

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

ADDRESS REPLY TO:
OFFICE OF THE ATTORNEY GENERAL
MINNESOTA POLLUTION CONTROL AGENCY
1935 W. COUNTY ROAD B2
ROSEVILLE, MINNESOTA 55113
(612) 296-7342

November 16, 1982

Ms. Theresa Lauterbach
Office of the Revisor of Statutes
Room 3
State Office Building
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Amendment of Agency Procedural Rules, Designated on Adoption as 6 MCAR §§4.3001, 4.3002, 4.3004, 4.3005 A. - L. and N. - Q., 4.3006 - 4.3009, 4.3010 A. - D. and F. - I., 4.3011, 4.3012, and 4.3014 - 4.3016.

Dear Ms. Lauterbach:

On October 26, 1982, the Minnesota Pollution Control Agency adopted amendments to the above-captioned rules. Two copies of the rules as finally adopted are enclosed for your review as to form.

Very truly yours,

Jocelyn F. Olson

JOCELYN F. OLSON
Special Assistant
Attorney General

cc: Ted Martinez
Office of the Attorney General

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

RECEIVED
NOV 16 1982
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

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MINNESOTA POLLUTION CONTROL AGENCY
1935 W. COUNTY ROAD B2
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Mr. Ted Martinez
Office of the Attorney General
Administration Building
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Amendment of Agency Procedural Rules, Designated on Adoption as 6 MCAR §§4.3001, 4.3002, 4.3004, 4.3005 A. - L. and N. - Q., 4.3006 - 4.3009, 4.3010 A. - D. and F. - I., 4.3011, 4.3012, and 4.3014 - 4.3016.

Dear Mr. Martinez:

On September 13, 1982, the Minnesota Pollution Control Agency published notice of its intent to adopt amendments to Minn. Rules MPCA 1-4 and 6-13 without a public hearing. During the public comment period the Agency received more than seven requests for hearing on the amendments proposed as 6 MCAR §§4.3003, 4.3005 M., and 4.3013.

On October 26, 1982, the Agency Board considered the requests of the Director to 1) hold a rulemaking hearing on the three sections of the rules for which more than seven requests for hearing were received, and 2) adopt the other portions of the rules. The Agency adopted a resolution authorizing a public hearing on the three rules listed above and on a fourth, 6 MCAR §4.3010 E. The Agency's resolution also adopted the remainder of the rules. A copy of the Director's memorandum to the Board is enclosed. This memorandum contains a copy of the rules as adopted by the Agency.

Following the adoption of the rules the rules as adopted were sent to the Office of the Revisor of Statutes for printing in the format which would be acceptable to that office. The enclosed copies of the rules as adopted were prepared by that office.

The Agency is no submitting to you for approval the adopted rules now codified as 6 MCAR §§4.3001, 4.3002, 4.3004, 4.3005 - 4.3012 and 4.3014 - 4.3016. Enclosed for your review are the following:

1. Rules as adopted (original and three copies).

2. Order Adopting Amendments to Rules (two copies).

3. Certificate of Agency's Resolution Adopting Amendments to Rules.

4. Notice of Intent to Solicit Outside Opinion (6 S.R. 1654, March 29, 1982).

5. Affidavit of Jay M. Heffern indicating that there were no written comments received by the Agency pursuant to the publication of the Notice of Intent to Solicit Outside Opinion.

6. Order for Notice of Intent to Adopt Rules Without a Public Hearing.

7. Certificate of Agency's Authorizing Resolution.

8. Notice of Intent to Adopt Amendments to Rules Without a Public Hearing and rules as proposed (7 S.R. 312, September 13, 1982) and Errata (7 S.R. 506, October 4, 1982).

9. Copies of the written comments received during the comment period.

10. Affidavit of Mailing.

11. Certificate concerning mailing list.

12. Findings of Fact and Conclusions.

13. Statement of Need and Reasonableness.

14. Statement of Compliance with Rulemaking Procedures.

15. Affidavit Concerning Notification of Transmittal to the Attorney General.

Very truly yours,

Jocelyn F. Olson

JOCELYN F. OLSON
Special Assistant
Attorney General

Our File No. 8606

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 11-16-82
DATE FOR REVIEW 11-29-82
DATE DUE 11-30-82

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

Approved _____ Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State _____ Revisor approved 11/17/82 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed see SR.

✓ Order Adopting 10.26.82 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
9.10.82 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
9.13.82 At least 30/~~20~~ days prior to ~~hearing~~/adoption
+ Errata sheet 10.4.82

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

✓ Record (includes transcript or tape, exhibits, comments received 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
see submitted Affidavit

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO VIRGIL HERRICK, Chairman DATE: 11/17/82

Attn: JOCELYN F. OLSON, Special Assistant Attorney General

FROM : TED A. MARTINEZ
Special Assistant
Attorney General PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Amendment of Agency Procedural Rules, to be Recodified as 6 MCAR §§ 4.3001, 4.3002, 4.3004, 4.3005 A. - L. and N. - Q., 4.3006 - 4.3009, 4.3010 A. - D. and F. - I., 4.3011, 4.3012, and 4.3014 - 4.3016.

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.

TAM/ls
cc: Ms. Kathy Burek
Mr. Duane Harves

.3001

AG Copy

Pollution Control Agency

Adopted Amendments of Agency Procedural Rules

Rules as Adopted

6 MCAR S 4.3001 Definitions.

A. Scope. As used in 6 MCAR SS 4.3001-4.3016 the following words shall have the meanings given them.

B. Agency. "Agency" means the Minnesota Pollution Control Agency, as constituted pursuant to Minnesota Statutes, section 116.02, subdivision 1.

C. Days. "Days" means calendar days.

D. Director. "Director" means the executive director and chief executive officer of the agency.

E. Emergency. "Emergency" means imminent and substantial danger to the health and welfare of the people of the state, or any part thereof, as a result of the pollution of air, land, or water.

F. Hearing examiner. "Hearing examiner" means the person assigned by the chief hearing examiner pursuant to Minnesota Statutes, section 15.052, subdivision 3, to preside at a rulemaking hearing or contested case hearing.

G. Order. "Order" means any written command or direction made by the agency or the director, as provided by law.

H. Permit. "Permit" means every discharge, emission, and disposal authorization, every construction, installation, or operation authorization, and every other agency authorization designated "permit" in Minnesota Statutes, chapters 115 and 116, as now in force or hereafter amended, including Minnesota Statutes, sections 115.03, subdivision 1, 115.07, 116.07, subdivision 4, clause (a), 116.081, and 116.091. "Permit" does not include an "order," "variance," or "stipulation agreement" as defined in this rule, and does not include a "certification."

I. Person. "Person" means any human being, any municipality or other governmental or political subdivision or other public department or agency, any public or private corporation, any

partnership, firm, association, or other organization, any receiver, trustee, assignee, agency, legal entity, other than a court of law, or any legal representative of any of the foregoing, but does not include the agency.

J. Public informational meeting. "Public informational meeting" means a meeting called by the agency to solicit public comment and statements on a matter before the agency.

K. Schedule of compliance. "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

L. Service; serve. "Service" or "serve" means personal service or, unless otherwise provided by law, service by first class United States mail, postage prepaid, addressed to a person or party at his or her last known address. Service by mail is complete upon the placing of the item served in the mail. Agencies of the state of Minnesota may also serve by depositing the item to be served with the Central Mailing Section, Printing and Mailing Services Division Publications Division, Department of Administration.

M. Stipulation agreement. "Stipulation agreement" means any agreement entered into between the agency and any person or persons establishing a schedule for compliance with applicable statutes, rules, or standards by designated dates, or otherwise providing for settlement for noncompliance with applicable statutes, rules, or standards.

N. Variance. "Variance" means an authorization from the agency that grants an exemption from the requirements of any rule or standard of the agency and which does not require compliance with the rule or standard for the duration of the authorization. "Variance" does not include permits, stipulation agreements, schedules of compliance, or any modifications thereto, or any order of the agency which allows interim operation during completion of a compliance program, nor does variance include a time extension of an existing variance.

6 MCAR S 4.3002 Computation of time. In computing any period of time prescribed by these rules, the day of the last act, event,

.3003
.3004

or default from which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday.

6 MCAR S 4.3003 Duty of candor. In all formal or informal negotiations, communications, proceedings, and other dealings between any person and any member, employee, or agent of the agency, it shall be the duty of each person and each member, employee, or agent of the agency to act in good faith and with complete truthfulness, accuracy, disclosure, and candor. Any violation of the aforesaid duty shall be cause for imposition of sanctions as provided in MPCA 11.

This rule is to go to hearing. The underlined portion was proposed to be deleted?

6 MCAR S 4.3004 Officers, committees, and duties.

A. Officers. The officers of the agency are the chairperson, vice chairperson, and director.

B. Electing the chairperson. The chairperson must be elected by a majority of all agency members at each annual meeting for a term of one year. No member elected to the office of chairperson may serve in that capacity more than two full terms consecutively.

C. Electing the vice chairperson. The vice chairperson must be elected by a majority of all agency members at each annual meeting for a term of one year. No member elected to the office of vice chairperson may serve in that capacity more than two full terms consecutively.

D. Duties. The chairperson shall have the duties prescribed by rule of the agency. The vice chairperson shall discharge all duties of the chairperson during the absence or disability of the chairperson. The director shall have the duties prescribed by statute or by rule of the agency.

E. Vacancies. Upon a vacancy (for example, death, resignation, or removal) in the office of chairperson of the agency, the vice chairperson shall become the chairperson until such time as new officers are elected at the next annual meeting. Upon a vacancy in the office of vice chairperson, a special election shall be held at the next regular meeting, for

a term ending at the next annual meeting.

F. Removal. The chairperson or vice chairperson is removed from office by the affirmative vote of two-thirds of all members of the agency, this vote to be taken at the next regular meeting following the motion for removal.

(b) [see repealer and relettering instruction.]

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

H. Execution of documents. Contracts, stipulation agreements, and other documents approved by the agency pursuant to law shall be executed on the agency's behalf by the chairperson and the director.

6 MCAR S 4.3005 Agency meetings.

A. Regular meetings. Twelve regular monthly meetings of the agency shall be held each calendar year. A date for each regular meeting shall be set by the agency. The annual meeting, also conducted as a regular meeting, shall be held during the month of July of each year. The time and place of each regular meeting, including the annual meeting, shall be designated by the chairperson. The chairperson may direct that any regular meeting, except the annual meeting, be postponed or advanced.

B. Special meetings. The chairperson, or in the chairperson's absence the vice chairperson, or in their absence the director of the agency, may call a special meeting of the agency when, in his or her opinion, a meeting is necessary or desirable. The chairperson shall call a special meeting upon receipt of a request from three members of the agency.

C. Notice of regular meetings. The director shall give written notice of the time and place of each regular meeting to all agency members at least ten days prior to any regular meeting.

D. Notice of special meetings. The chairperson or the director shall give as much notice as possible to all agency members prior to any special meeting. This notice shall state

the time, place, and subject matter of the meeting. Except as provided in 6 MCAR S 4.3006, this notice shall be given at least two days prior to any special meeting.

E. Public notice of meetings. The director shall give public notice of the time and place of regular and special meetings in the manner provided in G.

F. Agenda preparation. At least ten days prior to all regular meetings of the agency, the director shall prepare a proposed agenda of business to be conducted at the meeting. Except when exigencies of time and circumstances warrant, an agenda must be prepared for all special meetings as far in advance of the special meeting as possible. The agenda must include a list of all matters to be considered at the meeting. Agency members may place items on the agenda by notifying the director at least 14 days prior to a regular meeting. Citizens may request in writing that items be placed on the agenda by notifying the director at least 14 days prior to a regular meeting. The director may in his or her discretion determine whether to place a citizen item on the agenda, but the director shall advise the agency of all items the director decides not to place on the agenda. Items may be placed on the agenda for a special meeting in the same manner as for regular meetings.

G. Notice of agenda. At least ten days prior to the regular meeting, the director shall mail a copy of the agenda to every member of the agency, to each person directly affected by a decision of the agency on an agenda matter, and to each person the director deems appropriate in the circumstances. The agenda for a regular meeting must be available for public inspection in the agency offices at least ten days prior to the regular meeting for which the agenda has been prepared. The agenda for a special meeting must be available for public inspection in the agency offices at least two days prior to the meeting, and as far in advance of the meeting as reasonably possible, except as provided in 6 MCAR S 4.3006.

H. Quorum. A majority of the members of the entire agency constitute a quorum, and a quorum must be present for the

transaction of business.

I. Presiding officer. The chairperson shall preside at all agency meetings. The vice chairperson shall preside in the chairperson's absence. The remaining members shall elect a presiding officer from among the members present whenever the chairperson and vice chairperson are both absent. The presiding officer shall serve only for that meeting or until the chairperson or vice chairperson shall arrive.

J. Agenda. The first order of business at the meeting shall be adoption of the agenda, which may be amended or modified by the agency at this time.

K. Agenda items. No matter may be considered at a regular agency meeting unless it has been placed on the agenda and all relevant public information has been made available for public inspection at least ten days prior to the regular meeting, except where the agency in its discretion by unanimous vote of those members present determines otherwise. Public information regarding matters to be considered at a special meeting must have been available for public inspection at least two days prior to the meeting, and as far in advance of the special meeting as reasonably possible, except as provided in 6 MCAR S 4.3006.

L. Voting. Except as otherwise specifically provided, a majority vote of the entire agency is necessary to make any decision. All members present, including the presiding officer, shall vote or abstain on every matter presented for decision. If the final vote taken on an agenda item does not result in a decision, but half or more of the voting members vote affirmatively, the matter must be placed on the agenda of the next regular monthly meeting or considered at a special meeting, unless the agenda item concerns rescission of a decision.

M. [See Relettering Instruction.] ~~Decisions at open meetings. All regular and special meetings of the agency must be open to the public, and all decisions of the agency must be made at these meetings. However, if the chairperson, or in the chairperson's absence the vice chairperson, determines that the~~

This rule is to go to hearing. The strikeout material was proposed as a new rule.

~~exigencies of time and circumstances warrant, then an agency decision may be made by telephone poll or other appropriate means. The unavailability of any agency member shall not postpone the making of the any decision. In the event that an agency decision is made by telephone poll or other appropriate means, this decision must be subject to confirmation at the next agency meeting.~~

N. Reconsideration of decision. ~~On the same day as originally made, upon the motion of any agency member who voted on the prevailing side and upon the affirmative vote of a majority of the entire agency,~~ Any decision of the agency may be reconsidered if an agency member who voted on the prevailing side makes a motion for reconsideration and if the motion for reconsideration is made during the course of the same meeting at which the original decision was made.

FofF 7a

O. Rescission of decision. Upon placement on the agenda by an agency member as provided in F. and upon the affirmative vote of two-thirds of the entire agency, any decision of the agency or director may be rescinded.

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

Q. Parliamentary procedure. Except as specifically provided in these rules, Robert's Rules of Order shall govern any question of parliamentary procedure that may arise at any meeting of the agency.

6 MCAR S 4.3006 Declaration of emergency.

A. Delegation to director. The agency herewith delegates to the director the authority to exercise, in accordance with the limitations and procedures hereinafter enumerated, emergency powers granted to the agency by Minnesota Statutes, section 116.11.

B. Notification to agency. If the director anticipates that emergency conditions may be approaching, the director shall keep the agency informed of these conditions by any means practicable. Upon declaration of an emergency by the director,

the director shall immediately notify all agency members that an emergency has been declared, and shall poll the members on the action taken by the director. Notification may be by telegram, telephone, or any other means practicable. The unavailability of any agency member shall not postpone the implementation of any emergency orders. If, pursuant to the poll, a majority of all members of the agency disapprove of the declaration of emergency, the declaration and the action taken shall be discontinued immediately. If, pursuant to the poll, a majority of all members of the agency disapprove of the action taken by the director, but agree that an emergency exists, the action of the director shall remain in effect until the agency orders different action to be taken.

C. Duration. Any action taken by the director pursuant to the declaration of emergency shall remain effective according to the following provisions:

1. for not to exceed three days, unless approved by a majority of the members of the agency pursuant to the poll required in B.; or

2. if extended beyond three days, as provided in item 1., then the period until the date of the next agency meeting, unless extended by the agency at the meeting; or

3. items 1. and 2. notwithstanding, until notice, hearing, and determination are effected pursuant to law; or

4. until discontinued by the declaration of the director or by majority vote of the agency.

D. Report. Any action taken by the director pursuant to a declaration of emergency must be included on the agenda of the next meeting of the agency, at which time the director shall report to the agency on the status of the emergency.

E. Agency action. The agency may by majority vote exercise its emergency powers. The action of the agency taken in an emergency situation shall remain effective until discontinued by majority vote of the agency or until notice, hearing, and determination are effected pursuant to law.

F. Notice. The notice requirements of 6 MCAR S 4.3005 do

not apply when the agency or the director is considering the exercise of emergency powers, but the agency and the director shall give such notice to the public as is possible under the circumstances.

G. Emergency powers. Nothing contained in 6 MCAR SS 4.3001-4.3016 shall be construed to preempt, repeal, or conflict with this rule or any other rule or statute that provides for acts to be taken or procedure to be followed by the agency or the director in an emergency.

6 MCAR S 4.3007 Variances.

A. Scope. This rule governs the procedure for issuance of all variances by the agency, except to the extent otherwise specifically provided by statute or rule.

B. Written application. In no case shall the agency grant a variance unless a written application has been made to the agency. The application must be served upon the director.

The written application must contain:

1. the name and address of the applicant and the person who prepared the application;

2. the signature of the applicant or authorized representative;

3. a description, including the location, of the business, plant, system, or facility for which a variance is sought;

4. the nature of the variance sought, including an identification of the applicable rules or standards from which a variance is sought, the period of time for which it is sought, and the reasons relied upon by the applicant in requesting the variance;

5. if the applicant seeks a variance primarily on grounds of economic burden, financial statements prepared or approved by a certified public accountant, or other person acceptable to the agency, which shall fairly set forth the status of the business, plant, system, or facility for each of the three financial years immediately preceding the year of the application, and an analysis of the effect of such financial status if the variance

is not granted (if the business, plant, system, or facility has not been in operation for this period, then the financial statements and analysis must be based on the most complete data available);

6. if the applicant seeks a variance on grounds that compliance is not technologically feasible, a report from a registered professional engineer, or other person acceptable to the agency, stating fully the reasons why compliance is not technologically feasible;

7. other additional data or information that is required by any applicable agency rule or standard; and

8. any other relevant data or information that the agency or the director deems essential to a determination on the application, including but not limited to the following:

existing rule – not subject to our review

a. a general description of the materials handled or processed by the applicant that are pertinent to the subject application, and a statement of the nature and quantity of the materials being discharged, emitted, or disposed of, and that can reasonably be expected to be discharged, emitted, or disposed of during the period of the proposed variance, and proposed methods for the control of these materials;

b. a comprehensive proposed plan indicating the steps to be taken by the applicant during the period of the variance, even if the applicant is seeking a permanent variance, to reduce emission levels or discharges to the lowest limits practical;

c. a concise statement of the effect upon the air, water, and land resources of the state and upon the public and other persons affected, including those residing in the area where the variance will take effect, which will result from agency approval of the requested variance;

d. a statement of the alternatives to the proposed operation under the variance which have been considered by the applicant; and

e. a concise statement of the effect on the establishment, maintenance, operation, and expansion of business, commerce, trade, traffic, and other economic factors

that may result from approval and from denial of the requested variance.

(c)-(d) [See Repealer.]

C. Review of applications. The director shall review all variance applications for completeness. If the director finds that the application is incomplete or otherwise deficient, the director shall promptly advise the applicant of the incompleteness or deficiency. The director shall suspend further processing of the portion of the application affected by the deficiency until the applicant has supplied the necessary information or otherwise corrected the deficiency.

D. Preliminary determination; preparation of public notice. After a variance application is complete, the director shall make a preliminary determination as to whether the variance should be issued or denied. The director shall prepare a notice of the completed application and the preliminary determination. The notice must include a statement as to the manner in which the public may submit comments on the variance application and the manner in which a person may file a request pursuant to 6 MCAR SS 4.3010 B. or 4.3015 B. asking that a contested case hearing or public informational meeting be held on the variance application. The notice must provide the public 30 days in which to submit these comments or requests.

E. Availability of public notice. The director shall make a copy of the public notice available at the main agency office and at the applicable agency regional office.

F. Mailing of public notice. The director shall mail a copy of the public notice to the applicant, to all persons who have registered their names on the mailing list established under Minnesota Statutes, section 15.0412, subdivision 4, and to any person upon request.

G. Circulation of public notice. The director shall circulate the public notice within the geographical area of the facility or activity that is the subject of the variance request. The director shall designate the geographical area, which shall as a minimum include the county in which the

facility or activity is or will be located.

The director shall circulate the public notice in one or more of the following ways: posting the notice in the post office, public library, or other buildings used by the general public in the designated geographical area; posting the notice at or near the entrance of the applicant's premises, if located near the facility that is the subject of the variance application; or publishing the notice in one or more newspapers or periodicals of general circulation in the designated geographical area.

H. Agency decision. The agency shall make all final decisions on variance applications. The agency shall approve or deny each application. The agency may grant a variance upon such conditions as the agency may prescribe.

If a contested case hearing has been held, the agency shall act on each variance application as expeditiously as possible after receipt of the hearing examiner's recommendation, or after submission of the application if no hearing is held. Any person may submit to the agency an oral or written statement or recommendation regarding a variance application in accordance with 6 MCAR S ~~4.3011~~ 4.3015. FofF 76

I. Notification. Every decision of the agency on a variance application shall be served on the applicant and upon all persons who have submitted to the agency a request to receive a copy of the decision.

J. Agency remedies preserved. During the pendency of a variance application, the agency may, in its discretion, avail itself of any legal, equitable, or administrative remedy provided by law for violation of Minnesota Statutes or rules.

K. Amendment or modification. In the event a variance has been granted by the agency, the person holding the variance may file with the agency at any time a written application for modification or amendment of the variance. The application for modification or amendment, and the agency's consideration of the application, shall comply with the requirements of these rules. This provision shall not apply to a time extension of an

existing variance.

L. Assignment. No variance may be assigned or transferred by the holder without the approval of the agency.

M. Violation by variance holder. Any variance holder who violates a provision of the variance is subject to revocation or suspension of the variance, or other sanction as authorized or provided by law. No revocation, suspension, or other sanction may be imposed before notice to the variance holder and opportunity for a contested case hearing.

6 MCAR S 4.3008 Stipulation agreements.

A. Data or information. Whenever any person or the agency proposes that a stipulation agreement be entered into, the person who is proposed as a signer of the stipulation agreement shall furnish such information or data as is deemed essential by the agency or the director in making a determination regarding the proposed stipulation agreement.

B. Interim operation. The agency may in its discretion provide under the terms of a stipulation agreement for the operation of existing systems pending completion of compliance under the schedule therefor, and under such further conditions as it may prescribe in the stipulation agreement. Completion of performance under the stipulation agreement shall not relieve any party thereto of any requirement of law or agency rules to apply for all necessary permits or variances.

6 MCAR S 4.3009 Informal complaints. Any person may file with the director an informal complaint concerning a pollution source. The informal complaint may be either written or oral and must state the name and address of the person filing the informal complaint, the name and address of the alleged pollution source, and a description of the matter giving rise to the complaint. A person making an oral complaint may be asked to submit his or her complaint in writing. Upon receipt of this informal complaint, the director shall make such investigation as is deemed necessary and appropriate. Within 20 days after the complaint is filed, the director shall notify the person

responsible for the alleged pollution source that an informal complaint has been filed. At any time after a complaint is filed, the agency may take whatever action it deems necessary and appropriate. The person who filed the complaint shall be notified of the dispostion of his or her complaint. In all actions taken pursuant to this rule, the director shall comply with the provisions of Minnesota Statutes, sections 15.1611 to 15.1699.

6 MCAR S 4.3010 Contested case hearings.

A. Objectives. All contested case hearings required by statute or rule and all contested case hearings ordered by the agency shall be conducted in accordance with the procedures set forth in the rules of the Office of Administrative Hearings, 9 MCAR SS 2.201-2.299, and in accordance with this rule. No person's rights, privileges, or duties may be determined without regard for fundamental fairness. To that end, this rule is intended to assure that all parties are provided a just and speedy contested case hearing.

B. Public requests for contested case hearing. Any person may request the agency to hold a contested case hearing on any matter. The person may submit this request at an agency meeting if the matter is on the agenda for consideration by the agency. If the matter is not on an agenda, the person shall request the director to place the matter on the agenda for the next agency meeting. This request must be made pursuant to 6 MCAR S 4.3005 F. The agency shall not consider a request for a contested case hearing on a matter unless the matter is properly on the agenda for the agency meeting. The person requesting that a hearing be held shall accompany the request with a document stating the person's reasons for requesting the hearing, the manner in which the person has been aggrieved, and the relief requested.

C. Agency decision to hold contested case hearing. The agency shall grant the hearing request or may order upon its own motion that a contested case hearing be held if it finds all three of the following:

1. that there is a material issue of fact or of the

application of fact to law related to the matter pending before the agency;

2. that the agency has the jurisdiction to make determinations on the issue of fact or of the application of facts to law; and

3. that there is a reasonable basis underlying the issue of fact or of the application of facts to law such that the holding of a contested case hearing would aid the agency in making a final determination on the matter.

If the agency decides not to hold a contested case hearing the agency may, in its discretion, order that a public informational meeting be held as provided in 6 MCAR S 4.3015 C.

(c)-(d) [See Repealer.]

~~C.~~ D. Parties. Any person whose legal rights, duties, or privileges may be determined in the matter for which the contested case hearing is to be held is a party. When a contested case hearing is held pursuant to a request for a hearing, the person or persons requesting the hearing are parties to the matter. In any hearing on an application for a permit or variance, the applicant is a party. The agency director is a party in any hearing to issue, reissue, modify, deny, revoke and reissue, revoke without reissuance, or suspend a permit or variance. Any person who has properly intervened in the contested case is a party.

(f) [See Repealer.]

~~D. Right to counsel. Any party may be represented by legal counsel throughout the contested case hearing.~~

~~E. Ex parte communication. No person shall communicate with any agency member concerning a matter for which a contested case hearing has been ordered by the agency except in writing, or orally after providing reasonable notice to all parties of the meeting at which the matter will be discussed. Copies of any written communication must be sent to all parties to the matter and to all agency members.~~

~~F.~~ E. Informal disposition. Informal disposition by stipulation, agreed settlement, or consent order may be made of

FoFF 7c

This rule is to go to hearing

Stricken material was in Rules as proposed

any matter for which a contested case hearing is scheduled, or any contested issue, at any point in the hearing, subject to agency approval of this informal disposition or its terms.

~~G.~~ F. Consolidation. The agency may consolidate two or more matters for which contested case hearings are scheduled and hold a joint hearing. The requirements of these rules shall be followed when consolidation is ordered. Any party may object to consolidation by filing a petition for severance with the agency at least 20 days before the hearing. The agency may sever the matter to which the petitioner is a party from the joint hearing.

(j)-(m) [See Repealer.]

~~H. Default. Whenever any party with adequate notice fails to appear at the contested case hearing, the hearing examiner may decide all issues in the matter adversely to the defaulting party, may terminate the hearing, may proceed with the hearing, or may take other appropriate action, without further notice to the party. The hearing examiner shall consider the rights of other parties to the matter when a party defaults.~~ FofF 7c

(o)-(q) [See Repealer.]

~~I.~~ G. Petition for reopening of hearing and remand to hearing examiner. At any time up to ten days after the agency's final decision, any party to a contested case hearing may request that the hearing be reopened and the matter be remanded to the hearing examiner by filing a petition. This petition shall contain the name and address of the petitioner, the agency designation for the matter, and the reasons for the petition.

The agency shall grant or deny a petition as part of the record. This petition shall be granted upon a showing that there are irregularities in the hearing, errors of law, or newly discovered material evidence of such importance as likely to have altered the outcome of the hearing. A petition may be granted upon a showing of good cause for failure to answer or appear at the hearing. Evidence and argument may be presented at the discretion of the agency in written or oral form, or both, by any party to the matter with respect to the granting or denial of the petition.

~~J. Reopened hearing, procedure. The hearing of a contested case that has been reopened and remanded to the hearing examiner must be conducted in the same manner prescribed for a contested case hearing.~~

~~K.~~ H. Decision after reopening and remand. The decision after reopening of the hearing and remand to the hearing examiner must be made in the same manner prescribed for the decision after a contested case hearing.

(s) [See Repealer.]

6 MCAR S 4.3011 Final decisions and orders in contested cases.

A. Time for filing comments and exceptions. The agency shall take no final action with respect to a matter for which a contested case hearing has been held for at least 20 days after the date of issuance of the hearing examiner's report. Any person may file written comments on or exceptions to the findings of fact, conclusions, and recommendations of the hearing examiner at any time up to ten days prior to the agency meeting at which the matter will be considered for final decision. However, these comments and exceptions must be based solely upon the record of the hearing.

B. Service of comments and exceptions. Any person who files written comments on or exceptions to the hearing examiner's report shall serve these comments or exceptions upon each individual agency member and upon all parties.

C. Appearance at agency meeting. Any party may appear at the agency meeting at which the matter will be considered for final decision and present comments and arguments, limited to evidence in the record, subject to time limitations and conditions that the chairperson prescribes.

D. Agency decision. The agency shall make all final decisions and orders in those matters for which a contested case hearing has been held. The agency's decision or order must be based solely on the record from the hearing. The decision or order must be accompanied by a concise statement of the findings and conclusions upon each contested issue of fact necessary to the decision.

.3012
.3013

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

F. Manner. The director shall place the matter on the agenda for an agency meeting. The decision or order must be announced at the agency meeting, and in all cases the decision or order must be entered in the minutes of the agency meeting.

G. Alternatives. The agency may accept, modify, or reject the recommendation of the hearing examiner, in whole or in part. The agency may remand the matter to the hearing examiner for further proceedings.

H. Notice. Every final decision or order in a matter for which a contested case hearing has been held must be served on all parties to the matter and on all persons who have submitted to the agency a request to be notified of the decision.

6 MCAR S 4.3012 Inspection of public records. All records and data of the agency that are "public" within the meaning of Minnesota Satutes, sections 15.1611 to 15.1699 and 116.075, or copies, are available for inspection and copying by any person, Monday through Friday, excluding legal holidays, between the hours of 9:00 a.m. and 4:00 p.m. at the agency offices. No public records shall be removed from agency offices. Any inspection or copying of records or data must be made in the presence of an officer, employee, or agent of the agency. The agency may charge and collect a reasonable fee for the reproduction of any public records.

6 MCAR S 4.3013 Confidential information.

~~A.~~ (1) Certification. In order to certify records, information, or objects for the confidential use of the agency, an owner~~,~~ or operator, or other person qualified by law, shall submit to the director a written statement setting forth those statutory grounds that require the agency to keep the records, information, or objects confidential. Any certification of records or information that applies to water pollution sources must be approved by the director. These records and information

To be taken to hearing - change shown revised language

See Resolution Adopting

shall not be released unless the director denies the certification request. Whenever the director denies a certification request, the director shall notify the certifier of the denial at least ~~seven~~ three days prior to making the records or information available to the public. The certifier may withdraw the records or information if such an option is available to him.

~~B.~~ (2) Filing. All certified records, information, or objects must be appropriately identified and segregated at the offices of the agency.

~~C.~~ (3) Agency use. Certified records, information, and objects, when approved by the director if required, are only for the confidential use of the agency. However, confidential information may be used by the agency in compiling or publishing analyses or summaries relating to the general condition of the state's water, air, and land resources so long as these analyses or summaries do not identify any owner or operator who has so certified.

~~D.~~ (4) Release authorization. Confidential information may be released when the agency is specifically authorized to do so by ~~statute~~ the person who certified the records, information, or objects.

~~E.~~ (5) Denial of request. Certified records or information that apply to water pollution sources may be released if the director denies the certification request. The provisions of ~~A.~~ (1) apply to this release.

~~F.~~ (6) Federal law. Regardless of whether records or information are certified confidential, the agency may disclose any information which it is obligated to disclose ~~under~~ in order to comply with federal law ~~or~~ and regulation, to the extent and for the purposes of such federally required disclosure. Whenever the agency is required to release certified information pursuant to federal law, ~~the director~~ he shall notify the certifier of this requirement at least ~~seven~~ three days prior to making the records or information available to the public. The certifier may withdraw this information if such an option is

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3015

available.

~~C.~~ (7) Use in ~~contested case~~ hearings. Confidential information that is relevant to a matter for which a ~~contested case~~ public hearing is being held, ~~and that has been made a part of the record,~~ may be considered by the agency in reaching a decision on the matter, but must not be released to the public unless the agency is required by statute to release it. When the agency is required by statute to release the information at the public hearing, the person who certified the information may withdraw the information, but the information shall not be considered by the agency or the hearing ~~examiner~~ officer in reaching a decision or recommendation on the matter. Whenever confidential information is considered by the agency or a hearing ~~examiner~~ officer in reaching a decision or recommendation on a matter, that fact must be so stated on the record.

6 MCAR S 4.3014 Conflict of interest. Any member of the agency who has a direct and substantial financial or employment interest relating to any matter before the agency, which interest is reasonably likely to affect the impartiality or judgment of the agency member in the matter, shall make known this interest and shall refrain from participating in or voting upon the matter.

No employee or agent of the agency, including the director, shall engage in any outside employment or other conduct that is likely to affect adversely the effectiveness or efficiency of any functions or duties performed for the agency.

6 MCAR S 4.3015 Public participation in agency meetings.

A. Agenda items for which no hearing was held. Upon request made prior to or at an agency meeting, any person who desires to present a statement on a matter that is on the agenda for the meeting, and for which no contested case or rulemaking hearing was held, must be afforded an opportunity to present an oral statement to the agency at the meeting. The chairperson may, depending on the circumstances, limit the time and manner of

this statement.

Persons who desire to present a written statement on the matter may do so if, at least ~~ten~~ five days before the meeting, they have served a copy of the written statement upon the director. The director shall then promptly provide a copy of the statement to each agency member.

The agency may allow any person adversely affected by these oral or written statements additional time to respond.

B. Request for public informational meeting. Any person may request the agency to hold a public informational meeting on any matter. The person may submit this request at an agency meeting if the matter is on the agenda for consideration by the agency. If the matter is not on the agenda, the person may request the director, pursuant to 6 MCAR S 4.3005 F., to place the matter on the agenda as a citizen item for the next agency meeting.

The agency shall not consider a request for a public informational meeting on a matter unless the matter is properly on the agenda for the agency meeting. The agency shall grant or deny the request. This rule does not limit the right of the agency to order, upon its own motion, that a public informational meeting be held on a matter, and does not limit the right of the director to hold public meetings.

C. Agenda items for which contested case hearing has been held. When a contested case hearing has been held on an agenda item the participation of the public and of the parties in the matter is governed by 6 MCAR SS 4.3010-4.3011.

D. Agency items for which rulemaking hearing has been held. When a rulemaking hearing has been held, the agency shall take no final action with respect to the matter for at least 20 days after the date of issuance of the hearing examiner's report. Any person may file written comments or exceptions to the findings of fact, conclusions, and recommendations of the hearing examiner at any time up to ten days prior to the agency meeting at which the matter will be considered for final decisions. However, these comments and exceptions must be based solely upon the record of the hearing.

Any person who files written comments on or exceptions to the hearing examiner's report shall serve these comments or exceptions upon each individual agency member and upon the director.

Any person may appear at the agency meeting at which the matter will be considered for final decision, and may present comments and arguments limited to evidence in the record, within limits of time and manner as the chairperson may establish under the circumstances.

6 MCAR S 4.3016 Public participation in director's activities.

A. Extent of participation. Any person may participate in the activities of the director. Participation in the director's activities includes the right to submit statements, the right to attend meetings and conferences and share in discussions, and the right to receive sufficient notice of progress in the matter to adequately exercise these rights.

However, if a meeting of the director involves information that is not public within the meaning of Minnesota Statutes, sections 15.1611 to 15.1699 or 116.075, the director shall conduct a closed meeting to discuss the nonpublic information.

B. Notice of progress. Any person who wishes to receive notice of progress in an agency matter shall so advise the director. Thereafter, the director shall give this person adequate notice of pending events in the matter.

Repealer. Rules ~~MPCA 3(b)~~ MPCA 3(b)(1), 3(b)(2), 3(b)(3), 3(b)(4), 3(b)(5)(i), 3(b)(5)(ii), 3(b)(5)(iii), 3(b)(5)(iv), 3(b)(5)(v), 3(b)(5)(vii), 3(b)(5)(viii), MPCA 6(c), 6(d), MPCA 9(c), 9(d), 9(f), 9(j), 9(k), 9(l), 9(m), 9(o), 9(p), 9(q), 9(s), MPCA 11, and MPCA 13 of the Minnesota Pollution Control Agency are repealed.

Relettering. Reletter MPCA 3(b)(5)(vi) as 6 MCAR S 4.3005 M.

APPROVED AS TO LEGALITY

Nov 29 19 82

WARREN SPANNAUS, ATTORNEY GENERAL

BY Ted A. Martinez

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 29 1982
Joan Anderson Growe
Secretary of State

12:30 PM

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Agency Procedural Rules, to be Recodified as 6 MCAR §§4.3001, 4.3002, 4.3004, 4.3005 A. - L. and N. - Q., 4.3006 - 4.3009, 4.3010 A. - D. and F. - I., 4.3011, 4.3012, and 4.3014 - 4.3016

ORDER ADOPTING AMENDMENTS TO RULES

Notice of the Minnesota Pollution Control Agency's intent to adopt amendments to the above-entitled rules without a public hearing was published in the State Register on September 13, 1982, and was sent by United States mail to all persons on the list maintained by the Agency pursuant to Minn. Stat. §15.0412, subd. 4 (Supp. 1981) on September 10, 1982. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, after receiving fewer than seven requests for public hearing within the 30-day comment period, after reviewing and considering the comments, and after determining the need for and reasonableness of the above-captioned amendments,

NOW, THEREFORE, IT IS ORDERED, this 26th day of October, 1982, that a portion of the Agency's Rules of Procedure are amended and recodified as 6 MCAR §§4.3001, 4.3002, 4.3004, 4.3005 A. - L. and N. - Q., 4.3006 - 4.3009, 4.3010 A. - D. and F. - I., 4.3011, 4.3012 and 4.3014 - 4.3016, and, accordingly, Minn. Rules MPCA 3(b)(1) - (4), 3(b)(5)(i) - (v), 3(b)(vii), 3(b)(viii), MPCA 6(c), 6(d), MPCA 9(c), 9(d), 9(f), 9(g), 9(j) - (q), 9(r)(4),

9(s), MPCA 11 and MPCA 13 are hereby repealed pursuant to authority vested in the Minnesota Pollution Control Agency by Minn. Stat. §116.07, subd. 3 (1980).

VIRGIL HERRICK
Chairman

LOUIS J. BREIMHURST
Executive Director

Department of Health

Notice of Revised Application by City of Oakdale for Expansion of Primary Service Area

As of March 29, a revised application was submitted by the City of Oakdale with the Department of Health for an expansion of its primary service area to include a base of operations located at Oakdale Fire Department, 6279-50th Street North, Oakdale, Minnesota 55109. The application is considered complete. A notice of application was previously published in the *State Register* on January 18th.

This notice is given pursuant to Minnesota Statutes § 144.802 (1979), which requires that the Commissioner of Health publish the notice in the *State Register* at the applicant's expense, and in a newspaper in the municipality in which the service will be provided, or if no newspaper is published in the municipality, or if the service would be provided in more than one municipality, in a newspaper published at the county seat of the county or counties in which the service would be provided. Each municipality, county, community health services agency, and any other interested person wishing to comment on this application may submit comments to the Metropolitan Health Board, 300 Metro Square Building, Seventh & Robert Streets, St. Paul, Minnesota 55101, before the close of business on April 28th, 1982.

After a public hearing has been held in the municipality in which the service is to be located, the Metropolitan Health Board shall recommend that the Commissioner of Health grant or deny a license or recommend that a modified license be granted. The Metropolitan Health Board shall make the recommendations and reasons available to any individual requesting them.

Within 30 days of receipt of the Metropolitan Health Boards recommendations, the Commissioner of Health shall grant or deny the license to this applicant.

Pollution Control Agency

Notice of Intent to Solicit Outside Opinion Concerning Proposed Amendments to the Minnesota Pollution Control Agency's Rules of Procedure

Notice is hereby given that the Minnesota Pollution Control Agency (agency) is considering amending its Rules of Procedure, PCA 1-13.

All interested or affected persons or groups may submit data or views on the proposed amendments. Statement of information and comment may be made orally or in writing. Comments and information concerning the proposed amendments should be directed to:

Jay M. Heffern
Deputy Executive Director
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113
Telephone: (612) 296-7303

All written material received by the agency will become part of the record of any proceeding commenced by the agency to promulgate the rules.

Department of Public Welfare
Income Maintenance Bureau

Notice of Intent to Solicit Outside Opinion on Rule Governing Aid to Families with Dependent Children

Notice is hereby given that the Minnesota Department of Public Welfare is considering proposed amendments to DPW Rule 44 (12 MCAR § 2.004), Aid to Families with Dependent Children. The Aid to Families with Dependent Children program provides cash assistance to qualified families whose resources are not sufficient to meet their needs for food, shelter, clothing, and other essential items.

The amendments being considered by the department include:

a) changes needed to bring the rule into compliance with new federal and state laws and federal regulations;

STATE OF MINNESOTA

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Agency Procedural Rules, Minn. Rules MPCA 1 - 13, to be Recodified as 6 MCAR §§4.3001 - 4.3011

ORDER FOR NOTICE OF INTENT TO ADOPT AMENDMENTS TO RULES WITHOUT PUBLIC HEARING

It is ordered this 29th day of July, 1982, that Notice of Intent to Adopt Amendments to Rules Without a Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Minnesota Pollution Control Agency for that purpose and be published in the State Register.

Louis Breimhurst

LOUIS J. BREIMHURST
Executive Director

CERTIFICATE OF AGENCY'S AUTHORIZING RESOLUTION

I, Virgil Herrick, do hereby certify that I am a member and the Chairman of the Minnesota Pollution Control Agency, an agency 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 Minnesota Pollution Control Agency duly and properly called an held on the July 27th 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 will be set forth in the minutes of said meeting and has not been rescinded or modified.

BE IT RESOLVED that the Minnesota Pollution Control Agency hereby finds that the attached proposed amendments to rules relating to Agency procedures are noncontroversial in nature.

BE IT FURTHER RESOLVED, that Louis J. Breimhurst, Executive Director of the Minnesota Pollution Control Agency, is hereby granted the authority and directed to sign an Order of the Agency directing that Notice be given of the Agency's intent to adopt without a public hearing the attached rule amendments, to sign the Notice thereof, and to perform any acts incidental thereto.

Prior to publishing the proposed rule amendments in the State Register, the Executive Director is authorized to make any form changes in the rules that the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's certification as required in Minn. Stat. §15.0412, subd. 2a (Supp. 1981).

In the event a public hearing becomes necessary, the Executive Director is hereby granted the authority and directed to call a hearing for the purpose of promulgating said rule amdnements as well as perform any and all acts incidental thereto, including but not limited to signing an order for Hearing and Notice of Hearing as well as acting as the Agency's representative at all hearings.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 3RD day of August, 1982.

Virgil C. Herrick
VIRGIL HERRICK
Chairman

Cynthia C. Jespersen
Attest by one other Agency member

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Agency Procedural Rules, Minn. Rules MPCA 1 - 4 and 6 - 13, to be Recodified as 6 MCAR §§4.3001 - 4.3016

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

James L. Schmidt, being duly sworn, deposes and says:

That on the 10th day of September, 1982, at the City of Roseville, County of Ramsey, State of Minnesota, s/he served the attached Notice of Intent to Adopt Amendments to Rules Without a Public Hearing by depositing in the United States mail for first class mailing at said City of Roseville, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the Pollution Control Agency for the purpose of receiving notice of the porposed adoption of rules by the Pollution Control Agency.

James L. Schmidt

Subscribed and sworn to before me this 13th day of September, 1982.

Maryanne Gibbons

Notary Public

MARYANNE GIBBONS
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires Sept 26, 1985

Pollution Control Agency

Proposed Amendment of Agency Procedural Rules

Notice of Intent to Adopt Amendments to Rules Without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) intends to adopt without a public hearing amendments to Minn. Rules MPCA 1 - 4 and 6 - 13, the procedural rules of the Agency. The Agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §15.0412, subd. 4h (1980).

The proposed amendments are authorized by Minn. Stat. §116.07, subd. 3 (1980). The proposed amendments if adopted would: 1) update the Agency's procedural rules in accordance with legislative changes which have occurred since the adoption of the original rules in 1973; 2) in certain instances, conform the rules to actual Agency practice; and 3) make stylistic and clarifying changes. The rules as amended will be codified as 6 MCAR §§4.3001 - 4.3016. A copy of the proposed amendments is enclosed.

The Agency has prepared a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon by the Agency to support the proposed amendments. Copies of the Statement of Need and Reasonableness and of the proposed amendments are available and may be obtained by contacting:

David Christopherson
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
Telephone: (612) 296-7711

Interested persons have 30 days, specifically until October 13, 1982, to submit comments on the proposed amendments. The proposed amendments may be modified if the data and views submitted to the Agency warrant modification and the modification does not result in a substantial change in the proposed amendments.

Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will not be held. In the event that a public hearing is required, the Agency will proceed according to the provisions of Minn. Stat. §15.0412, subd. 4 - 4f (1980).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to David Christopherson, at the address and telephone number previously stated, no later than October 13, 1982. If a person desires to request a public hearing, the Agency requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

Upon adoption of the amendments by the Agency Board, the rules as proposed, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rule as adopted will be sent 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 amendments as adopted, should submit a written statement of such request to David Christopherson at the address previously stated.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. §10A.01, subd. 11 (1980) as any individual:

> (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or
>
> (b) Who spends more than $250 not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute contains certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

LOUIS J. BREIMHURST
Executive Director

Dated: _____, 1982

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Agency Procedural Rules, Minn. Rules MPCA 1 - 4 and 6 - 13, to be Recodified as 6 MCAR §§4.3001 - 4.3016

CERTIFICATE

I hereby certify that the list of persons, associations and other interested groups who have requested, pursuant to Minn. Stat. §15.0412, subd. 4 (1980), that their names be placed on file with the Minnesota Pollution Control Agency (Agency) for the purpose of receiving notice of the proposed adoption of rules by the Agency is accurate and complete as of 3:00 p.m., this 9th day of September, 1982.

Paul W. Hoff

LAKE SUPERIOR
INDUSTRIAL BUREAU
828 FIRST NATIONAL BANK
DULUTH MN 55802 1

N S P LAW DEPT
ATTN JOSEPH D BIZZANO JR
414 NICOLLET MALL
MPLS MN 55401 1

NORTHERN STATES POWER CO
ATTN G V WELK MANAGER
REG COMPLIANCE AND SERV
414 NICOLLET MALL
MPLS MN 55401 1

MN MULTI HOUSING ASSOC
ATTN JOHN G HORNER
3100 W LAKE ST
MPLS MN 55416 1

HOLMES & GRAVEN
ATTN LARRY M WERTHEIM
470 PILLSBURY CENTER
MINNEAPOLIS MN 55402 1

POTLATCH CORPORATION
ATTN MR ARCHIE D CHELSETH
BOX 510
CLOQUET MN 55720 1

ANOKA CO COMM HEALTH &
SOCIAL SERV DEPT
ATTN GERTRUDE M JAMES
COURTHOUSE 4TH FL
ANOKA MN 55303 1

FEDERAL STATE REPORTS INC
ATTN STATE REG DIV
5203 LEESBURG PIKE
SUITE 1201
FALLS CHURCH VA 22041 1

LAKE MINNETONKA CONS DIST
402 E LAKE ST
WAYZATA MN 55391 1

U OF M PHYSICAL PLANT DEPT
ATTN ROBERT SILVAGNI
200 SHOPS BLDG
319 15TH AVE SE
MPLS MN 55455 1

GENERAL MILLS INC
ATTN J W HAUN
P O BOX 1113
MPLS MN 55440 1

HESSIAN MCKASY & SODERBERG
ATTN MR JOHN A KNAPP
1500 MIDWEST PLAZA BLDG
MPLS MN 55402 1

MN ASSOC HEALTH CARE FAC
ATTN RICK CARTER
2850 METRO DRIVE SUITE 429
MPLS MN 55420 1

PETERSON POPOVICH KNUTSON
& FLYNN LAW OFFICE
ATTN PETER S POPOVICH
345 CEDAR BLDG SUITE 800
ST PAUL MN 55101 1

JONES HAUGH & SMITH INC
515 SOUTH WASHINGTON
ALBERT LEA MN 56007 1

WILLIAM MITCHELL COLLEGE
OF LAW
ATTN PROF MARCIA GELPE
875 SUMMIT AVE
ST PAUL MN 55102 1

COLOR-AD PACKAGING INC
ATTN MICHAEL S KECKEISEN
3600 ALABAMA AVE
MPLS MN 55416 1

THE SHERWIN-WILLIAMS CO
ATTN D A COHAGAN
101 PROSPECT AVE NW
CLEVELAND OH 44115 1

MN RETAIL MERCHANTS ASSOC
ATTN WENDY M BORSHEIM
180 METRO SQUARE BLDG
ST PAUL MN 55101 1

IOWA DEPT ENVIRON QUALITY
ATTN STEVEN N WILLIAMS
HENRY A WALLACE BLDG
DES MOINES IA 50319 1

MPIRG
ATTN KENNETH PETERSON
2412 UNIVERSITY AVE SE
MPLS MN 55414 1

MPIRG
ATTN JAMES MILLER
2412 UNIVERSITY AVE SE
MPLS MN 55414 1

GEO A HORMEL & CO
ATTN KEVIN C JONES
BOX 800
AUSTIN MN 55912 1

ASHLAND PETROLEUM COMPANY
ATTN RICHARD HETLAND
P O BOX 9
ST PAUL PARK MN 55071 1

BLANDIN PAPER COMPANY
ATTN W J LICKE
115 FIRST STREET SW
GRAND RAPIDS MN 55744 1

ROBERT S BURK
4344 IDS CENTER
MINNEAPOLIS MN 55402 1

BARBARA L HUGHES
METRO CLEAN AIR COMMITTEE
1829 PORTLAND AVENUE
MINNEAPOLIS MN 55404 1

MN MOTOR TRANSPORT ASSOC
ATTN JAMES N DENN
1821 UNIVERSITY RM 134N
ST PAUL MN 55104 2

MAC ARTHUR CO
2400 WYCLIFF STREET
ST PAUL MN 55114 2

UNITED POWER ASSOC
ATTN REYNOLD S RAHKO
PROJECTS COORD DIVISION
ELK RIVER MN 55330 2

THE PILLSBURY COMPANY
ATTN CARL A SMITH
608 2ND AVE SOUTH
MPLS MN 55402 2

INDUST HEALTH ENG ASSOC I
ATTN KNOWLTON J CAPLAN
P O BOX 9342
MPLS MN 55440 2

COMM HEALTH SERV BRD
ATTN BRUCE T ROWE
325 LAKE AVENUE S SUITE 604
DULUTH MN 55802 2

CITY OF WINONA
ATTN ROBERT J BOLLANT
4TH & LAFAYETTE ST
WINONA MN 55987 2

MOSS FLAHERTY CLARKSON &
FLETCHER LAW OFFICES
1200 PILLSBURY CENTER
200 SO 6TH STREET
MPLS MN 55402 2

L L P O D LAW OFFICES
ATTN JOHN E DRAWZ
1100 FIRST NAT BANK BLDG
MPLS MN 55402 2

ASSOC OF MN COUNTIES
ATTN JAMES C SHIPMAN
2305 FORD PARKWAY
ST PAUL MN 55116 2

DAKOTA COUNTY ATTORNEY
ROBERT F CAROLAN
1560 HIGHWAY 55
HASTINGS MN 55033 2

SHELDAHL
ATTN DAVID MILLER
N HWY 3
NORTHFIELD MN 55057 2

OLSON GUNN & SERAN LTD
ATTN WAYNE H OLSON ESQ
315 PEAVEY BLDG
730 SECOND AVE SOUTH
MPLS MN 55402 2

AM CRYSTAL SUGAR CO
ATTN MR I V FORDYCE
101 NO THIRD ST
MOORHEAD MN 56560 2

MN RAILROADS ASSOC
ATTN GORDON FORBES
303 HANOVER BLDG
480 CEDAR ST
ST PAUL MN 55101 2

PAUL J HUBER LTD
1821 UNIVERSITY AVE
ST PAUL MN 55104 2

CARL MAHLKE
MN COUN TROUT UNLIMITED
909 REDWOOD W 2
LA CRESCENT MN 55947 2

IBM CORPORATION
ATTN J P HARMON
DEPT 713/BLDG 658-D
ROCHESTER MN 55901 2

EPA REGION V
ATTN KATHY BROWN
230 S DEARBORN ST
CHICAGO IL 60604 2

MN PETROLEUM COUNCIL
ATTN WILLIAM HADDELAND
300 NORTHERN FEDERAL BLDG
ST PAUL MN 55102 2

FEDERAL-STATE REPORTS INC
ATTN BONNIE M SPENCER
5203 LEESBURG PIKE #1201
BAILEYS CROSSROADS
FALLS CHURCH VA 22041 2

MINNEAPOLIS TRIBUNE
ATTN BOB FRANKLIN
425 PORTLAND AVE
MPLS MN 55488 2

BOLTON & MENK INC
ATTN THOMAS A ROUSHAR
515 N FRONT ST
MANKATO MN 56001 2

MS SHAILLA REGEHR
R R 1 BOX 419
STEWARTVILLE MN 55976 2

PICKANDS MATHER & CO
ATTN T J MANTHEY
1100 SUPERIOR AVE NE
CLEVELAND OH 44114 2

PICKANDS MATHER & CO
ATTN CHUCK HOFFMAN
200 WEST SUPERIOR ST
SUITE 811
DULUTH MN 55802 3

NORTH STAR STEEL CO
ATTN MR R A GARVEY
1678 RED TOCK TD
P O BOX 43189 3
ST PAUL MN 55164

MINNKOTA POWER COOP INC
ATTN LOREN L JOHNSON
BOX 1318
GRAND FORKS MN 58201 3

DULUTH MISSABE & IRON
RANGE RAILWAY CO
210 MISSABE BLDG
DULUTH MN 55802 3

MR HENRY CHISHOLM
OGLEBAY NORTON CO
P O BOX 6508
CLEVELAND OHIO 44101 3

ROBERT E ISAKSON
CONSULTING ENGINEERS
DIVERSIFIED INC
P O BOX J 3
OSSEO MN 55369

GEORGE MASTOR
LEGAL DIVISION
MINNESOTA GAS CO
300 PEAVEY BLDG 3
MINNEAPOLIS MN 55402

DAMES & MOORE
ATTN GEORGE NICHOLAS
1550 NORTHWEST HIGHWAY
PARK RIDGE ILL 60068 3

DOUGLAS HILDRE
NORTHERN ORDINANCE DIV.
FMC CORP.
4800 E RIVER ROAD
MINNEAPOLIS MN 55421 3

COOPERATIVE POWER ASSOC
ATTN WILLIAM KAUL
8020 MITCHELL ROAD
EDEN PRAIRIE MN 55344 3

DAVID BRASLAU ASSOCIATES
2829 UNIVERSITY AVE SE
SUITE 342 3
MINNEAPOLIS MN 55414

CONWED
ATTN GEORGE A LEONE
444 CEDAR ST
PO BOX 43237
ST PAUL MN 55164-0237 3

MANAGER
ENVIR. PLANNING
ROOM 807
TRANSPORTATION BLDG
ST PAUL MN 55155 3

RAMSEY CO ENVIR HEALTH
ATTN DOUGLAS WOOD
1910 W CO RD B
ROSEVILLE MN 55113 3

KRIS ANNE MONTEITH
SF&A REPORTING SERVICES
1101 15TH ST NW
WASHINGTON DC 20005 3

UNITED POWER ASSOC
ATTN MICHAEL V OBRIEN
ENVIRONMENTAL & LAND DIV
ELK RIVER MN 55330 3

MN CHAPTER OF ABC
ATTN DONALD E MONTGOMERY
6300 WALKER ST SUITE 109
MPLS MN 55416 3

ROBT J PUGLEASA CO INC
ATTN GENE A BROWN
61 BEDFORD ST SE
MPLS MN 55414 3

PERRY GRUBB ASSOC INC
ATTN CHARLES R SINGER
771 HARDING ST NE 3
MPLS MN 55413

LAW OFFICES
ATTN DONALD B CRASSWELLER
1000 ALWORTH BUILDING
DULUTH MN 55802

THOMAS M POLT
ATTORNEY AT LAW
MCCARTHY BLDG
EYOTA MN 55934 3

BURLINGTON NORTHERN INC
ATTN J D GIALLOMBARDO
176 EAST FIFTH ST RM 1280
ST PAUL MN 55101
3

RICE COUNTY PLANNING OFF
610 NW 20TH STREET
PO BOX 40
FARIBAULT MN 55021

CALC
ATTN PAM BARBOUR
122 W FRANKLIN AVE RM 302
MINNEAPOLIS MN 55404 3

HEALTH & SOCIAL SERVICES
ATTN ROBERT HUTCHISON
COURTHOUSE-4TH FLOOR
ANOKA MN 55303 3

PRESIDENT
INTERSTATE POWER CO
1000 MAIN ST
DUBUQUE IA 52001 4

PHILLIPS LEGIS. SERVICES
459 RICE ST
ST PAUL MN 55103 4

DAVID GURNEY
ENVIR. HEALTH ENGIN.
DAKOTA CNTY GOV. CENTER
1560 HWY 55
HASTINGS MN 55033 4

D H G & G ATTORNEYS AT LAW
ATTN JOHN HERMAN
TEN SOUTH FIFTH ST
SUITE 930
MPLS MN 55401 4

MIDLAND GLASS COMPANY INC
ATTN R J BARTO
P O BOX 69 SHAK
SHAKOPEE MN 55379 4

BURLINGTON NORTHERN
LAW DEPARTMENT
176 EAST FIFTH STREET
ST PAUL MN 55101 4

WOLVERTON ENGINEERING CO
847 40TH AVENUE NE
COLUMBIA HTS MN 55421 4

DAIRYLAND POWER COOP
ATTN THOMAS A STEELE
P O BOX 817
2615 EAST AVENUE S
LA CROSSE WI 54601 4

ROCHESTER PUBLIC UTILITIES
ATTN JOSEPH HENSEL
506 FIRST AVENUE NE
BOX 6057
ROCHESTER MN 55901 4

SARGENT & LUNDY ENGINEERS
55 EAST MONROE STREET
CHICAGO IL 60603 4

HENNINGSON DURHAM & RICH.
POWER AND ENERGY DIV.
ATTN DALE MCMICHAEL
300 PARKDALE 1 BLDG
5401 GAMBLE DRIVE
MPLS MN 55416 4

LAND O LAKES
ATTN JAMES A BOSCH
4001 LEXINGTON AVE N
ARDEN HILLS MN 55112 4

INTERNATIONAL ECO SOCIETY
ATTN R J F KRAMER
1471 BARCLAY STREET
ST PAUL MN 55106 4

DELANEY THOMPSON & SOLUM
ATTN ERIC W INGVALDSON
700 GALAXY BLDG
330 SECOND AVE SOUTH
MPLS MN 55401 4

CONRAD M FREDIN
ATTORNEY AT LAW
811 FIRST NAT BANK BLDG
DULUTH MN 55802 4

U OF M ATTN ROBERT SNYDER
248 CLASSROOM OFFICE BLDG
1994 BUFORD AVE
ST PAUL MN 55108 4

KSTP AM RADIO
ATTN J B ECKERT
3415 UNIVERSITY AVE
ST PAUL MN 55114 4

KOPPERS COMPANY INC
ATTN JORDAN M DERN
1201 KOPPERS BUILDING
PITTSBURGH PA 15219 4

THE ISAAK WALTON LEAGUE
OF AMERICA INCORPORATED
3255 HENNEPIN AVE S # 10
MINNEAPOLIS MN 55408 4

DORSEY & WHITNEY
ATTN BECKY A COMSTOCK
2200 FIRST BANK PLACE EA
MINNEAPOLIS MN 55402

BETTY SIMS
2149 GOODRICH AVE
ST PAUL MN 55105 4

ENVIRONMENTAL TASK FORCE
1346 CONNECTICUT AVE NW
SUITE 730
WASHINGTON DC 20036 4

WM MITCHELL COLLEGE OF LA
ATTN RENEE BELOY
875 SUMMIT AVE
ST PAUL MN 55105 4

REGION NINE DEVELP COMM
ATTN LYNNETTE RENNEKE WIE
410 S 5TH ST P O BOX 3367
MANKATO MN 56001 4

MN NEWSPAPER ASSOC
845 6TH ST SUITE 400
MPLS MN 55402 4

LIBBIE HENDERSON
305 LAFOND AVE
ST PAUL MN 55103 4

NCASI
ATTN REID MINER
CENTRAL LAKE ST REG CE
WESTERN MICHIGAN UNIVERSITY
KALAMAZOO MI 49008 5

BLACK & VEATCH/MICHIGAN
ATTN ENVIRONMENTAL SPECIAL
200 RENAISSANCE CE # 1220
DETROIT MI 48243 5

KFIL RADIO
ATTN ERNIE HAIN
P O BOX 377
PRESTON MN 55965 5

TENNECO INC
ATTN B J WHITLEY CEP
1100 MILAM BLDG
HOUSTON TX 77001 5

STEARNS COUNTY PLAN DEPT
ATTN KENNETH HOPKE
BOX 604
ST CLOUD MN 56301 5

FINANCE AND COMMERCE
THE DAILY BUSINESS NEWS
615 SOUTH 7TH STREET
MPLS MN 55415 5

MOTORCYCLE IND COUNCIL I
ATTN KATHY R VAN KLEECK
1001 CONNECTICUT AVE NW
WASHINGTON DC 20036 5

N AGRI-GROWTH COUNCIL
TTN PATRICIA KLOCKE
850 METRO DRIVE SUITE 725
INNEAPOLIS MN 55420 5

HAMLINE U LAW SCHOOL
PUBLIC INTEREST CLINIC
ATTN BARBARA JOHNSON
ST PAUL MN 55104 5

TECH SALES CO
ATTN DON REGER
311 WEST 44TH STREET
MPLS MN 55409 5

ELLSWORTH HARPOLE
1906 THIRD AVE S APT 35
MINNEAPOLIS MN 55404 5

ENVIR ENG & POLLUTION
CONTROL/3M: 21-2W-06
DAVID M BENFORADO PE
P O BOX 33331
ST PAUL MN 55133 5

BLANDIN WOOD PRODUCTS CO
ATTN CURT R FIRMAN
WAFERBOARD PLANT SITE BOX N
GRAND RAPIDS MN 55744 5

CIVIC CENTER
ENV ED COORDINATOR
ATTN BOB OVERBY
APPLETON MN 56208 5

COOPERATIVE POWER ASSOC
ATTN SCOTT SCHULER
8020 MITCHELL ROAD
EDEN PRAIRIE MN 55344 5

BRUCE E BENSON
ZONING OFFICER
COURTHOUSE
CARLSON MN 55718 5

KEVIN HOFSTAD
1323 E 22ND ST #101
MPLS MN 55404 5

BARBARA JOHNSON
1636 TAYLOR AVE
ST PAUL MN 55104 5

NEWS EDITOR
REGISTER-MIRROR
1414 SOO LINE BLDG
MPLS MN 55402 5

PILLSBURY CO
ATTN MAHLOW SCHNEIDER
608 2ND AVE S
MPLS MN 55402 5

ANN REHTMAN
805 HAGUE AVE
ST PAUL MN 55104 5

LITTON INDUSTRIES
ATTN NATALIE GAULL
P O BOX 9461
MPLS MN 55420 5

KEN KADLER
762 HOLLY AVE
ST PAUL MN 55104
6

BADGER SAFE ENERGY ALLI
BOX 68
DURAND WI 54736
6

D E GRAMMER
4410 E 4TH AVE
HIBBING MN 55746
6

AL KURKI
2904 W 3RD ST
DULUTH MN 55806
6

AMY GOLDSMITH
2600 PLEASANT AVE S
MPLS MN 55408
6

HAMLINE U SCHOOL OF LAW
PUBLIC INTEREST AD
ADVOCACY CLINIC
ST PAUL MN 55104
6

KRISTIN LARSON
2215 W 21ST ST
MPLS MN 55405
6

NELSON FRENCH
3715 E 26TH ST
MPLS MN 55406
6

KATE FLOM
1288 HUBBARD AVE
ST PAUL MN 55106
6

REGINZ LARSON
717 FRY ST
ST PAUL MN 55104
6

THE MINNESOTA PROJECT
ATTN LONI KEMP
618 E 22ND ST
MPLS MN 55404
6

BROEKER HARTFELDT HEDGES &
GRANT ATTORNEY AT LAW
ATTN JOHN M BROEKER
2850 METRO DRIVE SUITE 800
MPLS MN 55420
6

CITY OF BROOKLYN CENTER
ATTN PATTY PAGE
6301 SHINGLE CREEK PKWY
BROOKLYN CE MN 55430
6

POPHAM HAIK LAW FIRM
ATTN G ROBERT JOHNSON
4344 IDS CENTER
MPLS MN 55402
6

HARDIA RIEKE
2100 28TH AVE S
MPLS MN 55406
6

A B SCHAEFER JR
14900 61ST ST N
STILLWATER MN 55082
6

ROBERT LOCKYEAR
14900 61ST ST N
STILLWATER MN 55082
6

M NEAL ERDAHL
14900 61ST ST N
STILLWATER MN 55082
6

PAUL BRANDT
14900 61ST ST N
STILLWATER MN 55082
6

JACQUELYNE FARM
385 W CO RD B2
ROSEVILLE MN 55113
6

ENVIRONMENTAL ENGINEERIN
& POLLUTION CONTROL/3M
ATTN THOMAS ZOSEL
P O BOX 33331
ST PAUL MN 55133
6

MOBIL OIL
ATTN PETE GATES
P O BOX 66568
AMF O'HARE IL 60666
6

DORSEY LAW FIRM
ATTN PHIL CHEN
2300 1ST NATL BANK BLDG
MPLS MN 55402
6

INDUSTRIAL FABRICATORS C
P O BOX 1561
JACKSON TN 38301
6

EDWIN E STERLING
3920 39TH AVE S
MPLS MN 55406
6

FRUNDT FRUNDT & JOHNSON
117 WEST 5TH STREET
BLUE EARTH MN 56013
6

RELIANCE UNIVERSAL INC
ATTN PAUL H WALKER
ROBTSON RESEARCH & DVLP
4730 CRITTENDEN DRIVE
LOUISVILLE KY 40233

PULP & PAPER
ATTN PAULA IRONS
500 HOWARD ST
SAN FRANCISCO CA 94105
7

C.W. BERGSTROM
DIV. CHIEF ENGINEER
AMOCO PIPELINE CO.
2200 S. MAIN ST.
LOMBARD IL 60148
7

API INC
ATTN TERRY WOLD
2366 ROSE PLACE
ST PAUL MN 55113
7

THE HEALTH CENTRAL SYSTEM
ATTN DONALD G ROBIDA
601 BROOKDALE TOWERS
2810 FIFTY SEVENTH AVE N
MPLS MN 55430
7

CENEX
ATTN RALPH SCHLETTY
BOX 43089
ST PAUL MN 55164
7

BOISE CASCADE CORPORATION
ATTN MR RUSS SUMMER
ENVIRONMENTAL ENGINEER
INTERNATIONAL FALLS MN
56649
7

EPA REGION V
ATTN DAVE ULLRICH
230 S DEARBORN ST
CHICAGO IL 60604
7

DAMES & MOORE
ATTN LARRY ANNEN
1550 NW HWY
PARK RIDGE IL 60068
7

GOULD INC
PORTABLE BATTERY DIVISION
ATTN DOUGLAS ROBAHM
931 VANDALIA ST
ST PAUL MN 55114
7

CLEAR AIR CLEAR WATER
STEVE CHAPMAN
BOX 8597
WHITE BEAR LAKE MN 55110
7

RICHARD L BUTLER
12600 PARKWOOD DR APT 2
BURNSVILLE MN 55337
7

PICKANDS MATHER & CO
ATTN THOMAS W HAYES
SUITE 811-200 W SUPERIOR ST
DULUTH MN 55802
7

BENDIX
ENVIR & PROCESS INST DIV
P O DRAWER 831
LEWISBURG W VA 24901
7

PAUL WEIR CO
ATTN MARY VACULA
20 NORTH WACKER DR
CHICAGO IL 60606
7

ST PAUL PUBLIC HEALTH
ATTN DR PAUL J COX
555 CEDAR ST
ST PAUL MN 55101
7

FEDERAL-STATE REPORTS INC
ATTN LOU O'BOYLE
5203 LEESBURG PIKE #1201
BAILEYS CROSSROADS
FALLS CHURCH VA 22041
7

OFFICE OF ADMIN HEARINGS
ATTN SAM RUHLE
400 SUMMIT BANK BLDG
310 S FOURTH AVE
MPLS MN 55415
7

MICHAEL HENNEN
4608 ALDRICH AVE S
MPLS MN 55409
7

SHELL ENGINEERING & ASSOC
1804 VANDIVER DRIVE
PO BOX 548
COLUMBIA MO 65205
7

E I DU PONT DE NEMOURS CO
ATTN DAVID T MODI
LEGAL DEPT (D7082)
1007 MARKET STREET
WILMINGTON DE 19898
7

UNION CARBIDE CORP
ATTN C E VAN DYK
OLD RIDGEBURY RD
DANBURY CT 06810
7

LEAGUE OF MINNESOTA CITIES
ATTN DON SLATER
183 UNIVERSITY AVE EAST
ST PAUL MN 55101
7

CITIZENS FOR BETTER ENVIR
ATTN CAROLE BARTH
127 7TH ST N
SUITE 204
MPLS MN 55403
7

ERM-NORTH CENTRAL INC
ATTN SUSAN HOGLUND
200 SOUTH PROSPECT AVE
PARK RIDGE IL 60068
7

ENVIR RESEARCH GROUP
ATTN SALES & MARKETING
PO BOX 70006
135 STATE ST
ST PAUL MN 55107
7

M & M PROTECT CONSULTANTS
ATTN WM R HOYT
1500 NORTH STAR CENTER
MPLS MN 55402
7

MINNESOTA FARMERS UNION
ATTN MARK McAFEE
1717 UNIVERSITY
ST PAUL MN 55104
7

MN CONSERVATION FED
DIANE KELLY
4354 HARRIET AVE SO
MPLS MN 55409
7

SECURE OUR SOCIETY INC
ATTN LESLIE DAVIS
2124 LOWER ST DENNIS RD
ST PAUL MN 55116
7

VAN HOVEN CO INC
ATTN ED VAN HOVEN JR
BOX 56
SO ST PAUL MN 55075

NATL RENDERERS ASSO INC
ATTN WILLIAM H PROKOP
2250 EAST DEVON AVE
DES PLAINES IL 60018
7

MPCA HEARING NOTIFICATION
MAILING LIST
AIR QUALITY REQUESTS

NSP
ATTN ED SCHENTZEL
REGULATORY LIAISON
414 NICOLLET MALL
MPLS MN 55401 AQ

DAIRYLAND POWER COOP
ATTN ERIC HENNEN
PO BOX 817
2615 EAST AVE SO
LA CROSSE WI 54601 AQ

METRO AIRPORTS COMM
ATTN DIR OF OPERATIONS
6040 28TH AVE S
MPLS MN 55450 AQ

KIBCOR ENGINEERING CO
ATTN BERNARD TRENDA
3424 WOODDALE AVE
MPLS MN 55416 AQ

WINONA DAILY NEWS
ATTN DON STUART
401 N FRANKLIN
WINONA MN 55987
OLMSTED
WINONA
COUNTIES

IOWA DEPT ENVIR QUALITY
ATTN CHARLES MILLER
E 9TH & GRAND
DE MOINES IA 50316 AQ

KVB ENGINEERING
ATTN THOMAS STERN
6176 OLSON MEM HWY
GOLDEN VALLEY MN 55422 AQ

INTERN MINERAL & CHEM CORP
ENVIR & SAFETY OPERATIONS
421 E HAWLEY ST
MUNDELEIN IL 60060 AQ

NW PULP & PAPER
ATTN HEIDI SCHULTZ
555 116TH AVE NE SUITE 266
BELLEVUE WA 98004 AQ

CORBIN S KIDDER
442 SUMMIT AVE APT #2
ST PAUL MN 55102
AQ

BARBARA KNAPP
9508 BRUNSWICK CIRCLE
BLOOMINGTON MN 55438
AQ & ACID RAIN

VAN HOVEN CO INC
ATTN ED VAN HOVEN JR
BOX 56
SO ST PAUL MN 55075 AQ

NATIONAL RENDERERS ASSO INC
ATTN WILLIAM H PROKOP
2250 EAST DEVON AVE
DES PLAINES IL 60018 AQ

MPCA HEARING NOTIFICATION
MAILING LIST
SOLID & HAZ WASTE REQUESTS

CHAIRMAN OF FAIRMONT AREA
CHAMBER OF COMMERCE
99 DOWNTOWN PLAZA
FAIRMONT MN 56031 SW

ECRDC
119 SOUTH LAKE STREET
MORA MN 55051 SHW

WINONA DAILY NEWS
ATTN DON STUART
401 N FRANKLIN
WINONA MN 55987 OLMSTED WINONA COUNTIES

GREGORY WERSAL
7841 WAYZATA BLVD
MPLS MN 55426 HAZ W

MIDWESTERN GAS TRANS CO
ATTN MICHAEL CATT
PO BOX 2511
HOUSTON TX 77001 HAZ W

CHEMFIX INC
ATTN H HUDSON BUZBEE
1675 AIRLINE HWY
PO BOX 1572
KENNER LA 70063 SHW

A B SCHAEFER JR
CHAIRMAN WASHINGTON CO
BOARD OF COMMISSIONERS
14900 61ST ST NO
STILLWATER MN 55082 HAZ W

ROBERT LOCKYEAR
PLANNING COORDINATOR
14900 61ST ST N
STILLWATER MN 55082
HAZ W

PAUL BRANDT
ENVIRONMENTAL SERV TECH
14900 61ST ST N
STILLWATER MN 55082
HAZ W

M NEAL ERDAHL
COUNTY ADMINISTRATOR
14900 61ST ST N
STILLWATER MN 55082 HAZ W

MARY AYEDE
1201 N BIRCHLAKE BLVD
WHITE BEAR LK MN 55110
SHW

ENVIR HYDROLOGY CORP
PO BOX 14701 UNIV STATION
3036 UNIVERSITY AVE SE
MPLS MN 55414
HAZ W

PORTAGE SANITARY LANDFILL
AUTHORITY
CRANE LAKE MN 55725
SHW

ROBB KUNZIG
HAZARDOUS MATERIALS
PO BOX 535
CAMBRIDGE MA 02238
SHW

WRIGHT CHEMICAL CO
ATTN PATRICK REILLY
10740 RIVERVIEW PLACE
COON RAPIDS MN 55433
HAZ W

UNIVERSITY OF MN
ATTN LASZLO FULOP
DIR OF PHYSICAL PLANNING
503 MORRILL HALL
MPLS MN 55455 SHW

ERIKA SITZ
IZAAK WALTON LEAGUE
6521 154TH LANE NW
RAMSEY MN 55303 SHW

MPCA HEARING NOTIFICATION
MAILING LIST
WATER QUALITY REQUESTS

STEVEN BUCHANAN
MPLS AUDUBON
4552 ALDRICH AVE S
MPLS MN 55409 WQ

METRO AIRPORTS COMM
ATTN DIR OF OPERATIONS
6040 28TH AVE S
MPLS MN 55450
WQ

ECRDC
119 SOUTH LAKE STREET
MORA MN 55051 WQ

WINONA DAILY NEWS
ATTN DON STUART
401 N FRANKLIN
WINONA MN 55987
OLMSTED
WINONA
COUNTIES

JOHN NORDENSEN
4907 18TH AVE S
MPLS MN 55417 WQ

CHEMFIX INC
ATTN H HUDSON BUZBEE
1675 AIRLINE HWY
PO BOX 1572
KENNER LA 70063 WQ

INFORMATION NEWS SERVICE
854 NATIONAL PRESS BLDG
WASHINGTON DC 20045 WQ

UNIVERSITY OF MN
ATTN LASZLO FULOP
DIR OF PHYSICAL PLANNING
503 MORRILL HALL
MPLS MN 55455 WQ

UNION OIL COMPANY OF CA
ATTN DIANE DUNCAN
PO BOX 7600
LOS ANGELES CA 90051 WQ

BARBARA KNAPP
9508 BRUNSWICK CIRCLE
BLOOMINGTON MN 55438

ACID RAIN

MPCA HEARING NOTIFICATION
MAILING LIST
INTER OFFICE

DEPT OF EDUCATION
ATTN FREDRIK M CHRISTIANSEN
RM 911 CAPITOL SQ BLDG
ST PAUL MN 55101

OFF OF LEGISLATIVE AUDITOR
ATTN ALLAN BAUMGARTEN
PROGRAM EVALUATION SPEC
122 VETERANS SERV BLDG
ST PAUL MN 55155

METROPOLITAN COUNCIL
ATTN JOHN T HOEFT
300 METRO SQ BLDG
7TH ST & ROBERT ST
ST PAUL MN 55101

DEPT OF ECONOMIC DVLPMT
ATTN KENT E EKLUND
480 CEDAR ST
ST PAUL MN 55101

LEGISLATIVE COMM ON
WASTE MANAGEMENT
ATTN SUE ROBERTSON
B-46
STATE CAPITOL

PRESS/MN GOVT REPORT
ATTN JEAN DAWSON
RM B12 CAPITOL BLDG
ST PAUL MN 55155

DEPT OF ECONOMIC DVLPMT
ATTN RICHARD C BUSKE
480 CEDAR ST
ST PAUL MN 55101

ATTORNEY GENERAL'S OFFICE
ANTITRUST DIVISION
2ND FLOOR FORD BLDG
117 UNIVERSITY AVE

DEPT OF ECONOMIC DVLPMT
ATTN CHARLES SCHAFFER
480 CEDAR ST
ST PAUL MN 55101

DEPT OF AGRICULTURE
AGRONOMY SERVICES
ATTN GARY BRAUN
90 W PLATO BLVD
ST PAUL MN 55107

MEEB CENTRAL OFFICE
ATTN RAY QUINN
BOX 5 CENTENNIAL BLDG
ST PAUL MN

MN DEPT OF HEALTH
ATTN MARGARET SANDBERG
COMMUNITY DEVELOPMENT
717 DELAWARE ST SE
MPLS MN 55440

SENATE COUNCIL OFFICE
ATTN ALAN WILLIAMS
RM 480
STATE OFFICE BLDG
ST PAUL MN 55155

WATER RESOURCES BOARD
555 WABASHA RM 206
ST. PAUL MN 55102

BRD OF ARCH ENG LAND SURV
AND LANDSCAPE ARCHITECTURE
ATTN LOWELL E TORSETH
500 METRO SQUARE
ST PAUL MN 55101

LEGISLATIVE COMM TO
REVIEW ADMIN RULES
ATTN KATHLEEN BUREK
RM 430
STATE OFFICE BLDG

MN DEPT OF HEALTH
ATTN JAMES WITKOWSKI
717 Delaware St. SE
MPLS MN 55440

MN DEPT ECONOMIC SECURITY
ATTN F JAMES RYBAK PHD
690 AM CE 150 E KELLOGG
ST PAUL MN 55101

SCIENCE & TECH OFFICE
ATTN JOHN MALINKA
RM 49 STATE OFFICE BLDG
ST PAUL MN 55155

WATER PLANNING BOARD
RM 600 AMERICAN CTR BLDG
150 E. KELLOGG BLVD.
ST. PAUL MN 55101

Errata

The following changes are to be made in Pollution Control Agency's Proposed Amendment of Agency Procedural Rules, Volume 7, Number 11, September 13, 1982:

At 7 S.R. 314, 6 MCAR § 4.3001 K.: Change "~~(i)~~" to "~~(l)~~".

At 7 S.R. 316, 6 MCAR § 4.3005 G.: Paragraph G. should read: "G. Notice of agenda. At least ten days prior to the regular meeting, the director shall mail a copy of the agenda to every member of the agency, to each person directly affected by a decision of the agency on an agenda matter, and to each person the director deems appropriate in the circumstances. The agenda for a regular meeting must be available for public inspection in the agency offices at least ten days prior to the regular meeting for which the agenda has been prepared."

At 7 S.R. 316, 6 MCAR § 4.3006 Declaration of emergency., strike out "MPCA 4".

At 7 S.R. 317, 6 MCAR § 4.3007 Variences., strike out "MPCA 6".

At 7 S.R. 318, 6 MCAR § 4.3007 A.7.a., change to read: "a general description of the materials handled or processed by the applicant ~~which~~ that are pertinent to the subject application, and a statement of the nature and quantity of the materials being discharged, emitted, or disposed of, and ~~which~~ that can reasonably be expected to be discharged, emitted, or disposed of~~,~~ during the period of the proposed variance, and proposed methods for the control of ~~such~~ these materials:"

At 7 S.R. 321, change "6 MCAR § 4.3001" to read "6 MCAR § 4.3011".

At 7 S.R. 322, 6 MCAR § 4.3013 A., the last sentence should read: "The certifier may withdraw ~~such~~ the records or information if such an option is available ~~to him~~.

D. [Unchanged.]

4 MCAR § 4.215 Renewal of a certificate of confirmation. Upon expiration of its certificate of confirmation or the renewal of its cable communications franchise, a cable communications company must obtain renewal of its certificate of confirmation. The renewal of any certificate of confirmation ~~shall~~ may be issued only after compliance with 4 MCAR §§ 4.200-4.204. The renewal of a certificate of confirmation ~~shall~~ may be issued only after full board proceedings and shall be valid for ~~a period of ten years from the expiration date of the previously issued certificate, except~~ the same number of years as the renewal franchise period. When a certificate is renewed before its expiration date, the term of the renewed certificate shall begin on the date of its issue; any remaining term of a previously issued certificate ~~shall~~ is then ~~be~~ expired.

The procedure for obtaining the renewal of a certificate of confirmation shall be the same as ~~is herein provided~~ the procedure for obtaining a regular certificate of confirmation.

Nothing in this rule ~~shall prohibit~~ prohibits a cable communications company from renewing its certificate of confirmation prior to the expiration of any existing certificate of confirmation.

4 MCAR § 4.250 Deregulated systems.

A. Scope. A system which serves more than 50 but fewer than 1,000 subscribers and which has been removed from the provisions of *Minnesota Statutes*, chapter 238 under *Minnesota Statutes*, section 238.02, subdivision 3, is subject to the requirements in B.-D.

B. Reports to board. The system operator shall provide to the board information and documentation in the form and at the times the board requires.

C. Access for educational and governmental programming. The system operator shall provide reception on at least one specially designated access channel to each subscriber who receives some or all of the services offered on the system. Franchisees providing only alarm services or only data transmission services for computer-operated functions do not need to provide access channel reception to alarm and data service subscribers. The specially designated access channel may be used by local educational authorities and local government on a first-come, first-served, nondiscriminatory basis. The franchisee may use this specially designated access channel for other purposes during those hours when the channel is not in use by local educational authorities or local government. The VHF spectrum must be used for the specially designated access channel.

D. Operating rules. The system operator shall establish rules for the administration of the specially designated access channel and shall file the rules with the board within 90 days after the channel is put into use.

Pollution Control Agency
Proposed Amendment of Agency Procedural Rules

Notice of Intent to Amend Rules without a Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (agency) intends to adopt without a public hearing amendments to MPCA 1-4 and 6-13, the procedural rules of the agency. The agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980).

The proposed amendments are authorized by Minn. Stat. § 116.07, subd. 3 (1980). The proposed amendments if adopted would: 1) update the agency's procedural rules in accordance with legislative changes which have occurred since the adoption of the original rules in 1973; 2) in certain instances, conform the rules to actual agency practice; and 3) make stylistic and clarifying changes. The rules as amended will be codified as 6 MCAR §§ 4.3001-4.3016.

The agency has prepared a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon by the agency to support the proposed amendments. Copies of the statement of need and reasonableness and of the proposed amendments are available and may be obtained by contacting:

David Christopherson
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
Telephone: (612) 296-7711

Interested persons have 30 days, specifically until October 13, 1982, to submit comments on the proposed amendments. The proposed amendments may be modified if the data and views submitted to the agency warrant modification and the modification does not result in a substantial change in the proposed amendments.

Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will not be held. In the event that a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subd. 4-4f (1980).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to David Christopherson, at the address and telephone number previously stated, no later than October 13, 1982. If a person desires to request a public hearing, the agency requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

Upon adoption of the amendments by the agency board, the rules as proposed, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be sent 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 amendments as adopted, should submit a written statement of such request to David Christopherson at the address previously stated.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250 not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute contains certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Louis J. Breimhurst
Executive Director

Rules as Proposed

~~MPCA 2~~ 6 MCAR § 4.3001 Definitions.

A. Scope. As used in ~~these rules of procedure~~ 6 MCAR §§ 4.3001-4.3016 the following words shall have the meanings given them ~~herein~~.

~~(a)~~ B. Agency. "Agency" means the Minnesota Pollution Control Agency, as constituted pursuant to *Minnesota Statutes*, section 116.02, subdivision 1.

~~(b)~~ C. Days. "Days" means calendar days.

~~(c)~~ D. Director. "Director" means the executive director and chief executive officer of the agency.

~~(d)~~ E. Emergency. "Emergency" means imminent and substantial danger to the health and welfare of the people of the state, or any part thereof, as a result of the pollution of air, land, or water.

~~(e)~~ F. Hearing ~~Officer~~ examiner. "Hearing ~~officer~~ examiner" means the person ~~or persons appointed~~ assigned by the ~~agency~~, chief hearing examiner pursuant to ~~MPCA 9, to call and conduct a hearing~~ *Minnesota Statutes*, section 15.052, subdivision 3, to preside at a rulemaking hearing or contested case hearing.

~~(f)~~ G. Order. "Order" means any written command or direction made by the agency or the director, as provided by law~~, or made by a hearing officer appointed by the agency pursuant to MPCA 9~~.

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~~(g) PARTY. "Party" means any person whose legal rights, duties, or privileges may be determined in a hearing under the provisions of these Rules and any person who has properly intervened in a hearing. The term "party" shall include the Agency when the Agency initiates the hearing pursuant to MPCA 11.~~

~~(h)~~ H. Permit. "Permit" means every discharge, emission, and disposal authorization, every construction, installation, or operation authorization, and every other agency authorization designated "permit" in *Minnesota Statutes*, chapters 115 and 116, as now in force or hereafter amended, including *Minnesota Statutes*, sections 115.03, subdivision 1, 115.07, 116.07, subdivision 4, clause (a), 116.081, and 116.091~~,~~. ~~except that~~ "Permit" does not include an "order," ~~or a~~ "variance," or "stipulation agreement" as defined in this rule, and does not include a certification."

~~(i)~~ I. Person. "Person" means any human being, any municipality or other governmental or political subdivision or other public department or agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agency, legal entity, other than a court of law, or any legal representative of any of the foregoing, but does not include the ~~Minnesota Pollution Control~~ agency.

~~(j) PRONOUNS. Any reference to the male in these regulations shall be construed to include the female.~~

~~(k)~~ J. Public informational meeting. "Public informational meeting" means a meeting called by the agency to solicit public comment and statements on a matter before the agency.

~~(l)~~ K. Schedule of compliance. "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an effluent limitation, other limitation, prohibition, or standard.

~~(m)~~ L. Service; serve. "Service" or "serve" means personal service or, unless otherwise provided by law, service by first class United States mail, postage prepaid, addressed to a person or party at his or her last known address~~, unless some other manner of service is specifically required by law~~. Service by mail is complete upon the placing of the item served in the mail. Agencies of the state of Minnesota may also serve by depositing the item to be served with the Central Mailing Section, Publications Division, Department of Administration.

~~(n)~~ M. Stipulation agreement. "Stipulation agreement" means any agreement entered into between the agency and any person or persons establishing a schedule for compliance with applicable statutes, rules, ~~regulations~~ or standards by designated dates, or otherwise providing for settlement for noncompliance with applicable statutes, rules, or standards.

~~(o)~~ N. Variance. "Variance" means an authorization from the agency ~~which~~ that grants an exemption from the requirements of any rule~~, regulation,~~ or standard of the agency and which does not require compliance with ~~said~~ the rule~~, regulation,~~ or standard for the duration of the authorization. "Variance" does not include permits, stipulation agreements, schedules of compliance, or any modifications thereto, or any order of the agency which allows interim operation during completion of a compliance program, nor does variance include a time extension of an existing variance.

6 MCAR § 4.3002 Computation of time. In computing any period of time prescribed by these rules, the day of the last act, event, or default from which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or legal holiday.

~~MPCA 1~~ **6 MCAR § 4.3003 Duty of candor.** In all formal or informal negotiations, communications, proceedings, and other dealings between any person and any member, employee, or agent of the agency, it shall be the duty of each person and each member, employee, or agent of the agency to act in good faith and with complete truthfulness, accuracy, disclosure, and candor. ~~Any violation of the aforesaid duty shall be cause for imposition of sanctions as provided in MPCA 11.~~

~~MPCA 3 Agency Meetings and Officers.~~

6 MCAR § 4.3004 Officers, committees, and duties.

~~(a) Agency~~ A. Officers.

~~(1) Titles.~~ The officers of the agency ~~shall consist of chairman, vice chairman~~ are the chairperson, vice chairperson, and director.

~~(2) Elections~~

~~(i) Chairman.~~ B. Electing the chairperson. The ~~chairman shall~~ chairperson must be elected by a majority of all agency members at each annual meeting for a term of one ~~(1)~~ year. No member elected to the office of ~~chairman~~ chairperson may serve in that capacity more than two ~~(2)~~ full terms consecutively.

~~(ii) Vice chairman.~~ C. Electing the vice chairperson. The vice ~~chairman shall~~ chairperson must be elected by a majority of all agency members at each annual meeting for a term of one ~~(1)~~ year. No member elected to the office of vice ~~chairman~~ chairperson may serve in that capacity more than two ~~(2)~~ full terms consecutively.

~~(3) Duties~~

~~(i) Chairman~~ D. Duties. The ~~chairman~~ chairperson shall have ~~such~~ the duties ~~as are~~ prescribed by rule ~~or regulation~~ of the agency.

~~(ii) Vice chairman.~~

The vice ~~chairman~~ chairperson shall discharge all duties of the ~~chairman~~ chairperson during the absence or disability of the ~~chairman~~ chairperson.

~~(iii) Director.~~ The director shall have ~~such~~ the duties ~~as are~~ prescribed by statute or by rule ~~or regulation~~ of the agency.

~~(4)~~ E. Vacancies. Upon a vacancy (~~i.e.~~ for example, death, resignation, or removal) in the office of ~~Chairman~~ chairperson of the agency, the vice ~~chairman~~ chairperson shall become the ~~chairman~~ chairperson until such time as new officers are elected at the next annual meeting. Upon a vacancy in the office of vice ~~chairman~~ chairperson, a special election shall be held at the next regular meeting, for a term ending at the next annual meeting.

~~(5)~~ F. Removal. The ~~chairman~~ chairperson or vice ~~chairman may be~~ chairperson is removed from office by the affirmative vote of two-thirds of all members of the agency, ~~said~~ this vote to be taken at the next regular meeting following the motion for removal.

(b) [see repealer]

~~(c)~~ G. Committees. The agency may from time to time establish committees of agency members as it may deem necessary and desirable to facilitate its work. All committee recommendations shall be duly submitted to the agency for appropriate action.

~~(d)~~ H. Execution of documents. Contracts, stipulation agreements, and other documents approved by the agency pursuant to law shall be executed on the agency's behalf by the ~~Chairman~~ chairperson and the director.

6 MCAR § 4.3005 Agency meetings.

A. Regular meetings. Twelve regular monthly meetings of the agency shall be held each calendar year. A date for each regular meeting shall be set by the agency. The annual meeting, also conducted as a regular meeting, shall be held during the month of July of each year. The time and place of each regular meeting, including the annual meeting, shall be designated by the chairperson. The chairperson may direct that any regular meeting, except the annual meeting, be postponed or advanced.

B. Special meetings. The chairperson, or in the chairperson's absence the vice chairperson, or in their absence the director of the agency, may call a special meeting of the agency when, in his or her opinion, a meeting is necessary or desirable. The chairperson shall call a special meeting upon receipt of a request from three members of the agency.

C. Notice of regular meetings. The director shall give written notice of the time and place of each regular meeting to all agency members at least ten days prior to any regular meeting.

D. Notice of special meetings. The chairperson or the director shall give as much notice as possible to all agency members prior to any special meeting. This notice shall state the time, place, and subject matter of the meeting. Except as provided in 6 MCAR § 4.3006, this notice shall be given at least two days prior to any special meeting.

E. Public notice of meetings. The director shall give public notice of the time and place of regular and special meetings in the manner provided in G.

F. Agenda preparation. At least ten days prior to all regular meetings of the agency, the director shall prepare a proposed agenda of business to be conducted at the meeting. Except when exigencies of time and circumstances warrant, an agenda must be prepared for all special meetings as far in advance of the special meeting as possible. The agenda must include a list of all matters to be considered at the meeting. Agency members may place items on the agenda by notifying the director at least 14 days prior to a regular meeting. Citizens may request in writing that items be placed on the agenda by notifying the director at least 14 days prior to a regular meeting. The director may in his or her discretion determine whether to place a citizen item on the agenda, but the director shall advise the agency of all items the director decides not to place on the agenda. Items may be placed on the agenda for a special meeting in the same manner as for regular meetings.

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G. Notice of agenda. At least ten days prior to the regular meeting, the director shall mail a copy of the agenda to every member of the agency, to each person directly affected by a decision of the agency on the agenda matter, and to each person the director deems appropriate in the circumstances. The agenda for a regular meeting must be available for public inspection in the agency offices at least ten days prior to the regular meeting for which the agenda has been prepared.

The agenda for a special meeting must be available for public inspection in the agency offices at least two days prior to the meeting, and as far in advance of the meeting as reasonably possible, except as provided in 6 MCAR § 4.3006.

H. Quorum. A majority of the members of the entire agency constitute a quorum, and a quorum must be present for the transaction of business.

I. Presiding officer. The chairperson shall preside at all agency meetings. The vice chairperson shall preside in the chairperson's absence. The remaining members shall elect a presiding officer from among the members present whenever the chairperson and vice chairperson are both absent. The presiding officer shall serve only for that meeting or until the chairperson or vice chairperson shall arrive.

J. Agenda. The first order of business at the meeting shall be adoption of the agenda, which may be amended or modified by the agency at this time.

K. Agenda items. No matter may be considered at a regular agency meeting unless it has been placed on the agenda and all relevant public information has been made available for public inspection at least ten days prior to the regular meeting, except where the agency in its discretion by unanimous vote of those members present determines otherwise. Public information regarding matters to be considered at a special meeting must have been available for public inspection at least two days prior to the meeting, and as far in advance of the special meeting as reasonably possible, except as provided in 6 MCAR § 4.3006.

L. Voting. Except as otherwise specifically provided, a majority vote of the entire agency is necessary to make any decision. All members present, including the presiding officer, shall vote or abstain on every matter presented for decision. If the final vote taken on an agenda item does not result in a decision, but half or more of the voting members vote affirmatively, the matter must be placed on the agenda of the next regular monthly meeting or considered at a special meeting, unless the agenda item concerns rescission of a decision.

M. Decisions at open meetings. All regular and special meetings of the agency must be open to the public, and all decisions of the agency must be made at these meetings. However, if the chairperson, or in the chairperson's absence the vice chairperson, determines that the exigencies of time and circumstances warrant, then an agency decision may be made by telephone poll or other appropriate means. The unavailability of any agency member shall not postpone the making of the any decision. In the event that an agency decision is made by telephone poll or other appropriate means, this decision must be subject to confirmation at the next agency meeting.

N. Reconsideration of decision. On the same day as originally made, upon the motion of any agency member who voted on the prevailing side and upon the affirmative vote of a majority of the entire agency, any decision of the agency may be reconsidered.

O. Rescission of decision. Upon placement on the agenda by an agency member as provided in F. and upon the affirmative vote of two-thirds of the entire agency, any decision of the agency or director may be rescinded.

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

Q. Parliamentary procedure. Except as specifically provided in these rules, *Robert's Rules of Order* shall govern any question of parliamentary procedure that may arise at any meeting of the agency.

MPCA 4 6 MCAR § 4.3006 Declaration of emergency.

~~(a)~~ A. Delegation to director. The agency herewith delegates to the director the authority to exercise, in accordance with the limitations and procedures hereinafter enumerated, emergency powers granted to the agency by *Minnesota Statutes*, section 116.11.

~~(b)~~ B. Notification to agency. If the director anticipates that emergency conditions may be approaching, ~~he~~ the director shall keep the agency informed of ~~such~~ these conditions by ~~such means as may be~~ any means practicable. Upon declaration of an emergency by the director, ~~he~~ the director shall immediately notify all agency members that ~~such~~ an emergency has been declared, and shall poll the members on the action taken by the director. Notification may be by telegram, telephone, or any other means practicable. The unavailability of any agency members shall not postpone the implementation of any emergency ~~or~~

~~any rules, regulations or~~ orders ~~pursuant thereto~~. If, pursuant to the poll, a majority of all members of the agency disapprove of the declaration of emergency, the declaration and the action taken shall be discontinued immediately. If, pursuant to the poll, a majority of all members of the agency disapprove of the action taken by the director, but agree that an emergency exists, the action of the director shall remain in effect until the agency ~~shall order~~ orders different action to be taken.

~~(c)~~ C. Duration. Any action taken by the director pursuant to ~~his~~ the declaration of emergency shall remain effective according to the following provisions:

~~(1)~~ 1. for not to exceed three ~~(3)~~ days, unless approved by a majority of the members of the agency pursuant to the poll required in ~~section (b)~~ B.; or

~~(2)~~ 2. if extended beyond three ~~(3)~~ days, as provided in ~~subsection (c)(1) hereof~~ item 1., then the period until the date of the next agency meeting, unless extended by the agency at ~~such~~ the meeting; or

~~(3)~~ 3. ~~Subsection (c)(1) and (c)(2)~~ items 1. and 2. notwithstanding, until notice, hearing, and determination are effected pursuant to law; or

~~(4)~~ 4. ~~said emergency action may be~~ until discontinued ~~at any time~~ by the declaration of the director or by majority vote of the agency.

~~(d)~~ D. Report. Any action taken by the director pursuant to a declaration of emergency ~~shall~~ must be included on the agenda of the next meeting of the agency, at which time the director shall report to the agency on the status of the emergency.

~~(e)~~ E. Agency action. The agency may by majority vote exercise its emergency powers. The action of the agency taken in an emergency situation shall remain effective until discontinued by majority vote of the agency or until notice, hearing, and determination are effected pursuant to law.

~~(f)~~ F. Notice. The notice requirements of ~~MPCA 3 shall~~ 6 MCAR § 4.3005 do not apply when the agency or the director ~~are~~ is considering the exercise of ~~their~~ emergency powers, but the agency and the director shall give such notice to the public as is possible under the circumstances.

~~(g)~~ G. Emergency powers. Nothing contained in ~~these Rules of Procedure~~ 6 MCAR §§ 4.3001-4.3016 shall be construed to preempt, repeal, or conflict with ~~MPCA 4~~ this rule or any other rule~~, regulation~~ or statute ~~which~~ that provides for acts to be taken or procedure to be followed by the agency or the director in an emergency.

MPCA 6 6 MCAR § 4.3007 Variances.

~~(a)~~ A. Scope. This rule ~~shall govern~~ governs the procedure for issuance of all variances by the agency, except to the extent otherwise specifically provided by statute or ~~regulation~~ rule.

~~(b)~~ B. Written application. In no case shall the agency grant a variance unless a written application ~~therefor~~ has been made~~, under oath,~~ to the agency. The application ~~shall~~ must be served upon the director.

The written application ~~shall~~ must contain:

~~(1)~~ 1. the name and address of the applicant and the person who prepared the application;

~~(2)~~ 2. the signature of the applicant or ~~the~~ authorized representative ~~thereof~~;

~~(3)~~ 3. a description, including the location, of the business, plant, system, or facility for which a variance is sought~~, including the location thereof~~;

~~(4)~~ 4. the nature of the variance sought, including an identification of the applicable ~~regulations~~ rules or standards from which a variance is sought, the period of time for which it is sought, and the reasons relied upon by the applicant in requesting the variance;

~~(5)~~ 5. if the applicant seeks a variance primarily on grounds of economic burden, ~~the application shall be accompanied by~~ financial statements prepared or approved by a certified public accountant, or other person acceptable to the agency, which shall fairly set forth the status of the business, plant, system, or facility for each of the three financial years immediately preceding the year of the application, and an analysis of the effect of such financial status if the variance is not granted~~.~~ (if the business, plant, system, or facility has not been in operation for ~~such~~ this period, then the financial statements and ~~said~~ analysis ~~shall~~ must be based on the most complete data available);

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~~(6)~~ 6. if the applicant seeks a variance on grounds that compliance is not technologically feasible, ~~the application shall be accompanied by~~ a report from a registered professional engineer, or other person acceptable to the agency, stating fully the reasons why compliance is not technologically feasible;

~~(7)~~ ~~such~~ 7. other ~~or~~ additional data or information ~~which~~ that is required by any applicable agency ~~regulation~~ rule or standard; and

~~(8)~~ ~~such~~ 8. any other relevant data or information ~~which~~ that the agency or the director deems essential to a determination on the application, including but not limited to the following:

~~(i)~~ a. a general description of the materials handled or processed by the applicant ~~which~~ that are pertinent to the subject application, and a statement of the nature and quantity of the materials being discharged, emitted, or disposed of, and ~~which~~ that can reasonably be expected to be discharged, emitted, or disposed of~~,~~ during the period of the proposed variance, and proposed methods for the control of ~~such~~ these materials:

~~(ii)~~ b. a comprehensive proposed plan indicating the steps to be taken by the applicant during the period of the variance, even if the applicant is seeking a permanent variance, to reduce emission levels or discharges to the lowest limits practical;

~~(iii)~~ c. a concise statement of the effect upon the air, water, and land resources of the state and upon the public and other persons affected, including those residing in the area where the variance will take effect, which will result from agency approval of the requested variance;

~~(iv)~~ d. a statement of the alternatives to the proposed operation under the variance which have been considered by the applicant; and

~~(v)~~ e. a concise statement of the effect on the establishment, maintenance, operation, and expansion of business, commerce, trade, traffic, and other economic factors ~~which~~ that may result from approval and from denial of the requested variance.

(c)-(d) [See Repealer.]

C. Review of applications. The director shall review all variance applications for completeness. If the director finds that the application is incomplete or otherwise deficient, the director shall promptly advise the applicant of the incompleteness or deficiency. The director shall suspend further processing of the portion of the application affected by the deficiency until the applicant has supplied the necessary information or otherwise corrected the deficiency.

D. Preliminary determination; preparation of public notice. After a variance application is complete, the director shall make a preliminary determination as to whether the variance should be issued or denied. The director shall prepare a notice of the completed application and the preliminary determination. The notice must include a statement as to the manner in which the public may submit comments on the variance application and the manner in which a person may file a request pursuant to 6 MCAR §§ 4.3010 B. or 4.3015 B. asking that a contested case hearing or public informational meeting be held on the variance application. The notice must provide the public 30 days in which to submit these comments or requests.

E. Availability of public notice. The director shall make a copy of the public notice available at the main agency office and at the applicable agency regional office.

F. Mailing of public notice. The director shall mail a copy of the public notice to the applicant, to all persons who have registered their names on the mailing list established under *Minnesota Statutes*, section 15.0412, subdivision 4, and to any person upon request.

G. Circulation of public notice. The director shall circulate the public notice within the geographical area of the facility or activity that is the subject of the variance request. The director shall designate the geographical area, which shall as a minimum include the county in which the facility or activity is or will be located.

The director shall circulate the public notice in one or more of the following ways: posting the notice in the post office, public library, or other buildings used by the general public in the designated geographical area; posting the notice at or near the entrance of the applicant's premises, if located near the facility that is the subject of the variance application; or publishing the notice in one or more newspapers or periodicals of general circulation in the designated geographical area.

~~(c)~~ H. Agency decision. The agency shall make all final decisions on variance applications. The agency shall approve or deny each application. The agency may grant a variance upon such conditions as the agency may prescribe.

If a contested case hearing has been held, the agency shall act on each variance application as expeditiously as possible after receipt of the hearing ~~officer's~~ examiner's recommendation, or after submission of the application if no hearing is held. Any

person may submit to the agency an oral or written statement or recommendation regarding a variance application in accordance with ~~MPCA 9(m)(4) or MPCA 13(a)~~ 6 MCAR § 4.3011.

~~(f)~~ I. Notification. Every decision of the agency on a variance application shall be served on the applicant and upon all persons who ~~entered an appearance at any public hearing held on the application~~ have submitted to the agency a request to receive a copy of the decision.

~~(g)~~ J. Agency remedies preserved. During the pendency of a variance application, the agency may, in its discretion, avail itself of any legal, equitable, or administrative remedy provided by law for violation of *Minnesota Statutes* or rules.

~~(h)~~ K. Amendment or modification. In the event a variance has been granted by the agency, the person holding the variance may file with the agency at any time a written application for modification or amendment of the variance. The application for modification or amendment, and the agency's consideration of the application, shall comply with the requirements of these rules. This provision shall not apply to a time extension of an existing variance.

~~(i)~~ L. Assignment. No variance may be assigned or transferred by the holder without the approval of the agency. ~~The agency may, in its discretion, hold a hearing on any request to assign or transfer a variance.~~

M. Violation by variance holder. Any variance holder who violates a provision of the variance is subject to revocation or suspension of the variance, or other sanction as authorized or provided by law. No revocation, suspension, or other sanction may be imposed before notice to the variance holder and opportunity for a contested case hearing.

~~MPCA 7~~ 6 MCAR § 4.3008 **Stipulation agreements.**

~~(a)~~ A. Data or information. Whenever any person or the agency proposes that a stipulation agreement be entered into, the person who is proposed as a signer of the stipulation agreement shall furnish such information or data as is deemed essential by the agency or the director in making a determination regarding the proposed stipulation agreement.

~~(b)~~ B. Interim operation. The agency may in its discretion provide under the terms of a stipulation agreement for the operation of existing systems pending completion of compliance under the schedule therefor, and under such further conditions as it may prescribe in the stipulation agreement. Completion of performance under the stipulation agreement shall not relieve any party thereto of any requirement of law or agency rules ~~or regulations~~ to apply for all necessary permits or variances.

~~MPCA 8~~ 6 MCAR § 4.3009 **Informal complaints.** Any person may file with the director an informal complaint concerning a pollution source. The informal complaint may be either written or oral and ~~shall~~ must state the name and address of the person filing the informal complaint, the name and address of the alleged pollution source, and a description of the matter giving rise to the complaint. A person making an oral complaint may be asked to submit his or her complaint in writing. Upon receipt of ~~such~~ this informal complaint, the director shall make such investigation as is deemed necessary and appropriate. Within ~~twenty (20)~~ days after the complaint is filed, the director shall notify the person responsible for the alleged pollution source that an informal complaint has been filed. At any time after a complaint is filed, the agency may take whatever action it deems necessary and appropriate. The person who filed the complaint shall be notified of the disposition of his or her complaint. In all actions taken pursuant to this rule, the director shall comply with the provisions of *Minnesota Statutes*, sections 15.1611 to 15.1699.

~~MPCA 9~~ 6 MCAR § 4.3010 **Contested case hearings.**

~~(a)~~ A. Objectives. All contested case hearings required by statute or ~~regulation~~ rule and all contested case hearings ordered by the agency ~~in its discretion, other than rule-making hearings conducted pursuant to Minnesota Statutes, chapter 15 and other than public informational meetings,~~ shall be conducted in accordance with the procedures set forth in the rules of the Office of Administrative Hearings, 9 MCAR §§ 2.201-2.299, and in accordance with this rule. No ~~person before this agency shall have his~~ person's rights, privileges, or duties may be determined without regard for fundamental fairness. To that end, this rule is intended to assure that all parties are provided a just and speedy ~~public~~ contested case hearing.

~~(b) Decision to Hold a Hearing.~~

~~(1)~~ B. Public requests for contested case hearing. Any person may request the agency to hold a ~~public~~ contested case hearing on any matter. The person may submit ~~such~~ this request at an agency meeting if the matter is on the agenda for consideration by the agency. If the matter is not on an agenda, the person shall request the director to place ~~such~~ the matter on the agenda for the next agency meeting. ~~Such~~ This request ~~shall~~ must be made pursuant to ~~MPCA 3(b)(4)(i)~~ 6 MCAR

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.

§ 4.3005 F. The agency shall not consider a request for a ~~public~~ contested case hearing on a matter unless the matter is properly on the agenda for the agency meeting. The person requesting that a ~~public~~ hearing be held ~~may~~ shall accompany ~~his~~ the request with a ~~complaint~~ document stating ~~his~~ the person's reasons for requesting the hearing, ~~how he~~ the manner in which the person has been aggrieved, and the relief requested.

~~(2)~~ C. Agency decision to hold contested case hearing. The agency shall~~, in its discretion,~~ grant ~~or deny~~ the hearing request or may order upon its own motion that a contested case hearing be held if it finds all three of the following:

1. that there is a material issue of fact or of the application of fact to law related to the matter pending before the agency;

2. that the agency has the jurisdiction to make determinations on the issue of fact or of the application of facts to law; and

3. that there is a reasonable basis underlying the issue of fact or of the application of facts to law such that the holding of a contested case hearing would aid the agency in making a final determination on the matter.

~~(3) The agency, upon its own motion, may order that a public hearing be held on a matter.~~

If the agency decides not to hold a contested case hearing the agency may, in its discretion, ~~decline to order a public hearing but~~ order that a public informational meeting be held as provided in 6 MCAR § 4.3015 C.

(c)-(d) [See Repealer.]

~~(e)~~ C. Parties. Any person whose legal rights, duties, or privileges may be determined in the matter for which the contested case hearing is to be held ~~shall be~~ is a party. When a contested case hearing is held pursuant to a request for a hearing, the person or persons requesting the hearing ~~shall be~~ are parties to the matter. In any hearing on an application for a permit or variance, the applicant ~~shall be~~ is a party. The agency ~~shall be~~ director is a party in any hearing to ~~revoke~~ issue, reissue, modify, deny, revoke and reissue, revoke without reissuance, or suspend a permit or variance ~~pursuant to MPCA 11~~. Any person who has properly intervened in the ~~matter shall be~~ contested case is a party.

(f) [See Repealer.]

~~(g)~~ D. Right to counsel. Any party may be represented by legal counsel throughout the contested case hearing.

E. Ex parte communication. No person shall communicate with any agency member concerning a matter for which a contested case hearing has been ordered by the agency except in writing, or orally after providing reasonable notice to all parties of the meeting at which the matter will be discussed. Copies of any written communication must be sent to all parties to the matter and to all agency members.

~~(h)~~ F. Informal disposition. Informal disposition by stipulation, agreed settlement, or consent order may be made of any matter for which a contested case hearing is scheduled, or any contested issue ~~therein by stipulation, agreed settlement, or consent order~~, at any point ~~therein~~ in the hearing, subject to ~~the~~ agency approval of ~~such~~ this informal disposition~~,~~ or ~~any~~ its terms ~~thereof, by the agency~~.

~~(i)~~ G. Consolidation. The agency may consolidate two or more matters for which contested case hearings are scheduled and hold a joint hearing. The requirements of these rules ~~of Procedure~~ shall be followed when consolidation is ordered. Any party may object to consolidation by filing a petition for severance with the agency at least ~~twenty (20)~~ days before the hearing. The agency may sever the matter to which the petitioner is a party from the joint hearing.

(j)-(m) [See Repealer.]

~~(n)~~ H. Default. Whenever any party with adequate notice fails to appear at the contested case hearing, the hearing ~~officer~~ examiner may decide all issues in the matter adversely to the defaulting party, may terminate the hearing, may proceed with the hearing, or may take other appropriate action, without further notice to the party. The hearing ~~officer~~ examiner shall consider the rights of other parties to the matter when a party defaults.

(o)-(q) [See Repealer.]

~~(r) REHEARING~~

~~(1) Agency Right to Reconsider. The Agency may, upon request and good cause shown, or on its own motion, reconsider a final decision. This right may be exercised until it is lost by appeal or the granting of a writ of certiorari or until the time allowed by the statute for appeal, or six months, whichever is less, has expired.~~

~~(2) Obtaining a Rehearing~~

~~(i)~~ I. Petition for ~~Rehearing~~ reopening of hearing and remand to hearing examiner. At any time ~~prior to~~ up to ten days after the agency's ~~loss of the right to reconsider a~~ final decision, any party to ~~the matter may request a rehearing~~

a contested case hearing may request that the hearing be reopened and the matter be remanded to the hearing examiner by filing a petition ~~for rehearing~~. ~~Such~~ This petition shall contain~~:~~

~~1.~~ the name and address of the petitioner~~;~~,

~~2.~~ the agency designation for the matter~~;~~, and

~~3.~~ the reasons for the petition.

~~(ii) Agency Action.~~

The agency shall grant or deny a petition ~~for Rehearing~~ as part of the record. ~~Such~~ This petition shall be granted upon a showing that there are irregularities in the hearing, errors of law, or newly discovered material evidence of such importance as likely to have altered the outcome of the hearing. A ~~rehearing~~ petition may be granted upon a showing of good cause for failure to answer or appear at the hearing. Evidence and argument may be presented at the discretion of the agency in written or oral form, or both, by any party to the matter with respect to the granting or denial of the petition.

~~(3) Notice of Rehearing. Notice of rehearing shall be provided in the same manner prescribed for notice of hearing.~~

~~(4)~~ ~~Rehearing~~ J. Reopened hearing, procedure. ~~A rehearing in a matter shall~~ The hearing of a contested case that has been reopened and remanded to the hearing examiner must be conducted in the same manner prescribed for a contested case hearing.

~~(5)~~ K. Decision after ~~Rehearing~~ reopening and remand. The decision after ~~rehearing shall~~ reopening of the hearing and remand to the hearing examiner must be made in the same manner prescribed for the decision after a contested case hearing.

(s) [See Repealer.]

6 MCAR § 4.3001 Final decisions and orders in contested cases.

A. Time for filing comments and exceptions. The agency shall take no final action with respect to a matter for which a contested case hearing has been held for at least 20 days after the date of issuance of the hearing examiner's report. Any person may file written comments on or exceptions to the findings of fact, conclusions, and recommendations of the hearing examiner at any time up to ten days prior to the agency meeting at which the matter will be considered for final decision. However, these comments and exceptions must be based solely upon the record of the hearing.

B. Service of comments and exceptions. Any person who files written comments on or exceptions to the hearing examiner's report shall serve these comments or exceptions upon each individual agency member and upon all parties.

C. Appearance at agency meeting. Any party may appear at the agency meeting at which the matter will be considered for final decision and present comments and arguments, limited to evidence in the record, subject to time limitations and conditions that the chairperson prescribes.

D. Agency decision. The agency shall make all final decisions and orders in those matters for which a contested case hearing has been held. The agency's decision or order must be based solely on the record from the hearing. The decision or order must be accompanied by a concise statement of the findings and conclusions upon each contested issue of fact necessary to the decision.

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

F. Manner. The director shall place the matter on the agenda for an agency meeting. The decision or order must be announced at the agency meeting, and in all cases the decision or order must be entered in the minutes of the agency meeting.

G. Alternatives. The agency may accept, modify, or reject the recommendation of the hearing examiner, in whole or in part. The agency may remand the matter to the hearing examiner for further proceedings.

H. Notice. Every final decision or order in a matter for which a contested case hearing has been held must be served on all parties to the matter and on all persons who have submitted to the agency a request to be notified of the decision.

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~~MPCA 10 Inspection and Confidential Information.~~

~~(a)~~ 6 MCAR § 4.3012 **Inspection of public records.** All ~~public~~ records and data of the agency that are "public" within the meaning of *Minnesota Statutes*, sections 15.1611 to 15.1699 and 116.075, or copies ~~thereof~~, ~~shall be~~ are available for inspection and copying by any person, Monday through Friday, excluding legal holidays, between the hours of 9:00 a.m. and 4:00 p.m. at the agency offices. No public records shall be removed from ~~said~~ agency offices. Any inspection or copying of ~~said~~ records or data ~~shall~~ must be made in the presence of an officer, employee, or agent of the agency. The agency may charge and collect a reasonable fee for the reproduction of any public records.

~~(b)~~ 6 MCAR § 4.3013 **Confidential information.**

~~(1)~~ A. Certification. In order to certify records, information, or objects for the confidential use of the agency, an owner ~~or~~, operator, or other person qualified by law~~,~~ shall submit to the director a written statement setting forth those statutory grounds ~~which~~ that require the agency to keep ~~such~~ the records, information, or objects confidential. Any certification of records or information ~~which~~ that applies to water pollution sources must be approved by the director. ~~Such~~ These records ~~or~~ and information shall not be released unless the director denies the certification request. Whenever the director ~~shall deny~~ denies a certification request, ~~he~~ the director shall notify the certifier of ~~such~~ the denial at least ~~three~~ ~~(3)~~ seven days prior to making the records or information available to the public. The certifier may withdraw ~~such~~ the records or information if such an option is available ~~to him~~.

~~(2)~~ B. Filing. All certified records, information, or objects ~~shall~~ must be appropriately identified and segregated at the offices of the agency.

~~(3) Use~~

~~(i)~~ C. Agency use. Certified records, information, and objects, when approved by the director if required, ~~shall be~~ are only for the confidential use of the agency. However, confidential information may be used by the agency in compiling or publishing analyses or summaries relating to the general condition of the state's water, air, and land resources so long as ~~such~~ these analyses or summaries do not identify any owner or operator who has so certified.

~~(4) Release~~

~~(i) Approval~~ D. Release authorization. Confidential information may be released when the agency is specifically authorized to do so by ~~the person who certified the records, information, or ojects~~ statute.

~~(ii)~~ E. Denial of request. Certified records or information ~~which~~ that apply to water pollution sources may be released if the director denies the certification request. The provisions of ~~subparagraph (b)(1) above shall~~ A. apply to ~~such~~ this release.

~~(iii)~~ F. Federal law. Regardless of whether records or information are certified confidential, the agency may disclose any information which it is obligated to disclose ~~in order to comply with~~ under federal law ~~and~~ or regulation, to the extent and for the purposes of such federally required disclosure. Whenever the agency is required to release certified information pursuant to federal law, ~~he~~ the director shall notify the certifier of ~~such~~ this requirement at least ~~three~~ ~~(3)~~ seven days prior to making the records or information available to the public. The certifier may withdraw ~~such~~ this information if such an option is available ~~to him~~.

~~(iv) Public~~ G. Use in contested case hearings. Confidential information ~~which~~ that is relevant to a matter for which a ~~public~~ contested case hearing is being held, and that has been made a part of the record, may be considered by the agency in reaching a decision on the matter, but ~~shall~~ must not be released to the public unless the agency is required by statute to release it. When the agency is required by statute to release the information at the public hearing, the person who certified the information may withdraw the information, but the information shall not be considered by the agency or the hearing ~~officer~~ examiner in reaching a decision or recommendation on the matter. Whenever confidential information is considered by the agency or a hearing ~~officer~~ examiner in reaching a decision or recommendation on a matter, that fact ~~shall~~ must be so stated on the record.

~~MPCA 12~~ 6 MCAR § 4.3014 **Conflict of interest.** Any member of the agency who has a direct and substantial financial or employment interest relating to any matter before the agency, which interest is reasonably likely to affect ~~his~~ the impartiality or judgment of the agency member in the matter, shall make known ~~such~~ this interest and shall refrain from participating in~~,~~ or voting upon~~,~~ ~~such~~ the matter.

No employee or agent of the agency, including the director, shall engage in any outside employment or other conduct ~~which~~ that is likely to affect adversely the effectiveness or efficiency of any functions or duties ~~he performs~~ performed for the agency.

6 MCAR § 4.3015 **Public participation in agency meetings.**

A. Agenda items for which no hearing was held. Upon request made prior to or at an agency meeting, any person who desires to present a statement on a matter that is on the agenda for the meeting, and for which no contested case or rulemaking hearing

was held, must be afforded an opportunity to present an oral statement to the agency at the meeting. The chairperson may, depending on the circumstances, limit the time and manner of this statement.

Persons who desire to present a written statement on the matter may do so if, at least ten days before the meeting, they have served a copy of the written statement upon the director. The director shall then promptly provide a copy of the statement to each agency member.

The agency may allow any person adversely affected by these oral or written statements additional time to respond.

B. Request for public informational meeting. Any person may request the agency to hold a public informational meeting on any matter. The person may submit this request at an agency meeting if the matter is on the agenda for consideration by the agency. If the matter is not on the agenda, the person may request the director, pursuant to 6 MCAR § 4.3005 F., to place the matter on the agenda as a citizen item for the next agency meeting.

The agency shall not consider a request for a public informational meeting on a matter unless the matter is properly on the agenda for the agency meeting. The agency shall grant or deny the request. This rule does not limit the right of the agency to order, upon its own motion, that a public informational meeting be held on a matter, and does not limit the right of the director to hold public meetings.

C. Agenda items for which contested case hearing has been held. When a contested case hearing has been held on an agenda item the participation of the public and of the parties in the matter is governed by 6 MCAR §§ 4.3010-4.3011.

D. Agency items for which rulemaking hearing has been held. When a rulemaking hearing has been held, the agency shall take no final action with respect to the matter for at least 20 days after the date of issuance of the hearing examiner's report. Any person may file written comments or exceptions to the findings of fact, conclusions, and recommendations of the hearing examiner at any time up to ten days prior to the agency meeting at which the matter will be considered for final decisions. However, these comments and exceptions must be based solely upon the record of the hearing.

Any person who files written comments on or exceptions to the hearing examiner's report shall serve these comments or exceptions upon each individual agency member and upon the director.

Any person may appear at the agency meeting at which the matter will be considered for final decision, and may present comments and arguments limited to evidence in the record, within limits of time and manner as the chairperson may establish under the circumstances.

6 MCAR § 4.3016 Public participation in director's activities.

A. Extent of participation. Any person may participate in the activities of the director. Participation in the director's activities includes the right to submit statements, the right to attend meetings and conferences and share in discussions, and the right to receive sufficient notice of progress in the matter to adequately exercise these rights.

However, if a meeting of the director involves information that is not public within the meaning of *Minnesota Statutes*, sections 15.1611 to 15.1699 or 116.075, the director shall conduct a closed meeting to discuss the nonpublic information.

B. Notice of progress. Any person who wishes to receive notice of progress in an agency matter shall so advise the director. Thereafter, the director shall give this person adequate notice of pending events in the matter.

Repealer. Rules MPCA 3(b), MPCA 6(c), 6(d), MPCA 9(c), 9(d), 9(f), 9(j), 9(k), 9(l), 9(m), 9(o), 9(p), 9(q), 9(s), MPCA 11, and MPCA 13 of the Minnesota Pollution Control Agency are repealed.

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STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Agency Procedural Rules, to be Recodified as 6 MCAR §§4.3001, 4.3002, 4.3004, 4.3005 A. - L. and N. - Q., 4.3006 - 4.3009, 4.3010 A. - D. and F. - I., 4.3011, 4.3012 and 4.3014 - 4.3016

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (Agency) on the 26th day of October, 1982. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the Agency, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness and the written comments submitted to the Agency, after considering all of the evidence adduced upon the records, files and proceedings herein, the Agency, being fully advised in the premises, hereby adopts the following Findings of Fact and Conclusions.

FINDINGS OF FACT

1. The Agency published its notice of intent to adopt the above-captioned rules, together with the proposed rules, in the State Register on September 13, 1982.

2. On September 10, 1982, the Agency gave the same notice by United States mail to all persons who have registered their names with the Agency pursuant to Minn. Stat. §15.0412, subd. 4 (Supp. 1981).

3. The notice of the Agency's intent to adopt the rules afforded all interested persons 30 days to submit data and views

on the proposed rules and to request a hearing on the proposed rules. The notice was in all respects in compliance with the requirements of Minn. Stat. §15.0412, subd. 4h (Supp. 1981).

4. The Agency prepared a Statement of Need and Reasonableness and made it available to the public upon the date of mailing of the notice of intent to adopt the rules.

5. The 30 day comment period, as set out in the notice, expired on October 13, 1982.

6. During the comment period, the Agency received five requests for public hearing on the proposed amendments to 6 MCAR §§4.3001, 4.3002, 4.3004, 4.3005 A. - L. and N. - Q., 4.3006 - 4.3009, 3010 A. - D. and F. - I., 4.3011, 4.3012, and 4.3014 - 4.3016.

7. The Agency finds that certain modifications to the proposed rules are supported by the data and views submitted to the Agency within the comment period. Specifically, the Agency makes the following findings with respect to each of the modifications:

a. Comments regarding motion for reconsideration of a decision, 6 MCAR §4.3005 N.

The record contains comments concerning the limitations which should be placed on the ability of the Agency to reconsider a decision. 6 MCAR §4.3005 N. states that a motion for reconsideration of a decision may be made on the same day as the decision was made. Because the Agency meets only once a month, it

is frequently the case that an Agency meeting will be continued on a different day to conduct the business that would fit on a one-day schedule. The days of meeting are normally contiguous or are within a week or two of each other. It would be reasonable to be able to reconsider a decision so long as it is done within the confines of the same meeting. Therefore it is reasonable to change the language of this rule so that it states as follows:

> Any decision of the agency may be reconsidered if an agency member who voted on the prevailing side makes a motion for reconsideration and if the motion for reconsideration is made during the course of the same meeting at which the original decision was made.

OK ✓1 P.1

b. Comments regarding an incorrect cross reference in 6 MCAR §4.3007 H.

A comment was received concerning the fact that 6 MCAR §4.3007 H. contains an incorrect cross reference. It states: "Any person may submit to the agency an oral or written statement or recommendation regarding a variance application in accordance with 6 MCAR §4.3011." The correct rule concerning the submission of written statements to the Agency under these circumstances is 6 MCAR §4.3015. Therefore it is reasonable to correct this error in the rule amendments as adopted.

Corrected ✓ P.12

c. Comments regarding certain subjects relating to contested case hearings which are covered by the rules of the Office of Administrative Hearings, 6 MCAR §§4.3010 D., H. and J.

No substantive changes are proposed to be made to the original Minn. Rules MPCA 9(g), (n) and (r)(4), which were entitled "Right to counsel," "Default," and "Rehearing Procedure,"

respectively. However, on September 29, 1982, Duane Harves, Chief Hearing Examiner, submitted comments indicating that these three rules ought to be deleted because the matters addressed therein are covered by the rules of the Office of Administrative Hearings, 9 MCAR §§2.206, 2.208 and 2.219. The Agency agrees that these matters are covered by those rules and therefore believes that proposed 6 MCAR §§4.3010 D., H. and J. are no longer necessary. deleted p. 15, 16, 17 It is thus reasonable to repeal these rules and to reletter the remaining rules accordingly.

c. Comments relating to the time period in which the public must submit written comments on agenda items for which no hearing was held, 6 MCAR §4.3015 A.

The record contains comments relating to the time period in which the public must submit written comments on agenda items for which no hearing was held. For this type of items, the amendments as proposed require any person who wishes to present a written statement to the Board to serve a copy of the statement on the Director at least ten days before the Board meeting.

A problem has been identified with this requirement. 6 MCAR §4.3005 E., entitled "Public notice of meetings," requires that a copy of the Agency's agenda be mailed out only ten days before the meeting. In the event that the agenda were actually sent out only ten days before the meeting, a person with an interest in a matter to be considered by the Board would be required to mail his or her comments on the matter on the same day that the agenda was mailed.

Because a delay can reasonably be expected between the mailing of the agenda and receipt of it by the interested person, the interested person could thus be required to comment on the matter even before being notified that it would be considered. This is, of course, unreasonable. Therefore it is proposed that 6 MCAR §4.3015 A. be changed to require the interested person to submit comments five days before the date of the Agency meeting. changed to 21

8. The Agency adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the amendments to the rules. The Agency hereby incorporates the Statement of Need and Reasonableness into these findings.

CONCLUSIONS

1. The Minnesota Pollution Control Agency duly acquired and has jurisdiction over this proceeding.

2. The Agency published and served due, timely and adequate notice of the intent to adopt amendments to the rules without a public hearing.

3. All relevant legal and procedural requirements of statute and rule have been complied with.

4. The modifications to the proposed rule amendments are supported by the data and views submitted to the Agency within the comment period and do not result in a substantial change in the

proposed rule amendments.

MINNESOTA POLLUTION CONTROL AGENCY

VIRGIL HERRICK
Chairman

LOUIS J. BREIMHURST
Executive Director

Dated: October 26, 1982

CERTIFICATE OF AGENCY'S RESOLUTION ADOPTING
AMENDMENTS TO RULES

I, Virgil Herrick, do hereby certify that I am a member and the Chairman of the Minnesota Pollution Control Agency, an agency 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 Minnesota Pollution Control Agency duly and properly called an held on the 26th day of October, 1982, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified.

BE IT RESOLVED, that the Minnesota Pollution Control Agency hereby authorizes the initiation of rulemaking proceedings pursuant to Minn. Stat. §15.0412, subd. 4 - 4g with respect to the amendments to 6 MCAR §§4.3003, 4.3005 M., 4.3010 E., and 4.3013, which it proposed on July 27, 1982. The Director is hereby granted the authority to call a hearing for the purpose of promulgating said rule amendments and to perform any and all acts incidental thereto, including but not limited to signing an Order for Hearing and Notice of Hearing as well as acting as the Agency's representative at all hearings.

BE IT FURTHER RESOLVED, that the attached amendments to the Agency Procedural Rules codified as 6 MCAR §§4.3001, 4.3002, 4.3004, 4.3005 A. - L. and N. - Q., 4.3006 - 4.3009, 4.3010 A. - D. and F. - I., 4.3011, 4.3012 and 4.3014 - 4.3016 are hereby approved and adopted, pursuant to the authority vested in the Agency by Minn. Stat. §116.07, subd. 3 (1980).

BE IT FURTHER RESOLVED, that prior to publishing the rule amendments as adopted in the State Register, the Executive Director is authorized to make any form changes in the rules that the Revisor of Statutes requires the Agency to make in order to obtain the Revisor's Certificate as required in Minn. Stat. §15.0412, subd. 10 (Supp. 1981).

BE IT FURTHER RESOLVED, that the Minnesota Pollution Control Agency adopts the attached Findings of Fact and Conclusions and Order Adopting Rule Amendments.

BE IT FURTHER RESOLVED, that the Chairman and Executive Director are hereby authorized to execute the above-named documents.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 26th day of October, 1982.

Virgil Herrick

VIRGIL HERRICK
Chairman

Cynthia C Jepsen

Attest by one other Agency member

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Agency Procedural Rules, Minn. Rules MPCA 1 - 4 and 6 - 13, to be Recodified as 6 MCAR §§4.3001 - 4.3016

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

Minn. Stat. chs. 115 and 116 establish the Minnesota Pollution Control Agency (Agency) and set forth its authority. Minn. Stat. §116.07, subd. 3 (1980) provides that the Agency "may adopt, amend, and rescind rules governing its own administration and procedure." Accordingly, Minn. Rules MPCA 1 - 13 were adopted in 1973 to prescribe the Agency's basic operating procedures.

Minn. Rules MPCA 1 - 13 set forth the procedures used by the Agency for such basic things as conducting Agency meetings, making Agency decisions, electing Agency officers, granting variances from Agency rules, ordering and holding hearings, and the participation of the public in Agency affairs. 1/

On March 26, 1982, notice was published in the State Register announcing the Agency's intent to amend the procedural rules and requesting that interested parties submit any information or

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1/ Minn. Rule MPCA 5 governs the general procedures for the issuance of all Agency permits. That rule, however, is not proposed to be revised at this time. The Agency is in the process of revising Minn. Rule MPCA 5 and its other rules dealing with the issuance of permits, and these revisions will be proposed at a later date. See Notice of Intent to Solicit Outside Opinion Concerning Proposed Rules Relating to Permits Issued by the Minnesota Pollution Control Agency, 6 S.R. 1699 (April 5, 1982).

comments they might have on the procedural rules. Notice was subsequently given and a public meeting of the Agency Board's Rules Committee was held on June 7, 1982, to discuss the proposed amendments. Various revisions have been made to the rules over the course of several months on the basis of comments and suggestions from the Agency staff, the Agency Board and the public. Upon the recommendation of the Rules Committee, the Agency Board on July 27, 1982, authorized the initiation of rulemaking proceedings, pursuant to Minn. Stat. §14.0412, subd. 4h (Supp. 1981) relating to the adoption of noncontroversial rules, for the adoption of amendments to the Agency's procedural rules.

II. GENERAL NEED FOR AMENDMENTS TO THE PROCEDURAL RULES

Minn. Rules MPCA 1 - 4 and 6 - 13 have not been revised since their adoption in 1973. Legislative changes and Agency experience with the rules, however, have created a need to update the rules. In addition, the need to change substantive portions of the rules is providing the Agency with an opportunity to make needed stylistic and clarifying changes to the rules.

Since the adoption of the original rules in 1973, the Minnesota legislature has substantially revised the Administrative Procedure Act, Minn. Stat. §§15.041 - 15.052. One of the major revisions was the creation of the Office of Administrative Hearings. It is now required that evidentiary hearings, both for rulemaking and for contested cases, be conducted by a Hearing Examiner from that office. The current procedural rules of the

Agency reflect the Agency's previous practice of appointing its own hearing officers to conduct its hearings. Since this practice is no longer permissible, the Agency's rules referring to the Agency-appointed hearing officers are obsolete. In addition, the Agency's procedural rules contain a number of specific provisions regarding the conduct of the hearing. Minn. Stat. §15.052, subd. 4 (Supp. 1981) requires the Chief Hearing Examiner to adopt rules governing the procedural conduct of all hearings, which rules are binding upon all agencies and supersede any other agency rules with which they conflict. Those rules, 9 MCAR §§2.101 et seq. and 2.201 et seq., are now in place. As a result, a number of the hearing procedures in the Agency's rules need to be revised to be consistent with the rules adopted by the Chief Hearing Examiner to govern the procedures of the Office of Administrative Hearings.

A second recent statutory change creating a need to amend the Agency's procedural rules is the 1982 amendments to Minn. Stat. §116.07, subd. 5 (Minn. Laws 1982, ch. 458 §2), which allows the Agency to grant variances from its rules. The old statute required that a public hearing precede the granting of all variances except variances from rules relating to feedlots. The amended statute deletes the requirement for a public hearing and instead requires "notice and opportunity for hearing." It also requires the Agency to follow the provisions of Minn. Stat. §15.0412, subd. 1a (Supp. 1981) in granting variances. That

statute requires the Agency to "adopt rules setting forth procedures and standards by which variances shall be granted and denied." The Agency's current procedural rules require a public hearing in accordance with the statute as it was prior to the 1982 amendments. Therefore the rules need to be revised to reflect the fact that a hearing is not required in every case.

A third statutory change which has had an effect on the Agency's procedures is the adoption of the Minnesota Government Data Practices Act, Minn. Stat. 15.1611 - 15.1699 (Supp. 1981). This statute now governs the collection, security and dissemination of Agency records and data. The provisions of the procedural rules dealing with Agency records and data are in need of revision to acknowledge this Act and eliminate any inconsistencies.

There are also a number of changes which are proposed to the rules as a result of practical experience in dealing with them. Since 1973, the Agency has discovered that certain situations commonly arise which are not addressed by the current rules. At the same time, certain portions of the rules have been shown not be practical or necessary. Others do not conform to actual Agency practice.

In connection with the effort involved in making the substantive changes described above, the Agency is taking the opportunity to make a number of stylistic and clarifying changes

to the rules. These changes will not be discussed individually. They are as follows:

1. The rules have been renumbered and, in some cases, reordered, in accordance with the requirements of the Office of the Revisor of Statutes.
2. Capitalization of nouns has been changed in accordance with the requirements of the Office of the Revisor of Statutes.
3. The word "regulation" has been changed to "rule" in accordance with the terminology of the Administrative Procedure Act (see Minn. Stat. §15.0411, subd. 3 (Supp 1981)).
4. The rules have been made gender neutral (e.g., "chairman" has been changed to "chairperson").
5. Punctuation and grammar have been corrected where needed.
6. Changes have been made to clarify the meaning, but not change the sense, of some of the rules.

III. NEED FOR AND REASONABLENESS OF SPECIFIC AMENDMENTS TO THE PROCEDURAL RULES

The discussion below addresses the need for and reasonableness of the specific amendments of a substantive nature which are proposed to be made to the procedural rules.

Duty of Candor.

The rule relating to duty of candor, formerly codified as

Minn. Rule MPCA 1, no longer appears as the first of the Agency procedural rules. It has been reordered and is now codified as Section 4.3003. Proposed amendments to that rule are discussed later in this document.

Definition of "Hearing Examiner." Section 4.3001 F.

The original rule refers to "hearing officer," a person appointed by the Agency Board to conduct public hearings. However, Minn. Stat. §15.052, subd. 3 (1980) states: "All hearings of state agencies required to be conducted under this chapter shall be conducted by a hearing examiner assigned by the chief hearing examiner." The rule is proposed to be amended so that the definition reflects that requirement. This change is needed and reasonable because it conforms the rule to the statute.

Definition of "Order." Section 4.3001 G.

The original rule defines "order" to include orders issued by Agency-appointed hearing officers. Since hearing officers have been replaced by hearing examiners from the Office of Administrative Hearings, the language referring to hearing officers is no longer needed and is proposed to be stricken.

Definition of "Party." ~~(g)~~.

The definition of "party" is proposed to be stricken here and to be covered under Section 4.3010 C., which relates to contested case hearings. This change is reasonable because within the

context of administrative proceedings this term is relevant only with respect to contested case hearings.

Definition of "Permit." Section 4.3001 H.

This rule is proposed to be amended to clarify that the definition of "permit" does not include a certification. This is needed and reasonable because it is in accordance with the current Agency practice of considering certifications to be separate from permitting processes.

Use of Pronouns. ~~(j)~~.

The provision regarding the use of pronouns has been made unnecessary because of changes in the rule which make it gender-neutral. Therefore this provision is proposed to be stricken.

Definitions of "Service" and "Serve." Section 4.3001 L.

This rule is proposed to be amended to allow personal delivery of an item as an alternative to delivery by mail. In addition, service by mail has been more clearly defined as either First Class United States mail or Minnesota state interoffice mail, completed when the item served is actually placed in the mail. These changes are reasonable and conform to the rules of the Office of Administrative Hearings, 9 MCAR §2.202 D. They are also consistent with Rule 5.02 of the Minnesota Rules of Civil Procedure.

Definition of "Stipulation Agreement." Section 4.3001 M.

The definition of "stipulation agreement" is proposed to be broadened so as to include all types of settlements concerning noncompliance with applicable statutes and rules. This change is needed and reasonable because it conforms the definition with actual Agency practice.

Computation of Time. Section 4.3002.

The Agency proposes to adopt a new provision on computation of time which is identical to 9 MCAR §2.209 A. of the Office of Administrative Hearings. This provision is needed because several other portions of the rules require the counting of days (see, e.g., Section 4.3010 I.). It is reasonable because it is the standard method of computation used by the courts (see Rule 6.01 of the Minnesota Rules of Civil Procedure).

Sanctions for Violations of Duty of Candor. Section 4.3003.

The last sentence of this rule is proposed to be stricken. This is needed and reasonable because the provision referred to in this sentence is proposed to be deleted from the rules (see the explanation on page 26).

Agency Meetings and Officers, Sections 4.3004 and 4.3005.

Minn. Rule MPCA 3, entitled "Agency Meetings and Officers" is proposed to be divided into two separate rules: Section 4.3004,

"Officers, committees and duties," and Section 4.3005, "Agency meetings." This has required some restructuring of the original rules. The portions of the original rule relating to Agency meetings have been repealed and appear as new language; however, most of the provisions and language are identical to the original rule. The changes to the original rule as now contained in Section 4.3005 are noted and explained below.

Annual Meeting of the Agency. Section 4.3005 A.

The original rule specifies that the annual meeting of the Agency is to be held on the third Tuesday of July each year, except that the Agency may change the date upon 60 days notice. The rule is proposed to be changed to simply specify that the annual meeting shall be held during the month of July. In most cases, this will be the regular July meeting. The proposed changes to the rule are needed and reasonable because they conform the rule to the actual Agency practice over the years. Specifying that the annual meeting will be held in July provides needed scheduling flexibility to the Agency and, at the same time, sufficient certainty to the public.

Agency Notice of Meetings. Section 4.3005 C.

The requirement that seven days notice be given to all Board members before any change in the date of a meeting for reasons such as emergencies has proved itself to be impossible to

implement and is therefore proposed to be eliminated.

Public Notice of Agency Meetings. Section 4.3005 E.

The original rule, when combined with Section 4.3005 G., seems to require the Agency to give the public two separate notices announcing the time and place of regular and special meetings. However, in actual practice the Agency has always given notice of its meetings by sending a copy of the agenda to a large list of persons having an interest in Agency affairs and to any person directly affected by an agenda item. The agenda is also available for public inspection in the Agency offices. The rule is proposed to be amended to clarify that only one notice of the item and place of the meeting will be sent to the public. The amendments are reasonable because they conform the rule to actual Agency practice and because the past Agency practice has proved itself to be satisfactory to the public.

Agenda Preparation. Section 4.3005 F.

This rule is proposed to be amended to state that the agenda must be prepared at least ten days prior to the regular meetings of the Agency. This conforms the rule to actual Agency practice and as a practical matter is already required by the existing rule (now Section 4.3005 G.), since that rule requires the agenda to be mailed out ten days before the meeting.

In addition, the words "provided the Director is notified of

the item in time to place the item on the agenda" are proposed to be eliminated as superfluous.

Consideration of Items Not on the Agenda. Section 4.3005 K.

This rule is proposed to be amended to require the unanimous vote of the Board members present for the consideration at a regular meeting of an item not on the agenda. This change is reasonable because it ensures that items which are controversial (as evidenced by failure to receive such unanimous consent) are given full public notice before a final decision is made.

Voting. Section 4.3005 L.

Several changes are proposed to this rule. To be fully understood, they must be read in conjunction with newly proposed Section 4.3003 O., relating to the vote needed to rescind a decision. The changes are discussed below on a sentence-by-sentence basis.

First sentence: The words "[e]xcept as otherwise specifically provided" have been added to alert the reader to the fact that elsewhere in the rules there is an exception to the provision for a majority vote. That exception is found in Section 4.3005 O. This change is needed and reasonable because it avoids conflict between different voting provisions in the rules. The phrase "[t]he affirmative vote of a majority of all the members" is proposed to be changed to "a majority vote of the entire

agency." This change is needed and reasonable because the original rule could be read to suggest that only a "yes" vote could result in a decision, whereas a vote of "no" from five or more Agency members has in practice been regarded as a decision. Finally, the list of items included in the term "decision" is proposed to be deleted because it is unnecessary.

Second sentence: It is proposed that the word "chairman" be changed to "presiding officer." This is needed and reasonable to clarify that, pursuant to Section 4.3004 D., the vice chairperson could be acting in the chairperson's place at the meeting.

Third sentence: The original rule requires any matter which did not receive a majority vote to be placed on the agenda of the next regular monthly meeting or considered at a special meeting. This rule is proposed to be rewritten as follows:

> If the final vote taken on an agenda item does not result in a decision, but half or more of the voting members vote affirmatively, the matter must be placed on the agenda of the next regular monthly meeting or considered at a special meeting, unless the agenda item concerns rescission of a decision.

In the Agency's experience, it is not unusual for a matter to receive less than a majority vote when fewer than nine Board members are present at a meeting. It is reasonable to require that, for all decisions except a vote on a motion to rescind a previous decision, the matter be considered again at the next opportunity if half or more of the members voted affirmatively

because such a vote shows that the matter is likely to receive a majority vote of the full Agency. (It should be noted that this rule as rewritten does not preclude the Director, a Board member, or a member of the public from causing the matter to be placed on the Agenda at the next opportunity even if half or more of the members voted negatively; the matter simply does not receive automatic placement on the agenda.)

It is also reasonable to exclude from the operation of this provision votes on motions to rescind a previous Agency decision because, in the interest of finality of Agency decisions, such motions should be discouraged and used only in cases where most reasonable persons would agree that the previous decision needs to be rescinded. Thus if a motion to rescind fails for lack of a majority, it should not automatically be placed on the agenda of the next meeting.

Agency Decisions Made by Telephone Poll. Section 4.3005 M.

The following sentence is proposed to be eliminated as superfluous: "If, pursuant to the poll, a majority of all members of the agency cast an identical vote, the decision of the majority shall be an agency decision." This sentence is superfluous because it merely repeats that decisions are made by a majority vote, which is covered by Section 4.3005 L.

Reconsideration and Rescission. Sections 4.3005 N. and O.

Section 4.3005 Q. of the rules provides that questions of

parliamentary procedure which are not specifically covered in the rules themselves are to be governed by Roberts Rules of Order. Since the original rules do not contain specific provisions relating to reconsideration and rescission of decisions, the Agency has always turned to §§36 and 37 of Roberts Rules of Order when questions as to reconsideration and rescission have arisen.

The Agency proposes to add specific provisions relating to reconsideration and rescission of its decisions. The provision for reconsideration exactly follows the provisions of Roberts Rules of Order. This provision is needed and reasonable because it states for the public the specific procedures which the Agency has been following with respect to reconsideration of decisions. The provision for rescission, calling for a two-thirds vote, follows one of the options outlined in Roberts Rules. The two-thirds requirement is reasonable because, in the interest of finality of Agency decisions, there should be a greater burden in reversing that which has already been done when time has passed since the original vote and reliance may have been placed on the decision.

Variances. Section 4.3007.

As discussed previously at pages 3 - 4, a recent change in Minn. Stat. §116.07, subd. 5 creates a need to amend the Agency's procedural rule relating to variances. The original rules, in accordance with the former statute, require the holding of a

contested case hearing. However, in the past the Agency has held several hearings because of this requirement on variance applications that were in no way contested, resulting in the expenditure of time, effort and money for no real purpose except compliance with the statute and rules. Thus the Agency wishes to take advantage of the amendment to the statute, which now provides no mandatory hearing, and adopt a variance procedure which provides adequate notice to regulated parties and the public and opportunity for hearing, but which does not require a hearing if none is requested.

The procedure which is proposed for consideration of variances includes submission of a variance application (which is required in the original rules) and review of the application by the Agency Director for completeness. If the Director finds any deficiency in the application, the applicant is so advised, and further processing is suspended until the application is found to be complete. After the variance application is complete, the Director makes a preliminary determination as to whether the variance should be issued or denied. Notice is then given to the public of the application and of the Director's preliminary determination. Any person may, within 30 days, submit comments on the variance application or may request that either a contested case hearing or a public informational meeting be held on the application. (The procedures for holding a contested case hearing

or public informational meeting are found in Sections 4.3010 and 4.3015.)

The variance rule as amended is reasonable because the procedure provided will ensure full public participation through a formal contested case hearing or public informational meeting, when such proceedings are requested and merited, yet will result in a significant savings to the state and regulated parties in cases of uncontested variance applications.

The specific amendments to the rule on variances which are not discussed above are discussed below.

Variance Applications. Section 3.007 B.

The provision requiring that a variance application be made under oath is proposed to be stricken as an unnecessary burden and not in accordance with actual Agency practice.

Notification. Section 4.3007 I.

The original rule requires the Agency to serve a copy of the Agency's decision on every person who entered an appearance at the public hearing. This rule is proposed to be amended to provide that a copy will be served upon all persons who have requested a copy. This is reasonable because under the amended rules it is possible that no public hearing will be held. In addition, it is not burdensome to require persons to make a request for a copy of a decision.

Hearings on Transfers of Variances. Section 4.3007 L.

The last sentence of this rule is proposed to be stricken. This is reasonable because a decision on the holding of a contested case hearing on transfer of a variance is covered adequately by Section 4.3010 and because the original rule is inconsistent with that rule in providing no criteria for the decision as to whether to hold a hearing.

Sanctions for Violations of Variance Provisions. Section 4.3007 M.

This rule is proposed to be added to make it clear that sanctions, including revocation or suspension of a variance, may result from violations of variance provisions. This rule is reasonable because it provides notice of the availability of such sanctions to regulated parties and to the public. The last sentence of the rule provides that sanctions will not be imposed before notice to the variance holder and opportunity for a contested case hearing. This is reasonable because it comports with the constitutional doctrine of due process of law.

Informal Complaints. Section 4.3009.

The Agency proposes to amend this rule to add new language at the end of the rule acknowledging the applicability of the Minnesota Government Data Practices Act, Minn. Stat. §15.1611 - 15.1699, to data and information obtained by the Agency through informal complaints. This is reasonable because it provides a

cross-reference which alerts the Agency and the public to the applicability of the Act.

Contested Case Hearings. Section 4.3010 and 4.3011.

As discussed previously at pages 2 - 3, significant changes to the Administrative Procedure Act and the adoption of rules by the Office of Administrative Hearings have made necessary significant revisions to the Agency's rules concerning public -- now called "contested case" -- hearings. As a part of this revision, the original Minn. Rule MPCA 9 is proposed to be divided into two separate parts: Section 4.3010, "Contested case hearings," and Section 4.3011, "Final decisions and orders." This has required some restructuring of the rule. The specific revisions to the rule are discussed below.

Agency Decision to Hold a Contested Case Hearing. Section 4.3010 C.

The original rules provide that the Agency may order a contested case in its discretion. They contain no criteria for the Agency to use in deciding whether to order a hearing and no criteria for the public to use in requesting one. The Agency proposes to amend the rule to provide such criteria. An affirmative decision to order a hearing would require that the Agency find all three of the following to be true: a) that there is a material issue of fact or of the application of fact to law related to the matter pending before the Agency, b) that the

Agency has jurisdiction to make determinations on that issue, and c) that there is a reasonable basis underlying that issue such that the holding of a contested case hearing would aid the Agency in making a final determination on the matter.

The addition of the criteria to the rules is needed and reasonable because it provides certainty that hearing requests are granted when there are issues which the Agency has the jurisdiction to decide and which involve factual disputes which need the full examination that contested case hearing provide and, likewise, to preclude the holding of formal hearings when they cannot serve such a purpose. Where the Agency finds that the holding of a contested case hearing is not justified, it can order the holding of a public informational meeting (see Section 4.3015 B.) if the issue would still benefit from the additional discussion afforded by such a public meeting.

Hearing Officers and Hearing Notice. ~~(c)~~ and ~~(d)~~.

The provisions concerning hearing officers and hearing notice have been replaced by similar provisions of the rules of the Office of Administrative Hearings. Thus it is reasonable to repeal these rules.

Participation of the Agency Director as a Party in Contested Case Hearings. Section 4.3010 D.

The original rule states that the Agency itself is a party in all hearings concerning permits and variances. The Agency,

however, will make the final decision after the hearing is concluded and the Hearing Examiner has recommended a decision. Therefore, it is inappropriate for the Agency to act as a party in the hearing. In actual Agency practice over the years, the Director has intervened in the Agency's contested case hearings, providing technical expertise to ensure the completeness of the hearing record and taking a position as to the outcome. The revisions make it clear that the Director will act as a party in Agency contested case hearings without being required to submit a petition to intervene. This is reasonable because it conforms to the past and present practice of the Agency, which has been found to be beneficial to the hearing process.

Answer. ~~(f)~~.

The provision concerning the response to a complaint initiating a contested case hearing has been replaced by the provisions of the rules of the Office of Administrative Hearings. Therefore it is reasonable to repeal this rule.

Ex Parte Communication. Section 4.3010 E.

The Agency proposes to add a new provision to the rules requiring that any communication with Board members on a contested case matter be done either orally at an open meeting or in a writing that is sent to all other parties and Board members. This provision is reasonable because it promotes fairness by ensuring

that all parties have access to the decision makers on an equal basis. It also ensures that Agency decisions are made openly and fairly, without even the appearance of impropriety.

Conduct of Hearings. ~~(j)~~ - ~~(m)~~ and ~~(o)~~.

The provisions of the rules concerning the conduct of hearings has been replaced by similar provisions of the rules of the Office of Administrative Hearings. Therefore it is reasonable to repeal these provisions.

Appeal of Hearing Officer's Decision. ~~(p)~~.

The provision of the rules concerning appeal of a hearing officer's decision has been replaced by Section 4.3011 A. - C. Therefore it is reasonable to repeal this provision.

Final Decisions and Orders. ~~(q)~~

The provisions of the original rule concerning final decisions and orders have been reordered and recodified as Section 4.3011 (see discussion at pages 23 - 26).

Agency Right to Reconsider. ~~(r)(1)~~.

The provision of this rule concerning reconsideration of a decision made after public hearing has been replaced by newly proposed Sections 4.3005 N. and O. Therefore it is reasonable to repeal this rule.

Reopening of Contested Cases. Section 4.3010 I. - K.

The action of "rehearing" a contested case is proposed to be relabeled as "reopening and remanding to the hearing examiner." This change is reasonable because the new label is more appropriate.

Petition for Reopening of Hearing and Remand to Hearing Examiner. Section 4.3010 I.

The original rule provides that a rehearing could be requested up until the time the Agency loses its right to reconsider the matter. The provision regarding the right to reconsider a matter, as discussed above, is proposed to be repealed. The Agency proposes to amend the rule to delete the reference to the "right to reconsider" and to provide that such a petition must be filed within ten days after the Agency's final decision. This amendment provides a reasonable time for a party to prepare such a petition after the final decision is made.

Notice of Rehearing. ~~(3)~~.

The language which is proposed to be stricken is adequately covered in the paragraph which follows it. Therefore the repeal of this language is reasonable.

Severability. ~~(8)~~.

The provision regarding severability is proposed to be

repealed because the Agency has been advised that the Revisor of Statutes will be deleting severability clauses when it republishes all agency rules. Therefore it is reasonable to repeal this rule.

Final Decisions and Orders. Section 4.3011.

Due to the repositioning of the rule relating to final decisions and orders, Section 4.3011 appears in the proposed amendments as all new language. However, most of the provisions in this section are identical to the original rule. The changes in the original rule as now contained in Section 4.3011 are noted and explained below.

Written and Oral Comments on Hearing Examiner's Report. Section 4.3011 A. - C.

Parts A. and B. of the rule as amended essentially replace the original paragraph (p) of Minn. Rule MPCA 9 and detail, in terms consistent with the Administrative Procedure Act, the procedure for submitting comments on and exceptions to a Hearing Examiner's Report. A period of at least 10 days following the issuance of the report is provided for the making of such comments and exceptions. In the interest of fairness, copies of the comments and exceptions must be served upon all parties to the contested case and upon each of the Agency members. Comments must be based on the hearing record. In addition, part C. allows all parties to present oral comments to the Agency in person, again limited to the evidence in the record, at the Agency meeting at

which the matter is to be decided.

These rules are reasonable because they provide fair and equal access to the decisionmakers by all parties to the contested case hearing.

Proposed Agency Decision. Section 4.3011 F.

The following sentence in the original Minn. Rule MPCA 9 (q)(3) is proposed to be eliminated:

> If the Agency has reached a Proposed Decision prior to the Agency meeting, it shall make such Proposed Decision available to all parties at least ten (10) days prior to the Agency meeting at which it intends to announce its decision or order.

It is reasonable to delete this provision because the Agency in practice has never issued Proposed Decisions.

Notice of Final Agency Decision. Section 4.3011 H.

The provision in the original rules for serving notice of the Agency's final decision in a matter for which a contested case hearing has been held is proposed to be amended to require that a copy of the decision be served upon all persons who have requested to be so notified. (Service upon all the parties is also required in the original rule, and this provision is not proposed to be amended.) This is reasonable because it ensures that notice of the decision reaches those who actually want it, and reflects actual Agency practice over the years.

Inspection of Public Records and Confidential Information. Sections 4.3012 and 4.3013.

The original Minn. Rule MPCA 10 is proposed to be divided into two rules: Section 4.3012, entitled "Inspection of public records," and Section 4.3013, entitled "Confidential information." These rules are proposed to be amended to add cross references to Minn. Stat. §§15.1611 - 1699 and 116.075, the statutes relating to government data and the public nature of Agency documents. This is reasonable because it notifies the Agency and the public of the need to comply with statutes applicable to the handling of Agency documents and data. Other changes to the original rule are discussed below.

Notice of Release of Certain Records. Section 4.3013 A. and F.

The number of days notice that must be given before making public any records which are 1) requested to be certified as confidential or 2) certified as confidential but required to be released by federal law has been extended from three to seven. This is reasonable because it allows more time for the submitter of the information to withdraw it.

Use of Confidential Information in Contested Case Hearings. Section 4.3013 G.

The Agency proposes to amend this rule so that it applies only to confidential information which has been made a part of the record in the contested case hearing. This is a reasonable

clarifying amendment because the original rule could be read to suggest that the Agency can consider any confidential information which is relevant to the matter, whereas it is limited by Minn. Stat. §15.0422 (1980) to consider only information in the record.

Sanctions. ~~Minn. Rule MPCA 11.~~

Minn. Rule MPCA 11 regarding sanctions is proposed to be repealed. This is reasonable because the rule does nothing more than state that the Agency may impose appropriate sanctions or seek judicial relief for the violation of its rules, permits and orders. This rule repeats provisions found in other Agency rules and adds nothing to the language of Minn. Stat. §115.071, subd. 1 (1980), which provides:

> The provisions of Chapters 115 and 116 and all regulations, standards, orders, stipulation agreement, schedules of compliance, and permits adopted or issued by the agency . . . may be enforced by any one or any combination of the following: criminal prosecution; action to recover civil penalties; injunction; action to compel performance; or other appropriate action, in accordance with the provisions of said chapters and this section.

Therefore it is reasonable to repeal this rule as unnecessary.

Participation of the Public in Agency Affairs. Sections 4.3015 and 4.3016.

The Agency proposes to amend the original Minn. Rule MPCA 13 to make it clear that the public has the right to participate in activities of both the Agency and the Director. The rule has been restructured and divided into two rules. The manner that the

public may participate in Agency meetings is set forth in Section 4.3015. The manner that the public may participate in the activities of the Director is set forth in Section 4.3016. Specific provisions are explained below.

Statements on Agenda Items for Which No Contested Case or Rulemaking Hearing Has Been Held. Section 4.3015 A.

While the provision in the rule regarding the making of statements to the Board on agenda items for which no contested case or rulemaking hearing has been held has been repositioned and thus appears as new language, most of the language actually is identical to the original rule. However, the rule is proposed to be amended with respect to the procedure for submitting written statements. Written statements are permitted, but a copy must be served upon the Director at least ten days prior to the meeting. The Director will then mail copies of the statement to each Board member. The ten-day requirement is reasonable because it provides adequate time for the Director to review the statement and, if necessary, to prepare to respond to the statement. The requirement that the Director provide copies of the statement to the Board members is reasonable because it aids the public, who may not be familiar with the names and addresses of the citizen Board members.

Request for Informational Meeting. Section 4.3015 B.

The Agency proposes to add a new provision to the rules

setting forth the manner in which the public may request a public informational meeting on a matter. The rule is reasonable because it conforms to the Agency's past and present practice concerning public informational meetings, and the Agency has found the procedure set forth in the rule to be quite manageable and sufficiently convenient to the public.

Statements on Agency Items for Which a Contested Case Hearing Has Been Held. Section 4.3015 C.

The Agency proposes to amend this rule to indicate that the manner in which the statements are to be made on agenda items for which a contested case hearing has been held is governed by Sections 4.3010 and 4.3011. This is reasonable because it is desirable to have all procedures relating to contested cases gathered together in one rule, to the extent possible.

Statements on Agenda Items for Which a Rulemaking Hearing Has Been Held. Section 4.3015 D.

The Agency proposes to amend the rules to add a provision which sets forth the manner in which members of the public may comment on agenda items for which a rulemaking hearing was held. The procedure set forth in 4.3015 D. is the same procedure set forth in Section 4.3011 regarding agenda items for which a contested case hearing was held. This new provision of the rule is needed and reasonable because it provides an adequate and fair opportunity to the public to comment on the report of the Hearing

Examiner and on the record of the hearing prior to any final Agency decision on the matter.

Public Participation in the Director's Activities. Section 4.3016.

Most of the language of this rule comes from original Minn. Rule MPCA 13(a). There are, however, two changes which are proposed to be made to the existing language. The Agency proposes to add language regarding the holding of meetings which involve information which is, pursuant to the Minnesota Government Data Practices Act, not public (see Minn. Stat. §15.162, subds. 2a (confidential data on individuals), 5a (private data on individuals), and 5c (protected non-public data)). The amended rule allows the Director to hold a closed meeting to discuss this type of information.

The Agency is required by law to protect government data which is classified by the Act as not public. Minn. Stat. §15.166 (1980) makes any state agency which violates the act liable for damages resulting from the violation and, in the case of a willful violation, for exemplary damages. Therefore this provision is needed and reasonable in order for the Agency to be able to comply with the Act and to prevent its own exposure to liability for compensatory and exemplary damages.

Second, the paragraph regarding responses to statements and recommendations made to the Agency is proposed to be eliminated as unnecessary, since there are provisions in other portions of the

rules providing for such responses.

Intervention. ~~(b)~~.

The rule relating to intervention, Minn. Rule MPCA 13(b) has been replaced by similar provisions of the rules of the Office of Administrative Hearings. Therefore it is reasonable to repeal this rule.

Repealer.

The provisions of the original rules which are covered by the repealer at the end of the new rules have been discussed in the order that they appeared in the original rules. As shown by the previous discussion of these rules, the repeal of these rules is needed and reasonable.

IV. CONCLUSION

Based on the foregoing, the proposed amendments to Minn. Rules MPCA 1 - 4 and 6 - 13, to be recodified as 6 MCAR §§4.3001 - 4.3016, are both needed and reasonable.

LOUIS J. BREIMHURST

Dated: September 13, 1982

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Amendment of Agency Procedural Rules, Designated upon Adoption as 6 MCAR §§4.3001, 4.3002, 4.3004, 4.3005 A. - L. and N. - Q., 4.3006 - 4.3009, 4.3010 A. - D. and F. - I., 4.3011, 4.3012 and 4.3014 - 4.3016

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Jocelyn F. Olson, do hereby declare that I have examined the proposed rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed.

Jocelyn F. Olson

JOCELYN F. OLSON
Special Assistant
Attorney General

Dated: November 15, 1982