advisory councils and task forces.

6 MCAR § 8.009 Final decisions and orders

A. Decision. Provides that the Board's decision on a matter following a hearing will, when required by law, be based solely on the record of the hearing. The rule also requires findings and conclusions for each decision which provides the parties to a matter and the public with a full and public record of the facts considered and reasoning used in the Board's decision.

B. Alternative findings and conclusions. Provides a procedure for the rejection of proposed findings and the adoption of alternative findings by the Board. This ensures that the parties to a matter and the public will be given a full explanation of the reasons behind the Board's decision.

C. Time. Provides that the Board will take final action in a timely fashion. Since these issues may be complex and the Board may require a variable amount of time to study an issue, no specific time limit has been set. An unrealistically short time period could result in ill-considered decisions in some cases.

D. Manner. Provides that a Board decision will be made in an open forum. The findings of fact and conclusions must be made available to all parties 10 days prior to the Board meeting to allow all parties to review the findings and conclusions and prepare any responses.

E. Remand. Provides the Board with the option to return a matter to the Hearing Examiner for further study, if necessary. This allows the Board the option to refuse to make a decision based on inadequate information and to require additional information.

F. Notice. Provides that all parties and interested persons will be given notice of the Board's decision. This encourages openness and public involvement in the Board's activities.

6 MCAR § 8.010 Reconsideration and rehearing

A. Reconsideration. Provides the opportunity to reconsider a Board decision. It is assumed that if a Board member or party wants to request a reconsideration, that decision can be reasonably made within three days. A longer time could be an unnecessary burden by making every Board decision

essentially a tentative decision until the reconsideration period had expired.

B. Obtaining a rehearing.

1. Petition for rehearing. Provides for a manner in which a petition requesting a rehearing may be submitted to the Board.

2. Action. Establishes criteria for the Board to decide whether to grant or deny a petition for rehearing.

3. Rehearing. Establishes a predictable method for notice and conduct of a rehearing.

6 MCAR § 8.011 Conflict of interest. The rule prohibits a member of the Board from participating in Board decisions where the Board member has a direct financial or employment interest. This provision helps to assure the decisions of the Board will be objectively based on the record before the Board. The rule also prohibits employees of the Board from engaging in employment or other activities which may effect their performance.

6 MCAR § 8.012 Public participation in Board matters

A. Board matters. The Board is making a considerable effort to be accessible to the public and to encourage public participation in Board matters. This rule ensures that the public will be allowed access to the Board and its decisions and outlines some methods by which public participation can

be accomplished. The rule also establishes a method whereby persons affected by comments received from members of the public will be notified and given a chance to respond. This will enable the Board to receive arguments from both (or many) sides of an issue. This openness and balancing of information and opinions should enhance the quality of the decisions made by the Board.

B. Board meetings.

1. Agenda items for which no public hearing was held. This rule establishes another method for allowing public comment and debate to occur before the Board. Written comments must be submitted prior to a regular or special Board meeting to allow the Board members a reasonable time to review the material before the meeting.

2. Agenda items for which a public hearing has been held. Provides for further public comment on an issue that has been subject to a hearing. However, since the matter has already been subject to a public hearing, and since the Board must make its decision based solely on the facts developed at the hearing, the comments to the Board may be limited to statements regarding evidence in the record.

6 MCAR § 3.013 Ex parte communication

Provides that all comments received from parties by Board members on a matter subject to a hearing will be circulated to all Board members and all parties. This rule prohibits individual lobbying efforts by parties to a matter that could

be used to inappropriately sway the opinions of individual Board members and ensures open and public debate of issues presented to the Board.

6 MCAR § 8.014 Reimbursement for out-of-state travel

Provides the Chairperson with authority to decide when to reimburse Board members and staff for expenses other than authorized travel.

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

FYI

Sharon

DEPARTMENT OFFICE OF ADMINISTRATIVE HEARINGS

Office Memorandum

TO : SHARON DECKER
Waste Management Board

DATE: 4/6/81

FROM : DUANE R. HARVES
Chief Hearing Examiner

Duane R. Harves Jr.

PHONE: 6-8100

SUBJECT: PROPOSED RULES GOVERNING THE OPERATING PROCEDURES FOR THE WASTE MANAGEMENT BOARD

I have noted that you are intending to adopt the above-referenced rules without a public hearing. As you may know, we worked on this section of the law for two years prior to its adoption. As a result of our interest, certain legislators have requested we maintain records to determine how the system is working.

Therefore, following your final adoption of the rules, I will be sending you a short questionnaire relative to the time and cost involved in this process.

In the meantime, good luck!

DRH:sh

RECEIVED
APR 7 1981
WASTE MANAGEMENT BOARD

file under "Operating Rules"

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules of the State Waste Management Board Governing Operating Procedures	STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General LeRoy C. Paddock, do hereby declare that I have examined the proposed rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed. Any exceptions are noted below.

