

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 835

8/4 S. Decker requested to send mail list cert, + 2 copies of rule as adopted 8/5

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 7-23-82
DATE FOR REVIEW 8-2-82
DATE DUE 8-6-82

Adopted w/a hearing
Adopted w/o hearing ✓
Temporary rule

Approved 8-6-82 Disapproved _____ Returned to Agency 8-10-82

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 8-10-82 Revisor approved 7/26/82 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 7.8.82 Date

✓ Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking
4.29.82 At least 30 days prior to ~~hearing~~/adoption

_____ Mailing list Certificate

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

N/A Hearing Examiner's Report

_____ 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

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

N/A Record (includes transcript or tape, exhibits, comments received (NO) by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : Robert G. Dunn, Chairman
Waste Management Board

DATE: August 6, 1982

Atten: LeRoy C. Paddock, Special Assistant, Attorney General

FROM : Ted A. Martinez
Special Assistant
Attorney General

PHONE: 396-4692

SUBJECT: In the Matter of the Adoption of Rules Relating to Supplementary Review 6 MCAR §§ 8.201-8.218

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;

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.

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

July 20, 1982

Mike Miles
Attorney General's Office
Administration Building
St. Paul, MN 55155

Dear Mike:

Enclosed are Adopted Rules of the Waste Management Board Governing Supplementary Review for your office's review and approval. The rules have also been submitted today to the Revisor's Office for final approval. If you have any questions, feel free to call me.

Sincerely,

LeRoy C. Paddock

LeROY C. PADDOCK
Special Assistant
Attorney General

Room 431
1935 W. County Road B-2
Roseville, MN 55113
(612) 296-7726

LCP:mah

Enc.

Waste Management Board

Adopted Rules Governing Supplementary Review

Rules as Adopted

6 MCAR S 8.201 Supplementary review of decisions concerning establishment of certain facilities. Rules 6 MCAR SS 8.201-8.218 establish the procedures by which the Waste Management Board will review petitions for supplementary review. Under Minn. Stat. SS 115A.32-115A.39, the Waste Management Board may entertain a petition for supplementary review whenever an authorized applicant has received all necessary permits from the Pollution Control Agency for a proposed facility but a political subdivision has refused to approve the establishment or operation of the facility.

6 MCAR S 8.202 Definitions. For the purposes of 6 MCAR SS 8.201-8.218, the following terms have the meanings given them unless the context requires otherwise.

A. Agency. "Agency" means the Pollution Control Agency.

B. Board. "Board" means the Waste Management Board.

C. Chairperson. "Chairperson" means the chairperson of the Waste Management Board.

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

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

6 MCAR S 8.203 Eligibility for supplementary review. The

following persons shall be eligible to request supplementary review by the board pursuant to Minn. Stat. SS 115A.32-115A.39:

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

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

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

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

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

6 MCAR S 8.204 Review of petitions for supplementary review.

A. Acceptance of petition. The chairperson on behalf of the board shall accept a petition for review if it conforms to the requirements of B. If the petition does not conform to the

requirements of B., the chairperson shall return it to the petitioners with a statement identifying the deficiencies in the petition.

B. Contents of petition. A petition shall include:

1. The name, address, and telephone number of the petitioner;

2. The name, address, and telephone number of each owner or operator of the proposed facility if different from the petitioner specified in 1.;

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

4. A description of the proposed facility;

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

6. An estimate of the required construction time;

7. An estimate of the functional life of the proposed facility;

8. For processing facilities, a description of the types of processes to be used;

9. For processing facilities, a statement of the design capacity of each process;

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

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

12. For petitioners who qualify for review under 6 MCAR S 8.203 B., a copy of the required solid waste plan conforming to the requirements of Minn. Stat. S 115A.46; and

13. For petitioners who qualify for review under 6 MCAR S 8.203 D. or E., a brief discussion showing how the proposed facility is consistent with the hazardous waste management plan required under Minn. Stat. S 115A.11, if the plan has been

adopted at the time the petition is submitted.

6 MCAR S 8.205 Additional information. The chairperson may request the petitioner to submit additional information whenever the chairperson determines that the information would be necessary or useful in deciding whether the petition should be approved or disapproved.

6 MCAR S 8.206 Procedure for supplementary review.

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

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

6 MCAR S 8.207 Identification of issues.

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

B. Public meetings. Within 60 days after the board has accepted a petition for review, the board shall hold an informal public meeting in the area where the facility is proposed. The

purpose of this meeting shall be to permit members of the public to discuss the issues which should be reviewed by the board.

C. Public meeting procedures.

1. The board shall announce the public meeting by providing press releases to newspapers and radio and television stations in the area where the facility is proposed and by letter to the political subdivisions within which the facility is proposed to be located.

2. The meeting shall be held in the area in which the facility is proposed to be located.

3. The meeting shall be conducted by the chairperson or his designee.

4. Copies of the compilation of issues prepared by the chairperson shall be available for review.

5. Members of the public shall be given an opportunity to suggest additional issues which should be considered and present reasons why particular issues should or should not be considered.

6. A summary of the issues raised at the public meeting shall be prepared.

6 MCAR S 8.208 Appointment of temporary board members.

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

B. Appointment by political subdivision. The political subdivisions shall appoint temporary board members in accordance with Minn. Stat. S 115A.34 within 45 days after the date the petition was accepted by the board.

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

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6 MCAR S 8.209 Mediation.

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

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

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

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

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

F. Compensation of mediator. The board shall pay the costs of mediation.

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

6 MCAR S 8.210 Recommended statement of issues. At least ten days before the board meeting held to determine the scope and procedures for review and to commence the supplementary review process, the chairperson shall prepare a recommended statement of the issues involved in the review. The chairperson shall make copies of the recommended statement available to members of the public. Copies of the recommended statement of issues shall be provided to the petitioner and the political subdivision.

6 MCAR S 8.211 Board meeting to establish scope and procedures for the second phase of the review.

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

B. Procedures.

1. If no mediated agreement has been reached, the board shall direct that a contested review be conducted under 6 MCAR S 8.213.

2. If a mediated agreement has been reached which may require the imposition of more stringent permit terms, conditions, or requirements, or if significant issues are identified in the statement of issues adopted by the board which were not addressed in the agreement, the board shall direct that a review hearing be conducted under 6 MCAR S 8.212.

3. If a mediated agreement has been reached which does not require the imposition of more stringent permit terms, conditions, or requirements, and if all significant issues which were identified in the statement of issues are addressed in the agreement, the board shall suspend the review pending final approval of the proposed facility by the political subdivision and shall dismiss the petition and terminate the review upon final approval of the proposed facility by the political subdivision.

6 MCAR S 8.212 Hearing procedures following mediated agreement.

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

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

1. Specify the date, time, and location of the hearing;

2. Describe the proposed facility and its location;

3. Describe the permits which have been issued for the proposed facility;

4. Briefly set out the process by which the agreement was reached and the scope and procedures which will be used in the supplementary review;

5. Identify the location or locations within the city, town, or county where copies of the agreement, the permit applications, agency permits, and the board's scope and procedures for review are available for review; and

6. Include the name of a person on the board's staff to whom questions about the review may be directed.

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

D. Procedures for the hearing.

1. The hearing shall be conducted by a hearing examiner from the Office of Administrative Hearings.

2. A majority of the permanent board members shall be present at the hearing.

3. The hearing shall be opened by the hearing examiner who will explain the hearing procedures.

4. A member of the board's staff shall explain the purpose of the hearing, the statement of issues adopted by the

board, and any additional permit terms, conditions, or requirements which the board is considering to implement the agreement.

5. The political subdivision and the petitioner shall explain the mediated agreement.

6. Members of the public shall have an opportunity to comment upon the agreement, the issues identified in the statement of issues, and any proposed additional permit terms, conditions, or requirements.

7. Questions may be directed to any representative of the political subdivision or the petitioner regarding the mediated agreement and to any person who presents a statement at the hearing.

8. The chairperson may request any person who has information related to the hearing to present the information if the chairperson determines the information would be helpful in reaching a decision in the case.

9. The hearing examiner may exclude testimony or disallow questions which are irrelevant, unduly repetitious, argumentative, harassing, or adversarial in nature.

10. No person shall interfere with the conduct of the hearing or disrupt or threaten to disrupt the hearing.

11. A transcript of the hearing shall be prepared.

6 MCAR S 8.213 Contested supplementary review hearing.

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

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

1. Specify the date, time, and location of the hearing;

2. Describe the proposed facility and its location;

3. Describe the permits which have been issued for the proposed facility;

4. Briefly set out the scope and procedures which will be used in the supplementary review;

5. Identify the location or locations within the city, town, or county where copies of the permit applications, agency permits, and the board's scope and procedures for review are available for review and where copies may be obtained;

6. Include the name of a person on the board's staff to whom questions about the review may be directed.

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

D. Definition; party. "Party" for the purposes of E.-V. means the petitioner, the political subdivision which refused to authorize the facility, and any person who is granted intervention under I.

E. Hearing examiner; duties. The hearing shall be conducted by a hearing examiner assigned by the Chief Hearing Examiner. The hearing examiner shall perform the following duties:

1. Hear and rule on motions;

2. Grant or deny requests for discovery including the taking of depositions;

3. Receive and act upon requests for subpoenas when appropriate;

4. Preside at the hearing;

5. Administer oaths and affirmations;

6. Examine witnesses when the hearing examiner deems it necessary to make a complete record;

7. Make preliminary, interlocutory, or other orders as the hearing examiner deems appropriate;

8. Rule on objections;

9. Do all things necessary and proper to the performance of 1.-8.; and

10. Perform other duties which may be delegated to the hearing examiner by the board.

The hearing examiner will not prepare a report following the hearing.

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

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

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

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

J. Default. The board may decide a review adverse to a party which defaults. Upon default, the allegations and evidence provided by the nondefaulting party shall be deemed

true without further evidence. A default occurs when a party fails to appear at a hearing, fails to comply with any interlocutory orders of the hearing examiner, or fails to timely prefile testimony, and is unable to demonstrate that good cause existed for any failure.

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

L. Prefiled testimony. The petitioner, the political subdivision which refused to approve the facility, and any party seeking to intervene shall file their testimoney with the hearing examiner and the board at least ten days before the hearing unless the hearing examiner directs otherwise. Testimony in the hearing shall be limited to the issues identified by the board in its statement of issues.

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

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

O. Prehearing procedures.

1. The purpose of the prehearing conference is to obtain stipulations regarding foundation for testimony or exhibits, to consider the proposed witnesses for each party, and to consider other matters that may be necessary or advisable to consider. Upon the request of any party or upon his own motion, the hearing examiner may, in his discretion, hold a prehearing conference prior to each contested review hearing. The hearing

examiner may require the parties to file a prehearing statement prior to the prehearing conference. The statement shall contain items the hearing examiner deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the hearing examiner. Agreements on any matters considered by the prehearing conference may be entered on the record or may be made the subject of an order by the hearing examiner. The hearing examiner shall hold any prehearing conferences in a manner and at a time which will not interfere with the completion of the review process in the time allowed by Minn. Stat. S 115A.35 and this rule.

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

P. Discovery.

1. Each party shall, within ten days of a demand by another party, disclose the names and addresses of all witnesses that a party intends to call at the hearing. All witnesses unknown at the time of the disclosure shall be disclosed as soon as they become known. Each party shall also disclose any relevant written or recorded statements made by the party or by witnesses on behalf of a party. The demanding party shall be permitted to inspect and reproduce those statements. Any party unreasonably failing upon demand to make the disclosure required by this rule may, in the discretion of the hearing examiner, be

foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

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

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

4. When a party is asked to reveal material which he

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

5. Discovery shall be conducted in a manner to ensure the completion of the review in the time permitted by Minn. Stat. S 115A.35 and this rule. The hearing shall not be continued to permit additional time for discovery.

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

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

S. Rules of evidence.

1. The hearing examiner may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable prudent persons are accustomed

to rely in the conduct of their serious affairs. The hearing examiner shall utilize the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, or unduly repetitious may be excluded.

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

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

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

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

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

T. The record. The board shall maintain the official record in each contested review hearing. The record in a contested review shall contain:

1. All pleadings, motions, and orders;

2. Evidence received or considered;

3. Offers of proof, objections, and rulings on them;

4. All memoranda or data submitted by any party in connection with the case; and

5. The transcript of the hearing.

U. Conduct of hearing. Unless the hearing examiner determines that the public interest will be equally served

otherwise, the hearing shall be conducted substantially in the following manner:

1. The hearing examiner shall briefly review the procedural rules for the hearing;

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

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

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

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

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

V. Completion of hearing. The hearing examiner shall conduct the hearing in a manner to ensure its completion in the time required by Minn. Stat. S 115A.35 and this rule.

6 MCAR S 8.214 Reconciliation procedures. At least 30 days before making its final decision in a review, the board shall make a determination as to whether a report should be made to the legislature and whether intervention should be requested as provided in Minn. Stat. S 115A.38.

6 MCAR S 8.215 Decision of Waste Management Board.

A. The record. No factual information or evidence which is

not a part of the hearing record shall be considered by the board in the determination of the case.

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

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

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

E. Basis of decision. In its decision to approve or not approve a proposed facility, the board shall consider and base its decision on the factors listed in 1.-6. Neither the petitioner nor the political subdivision shall be deemed to have the burden of proof as to any of the factors. The factors are:

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

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

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

site;

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

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

6. Any issue within the established scope of the supplementary review which is not addressed by 1.-5.

F. Final decision. The board shall review a mediated agreement and shall approve the agreement unless the agreement is clearly inappropriate based on the factors set out in 6 MCAR S 8.215 E. and the record of the hearing, fails to address significant issues relevant to the review, or requires the imposition of permit terms, conditions, or requirements outside of the authority of the board. If the board disapproves a mediated agreement, the board shall direct the staff to prepare a recommended decision based on the hearing record. When no mediated agreement has been reached or when a mediated agreement has been rejected, the board shall base its decision to approve or not approve a facility on the factors set out in 6 MCAR S 8.215 E. and the record of the hearing.

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

6 MCAR S 8.216 Terms, conditions, and requirements of permitting agencies.

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

B. Addition of provisions. If, based on the factors set out in 6 MCAR S 8.215 E., the board determines that more stringent permit terms, conditions, or requirements should be imposed in connection with the approval of a facility, the board shall direct that the terms, conditions, or requirements be added to the permit.

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

6 MCAR S 8.217 Revocation of approval. The board may revoke its approval of a facility if, following a contested case hearing under the Contested Case Procedures of Minn. Stat. SS 15.0418-15.052 and the rules of the Office of Administrative Hearings relating to contested case proceedings in 9 MCAR SS 2.201-2.222, it is determined that the petitioner knowingly made material false statement, representations or certifications, or knowingly withheld material information in any application, record, report, or other document filed pursuant to the provisions of 6 MCAR SS 8.210-8.213.

6 MCAR S 8.218 Computation of time. In computing any period of time prescribed under 6 MCAR SS 8.201-8.215, the date of the last act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so completed shall be included unless it is a Saturday, Sunday, or legal holiday.

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Certificate of Approval of Adopted Rules

Agency: Waste Management Board Date: 8/6/82

Division: RD: 189

Agency Contact:

Rule Numbers: 6 MCAR SS 8.201-8.218

Title: Adopted Rules Governing Supplementary Review

Type of Rules: Permanent X Temporary_____

Incorporations by Reference: None except those permitted under statute.

Rule Number: Material Incorporated:

Duplication of Statutory Language:

Rule Number:	Statutory Section Duplicated:
6 MCAR S 8.203	Minn. Stat. S 115A.33
6 MCAR S 8.215 E.1.-6.	Minn. Stat. S 115A.36

The attached rules are approved as to form, subject to the following editorial changes:

Page 11, lines 1 and 2, transfer sentence and insert in page 10, line 19, after the period.
Page 12, line 14, delete "testimoney" and insert "testimony".
Page 20, Line 25, Delete "statement" and insert "statements".

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 10 1982
Joan Anderson Growe
Secretary of State

APPROVED AS TO LEGALITY
Aug. 6 1982
WARREN SPANNAUS, ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

8:30 AM

Steven C. Cross — Roger J. Helder Jr. M.N.D.

Steven C. Cross
Revisor of Statutes

Name: Roger J. Helder, Jr. Date: 8/6/82
Title: Assistant Revisor Phone: 297-2948

Rules as Proposed (all new material)

6 MCAR S 8.201 Supplementary review of decisions concerning establishment of certain facilities. Rules 6 MCAR SS 8.201-8.218 establish the procedures by which the Waste Management Board will review petitions for supplementary review. Under Minn. Stat. SS 115A.32-115A.39, the Waste Management Board may entertain a petition for supplementary review whenever an authorized applicant has received all necessary permits from the Pollution Control Agency for a proposed facility but a political subdivision has refused to approve the establishment or operation of the facility.

6 MCAR S 8.202 Definitions. For the purposes of 6 MCAR SS 8.201-8.218, the following terms have the meanings given them unless the context requires otherwise.

A. Agency. "Agency" means the Pollution Control Agency.

B. Board. "Board" means the Waste Management Board.

C. Chairperson. "Chairperson" means the chairperson of the Waste Management Board.

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

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

6 MCAR S 8.203 Eligibility for supplementary review. The following persons shall be eligible to request supplementary review by the board pursuant to Minn. Stat. SS 115A.32-115A.39:

A. A generator of sewage sludge within the state who has been issued permits by the agency for a facility to dispose of

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sewage sludge or solid waste resulting from sewage treatment, except that the Metropolitan Waste Control Commission shall not be eligible to request review for a sewage sludge disposal facility or for a solid waste facility with a proposed permitted life of longer than four years;

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

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

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

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

6 MCAR S 8.204 Review of petitions for supplementary review.

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

B. Contents of petition. A petition shall include:

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1. The name, address, and telephone number of the petitioner;

2. The name, address, and telephone number of each owner or operator of the proposed facility if different from the petitioner specified in 1.;

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

4. A description of the proposed facility;

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

6. An estimate of the required construction time;

7. An estimate of the functional life of the proposed facility;

8. For processing facilities, a description of the types of processes to be used;

9. For processing facilities, a statement of the design capacity of each process;

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

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

12. For petitioners who qualify for review under 6 MCAR S 8.203 B., a copy of the required solid waste plan conforming to the requirements of Minn. Stat. S 115A.46; and

13. For petitioners who qualify for review under 6 MCAR S 8.203 D. or E., a brief discussion showing how the proposed facility is consistent with the hazardous waste management plan required under Minn. Stat. S 115A.11, if the plan has been adopted at the time the petition is submitted.

6 MCAR S 8.205 Additional information. The chairperson may request the petitioner to submit additional information whenever the chairperson determines that the information would be

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necessary or useful in deciding whether the petition should be approved or disapproved.

6 MCAR S 8.206 Procedure for supplementary review.

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

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

6 MCAR S 8.207 Identification of issues.

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

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

C. Public meeting procedures.

1. The board shall announce the public meeting by

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providing press releases to newspapers and radio and television stations in the area where the facility is proposed and by letter to the political subdivisions within which the facility is proposed to be located.

2. The meeting shall be held in the area in which the facility is proposed to be located.

3. The meeting shall be conducted by the chairperson or his designee.

4. Copies of the compilation of issues prepared by the chairperson shall be available for review.

5. Members of the public shall be given an opportunity to suggest additional issues which should be considered and present reasons why particular issues should or should not be considered.

6. A summary of the issues raised at the public meeting shall be prepared.

6 MCAR S 8.208 Appointment of temporary board members.

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

B. Appointment by political subdivision. The political subdivisions shall appoint temporary board members in accordance with Minn. Stat. S 115A.34 within 45 days after the date the petition was accepted by the board.

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

6 MCAR S 8.209 Mediation.

A. Notice of mediation. Within ten days following acceptance of a petition for review, the chairperson shall

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notify both the petitioner and the political subdivision that the services of an impartial mediator will be made available to the petitioner and the political subdivision to assist in the resolution of the issues separating the petitioner and the political subdivision.

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

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

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

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

F. Compensation of mediator. The board shall pay the costs of mediation.

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

6 MCAR S 8.210 Recommended statement of issues. At least ten days before the board meeting held to determine the scope and procedures for review and to commence the supplementary review process, the chairperson shall prepare a recommended statement

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of the issues involved in the review. The chairperson shall make copies of the recommended statement available to members of the public. Copies of the recommended statement of issues shall be provided to the petitioner and the political subdivision.

6 MCAR S 8.211 Board meeting to establish scope and procedures for the second phase of the review.

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

B. Procedures.

1. If no mediated agreement has been reached, the board shall direct that a contested review be conducted under 6 MCAR S 8.213.

2. If a mediated agreement has been reached which may require the imposition of more stringent permit terms, conditions, or requirements, or if significant issues are identified in the statement of issues adopted by the board which were not addressed in the agreement, the board shall direct that a review hearing be conducted under 6 MCAR S 8.212.

3. If a mediated agreement has been reached which does not require the imposition of more stringent permit terms, conditions, or requirements, and if all significant issues which were identified in the statement of issues are addressed in the agreement, the board shall suspend the review pending final approval of the proposed facility by the political subdivision and shall dismiss the petition and terminate the review upon final approval of the proposed facility by the political subdivision.

6 MCAR S 8.212 Hearing procedures following mediated agreement.

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

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

1. Specify the date, time, and location of the hearing;

2. Describe the proposed facility and its location;

3. Describe the permits which have been issued for the proposed facility;

4. Briefly set out the process by which the agreement was reached and the scope and procedures which will be used in the supplementary review;

5. Identify the location or locations within the city, town, or county where copies of the agreement, the permit applications, agency permits, and the board's scope and procedures for review are available for review; and

6. Include the name of a person on the board's staff to whom questions about the review may be directed.

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

D. Procedures for the hearing.

1. The hearing shall be conducted by a hearing examiner from the Office of Administrative Hearings.

2. A majority of the permanent board members shall be present at the hearing.

3. The hearing shall be opened by the hearing examiner who will explain the hearing procedures.

4. A member of the board's staff shall explain the purpose of the hearing, the statement of issues adopted by the board, and any additional permit terms, conditions, or requirements which the board is considering to implement the agreement.

5. The political subdivision and the petitioner shall

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explain the mediated agreement.

6. Members of the public shall have an opportunity to comment upon the agreement, the issues identified in the statement of issues, and any proposed additional permit terms, conditions, or requirements.

7. Questions may be directed to any representative of the political subdivision or the petitioner regarding the mediated agreement and to any person who presents a statement at the hearing.

8. The chairperson may request any person who has information related to the hearing to present the information if the chairperson determines the information would be helpful in reaching a decision in the case.

9. The hearing examiner may exclude testimony or disallow questions which are irrelevant, unduly repetitious, argumentative, harassing, or adversarial in nature.

10. No person shall interfere with the conduct of the hearing or disrupt or threaten to disrupt the hearing.

11. A transcript of the hearing shall be prepared.

6 MCAR S 8.213 Contested supplementary review hearing.

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

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

1. Specify the date, time, and location of the hearing;

2. Describe the proposed facility and its location;

3. Describe the permits which have been issued for the proposed facility;

4. Briefly set out the scope and procedures which will be used in the supplementary review;

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5. Identify the location or locations within the city, town, or county where copies of the permit applications, agency permits, and the board's scope and procedures for review are available for review and where copies may be obtained;

6. Include the name of a person on the board's staff to whom questions about the review may be directed.

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

D. Definition; party. "Party" for the purposes of E.-V. means the petitioner, the political subdivision which refused to authorize the facility, and any person who is granted intervention under I.

E. Hearing examiner; duties. The hearing shall be conducted by a hearing examiner assigned by the Chief Hearing Examiner. The hearing examiner shall perform the following duties:

1. Hear and rule on motions;

2. Grant or deny requests for discovery including the taking of depositions;

3. Receive and act upon requests for subpoenas when appropriate;

4. Preside at the hearing;

5. Administer oaths and affirmations;

6. Examine witnesses when the hearing examiner deems it necessary to make a complete record;

7. Make preliminary, interlocutory, or other orders as the hearing examiner deems appropriate;

8. Rule on objections;

9. Do all things necessary and proper to the performance of 1.-8.; and

10. Perform other duties which may be delegated to the hearing examiner by the board.

The hearing examiner will not prepare a report following the hearing.

F. Disqualification of hearing examiner. The hearing examiner shall withdraw from participation in a contested review

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at any time if he deems himself disqualified for any reason. Upon the filing in good faith by a party of an affidavit of prejudice, the Chief Hearing Examiner shall determine the matter as a part of the record. The affidavit must be filed no later than five days prior to the date set for hearing.

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

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

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

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

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existed for any failure.

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

L. Prefiled testimony. The petitioner, the political subdivision which refused to approve the facility, and any party seeking to intervene shall file their testimoney with the hearing examiner and the board at least ten days before the hearing unless the hearing examiner directs otherwise. Testimony in the hearing shall be limited to the issues identified by the board in its statement of issues.

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

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

O. Prehearing procedures.

1. The purpose of the prehearing conference is to obtain stipulations regarding foundation for testimony or exhibits, to consider the proposed witnesses for each party, and to consider other matters that may be necessary or advisable to consider. Upon the request of any party or upon his own motion, the hearing examiner may, in his discretion, hold a prehearing conference prior to each contested review hearing. The hearing examiner may require the parties to file a prehearing statement prior to the prehearing conference. The statement shall contain items the hearing examiner deems necessary to promote a useful prehearing conference. A prehearing conference shall be an

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informal proceeding conducted expeditiously by the hearing examiner. Agreements on any matters considered by the prehearing conference may be entered on the record or may be made the subject of an order by the hearing examiner. The hearing examiner shall hold any prehearing conferences in a manner and at a time which will not interfere with the completion of the review process in the time allowed by Minn. Stat. S 115A.35 and this rule.

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

P. Discovery.

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

2. A party may serve upon any other party a written

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

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

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

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5. Discovery shall be conducted in a manner to ensure the completion of the review in the time permitted by Minn. Stat. S 115A.35 and this rule. The hearing shall not be continued to permit additional time for discovery.

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

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

S. Rules of evidence.

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

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

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

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

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

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

T. The record. The board shall maintain the official record in each contested review hearing. The record in a contested review shall contain:

1. All pleadings, motions, and orders;

2. Evidence received or considered;

3. Offers of proof, objections, and rulings on them;

4. All memoranda or data submitted by any party in connection with the case; and

5. The transcript of the hearing.

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

1. The hearing examiner shall briefly review the procedural rules for the hearing;

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

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

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

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

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

V. Completion of hearing. The hearing examiner shall conduct the hearing in a manner to ensure its completion in the time required by Minn. Stat. S 115A.35 and this rule.

6 MCAR S 8.214 Reconciliation procedures. At least 30 days before making its final decision in a review, the board shall make a determination as to whether a report should be made to the legislature and whether intervention should be requested as provided in Minn. Stat. S 115A.38.

6 MCAR S 8.215 Decision of Waste Management Board.

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

B. Administrative notice. The board may utilize its experience, technical competence, and specialized knowledge in

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the evaluation of the evidence in the hearing record.

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

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

E. Basis of decision. In its decision to approve or not approve a proposed facility, the board shall consider and base its decision on the factors listed in 1.-6. Neither the petitioner nor the political subdivision shall be deemed to have the burden of proof as to any of the factors. The factors are:

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

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

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

4. The need for the proposed facility, especially its contribution to abating solid and hazardous waste disposal, the availability of alternative sites, and opportunities to mitigate

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or eliminate need by additional and alternative waste management strategies or actions of a significantly different nature;

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

6. Any issue within the established scope of the supplementary review which is not addressed by 1.-5.

F. Final decision. The board shall review a mediated agreement and shall approve the agreement unless the agreement is clearly inappropriate based on the factors set out in 6 MCAR S 8.215 E. and the record of the hearing, fails to address significant issues relevant to the review, or requires the imposition of permit terms, conditions, or requirements outside of the authority of the board. If the board disapproves a mediated agreement, the board shall direct the staff to prepare a recommended decision based on the hearing record. When no mediated agreement has been reached or when a mediated agreement has been rejected, the board shall base its decision to approve or not approve a facility on the factors set out in 6 MCAR S 8.215 E. and the record of the hearing.

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

6 MCAR S 8.216 Terms, conditions, and requirements of permitting agencies.

A. Board action. The board shall resolve any conflicts between state agencies regarding terms, conditions, and requirements for a permit in favor of the more stringent terms, conditions, and requirements. Should there be a question as to

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which term, condition, or requirement is more stringent, the board shall make the determination of which term, condition, or requirement is more stringent.

B. Addition of provisions. If, based on the factors set out in 6 MCAR S 8.215 E., the board determines that more stringent permit terms, conditions, or requirements should be imposed in connection with the approval of a facility, the board shall direct that the terms, conditions, or requirements be added to the permit.

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

6 MCAR S 8.217 Revocation of approval. The board may revoke its approval of a facility if, following a contested case hearing under the Contested Case Procedures of Minn. Stat. SS 15.0418-15.052 and the rules of the Office of Administrative Hearings relating to contested case proceedings in 9 MCAR SS 2.201-2.222, it is determined that the petitioner knowingly made material false statement, representations or certifications, or knowingly withheld material information in any application, record, report, or other document filed pursuant to the provisions of 6 MCAR SS 8.210-8.213.

6 MCAR S 8.218 Computation of time. In computing any period of time prescribed under 6 MCAR SS 8.201-8.215, the date of the last act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so completed shall be included unless it is a Saturday, Sunday, or legal holiday.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

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REVISOR OF STATUTES
OFFICE BY:

_____

OFFICE OF THE REVISOR OF STATUTES
PROPOSED RULES

4/16/82
RD189

Agency Waste Management Board

Division Waste Management Board Division

Agency Contact LeRoy C. Paddock Phone Number 296-7726

Title: Proposed Rules Governing Supplementary Review by the Waste Management Board of Decisions Concerning Establishment of Certain Kinds of Waste Facilities

Type of Rules: Permanent X Temporary ____

Incorporations by References: None

Rule Number	Material Incorporated Author Title Place Publisher Date Cost Places Available

See Additional references on back Yes ____ No X

Duplication of Statutory Language

Rule Number	Statutory Section Duplicated
6 MCAR S 8.203	Minn. Stat. S 115A.33

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: Theresa M. Lauterbach
Theresa M. Lauterbach

Title: Assistant Revisor

Phone: 296-0956

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules Relating to Supplementary Review 6 MCAR §§ 8.201-8.218	))))	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 May 10, 1982 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on November 30, 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 Rules Relating to Supplementary Review 6 MCAR §§ 8.201-8.218 are adopted this 8th day of July, 1982 pursuant to authority vested in the Board by Minnesota Statutes section 115A.06, subd. 2.

STATE OF MINNESOTA

Chairman of Waste Management Board

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

Resolution WMB-011-82

RESOLVED, that the rules relating to supplementary review 6 MCAR §§ 8.201-8.218 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: July 8, 1982

Robert G. Dunn, Chairman

Waste Management Board

Notice of Intent to Solicit Outside Opinions and Information Concerning Proposed Rules on Supplementary Review of Certain Solid and Hazardous Waste Facilities

Notice is hereby given that the Minnesota Waste Management Board is seeking opinions and information from sources outside the agency for the purpose of preparing rules on supplementary review of certain proposed solid and hazardous waste facilities. Such rules are authorized by Minn. Laws of 1980, ch. 564, art. IV.

Supplementary review of facilities is authorized by the Waste Management Act, Minn. Laws of 1980, ch. 564, only when a facility has been issued permits required by the Pollution Control Agency *and* a political subdivision has refused to approve the establishment or operation of the facility. Only certain entities may request supplemental review. They are as follows:

A. A generator of sewage sludge within the state who has been issued permits by the Pollution Control Agency for a facility to dispose of sewage sludge or solid waste resulting from sewage treatment;

B. A political subdivision which has been issued permits by the Pollution Control Agency, or a political subdivision acting on behalf of a person who has been issued permits by the Pollution Control Agency, for a solid waste facility which is no larger than 250 acres, not including any proposed buffer area, and is located outside the metropolitan area;

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

D. A person who has been issued permits by the Pollution Control Agency for a commercial hazardous waste processing facility at a site included in the Waste Management Board's inventory of preferred sites for such facilities adopted pursuant to § 115A.09.

Minn. Laws of 1980, ch. 564, Art. IV, § 5 requires *at least* the following factors be considered in the supplementary review process.

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

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

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

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

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

Written or oral information and comments on these factors, additional factors which should be considered, the structure of the supplementary review process or any other matter related to the supplementary review process should be addressed to:

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

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 held on this subject.

November 4, 1980

Robert G. Dunn, Chairman
Waste Management Board

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the)
Proposed Rules Governing)
Supplementary Review)

ORDER

The Minnesota Waste Management Board hereby orders and directs that notice be provided to persons on the Board's rulemaking notice list that the Board intends to adopt rules governing Supplementary Review without a public hearing.

Dated: 4/29/82

Robert G. Dunn
Chairman
Waste Management Board

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules Relating to Supplementary Review 6 MCAR §§ 8.201-8.218	))))	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 8th day of July, 1982, 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 supplementary review 6 MCAR §§ 8.201-8.218 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 8th day of July, 1982.

Robert G. Dunn
(Officer of the Board)

William L. Kuball
Attest by one other Board member

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

Proposed Rules Governing Supplementary Review

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 Section 15.0412, subd. 4(h) (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 Section 15.0412, subds. 4-4(f).

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

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

Authority for the adoption of these rules is contained in Minnesota Statutes Section 115A.32. 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, Attention: Sharon Decker, 123 Thorson Building, 7323 - 58th Avenue North, Crystal, Minnesota, 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, Attention: Sharon Decker, 123 Thorson Building, 7323 - 58th Avenue North, Crystal, Minnesota, 55428.

The rules proposed for adoption relate to the following matters: (1) eligibility for review, (2) contents and acceptance of a petition for review, (3) identification of issues to be reviewed, (4) appointment of temporary board members, (5) mediation, (6) establishing the scope and procedures for review, (7) hearing procedures, (8) approval or disapproval of proposed facilities, (9) terms and conditions of permits, and (10) revocation of approvals.

Copies of this Notice and the proposed rules are available and may be obtained by contacting the Waste Management Board, Attention: Sharon Decker, 123 Thorson Building, 7323 - 58th Avenue North, Crystal, Minnesota, 55428.

Dated: 4/29/82

STATE OF MINNESOTA

Robert G. Dunn
Chairman
Waste Management Board

STATE OF MINNESOTA
WASTE MANAGEMENT BOARD

AFFIDAVIT OF MAILING

June Seery, being first duly sworn deposes

That on the 29 day of April, 1982, at the City

of Crystal, County of Hennepin, State of Minnesota, he mailed the attached

material to those persons on the attached mailing list by deposition in the

United States mail at said City of Crystal, a copy, thereof, properly enveloped,

with postage prepaid:

June Seery

Subsribed and sworn to before

me this 29th day of April, 1982.

Beatrice L. Szymik

BEATRICE L. SZYMIK
NOTARY PUBLIC—MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES DEC. 1, 1985

STATE OF MINNESOTA
WASTE MANAGEMENT BOARD
123 THORSON COMMUNITY CENTER
7323 58TH AVENUE NORTH
CRYSTAL, MINNESOTA 55428

ROBERT G. DUNN
CHAIRMAN

TELEPHONE:
METRO AREA (612) 536-0816
TOLL FREE 1-800-652-9747

April 29, 1982

Enclosed is the notice to adopt rules without a public hearing for the Waste Management Board's proposed rules for supplementary review.

This notice will be published in the State Register on May 10, 1982. This will commence the 30-day comment period.

BOARD MEMBERS:
DISTRICT 1 LAURENCE HUNTER, Hastings
DISTRICT 2 KEITH KUITERS, Clarks Grove
DISTRICT 3 WILLIAM KIRCHNER, Richfield
DISTRICT 4 MILTON KNOLL, JR, White Bear Lake
DISTRICT 5 LOUISE KUDERLING, Minneapolis
DISTRICT 6 THOMAS RENNER, Elk River
DISTRICT 7 ALLAN EIDE, Hitterdal
DISTRICT 8 DAVID HARTLEY, Hermantown

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

Proposed Rules Governing Supplementary Review

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 Section 15.0412, subd. 4(h) (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 Section 15.0412, subds. 4-4(f).

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

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

Authority for the adoption of these rules is contained in Minnesota Statutes Section 115A.32. 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, Attention: Sharon Decker, 123 Thorson Building, 7323 - 58th Avenue North, Crystal, Minnesota, 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, Attention: Sharon Decker, 123 Thorson Building, 7323 - 58th Avenue North, Crystal, Minnesota, 55428.

The rules proposed for adoption relate to the following matters: (1) eligibility for review, (2) contents and acceptance of a petition for review, (3) identification of issues to be reviewed, (4) appointment of temporary board members, (5) mediation, (6) establishing the scope and procedures for review, (7) hearing procedures, (8) approval or disapproval of proposed facilities, (9) terms and conditions of permits, and (10) revocation of approvals.

Copies of this Notice and the proposed rules are available and may be obtained by contacting the Waste Management Board, Attention: Sharon Decker, 123 Thorson Building, 7323 - 58th Avenue North, Crystal, Minnesota, 55428.

Dated: 4/29/82

STATE OF MINNESOTA

Robert G. Dunn
Chairman
Waste Management Board

DISTRIBUTION LIST FOR

NOTIFICATION OF RULEMAKING ~~3/20~~ amended 11/30/81

Joseph D. Bizzano, Jr.
JoAnn McGuire
North. States Power Law Dept.
414 Nicollet Mall
Minneapolis, MN 55401

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

Bernard L. Brommer
Executive Vice President
Minnesota AFL-CIO
175 Aurora Avenue
St. Paul, MN 55103

Charles A. Schaffer
MN Dept of Economic Dev.
480 Cedar Street
St. Paul, MN 55101

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

Dr. Robert A. Reid, Manager
Corporate Environ. Health
Honeywell Plaza (MN12-3175)
Minneapolis, MN 55408

W. C. Viitala
Director of Public Affairs
Honeywell, Inc.
Honeywell Plaza (MN12-5215)
Minneapolis, MN 55408

Broeker, Hartfeldt, Hedges & Grant
2850 Metro Dr.-Suite 800
Bloomington, MN 55420

Charles R. Jacoby
Senior Chemical Engineer
The Gillette Company
St. Paul Manufacturing Center
Fifth at Broadway
St. Paul, MN 55101

Minnesota Petroleum Council
300 Northern Federal Bldg.
St. Paul, MN 55102

Dr. Daryl A. Thingvold
Serco Laboratories
1931 West County Road C2
Roseville, MN 55113

Vern Tate
Legislative Research 3-M
3-M Center
St. Paul, MN 55101

Scott Schuler, Env. Tech.
Cooperative Power Association
3316 West 66th Street
Minneapolis, MN 55435

Carol Propotnik
MPIRG
2412 University Avenue S.E.
Minneapolis, MN 55414

Forrest D. Nowlin
Larkin, Hoffman, Daly & Lindgren
1500 Northwestern Financial Cntr
7900 Xerxes Avenue So.
Minneapolis, MN 55431

Susan P. Robertson
Director of LCWM
B-46 State Capitol
St. Paul, MN 55155

R. G. Kirkham, Exec. Dir.
Minnesota Municipal Utilities
P. O. Box B
10 Central Avenue
Buffalo, MN 55313

Richard P. Cox
Metro Inter-County Association
2305 Ford Parkway, Suite 103
St. Paul, MN 55116

Robert R. Distad
Assistant County Attorney
Dakota County Attorney's Office
Dakota County Government Center
1560 West Highway 55
Hastings, MN 55033

Dave Gurney
Environmental Engineer
Dakota County Highway Department
Dakota County Government Center
1560 West Highway 55

Floyd J. Forsberg
City of St. Paul,
Department of Public Works
600 City Hall Annex
St. Paul, MN 55102

Edward L. Kuhlney
Region 10, Southern MN RDC
301 Marquette Bank Bldg.
Rochester, MN 55901

Arlene Farver
Donohue & Associates, Inc.
7400 Metro Blvd. Suite 310
Minneapolis, MN 55435

Susan J. Strand
Legal Dept., Land O'Lakes
P. O. Box 116
Minneapolis, MN 55440

I. V. Fordyce
Manager Environmental Control
Am. Crystal Sugar Company
101 North Third Street
Moorhead, MN 56560

Kevin C. Jones
George A. Hormel & Co.
P. O. Box 800
Austin, MN 55912

Norma Schumacher, Leg. Consult
O'Connor & Hannan
38th Floor - IDS Tower
Minneapolis, MN 55402

Archie D. Chelseth
Manager Public Affairs
Potlatch Corporation
Box 510
Cloquet, MN 55720

Marc Hugunin
The Concept Companies, Inc.
One Paramount Plaza
7801 E. Bush Lake Rd.
Minneapolis, Mn 55435

Bonnie M. Spencer
Federal-State Reports, Inc.
5203 Leesburg Pike, Suite 1201
Falls Church, Virginia 22041

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

Barb Kelly
Minnesota Waste Association
Suite 600
6 West 5th Street
St. Paul, MN 55102

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

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

Mike Robertson,
Assistant Executive Director
MPCA
1935 West County Road B2
Roseville, MN 55113

Craig Waldron
Region Nine Dev.Com.
410 S. 5th St.
P.O. Box 3367
Mankato, MN 56001

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

G. Robert Johnson
4344 IDS Center
Minneapolis, MN 55402

Robert S. Burk
4344 IDS Center
Minneapolis, MN 55402

Holly Rodin
Minnesota COACT
1216 So. 6th Street
Brainerd, MN 56401

Joseph S. Hensel
Rochester Public Utilities
506 First Ave. NE Box 6057

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the matter of the Proposed Adoption of Rules of the State Waste Management Board Governing Supplementary Review.

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. Section 15.0412, subd. 4, that their names be placed on file with and maintained by the State Waste Management Board for the purpose of receiving notice of the proposed adoption of rules by this Board is accurate and complete as of 5:00 P.M., this 29th day of April, 1982.

Sharon Decker

g. Any other information that might be helpful in investigating the abuse or neglect.

3. Investigation. The policies and procedures shall include identification of the person responsible for the internal review and investigation of abuse or neglect. However, if the person responsible for the review and investigation is suspected of committing the abuse or allowing the neglect, another person shall be designated to conduct the review and investigation.

4. Records. The policies and procedures shall include a provision requiring that records are maintained regarding the internal review and investigation of cases of abuse and neglect. These records shall contain a summary of the findings, persons involved, persons interviewed, persons and investigating authorities notified, conclusions and any actions taken. The records shall be dated and authenticated by signature and identification of the person doing the review and investigation.

5. Communication. The policies and procedures shall include a provision requiring the communication of all knowledge and written information regarding incidents of abuse or neglect to the Department of Public Welfare.

6. Cooperation. The policies and procedures shall include a provision requiring the cooperation of the program with the department in the course of the investigation.

7. Orientation for clients. The program shall provide for its clients an orientation to the internal reporting system. Client representatives shall have the opportunity to be included in the orientation. The program shall provide this initial orientation within 60 days after the effective date of this rule and, thereafter, for each new client within 24 hours of admission.

8. Distribution of copies. The program shall post a copy of the internal reporting policies and procedures in a prominent location in the facility or at the offices of an agency and have it available upon request to mandated reporters, clients, and client representatives.

F. Personnel requirements.

1. Orientation of reporters. Within 60 days after the effective date of this rule, the program shall inform mandated reporters about the requirements of Minn. Stat. § 626.557, the provisions of 12 MCAR § 2.010, and all internal policies and procedures related to vulnerable adults. All staff shall be informed that individuals, other than those mandated to report, may report suspected cases of abuse or neglect to the appropriate investigative authorities and that staff must provide information to those requesting it regarding the procedure for contacting the authorities. Thereafter, the program shall provide this orientation for new mandated reporters no later than during the first shift worked.

2. Training. The program shall conduct in-service training at least annually for mandated reporters to review Minn. Stat. § 626.557, the provisions of 12 MCAR § 2.010, and all internal policies and procedures related to vulnerable adults.

3. List of persons providing services. The program shall establish and maintain a current list of persons who provide services in or to the program who meet the definition of a mandated reporter.

Waste Management Board

Proposed Rules Governing Supplementary Review

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. 4(h) (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. 4-4(f).

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

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

Authority for the adoption of these rules is contained in Minn. Stat. § 115A.32. 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 has been prepared and is available from the Waste Management Board, Attention: Sharon Decker, 123 Thorson Building, 7323-58th Avenue North, Crystal, Minnesota, 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, Attention: Sharon Decker, 123 Thorson Building, 7323-58th Avenue North, Crystal, Minnesota, 55428.

The rules proposed for adoption relate to the following matters: (1) eligibility for review, (2) contents and acceptance of a petition for review, (3) identification of issues to be reviewed, (4) appointment of temporary board members, (5) mediation, (6) establishing the scope and procedures for review, (7) hearing procedures, (8) approval or disapproval of proposed facilities, (9) terms and conditions of permits, and (10) revocation of approvals.

Copies of this notice and the proposed rules are available and may be obtained by contacting the Waste Management Board, Attention: Sharon Decker, 123 Thorson Building, 7323—58th Avenue North, Crystal, Minnesota, 55428.

Robert G. Dunn, Chairman
Waste Management Board

Rules as Proposed (all new material)

6 MCAR § 8.201 Supplementary review of decisions concerning establishment of certain facilities. Rules 6 MCAR §§ 8.201-8.218 establish the procedures by which the Waste Management Board will review petitions for supplementary review. Under Minn. Stat. §§ 115A.32-115A.39, the Waste Management Board may entertain a petition for supplementary review whenever an authorized applicant has received all necessary permits from the Pollution Control Agency for a proposed facility but a political subdivision has refused to approve the establishment or operation of the facility.

6 MCAR § 8.202 Definitions. For the purposes of 6 MCAR §§ 8.202-8.218, the following terms have the meanings given them unless the context requires otherwise.

A. Agency. "Agency" means the Pollution Control Agency.

B. Board. "Board" means the Waste Management Board.

C. Chairperson. "Chairperson" means the chairperson of the Waste Management Board.

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

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

6 MCAR § 8.203 Eligibility for supplementary review. The following persons shall be eligible to request supplementary review by the board pursuant to Minn. Stat. §§ 115A.32-115A.39:

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

B. A political subdivision which has been issued permits by the agency, or a political subdivision acting on behalf of a person who has been issued permits by the agency, for a solid waste facility which is located outside the metropolitan area and which is no larger than 250 acres, not including any proposed buffer area, provided that if the petitioner is a political subdivision acting

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on its own behalf, the political subdivision shall have completed a plan conforming to the requirements of Minn. Stat. § 115A.46;

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

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

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

6 MCAR § 8.204 Review of petitions for supplementary review.

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

B. Contents of petition. A petition shall include:

1. The name, address, and telephone number of the petitioner;

2. The name, address, and telephone number of each owner or operator of the proposed facility if different from the petitioner specified in 1.;

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

4. A description of the proposed facility;

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

6. An estimate of the required construction time;

7. An estimate of the functional life of the proposed facility;

8. For processing facilities, a description of the types of processes to be used;

9. For processing facilities, a statement of the design capacity of each process;

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

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

12. For petitioners who qualify for review under 6 MCAR § 8.203 B., a copy of the required solid waste plan conforming to the requirements of Minn. Stat. § 115A.46; and

13. For petitioners who qualify for review under 6 MCAR § 8.203 D. or E., a brief discussion showing how the proposed facility is consistent with the hazardous waste management plan required under Minn. Stat. § 115A.11, if the plan has been adopted at the time the petition is submitted.

6 MCAR § 8.205 Additional information. The chairperson may request the petitioner to submit additional information whenever the chairperson determines that the information would be necessary or useful in deciding whether the petition should be approved or disapproved.

6 MCAR § 8.206 Procedure for supplementary review.

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

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

6 MCAR § 8.207 Identification of issues.

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

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

C. Public meeting procedures.

1. The board shall announce the public meeting by providing press releases to newspapers and radio and television stations in the area where the facility is proposed and by letter to the political subdivisions within which the facility is proposed to be located.

2. The meeting shall be held in the area in which the facility is proposed to be located.

3. The meeting shall be conducted by the chairperson or his designee.

4. Copies of the compilation of issues prepared by the chairperson shall be available for review.

5. Members of the public shall be given an opportunity to suggest additional issues which should be considered and present reasons why particular issues should or should not be considered.

6. A summary of the issues raised at the public meeting shall be prepared.

6 MCAR § 8.208 Appointment of temporary board members.

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

B. Appointment by political subdivision. The political subdivisions shall appoint temporary board members in accordance with Minn. Stat. § 115A.34 within 45 days after the date the petition was accepted by the board.

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

6 MCAR § 8.209 Mediation.

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

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

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

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

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

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F. Compensation for mediator. The board shall pay the costs of mediation.

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

6 MCAR § 8.210 Recommended statement of issues. At least ten days before the board meeting held to determine the scope and procedures for review and to commence the supplementary review process, the chairperson shall prepare a recommended statement of the issues involved in the review. The chairperson shall make copies of the recommended statement available to members of the public. Copies of the recommended statement of issues shall be provided to the petitioner and the political subdivision.

6 MCAR § 8.211 Board meeting to establish scope and procedures for the second phase of the review.

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

B. Procedures.

1. If no mediated agreement has been reached, the board shall direct that a contested review be conducted under 6 MCAR § 8.213.

2. If a mediated agreement has been reached which may require the imposition of more stringent permit terms, conditions, or requirements, or if significant issues are identified in the statement of issues adopted by the board which were not addressed in the agreement, the board shall direct that a review hearing be conducted under 6 MCAR § 8.212.

3. If a mediated agreement has been reached which does not require the imposition of more stringent permit terms, conditions, or requirements, and if all significant issues which were identified in the statement of issues are addressed in the agreement, the board shall suspend the review pending final approval of the proposed facility by the political subdivision and shall dismiss the petition and terminate the review upon final approval of the proposed facility by the political subdivision.

6 MCAR § 8.212 Hearing procedures following mediated agreement.

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

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

1. Specify the date, time, and location of the hearing;

2. Describe the proposed facility and its location;

3. Describe the permits which have been issued for the proposed facility;

4. Briefly set out the process by which the agreement was reached and the scope and procedures which will be used in the supplementary review;

5. Identify the location or locations within the city, town, or county where copies of the agreement, the permit applications, agency permits, and the board's scope and procedures for review are available for review; and

6. Include the name of a person on the board's staff to whom questions about the review may be directed.

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

D. Procedures for the hearing.

1. The hearing shall be conducted by a hearing examiner from the Office of Administrative Hearings.

2. A majority of the permanent board members shall be present at the hearing.

3. The hearing shall be opened by the hearing examiner who will explain the hearing procedures.

4. A member of the board's staff shall explain the purpose of the hearing, the statement of issues adopted by the board, and any additional permit terms, conditions, or requirements which the board is considering to implement the agreement.

5. The political subdivision and the petitioner shall explain the mediated agreement.

6. Members of the public shall have an opportunity to comment upon the agreement, the issues identified in the statement of issues, and any proposed additional permit terms, conditions, or requirements.

7. Questions may be directed to any representative of the political subdivision or the petitioner regarding the mediated agreement and to any person who presents a statement at the hearing.

8. The chairperson may request any person who has information related to the hearing to present the information if the chairperson determines the information would be helpful in reaching a decision in the case.

9. The hearing examiner may exclude testimony or disallow questions which are irrelevant, unduly repetitious, argumentative, harassing, or adversarial in nature.

10. No person shall interfere with the conduct of the hearing or disrupt or threaten to disrupt the hearing.

11. A transcript of the hearing shall be prepared.

6 MCAR § 8.213 Contested supplementary review hearing.

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

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

1. Specify the date, time, and location of the hearing;

2. Describe the proposed facility and its location;

3. Describe the permits which have been issued for the proposed facility;

4. Briefly set out the scope and procedures which will be used in the supplementary review;

5. Identify the location or locations within the city, town, or county where copies of the permit applications, agency permits, and the board's scope and procedures for review are available for review and where copies may be obtained;

6. Include the name of a person on the board's staff to whom questions about the review may be directed.

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

D. Definition; party. "Party" for the purposes of E.-V. means the petitioner, the political subdivision which refused to authorize the facility, and any person who is granted intervention under I.

E. Hearing examiner; duties. The hearing shall be conducted by a hearing examiner assigned by the Chief Hearing Examiner. The hearing examiner shall perform the following duties:

1. Hear and rule on motions;

2. Grant or deny requests for discovery including the taking of depositions;

3. Receive and act upon requests for subpoenas when appropriate;

4. Preside at the hearing;

5. Administer oaths and affirmations;

6. Examine witnesses when the hearing examiner deems it necessary to make a complete record;

7. Make preliminary, interlocutory, or other orders as the hearing examiner deems appropriate;

8. Rule on objections;

9. Do all things necessary and proper to the performance of 1.-8.; and

10. Perform other duties which may be delegated to the hearing examiner by the board.

The hearing examiner will not prepare a report following the hearing.

F. Disqualification of hearing examiner. The hearing examiner shall withdraw from participation in a contested review at any time if he deems himself disqualified for any reason. Upon the filing in good faith by a party of an affidavit of prejudice, the Chief

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Hearing Examiner shall determine the matter as a part of the record. The affidavit must be filed no later than five days prior to the date set for hearing.

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

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

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

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

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

L. Prefiled testimony. The petitioner, the political subdivision which refused to approve the facility, and any party seeking to intervene shall file their testimony with the hearing examiner and the board at least ten days before the hearing unless the hearing examiner directs otherwise. Testimony in the hearing shall be limited to the issues identified by the board in its statement of issues.

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

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

O. Prehearing procedures.

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

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

P. Discovery.

1. Each party shall, within ten days of a demand by another party, disclose the names and addresses of all witnesses that a party intends to call at the hearing. All witnesses unknown at the time of the disclosure shall be disclosed as soon as they

become known. Each party shall also disclose any relevant written or recorded statements made by the party or by witnesses on behalf of a party. The demanding party shall be permitted to inspect and reproduce those statements. Any party unreasonably failing upon demand to make the disclosure required by this rule may, in the discretion of the hearing examiner, be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

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

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

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

5. Discovery shall be conducted in a manner to ensure the completion of the review in the time permitted by Minn. Stat. § 115A.35 and this rule. The hearing shall not be continued to permit additional time for discovery.

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

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

S. Rules of evidence.

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

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

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

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

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

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

T. The record. The board shall maintain the official record in each contested review hearing. The record in a contested review shall contain:

1. All pleadings, motions, and orders;

2. Evidence received or considered;

3. Offers of proof, objections, and rulings on them;

4. All memoranda or data submitted by any party in connection with the case; and

5. The transcript of the hearing.

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

1. The hearing examiner shall briefly review the procedural rules for the hearing;

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

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

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

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

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

V. Completion of hearing. The hearing examiner shall conduct the hearing in a manner to ensure its completion in the time required by Minn. Stat. § 115A.35 and this rule.

6 MCAR § 8.214 Reconciliation procedures. At least 30 days before making its final decision in a review, the board shall make a determination as to whether a report should be made to the legislature and whether intervention should be requested as provided in Minn. Stat. § 115A.38.

6 MCAR § 8.215 Decision of Waste Management Board.

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

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

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

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

E. Basis of decision. In its decision to approve or not approve a proposed facility, the board shall consider and base its

decision on the factors listed in 1.-6. Neither the petitioner nor the political subdivision shall be deemed to have the burden or proof as to any of the factors. The factors are:

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

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

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

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

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

6. Any issue within the established scope of the supplementary review which is not addressed by 1.-5.

F. Final decision. The board shall review a mediated agreement and shall approve the agreement unless the agreement is clearly inappropriate based on the factors set out in 6 MCAR § 8.215 E. and the record of the hearing, fails to address significant issues relevant to the review, or requires the imposition of permit terms, conditions, or requirements outside of the authority of the board. If the board disapproves a mediated agreement, the board shall direct the staff to prepare a recommended decision based on the hearing record. When no mediated agreement has been reached or when a mediated agreement has been rejected, the board shall base its decision to approve or not approve a facility on the factors set out in 6 MCAR § 8.215 E. and the record of the hearing.

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

6 MCAR § 8.216 Terms, conditions, and requirements of permitting agencies.

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

B. Addition of provisions. If, based on the factors set out in 6 MCAR § 8.215 E., the board determines that more stringent permit terms, conditions, or requirements should be imposed in connection with the approval of a facility, the board shall direct that the terms, conditions, or requirements be added to the permit.

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

6 MCAR § 8.217 Revocation of approval. The board may revoke its approval of a facility if, following a contested case hearing under the Contested Case Procedures of Minn. Stat. §§ 15.0418-15.052 and the rules of the Office of Administrative Hearings relating to contested case proceedings in 9 MCAR §§ 2.201-2.222, it is determined that the petitioner knowingly made material false statement, representations or certifications, or knowingly withheld material information in any application, record, report, or other document filed pursuant to provisions of 6 MCAR §§ 8.210-8.213.

6 MCAR § 8.218 Computation of time. In computing any period of time prescribed under 6 MCAR §§ 8.201-8.215, the date of the last act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so completed shall be included unless it is a Saturday, Sunday, or legal holiday.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules Relating to Supplementary Review 6 MCAR §§ 8.201-8.218	))))	FINDINGS OF FACT AND CONCLUSIONS

Notice of the proposed adoption of the above-referenced rules was published in the State Register on May 10, 1982. 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 findings of fact:

1. By an Order, dated April 29, 1982, 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 May 10, 1982. See 6 S.R. 1850.

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. No comments were received on the rules. There were no requests for a public hearing.

5. Section 8.202 is altered by changing "6 MCAR §§ 8.202 - 8.218" in the first sentence to "6 MCAR §§ 8.201-8.218." This change is made to correct the discrepancy from what was published as proposed in the State Register.

6. The second and third sentences of Section 8.212B are consolidated by removing the period between the sentences and changing the first word of the third sentence from "Hearing" to "hearing." This change is necessary to correct the discrepancy from what was published as proposed in the State Register.

7. Section 8.215E is altered by deleting the word "or" before the word "proof" in the second sentence and adding the word "of" before the word "proof" in the second sentence. This change is necessary to correct the discrepancy from what was published as proposed in the State Register.

8. Section 8.215E(3) is altered by deleting the word "and" before "eliminate" in the first sentence and adding the word "or" before "eliminate" in the first sentence. This change is necessary to correct the discrepancy from what was published as proposed in the State Register.

CONCLUSIONS

1. The modifications in the rules from the version published in the State Register on May 10, 1982, do not result in a substantial change in the proposed language.

2. The rules as adopted, including the deletions 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, subd. 4h.

Date: July 8, 1982

Laurence E. Hunter

Laurence E. Hunter
Vice Chairman
Waste Management Board

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Rules Governing Supplementary Review	)))	CERTIFICATE OF BOARD'S RESOLUTION

I, Robert G. Dunn, do hereby certify that I am a member and the Chairman of the Minnesota 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 11th day of March, 1982, that a quorum was present at the meeting, that a majority of those present voted for the resolution, and that the resolution is set forth in the minutes of the meeting and has not been rescinded or modified.

> "RESOLVED, that the Minnesota Waste Management Board finds that the proposed rules governing Supplementary Review (proposed Rules 6 MCAR §§ 8.201-218) are noncontroversial in nature; and
>
> RESOLVED, that Robert G. Dunn, Chairman of the Minnesota Waste Management Board, be and hereby is granted the authority and directed (1) to sign an Order of the Board directing that Notice be given of the Board's intent to adopt without a public heraing the rules governing supplementary review; (2) to sign the notice thereof; (3) to make any form changes in the proposed rule that the Revisor of Statutes requires or suggests that the Board make in order for the Board to obtain the Revisor's certification as required by law; and, (4) to perform any and all other acts incidental to the promulgation of the proposed rules. In the event a public hearing becomes necessary, Robert G. Dunn is hereby granted the authority and directed to call a hearing for the purpose of promulgating the rules, as well as to perform any and all acts incidental thereto."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 11th day of March, 1982.

(Officer of the Board)

Attest by one other Board member

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules Relating to Supplementary Review 6 MCAR §§ 8.201-8.217	STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

The subject of this rulemaking proceeding is a set of proposed rules governing supplementary review of certain solid and hazardous waste facilities. Pursuant to Minn. Stat. §§ 115A.32 to 115A.39, the Waste Management Board may, upon request, review the decision of a political subdivision which has refused to approve the establishment or operation of a facility if the required permits for the facility have been issued by the Pollution Control Agency.

The statute allows a maximum of 180 days for the review. Minn. Stat. § 115A.35. The review procedures require that a hearing be held but specify that the hearing is not to be considered a contested case hearing under Chapter 15 of the Minnesota Statutes. In addition, several factors which must be considered in the review are set out in the statute. Minn. Stat. § 115A.36.

Following the hearing, the Waste Management Board is required to either approve or disapprove of the proposed facility. Minn. Stat. § 115A.37, subd. 1. The Board is authorized to resolve conflicts in permit conditions and may require more stringent permit conditions at the proposed site. The Board's decision to approve a facility is final and supersedes and preempts

requirements of state agencies and political subdivisions. Minn. Stat. § subd. 2.

As required by Minn. Stat. § 115A.12, the Waste Management Board consulted with both the Hazardous Waste Management Planning Council and the Solid Waste Advisory Council on drafts of the proposed rules.

In addition, a draft of the proposed rules was distributed by mail to potentially interested parties, including professional and trade associations in the state and other government agencies concerned with waste management. No written comments were received as a result of this mailing.

Finally, the chairperson published in the State Register pursuant to Minn. Stat. § 15.0412, subd. 6, a Notice of Intent to Solicit Outside Opinion concerning this rule. (6 S.R. 543, September 28, 1981) No written comments were received in response to this notice.

Rules 6 MCAR §§ 8.201-8.217 specify the contents of a petition for review; establish procedures for identifying the issues to be reviewed; provide for a mediation process; set out hearing procedures for review under two separate circumstances; provide procedures and criteria for the Board's decision; and establish a mechanism for revocation of approval.

II. NEED FOR THE PROPOSED RULES

The Waste Management Board is required by Minn. Stat. § 115A.32 to promulgate rules to govern its activities in

performing supplementary reviews. These rules are thus needed to fulfill this statutory obligation. In addition, the rules are needed to provide a coordinated and logical review procedure for conducting supplementary review. Further, the hearing procedures are needed because the supplementary review hearings are not contested case hearings and therefore, not subject to the contested case hearing procedures of the Office of Administrative Hearings.

III. REASONABLENESS OF THE PROPOSED RULES

6 MCAR 8.201. Purpose.

This section cites the statutory authority for the rules and indicates when the supplementary review process may be applicable.

6 MCAR 8.202. Definitions.

The definitions in this section provide common terminology for terms used in the proposed rules.

6 MCAR 8.203. Eligibility for Supplementary Review.

This section lists the persons eligible for review pursuant to sections 115A.32-115A.39. The statutory language is repeated in the rule to ensure that those persons reviewing the rules will know whether or not they qualify for supplementary review.

6 MCAR 8.204. Review of Petition.

This rule describes the process by which a petition is accepted for review and the information that needs to be provided by the petitioner. In order to conduct a meaningful review of a

petition the Board must have a minimum level of information about the applicant and the proposed facility. This rule requires the submission of the required information. The specific justification for each type of information specified in 6 MCAR § 8.204B is as follows:

1. The name, address and phone number of the petitioner is necessary to allow the Board to identify and contact the petitioner.
2. It is necessary to specify each owner or operator of the proposed facility in order that the Board can make the determination that the petitioner is eligible for supplementary review.
3. The street address and legal description of the location of the proposed facility is necessary to meet the statutory requirement (115A.34) for appointment of temporary board members specified in 115A.34.
4. A description of the proposed facility is necessary to allow the Board to make the determination that the petitioner is eligible for supplementary review.
5. The supplementary review process follows the existing environmental review and permit process. A list of the existing permits and pending permit

applications is necessary to ensure prior processes have been completed, establishing eligibility for review.

6. As part of the review, the Waste Management Board may adopt mitigative measures that will address the concerns of the community. The construction time will allow the Board to determine the timeframes for implementing any mitigative measures.

7-10. The information required in 7-10 will assist in reviewing the need for the facility which is one of the factors the Board must consider in any review.

11. A petition for supplementary review must demonstrate that a political subdivision has refused to approve the establishment or operation of the facility as required by 115A.33.

12. A review of the Solid Waste Management Plan will assist the Board in determining the need for solid waste facilities eligible for review by the Board.

13. The discussion of consistency of a hazardous waste facility with the Hazardous Waste Management Plan will assist the Board in determining the need for hazardous waste facilities.

6 MCAR 8.206. Procedure for Review.

The Waste Management Act specifies a six month period (from acceptance of a petition) within which the review must be

completed, and specifies certain procedures which must be completed in defined time periods. This paticular section of the supplementary review rules specifies what will take place in each phase to assist in the understanding of the review process.

6 MCAR 8.207. Identification of Issues.

Each dispute resulting in supplementary review will be based on a set of issues unique to that dispute. In order to identify the issues unique to each case, it is necessary to meet with the parties involved or to get their response in written form. Forty days allows time for these meetings to take place and for the chairman to compile a list of the issues, prior to the public meeting.

The purpose of a public meeting in the issue identification process is to give members of the public a chance to react to and review the list of issues identified by the developer and the political subdivision and suggest additional issues which should be reviewed by the Board.

This section outlines the procedures that will be followed during the public meeting held to identify any additional issues which may need to be considered in the review. These procedures will give adequate public notice so that any interested member of the public may participate; allow the meeting to be held in an area convenient to those who live near the proposed facility; make material publicly available for response and provide an

opportunity for suggestion of any additional issues which might not have been previously considered. The procedure is designed to allow the public to suggest additional issues in an informal setting and to allow expeditious completion of the issue identification process.

6 MCAR 8.209. Mediation.

This section describes the use of mediation services in the review process. Mediation has been successful in resolving a wide variety of environmental disputes in recent years and offers a constructive method by which a prospective operator of a facility and the political subdivision can identify acceptable terms, in addition to those required by governmental regulations, for the siting, design, and operation of the facility. Mediation is a negotiation process conducted by an impartial and independent mediator or "third party." It is a method for channeling conflict into compromise. Mediation relieves the need for a party to discredit and defeat its adversaries as it must do in a formal review or courtroom. Instead, by its nature it brings the parties together face to face to collaborate, in effect, on designing a solution. Its rules are the ethics of good faith bargaining; its by-products tend to be a better understanding by all the parties of each other's concerns and a clearer definition of the issues. It is a highly flexible process and conducive to innovation. Board sponsored mediation may result in solutions to disputes

which, though they may be ultimately decided by the Board, will continue to be a source of conflict in the communities. Since the Board's function in supplementary review is, ultimtely, to resolve disputes in a way that safeguards the local community and, at the same time promotes the general welfare of the state, mediation is another reasonable tool which can be utilized.

A. Notice of Mediation. It is imperative that mediation start as soon as possible in the process. A ten day period is adequate for notification of the availability of mediation services.

B. Conditions for Mediation. A mediated agreement is preferable to a state override. Consequently, mediation services are offered in every review. However, the parties cannot be required to negotiate or agree to any particular settlement of their differences. Unless they are willing to enter into the process with some intent to reach an accommodation of their differences, the mediation effort is likely to be unproductive. Twenty-five days allows the parties adequate time to make their decision on accepting mediation services. Twenty-five days is also a short enough time period so that, should mediation be accepted, the mediation process can occur within the time limits established by statute.

C. Selection of Mediator. One of the basic criteria for selecting a mediator is acceptability to the parties who

must paticipate in finding the solution to a dispute. If the mediator is unacceptable to any party, he or she will not likely be able to serve effectively. A ten day period is adequate for selection of a mediator by the parties.

D. Length of Mediation. In any dispute where negotiations occur, cooperation is necessary in order to find some mutually acceptable solution to the issues in the conflict. If a party can achieve its objective by delay, meaningful negotiations may not occur. Thus, the mediation period in supplementary review is limited to 30 days, unless the chairperson determines progress is being made which could result in a settlement if more time were allowed. The 30 day time limit also assures that the supplementary review process can be completed in the time permitted by statute.

E. Termination of Mediation. If the parties feel that the mediation process is not productive, the process may be terminated without further delay and the alternative review course can be commenced.

F. Compensation of Mediator. To encourage mediation, it is reasonable for the board to pay for these services.

F. Decision. Any agreement must be referred to the Board for their decision. Referral to the Board will allow for the expeditious completion of the review.

6 MCAR 8.210. Recommended Statement of Issues.

The recommended statement of issues will provide some direction to the Board in establishing the scope of review based on discussions with the parties and the public. Issuing the recommended statement ten days prior to the Board meeting commencing the review will allow parties or members of the public to attend the Board meeting to urge that the scope of the review address more or fewer issues.

6 MCAR 8.211. Establishing Scope and Procedures for the Second Phase of the Review.

A. Scope (Statement of Issues). A statement of issues for review represents the underlying concerns of the parties involved. By adopting a statement of issues, the WMB will establish a basis for deciding on a mediated agreement. A statement of issue could also serve as a framework for a contested or informal hearing. This scope (statement of issues) consists of issues related to the dispute, including those identified by the local community as being of concern and those issues that are in dispute between the political subdivision and the developer.

B. Procedures.

1. Where no mediated agreement has been reached, it is likely that a series of issues of fact and/or credibility will arise which will require a hearing to

be resolved. As a result, procedures similar to those utilized in contested case procedures are necessary to ensure that the Board will have before it the information necessary to make its decision.

2. Where a mediated agreement has been reached, the primary focus will be on the public reaction to the agreement and on the conditions the Board will be required to impose to effectuate the agreement. Under these circumstances, a less formal public hearing should provide the Board with the information necessary to make its decision.

3. If an agreement has been reached which does not require the Board to impose additional permit conditions and which addressed all those issues identified by the board (based in part on the public meeting to identify isssues) no dispute remains for the Board to resolve. As a result, the petition should be dismissed as soon as the agreement is actually carried out.

6 MCAR 8.212. Hearing Procedures Following Mediated Agreement

A. & B. Timing and Notice of Hearing. The statute (Minn. Stat. § 115A.35) specifies that notice of the hearing be published in a newspaper(s) of general circulation in the area for two successive weeks

ending at least 15 days before the date of the meeting. Forty-five days allows the WMB to meet this requirement. The statute also requires that this notice contain a description of the propose facility, its location, the permits and the Board's scope and procedure for review. This section complies with statutory requirements and also provides a contact person for ease of communication.

C. Location. Holding the hearing as near as practical to the proposed facility will make it easier for interested parties to attend.

D. Procedures. This section specifies the hearing procedures for supplementary review as required by statute. The procedures are designed to provide full opportunity for the public to comment on the agreement in an informal, non-threatening setting. The procedures permit questioning which may be necessary before members of the public can present their testimony.

6 MCAR 8.213. Contested Hearing.

Since the setting and justification of a contested review hearing closely parallels the setting and reasons for holding a contested case hearing under Minn. Stat. Ch. 15, the hearing procedures proposed in the rules have been drawn from the Rules of the Office of Administrative Hearings for Contested Cases. 9 MCAR § 2.201-2.299. Some changes from the rules have been made to

accommodate the short review period required by statute and the limited role of the hearing examiner in Supplementary Review Hearings.

A. Notice. Nature and timing of notice is specified in statute (Minn. Stat. § 115A.35).

B. Location. The location will make it easy for interested parties to attend.

C. Party is defined for purposes of providing common terminology and meaning for this term when used in discussing and understanding the provisions of the proposed rule.

D. Most of the duties of the hearing examiner specified in 9 MCAR § 2.203C. are repeated in this subsection. Some duties which are not appropriate to the supplementary review hearing context have been deleted.

E. Disqualification provides a method to allow the hearing examiner to disqualify himself or herself from the proceedings when there is a potential conflict of interest. This provision is the same as 9 MCAR § 2.212.

F. The statute specifies that a majority of permanent board members will be present at the hearing. Questions directed to witnesses by board members will serve to establish a clear record and provide the pertinent information necessary for the review decision.

G. Right to Counsel. This provision affords the opportunity to be represented by legal counsel or other persons. Views of the parties may be communicated better by counsel. The provision is the same as 9 MCAR § 2.206.

H. Intervention. Intervention is needed in order to provide interested people with a procedure which allows them to participate as a party, if it is determined that the petitioner's interest is not adequately represented by either of the parties participating in the case. The provision is similar to 9 MCAR § 2.210.

I. Default. Should a party fail to make the required appearance at the hearing, or fail to comply with requirements, this provision would allow the review to be completed. This provision is the same as 9 MCAR § 2.208.

J. Participation by Public. This section provides that persons having information concerning a particular issue or having a particular interest in an issue will have an opportunity to be heard at the hearing. The provision is similar to 9 MCAR § 2.210E.

K. Prefiled Testimony. Prefiled testimony is necessary so that hearing procedures are carried out as expeditiously as possible, which is especially important given the short review period provided by statute.

L. Rights of Parties. This provision assures that all evidence that should be admitted will be considered and adequately examined. The provision is the same as 9 MCAR § 2.217.

M. Witnesses. This provision assures parties that they may present witnesses on their behalf. The Board is also authorized to call its own witnesses to assure that all necessary evidence to make a proper decision is before the Board.

N. The prehearing procedures permit the resolution of minor issues prior to the hearing. This process expedites the completion of the hearing itself. The provision is similar to 9 MCAR § 2.213.

O. Discovery is allowed to ensure that the parties are able to obtain the information necessary to present their case. While a substantial range of discovery procedures are authorized, more lengthy discovery procedures are eliminated because of the limited time in which supplementary review must be completed. The provision is based on 9 MCAR § 2.214

P. Depositions to preserve testimony are authorized to ensure information necessary to the Board's decision will be available. The provision is the same as 9 MCAR § 2.215.

Q. Subpoenas issued through the Office of Administrative Hearings are provided to ensure that necessary witnesses and documents will be available for Supplementary Review Hearings. The provision is the same as 9 MCAR § 2.216.

R. Rules of Evidence. The rules of evidence are the same as those in 9 MCAR § 2.217C. The hearing examiners are familiar with these rules of evidence which should facilitate contested review hearings.

S. The Record. The decision in this matter rests with the Board and all materials from the hearing must be available to the Board. The decision must be made on the hearing record. This provision specifies what must be in the record and requires the Board to maintain that record which may be the subject of later judicial review. The provision is based on 9 MCAR § 2.217D.

T. Conduct of Hearing. These provisions allow for order and procedures in completing the hearing. The provisions are based on 9 MCAR § 2.217G.

U. This provision is necessary so that the hearing can be completed within the time constraints required by statute.

6 MCAR 8.214

Reconciliation procedures are set out in Minn. Stat. § 115A.38. This section simply requires the Board to make a

decision on whether to utilize the reconciliation procedures within the time permitted by statute.

6 MCAR 8.215. Decision of Waste Management Board.

A. The Record. This provision makes it clear that only evidence offered during the hearing may be considered. The limitation ensures all persons a fair opportunity to make their case before the Board. The provision is similar to 9 MCAR § 2.218A.1.

B. Administrative Notice. This provision allows the Board to draw upon relevant background information in making its decision. The provision is similar to 9 MCAR § 2.218A.2.

C. Participation in Decision. Since evidence which is not in the record may not be considered, a Board member will be able to have the complete information necessary to make a decision by reviewing the record without having been present at the hearing. Thus, upon a review of the record, absent Board members should be able to participate in the decision.

D. Recommended Disposition.

1. Utilizing the mediated agreement as the recommended disposition will simplify the review process and represents the best interests of parties involved.

2. The ten day period before the Board decision provides the public a reasonable opportunity to review the recommendations prior to the final decision.

E. Basis of Decision. The factors include the statutory requirements (Minn. Stat. § 115A.36) that the WMB must consider in making its final determination. The provision also allows for any other factors relevant to the review within the established scope to be considered.

F. Final Decision. This section provides for the acceptance of the mediated agreement unless it is inappropriate. Accepting the agreement will likely lead to the long-term solution of the dispute. However, if the factors for decision indicate the agreement is unacceptable, the agreement must be rejected to comply with the Board's statutory directive.

G. Ex Parte Communication. To ensure a fair procedure all parties to a proceeding should be aware of and be able to respond to arguments and facts presented by an other party. Limiting ex parte communications assures all parties will have an opportunity to respond.

6 MCAR 8.216. Terms, Conditions, and Requirements of Permitting Agencies

Minn. Stat. § 115A.37 authorizes the Board to require additional permit conditions and to resolve conflicts in permit conditions. This section provides a method for determining when to impose more stringent conditions. It also provides for notice to permitting agencies that additional more stringent permit

conditions will be required.

6 MCAR 8.217. Revocation of Approval.

The Board does not have the capability to investigate the accuracy of all statements made by a petitioner. Thus, unless they are challenged in the hearing, the Board must rely on the statements made by a petitioner. To help in assuring statements are accurate a procedure, which involves a full contested case hearing is established to revoke approvals made by the Board where the petitioner has knowingly made material false statements in information presented to the Board.

6 MCAR 8.218. Computation of Time.

This provision provides a way to measure time periods consistently.

Based on the foregoing, proposed rules 6 MCAR 8.201-218 are both needed and reasonable.

Dated: May 19, 1982

STATE OF MINNESOTA
WASTE MANAGEMENT BOARD

Bob Dunn, Chairman

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"A"

STATE OF MINNESOTA

WASTE MANAGEMENT BOARD

In the Matter of the Proposed Adoption of Rules of the State Waste Management Board Governing Supplementary Review	))))	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 upon 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.

Dated: July 20, 1982

LeRoy C. Paddock

LeROY C. PADDOCK
Special Assistant
Attorney General

ADMIN 1000 (REV. 4/77)

STATE OF MINNESOTA

DEPARTMENT WASTE MANAGEMENT BOARD

Office Memorandum

TO : Lee Paddock

DATE:

FROM : Sharon Decker - WMB

PHONE: 536-0816

SUBJECT: Supplementary Review Rules

We have received no requests for notification of the Attorney General's review of these rules.

SD:js