LeRoy C. Paddock

Special Assistant
Attorney General

Dated: May 21, 1981

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules of the State Waste Management Board Governing Operating Procedures	Docket No. WMB-001-81 ORDER ADOPTING RULES

Notice of the Board's intent to adopt the above-entitled rules without a public hearing was published in the State Register on March 30, 1981 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes Section 15.0412, subd. 4, on March 20, March 31, and April 17, 1981. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW THEREFORE, IT IS ORDERED that these rules identified as Operating Procedures as revised pursuant to the comments of the Attorney General's Office are adopted this 25th day of June, 1981 pursuant to authority vested in the Board by Minnesota Statutes Section 115A.06, subd. 2.

STATE OF MINNESOTA

ROBERT G. DUNN
Chairman
Waste Management Board

Rules as ~~Proposed~~ Adopted (all new material)

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~~PROPOSED~~ ADOPTED RULES
WASTE MANAGEMENT BOARD
OPERATING PROCEDURES

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6 MCAR § 8.001 Duty of Candor

A. Duty. 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.

B. Violation of duty of 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.

C. Imposition of sanctions. 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.

6 MCAR § 8.002 Definitions

A. Act. "Act" means the Waste Management Act, Minn. Stat. ch. 115A.

B. Advisory council. "Advisory council" means any of the advisory councils established by the Act.

C. Advisory task force. "Advisory task force" means any task force of non-Board members established by the chairperson to advise the Board.

D. Board. "Board" means the Waste Management Board.

E. Days. "Days" means calendar days.

F. 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. ~~The term "party" shall include the Board when the Board initiates a hearing pursuant to Section 8.001.~~

G. 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.

6 MCAR § 8.003 Board Meetings and Officers

A. Board meetings.

1. Types.

a. 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.

b. 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.

2. Board notice of meetings.

a. Regular meetings. The chairperson shall give written notice of the time and place of each regular meeting to all Board members at least ten (10) 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 (5) days prior to the date of a regular meeting which is either advanced or postponed.

b. 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 (3) days prior to any special meeting.

3. 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.

4. Agenda.

a. 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 fourteen (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 the 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.

b. 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 (10) 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 (10) 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 (3) days prior to the special meeting.

5. 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 (5) days before a regular meeting and at least one(1) day before a special meeting, unless otherwise specified in an order of the Board.

6. 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.

7. Conduct of meetings.

a. 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.

b. 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.

c. 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.

d. 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 (5) days prior to a regular meeting and at least one (1) day prior to a special meeting.

e. 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.

f. 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.

g. Record of meetings. The Board shall keep full and accurate minutes of all meetings, including a record of all votes of individual members.

h. 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.

i. 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.

6 MCAR § 8.004 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.

6 MCAR § 8.005 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 § 2.011A.

6 MCAR § 8.006 Temporary Board Members

A. 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.

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

C. 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.

6 MCAR § 8.007 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.

6 MCAR § 8.008 Advisory Councils and Advisory Task Forces

A. 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.

B. 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.

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

D. 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 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.

6 MCAR § 8.009 Final Decisions and Orders

A. 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. ~~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.~~

B. ~~Alternative f~~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 Board finds none of~~ the proposed statements of findings and conclusions ~~to be~~ submitted to the Board are not acceptable, the Board shall direct the staff to prepare additional findings and conclusions. Rejection of the ~~existing~~ proposed findings and conclusions shall be considered an interim decision. A final decision on the matter shall be made after the Board has ~~accepted~~ 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 (10) days prior to the Board meeting at which the Board intends to announce its decision or order.

C. 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.

D. 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. ~~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 at least ten (10) days prior to the Board meeting at which the Board intends to announce its decision or order.~~

E. Remand. The Board may remand the matter to the Hearing Examiner for further proceedings if the Board determines the record is inadequate.

F. 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 person who have submitted a statement into the record for whom the Board has the person's mailing address.

6 MCAR § 8.010 Reconsideration and Rehearing

A. 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.

B. Obtaining a rehearing.

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:

a. the name and address of the petitioner;

b. the Board designation for the matter; and

c. the reasons for the petition.

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, ~~or~~ 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.

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.

6 MCAR § 8.011 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.

6 MCAR § 8.012 Public Participation in Board Matters

A. 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.

B. Board meetings

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 (5) days before any regular meeting and one (1) 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 circumstances. The Board shall allow any person adversely affected by any oral or written statement submitted under this subsection additional time in which to respond if the Board determines that the person has not had an adequate opportunity to do so.

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 (5) 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.

6 MCAR § 8.013 Exparte 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.

6 MCAR § 8.014 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.

APPROVED AS TO FORM AND LEGALITY

6/30 1981

WARREN SPANNAUS, ATTORNEY GENERAL

BY Jerry Anderson

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN 30 1981
Joan Anderson Growe
Secretary of State

3:00 p.m.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT WASTE MANAGEMENT BOARD

Office Memorandum

TO : Mike Miles
Assistant A.G.

DATE: June 1, 1981

FROM : Robert Dunn
Chairman, WMB

PHONE: (612) 536-0816

SUBJECT: OPERATING RULES

Enclosed for your review are copies of the Operating Rules adopted by the Waste Management Board on May 21, 1981, together with the record of the rulemaking proceedings.

RGD:js

RECEIVED
JUN 1 - 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES