

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

Our File No. 1038

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 6-13-84
DATE FOR REVIEW 6-22-84
DATE DUE 6-27-84

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

Approved 6-27-84 (CDS) Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 6/28/84 Revisor approved 6/15/84
disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed see SR

✓ Order Adopting 6.7.84 Date

✓ Notice of Intent to Solicit Outside Opinion + comments.

✓ Order for rulemaking
N/A date of Hearing

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency no small biz language.

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

✓ Mailing list Certificate

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

N/A Hearing Examiner's Report

_____ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

_____ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

? Statement of Need and Reasonableness no small biz language

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

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : TOM TRIPLETT
Chairman, EQB
Attn: CHRISTIE ELLER/Special Assistant Attorney General

DATE: 6/27/84

FROM : LARRY D. STARNS
Special Assistant Attorney General
LDS

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Adoption of Rules of the State Environmental Quality Board Governing Operating Procedures for Conduct of Business.

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

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

1. Affixation of stamps of the Attorney General and Secretary of State;

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

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

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

Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

LDS:sa

AG copy

Environmental Quality Board

Adopted Rules Governing Operating Procedures for Conduct of Business

Rules as Adopted

4405.0100 DEFINITIONS.

Subpart 1. **Scope.** For the purpose of this chapter, the following terms have the meanings given them.

Subp. 2. **Agency.** "Agency" means a member agency of the board as defined in Minnesota Statutes, section 116C.03, subdivision 2.

Subp. 3. **Board.** "Board" means the Minnesota Environmental Quality Board.

Subp. 4. **Chairperson.** "Chairperson" means the person designated in Minnesota Statutes, section 116C.03, subdivision 3a to chair board meetings and perform duties as designated in Minnesota Statutes, chapters 116C and 116D, or as directed by the board or by rules adopted by the board.

Subp. 5. **Contested case.** "Contested case" means a proceeding as defined in Minnesota Statutes, section 14.02, subdivision 3 and conducted in accordance with Minnesota Statutes, sections 14.57 to 14.62 and parts 1400.5200 to 1400.8500.

Subp. 6. **EQB Monitor.** "EQB Monitor" means the publication of the board which contains notices required under Minnesota Statutes, chapters 116C and 116D or under rules adopted by the board and of other relevant information.

Subp. 7. **Hearing.** "Hearing" means a fact-finding proceeding held under Minnesota Statutes, chapters 116C and 116D and rules adopted under these chapters or any other fact-finding proceeding authorized by the board which is not conducted under Minnesota Statutes, chapter 14.

Subp. 8. **Hearing examiner.** "Hearing examiner" means the person or persons assigned by the chief hearing examiner under Minnesota Statutes, section 14.50.

? now ALJs

Subp. 9. **Interested persons.** "Interested persons" means those persons who have expressed interest in receiving notice of all board meetings or those persons who have expressed interest in a specific project or action of the board.

Subp. 10. **Party.** "Party" means any person whose legal rights, duties, or privileges may be determined in a contested case or board hearing and any person who has intervened in a contested case or hearing.

Subp. 11. **Person.** "Person" means a natural person, state, municipality, or other governmental unit or political subdivision or other agency or instrumentality, a public or private corporation, partnership, firm, association, or other organization, receiver, trustee, assignee, agent, or other legal representative of the foregoing, and any other entity.

Subp. 12. **Presiding officer.** "Presiding officer" means the person who chairs the board meeting in the absence of both the chairperson and vice chairperson.

Subp. 13. **Quorum.** "Quorum" means a majority of the permanent members of the board as established under Minnesota Statutes, section 116C.03, subdivision 2, excluding vacancies.

Subp. 14. **Regular meeting.** "Regular meeting" means the board meeting regularly scheduled for the third Thursday of each month.

Subp. 15. **Service; serve.** "Service" or "serve" means personal service or, unless otherwise provided by law, service by first class United States mail, postage prepaid, and addressed to the party at the last known address. Service by mail is complete upon the placing of the item to be served in the mail. Agencies of the state of Minnesota may also serve by depositing the item with central mailing section, Department of Administration.

Subp. 16. **Southern Minnesota Rivers Basin Council.** "Southern Minnesota Rivers Basin Council" means the council as defined in Minnesota Statutes, section 116C.82, subdivision 2.

Subp. 17. **Special meeting.** "Special meeting" means

meetings of the board other than the regular meetings.

Subp. 18. **Subcommittee.** "Subcommittee" means a group of board members, less than a quorum, authorized by the board to accomplish a specific objective.

Subp. 19. **Task force.** "Task force" means a group of individuals authorized by the board to accomplish a specific objective.

Subp. 20. **Technical representative.** "Technical representative" means a designated representative of an agency member of the board.

Subp. 21. **Vice chairperson.** "Vice chairperson" means the person elected by the board to serve as chairperson in the absence of the chairperson.

4405.0200 STATUTORY AUTHORITY.

Chapter 4405 is adopted under authority granted in Minnesota Statutes, sections 14.06, and 116C.04, subdivision 5.

4405.0300 DUTY OF CANDOR.

Subpart 1. **Duty.** In all formal or informal negotiations, communications, proceedings, and other dealings between any person and any member, employee, or agent of the board, it is the duty of each person and each member, employee, or agent of the board to act in good faith and with complete truthfulness, accuracy, disclosure, and candor.

Subp. 2. **Violation.** The board may deny, suspend, or revoke a permit, certificate, or approval issued by the board if the person seeking or holding the permit, certificate, or approval makes a material misstatement, act, or omission with respect to the permit, certificate, or approval that results in a breach of the duty of candor.

Subp. 3. **Imposition of sanctions.** In a case of an alleged violation of the duty of candor in which the board seeks to deny, suspend, or revoke a permit, certificate, or approval issued or granted by the board, a contested case hearing must be held to determine whether a violation of the duty of candor has occurred.

4405.0400 EX PARTE COMMUNICATION.

No party to a matter for which a hearing, a contested case, or rulemaking proceeding under Minnesota Statutes, chapter 14 has been ordered by the board may communicate with a board member concerning the matter except in writing, or orally as part of a presentation at a board meeting. Copies of any written communication must be sent to all parties to the matter and to all board members.

4405.0500 BOARD OFFICERS AND DUTIES.

Subpart 1. **Chairperson.** The chairperson shall preside at board meetings and perform other duties as assigned under law, rule, or as directed by the board.

Subp. 2. **Vice chairperson.** At its first meeting in February of each year, the board shall elect a member to serve as vice chairperson. In the absence or disability of the chairperson, the vice chairperson shall preside at board meetings and perform the other duties of the chairperson.

Subp. 3. **Presiding officer.** At a board meeting, if both the chairperson and vice chairperson are absent or are abstaining from discussing or voting on a matter, the board shall elect a presiding officer who shall serve only for that meeting or until either the chairperson or vice chairperson is available to chair the meeting.

4405.0600 BOARD MEETING PROCEDURES.

Subpart 1. **Decisions at open meetings.** All regular and special board meetings, and board-authorized subcommittee and task force meetings, must be open to the public. All board decisions must be made at open meetings.

Subp. 2. **Posting of meeting notices.** All notices of regular and special board meetings and meetings of board subcommittees and task forces must be posted in a conspicuous place in the board offices.

Subp. 3. **Notice of regular meetings.** The chairperson shall designate the time and place of each regular meeting. At least ten calendar days prior to a regular meeting, written

notice of the time, place, and matters to be considered must be posted and served on all board members, technical representatives, interested persons, and each party to a matter being considered at the meeting. Notice of the meeting must be published in the EQB Monitor prior to the meeting. The chairperson may direct that any regular meeting be rescheduled. Written notice of a rescheduled regular meeting shall be given in the manner described in subpart 4.

Subp. 4. **Notice of special meetings.** The chairperson, vice chairperson, or a majority of the board members may call a special meeting when deemed necessary or desirable. At least three calendar days prior to a special meeting, written notice of the time, place, and matters to be considered must be posted and served on board members, technical representatives, interested persons, and each party to a matter being considered at the meeting.

Subp. 5. **Agenda preparation.** The chairperson shall prepare a proposed agenda of business to be conducted for all meetings of the board. The agenda must include the time and place of the meeting and a list of all matters to be considered. Items may be placed on the agenda by notifying the chairperson of the matter at least 14 calendar days prior to a regular meeting. The chairperson shall determine whether or not a matter should be placed on the agenda and shall advise the board of all matters not placed on the agenda. A copy of an agenda constitutes written notice of board meetings when served as required in subparts 3 and 4.

criteria ? to guide discretion

Subp. 6. **Filing of written material.** Written material related to a matter to be decided by the board at a regular meeting must be served on all parties and 14 copies delivered to the board offices at least seven calendar days before a regular meeting. Written material related to a matter to be decided at a special meeting must be personally served on all parties, board members, and at the board offices at least two calendar days before the special meeting. The chairperson may grant an extension of time or allow the submission of fewer copies due to

time constraints or economic hardship.

Subp. 7. **Quorum.** A quorum must be present for transaction of board business.

Subp. 8. **Parliamentary procedure.** Except as specifically provided under statute or these parts, the most current revision of Roberts Rules of Order Revised governs any question of parliamentary procedure that arises at a board meeting.

Subp. 9. **Adoption of agenda.** The first order of business at the meeting must be adoption of the agenda, which may be amended or modified by the board prior to taking up other business. No matter may be voted upon at a regular or special board meeting unless it has been placed on the agenda as required under subparts 4 and 5. Discussion or informational items for which no decision will be made at the meeting may be added to the agenda at the meeting.

Subp. 10. **Public forum.** The chairperson may include a portion of time on each regular meeting agenda for persons to present statements on matters which are within the board's jurisdiction but are not on the agenda. The chairperson shall determine the limits of time and the relevancy of the statement to the board's jurisdiction.

Subp. 11. **Argument and presentations.** A person who wishes to present a statement on a matter that is on the agenda for the meeting shall be allowed to present statements to the board at the meeting; provided, however, that all written supporting materials must be filed as required under subpart 6. If the board determines that a person affected by an oral or written statement has not had adequate opportunity to respond, the board shall allow additional time to respond.

The chairperson shall determine the limits of time and the relevancy of discussion or debate on any matter before the board.

Subp. 12. **Voting.** An affirmative vote of a majority of all members of the board is necessary to take action, including the adoption, amendment, or repeal of rules and orders. All members present, including the chairperson, shall vote or abstain on every matter presented for board action.

When computing a majority of all members of the board, absences or abstentions must be included and vacancies must be excluded.

Unless otherwise provided by law or rule, whenever a motion for final adoption of a decision, resolution, or other action fails to receive the vote required and no contrary motion for final adoption has received the required vote, no action may be taken and the matter must be placed on the agenda of the next regular meeting or a special meeting without need for a determination to reopen, rehear, or otherwise reconsider the matter.

Subp. 13. **Record of meetings.** The board shall keep full and accurate minutes of all meetings, including a record of all votes of individual members.

Subp. 14. **Notice of decisions.** Following each regular or special meeting, a copy of all decisions or resolutions adopted by the board must be served on all parties to an action. Notice of board decisions must be published in the EQB Monitor.

4405.0700 SOUTHERN MINNESOTA RIVERS BASIN COUNCIL.

Subpart 1. **Recommendations.** Recommendations from the council must be submitted to the board. Minority recommendations on an issue may also be submitted. Recommendations must be submitted as required under part 4405.0600, subpart 6.

Subp. 2. **Meetings.** All meetings of the council are open to the public. Notice of time, place, and matters to be considered must be posted as established in part 4405.0600, subpart 2.

4405.0800 BOARD SUBCOMMITTEES; TASK FORCES.

Subpart 1. **Establishment.** The board may establish citizen or interdepartmental task forces or subcommittees to aid in performing its duties. The board shall specify the charge, duration, size, membership, meeting notice requirements, and other procedures to be followed for each group. The board may specify a chairperson for each task force or subcommittee.

Subp. 2. **Purpose.** Task forces and subcommittees shall advise the board on matters for which the board has charged them responsible.

Subp. 3. **Recommendations.** Recommendations from task forces and subcommittees must be submitted to the board. Minority recommendations on an issue may also be submitted. Recommendations must be submitted as required under part 4405.0600, subpart 6.

Subp. 4. **Meetings.** All meetings of subcommittees and task forces are open to the public. Notice of the time, place, and matters to be considered must be posted as established in part 4405.0600, subpart 2 and as specified in subpart 1.

4405.0900 EXCEPTIONS AND PROPOSED FINDINGS.

Subpart 1. **Exceptions to report of hearing examiner.** If a hearing examiner acting under contested case procedures in Minnesota Statutes, chapter 14 has submitted a report, and a party wishes to file exceptions to the report, a copy of the exceptions must be served on all parties and 14 copies of the exceptions must be filed with the chairperson within 14 calendar days after the availability of the report. The chairperson may grant an extension of time for filing exceptions, and may allow fewer copies to be submitted due to time constraints or economic hardship.

Subp. 2. **Proposed findings in other than contested cases.** If the board has conducted a hearing, parties to the proceeding may submit proposed findings and conclusions for the board's consideration. A copy of the proposed findings must be served on all parties and 14 copies must be filed within ten working days of the close of the record of the proceeding. The period for submitting proposed findings and conclusions and the number of copies required may be changed as set forth in subpart 1.

4405.1000 PARTIES.

Subpart 1. **Contested cases.** In proceedings conducted under Minnesota Statutes, chapter 14, parties have the rights and obligations specified in applicable rules established by the

Office of Administrative Hearings.

Subp. 2. **Hearings.** In hearings not conducted under Minnesota Statutes, chapter 14, the chairperson shall identify as a party any person with direct responsibility for proposing or undertaking an action or study, or for obtaining approval of an action, plan, or a proposal. Other persons not named as parties may intervene to the extent provided in part 4405.1100.

Subp. 3. **Rights and obligations.** Rights and obligations of parties in proceedings not under chapter 14 include all rights of the public at large and:

A. the right to make motions pertinent to the matter under consideration;

B. the right to notice other than published notice of board decisions;

C. the right to present argument to the board;

D. the right to submit proposed findings and conclusions; and

E. the obligation to serve other parties with copies of documents or other writings filed with the board as required under part 4405.0600, subpart 6.

4405.1100 INTERVENTION.

Subpart 1. **Contested cases.** In proceedings conducted under Minnesota Statutes, chapter 14, persons desiring to intervene shall intervene in accordance with applicable rules established by the Office of Administrative Hearings.

Subp. 2. **Hearings.** In other hearings, persons desiring to intervene shall intervene by submitting a timely petition to intervene to the board and to all parties showing both the person's interest in the matter, and the likelihood that this interest will not be adequately represented by existing parties. The chairperson shall determine the timeliness of the petition for each hearing based on circumstances at the time of filing. The chairperson of the board may grant permission to intervene. Intervenors have the rights and obligations accorded parties in matters before the board as established in this part. Intervention is not required before a person may submit

? too vague

evidence, make statements, or ask questions regarding matters before the board.

4405.1200 FINAL DECISIONS AND ORDERS.

Subpart 1. **Decision.** The board shall make all final decisions and orders in those matters for which a hearing, contested case, or rulemaking proceeding conducted under Minnesota Statutes, chapter 14 has been held. When required by law, the board's decision or order must be based solely on the record from the hearing. Nothing in this rule precludes argument concerning the application of law to matters of record.

Subp. 2. **Findings and conclusions.** 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. If the proposed statements of findings and conclusions submitted to the board are not adopted, the board shall direct its staff to prepare additional findings and conclusions. Rejection of the proposed findings and conclusions is considered an interim decision. A final decision on the matter must be made after the board has adopted a statement of findings and conclusions. When the board or its staff has prepared proposed findings and conclusions, a copy must be served on all parties at least ten calendar days before the meeting at which the board intends to make its decision or order.

Subp. 3. **Remand.** The board may remand a matter to the hearing examiner for further proceedings if the board determines that the record is inadequate. ? ALJ

4405.1300 RECONSIDERATION AND REHEARING.

Subpart 1. **Board right to reconsider and rehear.** Under the procedures in this part, the board may reconsider or rehear a final decision. The right to reconsider or rehear under this part may be exercised unless it is lost by appeal or the granting of a writ or certiorari. ? "of"

Subp. 2. **Reconsideration.** A board member or a party to a matter may request the board to reconsider a final decision by notifying the chairperson in writing within ten calendar days

after the board meeting at which the final decision on a matter was made. The chairperson shall place the request for reconsideration on the agenda for the board meeting next following the meeting at which the decision was made. Absent a motion to reconsider by a board member at the board meeting next following the meeting at which the decision was made, the request for reconsideration is deemed to be denied.

Subp. 3. **Obtaining a rehearing.** At any time within ten calendar days after the board's final decision on a matter for which the board held a hearing or a contested case, a board member or a party to the matter may request a rehearing by filing with the chairperson in writing both a request for reconsideration and a petition for rehearing. The chairperson shall place the request for reconsideration and petition for rehearing on the agenda for the board meeting next following the meeting at which the decision was made. The petition must contain the name, address, and telephone number of the petitioner; the board designation for the matter; and the reasons for the petition.

A petition for rehearing submitted after a final decision on the matter has been reached by the board may not be acted upon unless the board has first decided to reconsider its decision. Absent a motion by a board member to reconsider at the board meeting next following the board meeting at which the decision was made, the request for reconsideration and the petition for rehearing is deemed to be denied. The board shall grant or deny a petition for rehearing as part of the record of the decision. This petition must be granted upon a showing that there are irregularities in the hearing which affected the outcome of a hearing, errors of law, or that there is newly discovered material evidence of such importance it would have likely altered the outcome of the hearing. A rehearing petition must also be granted upon a showing of good cause for failure to have answered or appeared at the hearing.

A rehearing must be noticed and conducted in the same manner as the original hearing or contested case on a matter;

? ALJ

provided that, in a contested case, the hearing examiner may permit service of the notice less than 30 days prior to the rehearing of a contested case.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUN 28 1984
Joan Anderson Growe
Secretary of State
11:20 AM

APPROVED AS TO LEGALITY
June 27, 1984
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

Minnesota
Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Phone (612) 296-2723

June 12, 1984

Judith Wehrwein
Legal Assistant
Attorney General's Office
204 Administration Building
St. Paul, MN 55155

RE: In the Matter of Adoption of EQB Rules Governing Operating Procedures. Noncontroversial.

Dear Ms. Wehrwein:

Enclosed please find the documents as specified in MCAR 2000.0400 for submittal to the Attorney General's office.

Please note there were neither changes requested nor made to the proposed rules, therefore findings of fact required under 2000.0400, subp. 1F are not included.

Please feel free to contact me at the above number.

Sincerely,

Shirley M. Dougherty

Shirley M. Dougherty
Administrator

SMD/pb

Enc.

AN EQUAL OPPORTUNITY EMPLOYER

RECEIVED
JUN 13 1984
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

To: Larry
Date: 6/21/84
Re: EQB - Operating Procedures for Conduct of Business.

Rules as Adopted

p.1, lines 34,35 . 0100 subp. 8
p.8, line 15 . 0900 subp. 1
p.10, line 25 . 1200 subp. 3
p.12, line 1 . 1300 subp. 3.

All of the above contain references to "hearing examiner". This must be changed to "administrative law judge". - Can be corrected in subsequent amend.'s, not substantive. - LDS

p.5, line 21... . 0600 subp. 5
It is not clear whether a matter can be placed on the agenda merely by notification to the chairman or whether the chairperson has discretion over the agenda regardless of the timeliness of the notification. If the chair has discretion, there are no criteria to provide guidance. 1) Agenda is w/in inherent discretion of chairperson (§116C.04, subd. 2(x) gives EQB this pwr.) x
2) Chairperson controls the mtg. not the public x
~~controlling the chairperson that's chaos~~ - LDS

p.9, line 31 . 1100 subp. 2
The chair is granted authority to determine the timeliness of a petition but there are no criteria to limit the chair's discretion - 1) Rule promulgated via 116C.06 Sub 1 which references Minn. Rules 1400.6200 (via Ch. 14) and Minn. Rule 1400.6200 subp. 1 gives this same discretion to H.Ex./ALJ. w/ C.C. hearings
2) Should more extensively (over

p.10, line 32 . 1300 subd 1
"OR" must be changed to "of"
OK - not substantive x
OK other writers exists

delimit the requirements for entitlement to intervenor status such as in Minn. Rules 1400.6200; however, a) 116K.06 makes OAH hearing optional w/in EQB's discretion and ipso facto this gives them a large amt. of discretion w/respect to non-OAH hearings, and b) 4405.1100 permits participation in EQB meetings notwithstanding the fact that they have been denied intervenor status, so that they aren't materially prejudiced should they be denied such unfairly x

— LDS x

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY BOARD

In the Matter of the Proposed Adoption of Rules of the State Environmental Quality Board Governing Operating Procedures for Conduct of Business

ORDER ADOPTING RULES

Notice of the Board's intent to adopt the above-entitled rules without a public hearing was published in the State Register on March 19, 1984 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 14.14, subdivision 1 on March 23, 1984. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Operating Procedures for Conduct of Business are adopted this 7th day of June, 1984 pursuant to authority vested in the Environmental Quality Board by Minnesota Statutes section 116C.04, subp. 5.

STATE OF MINNESOTA

Tom Triplett
Chairman, EQB

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY BOARD

In the Matter of the Proposed Adoption of Rules of the State Environmental Quality Board Governing Operating Procedures

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 1st day of December, 1983 that a Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Environmental Quality Board for that purpose and be published in the State Register.

STATE OF MINNESOTA

Thomas Kalitowski

Chairman, Environmental Quality Board

CERTIFICATE OF BOARD'S

AUTHORIZING RESOLUTION

I, Thomas Kalitowski, do hereby certify that I am a member and the Chairperson of the Environmental Quality Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the EQB duly and properly called and held on the 1st day of December, 1983, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

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

IN WITNESS WHEREOF, I have hereunto subscribed my name this 1st day of December, 1983.

Thomas Kalitowski
Chairperson

Barbara L. Hughes
Attest by one other Board member

Environmental Quality Board

Notice of Intent to Solicit Outside Opinions or Information Concerning Proposed Rules Governing the Operating Procedures for the Environmental Quality Board

Pursuant to Minn. Stat. § 15.0412, subd. 6, notice is hereby given that the Minnesota Environmental Quality Board is soliciting information and opinions from sources outside the agency for the purpose of adopting rules governing the Operating Procedures for the Minnesota Environmental Quality Board. Such rules are authorized by Minn. Stat. § 116C.04, subd. 5 (1980).

Any persons desiring to submit information or comment on the subject may do so either orally or in writing. All statements of information and comment must be received by December 9, 1981. Any written material received by this date will become part of the record.

Written or oral information and comment should be addressed to:

Shirley M. Dougherty, Administrator
Environmental Quality Board
Room 100, Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2723

Dated: October 26, 1981

Robert Benner, Chairman
Environmental Quality Board

The Ad Hoc Coalition on Uranium Mining



Barnum Office
Box 322, Barnum Minnesota 55707

Twin Cities Office
618 East 22nd Street, Minneapolis MN 55404
612-870-4700

November 24, 1981

Ms. Shirley Dougherty
Administrator
Environmental Quality Board
100 Capitol Square Building
St. Paul, Minnesota 55101

Dear Shirley:

I am writing to respond to your Notice of Intent to Solicit Outside Opinions on Proposed Rules Governing Operating Procedures for Environmental Quality Board. My comments relate to EQB subcommittees formed to deal with specific topics and to bring recommendations to the full board. As you know, the Minnesota Coalition on Uranium was intensely interested in the recently completed EQB report to the Legislature on uranium. While we got full cooperation from the staff during the drafting of the report (such as meetings to hear our input and copies of early drafts), we found it somewhat more difficult to follow the subcommittee as they debated the final content of the report and recommendations.

One problem is that there was no established way to find out about meeting times and locations. Several times we heard about meetings through other agency staff, who had heard about it from someone else, etc. In cases like this in the future, I would recommend that the EQB notify anyone who requests notification about subcommittee meetings.

A second problem had to do with the structure of the meetings. At one meeting, everyone present was allowed to have input. At later meetings, members of the public were not allowed to speak at all. I would suggest that subcommittee chairpersons allow some time at each subcommittee meeting for members of the public to respond or make suggestions. I think that would follow in the open spirit in which full EQB meetings are conducted.

The third problem has to do with the timing of final recommendations of the subcommittee. The final draft of the recommendations, in this case, only became available to members of the public at the very EQB meeting at which they were approved. In this case, the report goes on to the Legislature for final hearings and action. But in other cases where the EQB is making final decisions, I would recommend that final subcommittee recommendations be made available to interested organizations at least a few days before final EQB action.

Folks Organized for Responsible Energy (FORE) • American Friends Service Committee (AFSC) • Black Hills Alliance • Clear Air Clear Water Unlimited • Cloquet Area Branch, American Association of University Women • Minnesota Clergy and Laity Concerned (CALC) • Duluth Clergy and Laity Concerned • Social Concerns Commission, Catholic Diocese of Duluth • Minnesota Conservation Federation • Minnesota Environmental Control Citizens Association (MECCA) • The Minnesota Project • Minnesota Public Interest Research Group (MPIRG) • Northern Sun Alliance • Save Lake Superior Association • Sierra Club, North Star Chapter • United Northern Sportsmen

I realize that it is not easy to pull together a final report with so many actors involved, and the uranium report proved to be particularly sticky, for a number of reasons. But I believe that adoption of the above three suggestions would not slow things down significantly, and would provide the public with predictable procedures for working with EQB subcommittees.

Thank you for the opportunity to comment.

Sincerely,

Loni Kemp

Loni Kemp

LK:mmh

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT Health

Office Memorandum

TO : Shirley Dougherty, Administrator
Environmental Quality Board

DATE: December 9, 1981

FROM : Technical Representatives
Tom Balcom, DNR
Janet Cain, PCA
Karen Cole, MEA
David Ekern, MN DOT
Jane Harper, MDA
Laura Oatman, MDH
Ted Orosz, DEPD

PHONE:

SUBJECT: Response to Solicition for Opinions and Information Regarding Operating Procedures for the Environmental Quality Board
State Register Cite 6 S.R. 860

In response to the above referenced Solicitation we offer the following input, comments, and opinions for your consideration in the rule development process.

We believe that Operating Procedures for the Board are important and needed, because this body has such frequent, and often controversial contact, with a wide variety of people unfamiliar with its operation and procedures. In addition, we believe development of operating procedures will provide the Board the opportunity to articulate its policies with respect to a variety of issues and at the same time structure its operations to more efficiently use its limited meeting time.

While this may be an appropriate time to begin the ruledrafting process, we would encourage the Board to take no final action on adopting the rules until resolution in two key areas becomes more certain. Once the Board has new rules governing the environmental review process, the role of the Board may change significantly. In addition, the Commissioner of the Department of Energy, Planning and Development has proposed a recommendation that will be made to the Legislature to make EQB into an autonomous agency. Thus any operating procedures adopted by the Board prematurely may become obsolete once these changes occur.

However, as the ruledrafting is started we think the following areas should be considered.

1. The rules should be written and organized in such a way as to make them as readable and usuable as possible by the general public. This effort is especially important given the infrequent contact with the Board by members of the public.

2. The rules should articulate the differences in Board procedures when dealing with the variety of programs that it administers. For example, we believe the rules should differentiate between procedural requirements when Chapter 15 proceedings are involved and when it conducts other activities.

3. Because other agencies of state goverment (i.e., MPCA) have already had experience in adopting and using operating procedures, we would encourage drawing from their experience and making adaptations to reflect the uniqueness of Board Operation and attitude.

4. Over the last few years the role of the Technical Representatives and Technical Committee have undergone several changes. We are concerned that the public and those parties who interface with the Technical Committee feel that this body represents added administrative burden in dealing with the Board and provides no clear direction in the decisionmaking efforts of the Board. In addition, as the Board makes expanded use of Task Forces and Subcommittees we believe it will be necessary to be able to draw from a wider variety of technical areas within member agencies. Therefore, we would encourage consideration of an expanded definition of the concept of Technical Representative and the need for the Technical Committee as a formal operating arm of the Board.

5. Within the procedure we also encourage a more formal delineation of time requirements for submission of materials to allow Board members more time to become familar with issues they will be addressing at the meeting.

As a means of articulating these concepts and opinions we are providing as input draft operating procedures for your use in the ruledrafting process. This document draws from various previous informal procedures used by the Board, concepts from other programs administered the Board, rules of other agencies, and from informal discussions among Technical Representatives and EQB staff.

We appreciate the opportunity to provide our opinions and will participate as the opportunity arises in the future. If you have questions please contact us.

cc: EQB Members

Minnesota
Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Phone 297-3184

December 24, 1981

Mr. William R. Kaul, Chairman
Environmental Committee
MN/WI Power Suppliers
8020 Mitchell Road
Eden Prairie, MN 55344

Dear Will:

Thank you very much for arranging the lunch and meeting last week. I think it was productive.

Let me refer to your letter of December 21 regarding the EQB operating procedures. I am inclined to agree with your point and will not press for action on the proposed procedures until after the dust has settled from the forthcoming rules hearings.

Thanks again!

Sincerely,

Robert F. Benner
Chairman

RFB:bb

cc Shirley Dougherty

AN EQUAL OPPORTUNITY EMPLOYER

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT EQB/Power Plant Siting

TO : Shirley Dougherty

DATE: June 14, 1983

FROM : Sheldon Mains SM

PHONE:

SUBJECT: Draft Proposed Operating Rules

George has asked me to review the draft operating rules. In general, they appear to be concise and complete. I do, however, have a few questions and suggestions.

3.002 C Chairperson

Could "chair" be used instead of "Chairperson"? "Chair" seems to be gaining favor as the preferred non-sexist term. — Revisor will substitute, if preferred

"Board" should be used instead of "EQB" on the second line to be consistent with section B.

3.002 N Service; serve

Is this section necessary? yes. — gets us out of a lot of repeating.

3.002 P Subcommittee

According to this section, a subcommittee could not have more than six board members--"less than a Quorum". Is this restriction necessary? — If more, then board meeting procedures apply to "meeting."

3.002 R Technical Representative

Technical representatives are only mentioned in 3.006 C (Notice of Regular meetings) and 3.006 D (Notice of special meetings). Is it necessary to refer to technical representatives at all and therefore, couldn't this definition be deleted?

3.005 C Presiding Officer

Instead of always requiring election, could the option of appointment of the presiding officer by the chairperson or vice chairperson be allowed to streamline the meetings when necessary?

3.006 C Notice of regular meetings

If a notice is served on all board members and interested persons, why is it necessary to include technical representatives in the list?

3.006 D Notice of special meetings

See the comments on 3.006 C.

3.006 H Parliamentary procedure

Should "law" be added in the first phrase? ("Except as provided in the law and these rules,")

The version (e.g. "the most current version of", or "Roberts Rules of Order Revised") of Robert Rules of Order should be specified. —

This section should also apply to subcommittee and task force meetings. no.

3.006 K Arguments and presentations

In paragraph number one, the chair, vice chairperson, or presiding officer should be given the authority to determine time limits for persons wishing to address the board on agenda matters for which no hearing was held. As this paragraph now reads, this authority could be argued to be provided only when a hearing has been held.

3.012 B Findings and conclusions

How does the sentence "A final decision on the matter shall be made after the board has adopted a statement of findings and conclusions" affect issues where if the board does not act, a specific decision is automatic by law or rule?

Additions

Are any procedural rule additions necessary for the Water Planning Board functions?

* There should be procedures for board intervention in member agency decisions. ?

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Pollution Control Agency

TO : Shirley Dougherty, Administrator
Environmental Quality Board

DATE: June 24, 1983

FROM : Deborah R. Pile, Director DRP
Office of Planning & Review

PHONE: 296-7799

SUBJECT: Comments on Draft Proposed Operating Rules

I have reviewed the proposed operating rules and have, in general, found them to be clear and believe that they will clear up some of the confusion that has arisen in the past over EQB procedures. As I had discussed with you, I do, however, have several comments to offer.

1. 6 MCAR §3.006.F - Board members and Technical Representatives would have more review opportunity if materials were served (mailed) to them the seven days prior to the meeting rather than just delivered to the board offices on that day. changed

2. 6 MCAR §3.006.I - This section is unclear, as it seems to be said in the first sentence that the agenda may be amended without exception, while in the last and the statement of need, the impression is that only nondecision items may be added. Perhaps the lack of clarity as to the definition of "duly placed on the agenda" is the problem here. changed

3. 6 MCAR §3.007.D - The citation here should be 3.006.B rather than 3.007.B. changed

4. 6 MCAR §3.012.B - Findings and Conclusions, if prepared, are to be served on all parties at least ten calendar days before the meeting at which the decision is to be made. It is unclear here what the procedure is to be if Findings have not been prepared. Findings are to be prepared - first sentence *

5. 6 MCAR §3.013.B and C.1 - In both of these sections, "ten days" is mentioned without reference to whether these are calendar or work days. Since the distinction is made in all other places, it should be made here. changed

Please feel free to call me if you have any questions on these comments or wish to discuss them further.

DRP:es



SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Bremer Tower **Office Memorandum**

TO : SHIRLEY DOUGHERTY
Environmental Quality Board

DATE: July 29, 1983

FROM : CHRISTIE B. ELLER CBE, by TJB
Special Assistant Attorney General

PHONE: 6-9200

SUBJECT: Proposed EQB Rules

As we discussed, the following is suggested language to be used in lieu of proposed 6 MCAR § 3.003B.

B. Violation of Duty of Candor. The board may deny, suspend or revoke any permit, certificate or approval issued by the board if the person seeking or holding the permit makes any material misstatement, act or omission with respect to the permit which results in a breach of the duty of candor.

Again, as we discussed, I would suggest forwarding the proposed language to Jim Alders and asking him for suggested language.

CBE:bl

Minnesota
Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Phone (612) 296-2723

August 22, 1983

Jim Alders
Northern States Power Company
414 Nicollet Mall
Minneapolis, MN 55401

Dear Jim:

Sorry I have taken so long to get back to you concerning the EQB Operating Rules, but I've been on vacation.

As we discussed, the following is suggested language to be used in lieu of the proposed 6 MCAR § 3.003B.

> B. Violation of Duty of Candor. The board may deny, suspend or revoke any permit, certificate or approval issued by the board if the person seeking or holding the permit makes any material mis-statement, act or omission with respect to the permit which results in a breach of the duty of candor.

Please let me know if this satisfies your concern. Also, please feel free to submit any other suggested language changes you or your attorney may have.

Sincerely,

Shirley M. Dougherty

Shirley M. Dougherty
Administrator

SMD/pb

AN EQUAL OPPORTUNITY EMPLOYER

Statement of Need and Reasonableness
Operating Rules for
Environmental Quality Board

6 MCAR §§ 3.001 - 3.013

Procedural rules are needed because the board makes difficult decisions on frequently controversial subjects with much public interest in the decision. The board encourages public participation in its decision-making process, therefore a predictable, orderly and fair method of conducting the business of the board is required.

In 1973 the board adopted procedural operating guidelines and has amended them occasionally as circumstances required. Generally, these proposed rules follow the procedures adopted through the years by the board. These procedures have been found to work and also meet the criteria of predictability, orderliness and fairness. The rules extend the procedures established in Robert's Rules of Order to accommodate the particular situations the board may face.

These rules will not directly affect small businesses and are therefore exempt from the requirements of Minn. Stat. Ch. 14.115, Small Business Considerations in Rulemaking. Since these rules do not set performance, design or operational standards nor compliance reporting requirements, exemption under Minn. Stat. Ch. 14.115, subd. 7b is applicable. In general, these rules should positively impact small business by establishing an orderly, fair and predictable method of interaction with the board.

6 MCAR § 3.001 Authority.

It is not essential that the authority for promulgating rules be included, however, it is included for the purpose of directing the reader to the proper statutory references. This is particularly important since the board frequently is involved in matters in which large numbers of citizens unfamiliar with administrative procedures participate.

6 MCAR § 3.002 Definitions.

Definitions are provided to clarify references to specific terms used in the rules.

6 MCAR § 3.003 Duty of candor.

It is necessary that accurate information is received from persons interacting with the board. This section, therefore, requires truthfulness and candor from all persons dealing with the Environmental Quality Board. To ensure that accurate information is provided, this section also establishes the types of penalties the board may impose if the duty of candor is violated. These penalties are stated in general terms and could vary according to the offense and the authority of the board. Finally, an orderly and open method (a contested case hearing) is provided to determine if a violation of duty of candor has occurred.

6 MCAR § 3.004 Ex parte communication.

This rule is necessary because it provides that all comments received by board members from parties on a matter subject to a hearing will be disclosed to all board members and all parties. This rule prohibits individual lobbying efforts by parties to a matter that could be used to inappropriately sway the opinions of individual board members.

The rule is reasonable and provides that board procedures are consistent with notions of due process and fundamental fairness. The Minnesota Supreme Court has noted that ex parte contacts may violate principles of fundamental constitutional protection and due process. See e.g., Crosby-Ironton Federation of Teachers, Local 1325 v. Independent School District No. 182, Crosby-Ironton, 285 N.W.2d 667 (Minn., 1979). In that case the Court noted that "[a]ny case reaching this court where ex parte contacts are under dispute, without notifying all other parties to the dispute, will raise a strong presumption that the ultimate award was procurred by corruption, fraud, or other undue means..." Id at 670.

6 MCAR § 3.005 Board officers and duties.

A. Chairperson. It is necessary that the board function in an orderly and predictable manner. Therefore, assignment of personal responsibility for board functions is reasonable. Although Minn. Stat. Ch. 116 C designates the chairperson, it is reasonable to refer to other legislation as well as board adopted rules which also contain functions delegated to the chairperson.

B. Vice Chairperson. It is necessary to the orderly functioning of the board that a substitute chairperson is designated. It is reasonable that the board elect the vice chairperson annually. Since citizen board member appointments are staggered and expire the first Monday in Janaury, it is reasonable that a vice chairperson be elected from the members in February of each year.

C. Presiding officer. For the orderly conduct of board business it is necessary that a meeting for which a quorum is present is held. It is reasonable that the board elect a presiding officer for the meeting or a portion of the meeting when both the chairperson and vice chairperson are unavailable.

6 MCAR § 3.006 Board meeting procedures.

A. Decisions at open meetings. Although Minn. Stat. § 471.705 (1982) and Minn. Stat. § 116C.04, subd. 1 (1982) provides that all board meetings are open and all board decisions are made in an open and public forum, it is reasonable and necessary to repeat the requirement because of the large number of citizens who participate in EQB meetings, some of whom may be unfamiliar with the open meeting law.

B. Posting of meeting notices. This rule is needed to fully implement the requirements for holding open, public meetings. (See Minn. Stat. § 471.705 (1982)) It is reasonable to designate a conspicuous place in the board offices where notice for all board-authorized meetings must be placed.

C. Notice of regular meetings. This rule fulfills the need for adequate board member and public notice before regular meetings. It is reasonable to schedule regular meetings for once each month thus allowing the board time to complete the tasks required by Minn. Stat. 116C, while providing enough time between meetings for adequate public notification and staff work prior to each meeting. Designation of the time, place, and advancement or postponement of the regular meetings by the chairperson is reasonable since it allows some flexibility in the meeting schedule to respond to the various situations that may arise. Board meeting notice is routinely distributed to 500 or more individuals and the media ten days in advance of the meeting. This lead-time has worked well in the past. Posting of a regular meeting notice and publication in the EQB Monitor is a reasonable method of general notice of meetings.

D. Notice of special meetings. With the numerous requirements of the board and the sensitive nature of the decisions the board must make, it is likely that occasionally a meeting may need to be held in addition to or at a different time than the regularly scheduled meeting. This rule responds to the need and reasonably requires fewer days notice in special circumstances.

E. Agenda preparation. It is necessary for the orderly conduct of business that all participants in a meeting know what is to occur at a meeting. It is reasonable to prepare an agenda in advance of a Board meeting which alerts the public and the board of the issues to be decided or discussed at the board meeting and allows time for adequate preparation for the meeting. Notifying the chairperson of an agenda matter 14 days in advance is necessary because of the number of agendas which are printed and distributed 10 days before a regular meeting. It is reasonable that the chairperson determines the agenda items, and that the board is notified of the chairperson's decision and may determine to place an item on a subsequent agenda or hold a special meeting.

F. Filing of written materials. For the orderly conduct of business it is necessary that written materials are received prior to a meeting. Providing copies to board members and parties 7 days before a meeting is a reasonable method for distribution of relevant materials concerning an agenda item and reasonable time for both board and party review. The chairperson is authorized to waive the requirements--for just cause--which allows the flexibility to respond to unusual circumstances.

G. Quorum. This rule is reasonable because it provides a minimum number of board members which are required to transact business but allows some members to be absent without precluding the board from conducting business.

H. Parliamentary procedures. It is necessary that procedures are established for circumstances not covered in these rules. This rule is reasonable because it provides for the orderly conduct of board meetings when such circumstances arise.

I. Adoption of agenda. It is necessary for the orderly conduct of business that the chairperson prepare an agenda. It is necessary also that board members have input into the agenda and that the public may rely on the agenda. This rule is reasonable because it provides board members an opportunity for input into agenda decisions while guaranteeing that board action on a matter will not occur without prior public notice. The rule also gives flexibility by allowing agenda modifications which may be necessary due to changed circumstances occurring after agenda preparation.

J. Public forum. It is necessary that the public have some method of access to the board. This rule reasonably provides a method for public access to the board as well as a method of control to ensure that the orderly transaction of agenda business occurs.

K. Arguments and presentations.

1. For full and open discussion, it is necessary that public input be allowed on all agenda matters. This rule is a reasonable method of ensuring public input into matters which have not had public hearings. A time frame is established to allow board member review of written materials prior to a meeting. A method is established which provides adequate time for response from persons affected by a statement to ensure fairness and provides opportunity for an open and balanced discussion of all sides of an issue before a board decision.

2. It is necessary that the board transact business in an orderly, fair manner. This rule reasonably gives the chairperson the authority to limit debate and discussion before the Board. This helps to ensure that board meetings will be conducted in an orderly, but fair, manner and that irrelevant debate will not keep the board from completing its scheduled work.

L. Voting.

1. It is necessary that an orderly, predictable manner of decision-making is established. The reasonable requirement that a majority vote of all members is necessary for a decision ensures that a minority position will not prevail simply because opposing board members were absent from a meeting.

2. It is necessary that a method of computing a majority is established for predictable decision-making. This rule provides a reasonable method for computing a majority, which is consistent with Minn. Stat. ch. 116 C and court decisions concerning majorities. (Ram Development Co. v. Shaw, 309 Minn. 139, 244 N.W.2d 110 (1976); Van Cleve v. Wallace, 216 Minn. 500, 13 N.W.2d 467 (1944); State ex rel. Peterson v. Hoppe, 194 Minn. 186, 260 N.W. 215 (1935))

3. It is necessary that a predictable method is established for making board decisions. Because of the stringent majority requirements established under Minn. Stat. Ch. 116 C, it is likely that board action may not occur on some agenda items. This rule reasonably establishes that, in such a case, the matter will be before the board at the next meeting and until action has been taken.

M. Record of meetings. It is necessary that records of meetings and decisions are kept. (See Minn. Stat. § 471.705 (1982)) It is reasonable to require minutes since minutes taken at board meetings provide the board with an accurate record of past decisions and discussions and provide the public with a record of previous board actions.

N. Notice of decisions. It is necessary to avoid confusion and to insure due process that those affected by a decision receive written notice of that decision. This rule reasonably establishes a predictable method of providing notification of board actions to both parties and interested persons. This promotes openness and public awareness of board actions.

6 MCAR § 3.007 Southern Minnesota Rivers Basin Council.

A. The Southern Minnesota Rivers Basin Council (SMRBC) became an advisory council to the board on July 1, 1983 by legislative action. It is reasonable that the purpose of the SMRBC is included in the rules to aid understanding of the council as well as its relationship to the board.

B. It is necessary that an orderly method is established for the council to submit its work to the board.

C. It is necessary to establish that all meetings of the council are open and the method of notification for meetings as required by Minn. Stat. § 471.705 (1982) are followed.

6 MCAR § 3.008 Board subcommittees, task forces.

Pursuant to Minn. Stat. § 116C.04, subd. 4 (1982) the board is authorized to establish interdepartmental or citizen task forces or subcommittees to study particular problems. In order to carry out the duties mandated in Minn. Stat. ch. 116C, it is necessary to establish a method for the board to form groups. This rule is reasonable because it:

A. Provides an orderly method for the board to establish groups to aid in performing its duties. The method gives the board direction of the groups and the flexibility to respond to the circumstances for establishing each group;

B. Establishes the over-all advisory purpose of each group and the limits of subcommittee or task force authority;

C. Establishes the output expected by the board from each group and provides an orderly method for the board to receive recommendations from the groups; and

D. Establishes that the public may attend all subcommittee or task force meetings and designates a place for public notice of each meeting as required by Minn. Stat. § 471.705 (1982).

6 MCAR § 3.009 Exceptions and proposed findings.

For the orderly, predictable conduct of board duties, it is necessary that a method is established for timely board receipt of all opinions on an issue.

A. Exceptions to report of hearing examiner. This rule reasonably provides an orderly, timely method for submission of responses to a hearing examiner's finding for a contested case. It is also reasonable to establish criteria for the chairperson to use when responding to a request for waiving the requirements for time for filing or number of copies to be filed.

B. Proposed findings in other than contested cases. This rule is reasonable because it provides an orderly, timely method for submission of proposed findings. It also establishes reasonable criteria for the chairperson to use when responding to a request for waiving the requirements of time for filing or number of copies to be filed.

6 MCAR § 3.010 Parties.

A. It is necessary that parties to a contested case are aware of their rights and obligations. This rule identifies the rules which govern the rights and obligations of parties in contested cases.

B. It is necessary to establish parties in a board hearing. This rule is reasonable because it provides a method for identifying parties to board hearings.

C. This rule is reasonable because it identifies the rights and obligations of parties in board hearings.

6 MCAR § 3.011 Intervention.

A. For contested cases it is necessary that those desiring to intervene are aware of the procedures. This rule is reasonable because it identifies the statute and rules which govern intervention in contested cases.

B. It is necessary that a method is established allowing for intervention in board hearings. This rule reasonably establishes a method for intervening in board hearings which authorizes the chairperson to grant permission for intervention and identifies the rights and obligations of intervenors. The rule also is reasonable because it identifies the rights of any person in a board hearing.

6 MCAR § 3.012 Final Decisions and Orders

A. Decision. To avoid confusion, it is necessary that the final decision maker is established. This rule is reasonable because it establishes that the board must make all final decisions and orders when a hearing, contested case or rulemaking proceeding has been held. It is also reasonable to provide that the board's decision on a matter following a hearing will, when required by law, be based solely on the record of the hearing as required by the Minnesota Administrative Procedures Act, Minn. Stat. § 14.62 (1982).

B. Findings and conclusions. It is necessary that both the public and parties understand the basis for the board's decisions. It is also necessary that every decision and order rendered by an agency in a contested case be in writing and include the agencies' Findings of Fact and Conclusions of Law on material issues (Minn. Stat. § 14.62 (1982)). This rule is reasonable because it requires findings and conclusions for each decision which provides the parties to a matter and the public with a full and public record of the facts considered and reasoning used for the board's decision.

This rule is reasonable because it provides a procedure for the rejection of proposed findings and the adoption of alternative findings by the board. This ensures that the parties to a matter and the public will be given a full explanation of the reasons for the board's decision.

C. Remand. It is necessary that a method is established for further examination of an issue if the circumstances warrant. This rule is reasonable because it authorizes the board to remand a matter and identifies reasonable criteria for making a determination to remand.

6 MCAR § 3.013 Reconsideration and rehearing.

A. While the Minnesota Administrative Procedures Act does not specifically prove for reconsideration, it recognizes that reconsideration may occur. See Minn. Stat. § 14.64 (1982). It is necessary that a method is established for reconsidering a decision. This rule is reasonable because it provides an opportunity to reconsider a board decision and identifies exceptions to the board's right to reconsider; and

B. Establishes a method for requesting reconsideration and a method for handling the request.

C. Obtaining a rehearing. It is necessary that a method is established for rehearing a contested case or hearing if the circumstances warrant a rehearing. This rule is reasonable because it:

1. Establishes a process for requesting a rehearing;

2. Establishes reasonable criteria to be used when the board is determining whether to grant a rehearing; and

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

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD472

Agency: Environmental Quality Board

Division:

Agency Contact: Shirley Dougherty 296-2723

Part Numbers: 4405.0100 to 4405.1300

Title: Proposed Operating Rules of the Environmental Quality Board

Type of Rules: Permanent

Incorporations by Reference: None

Duplication of Statutory Language: None

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Maryanne V. Hruby
Assistant Revisor
Phone: 297-2948
Date: February 2, 1984

Environmental Quality Board

In the Matter of the Proposed Adoption of Rules Governing Operating Procedures for Conduct of Business of the Environmental Quality Board

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Environmental Quality Board proposes to adopt the above-entitled rules without a public hearing. The Board has determined that the proposed adoption of the rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sections 14.21-14.28 (1982/Supp. 1983).

Minnesota Statute section 116C.04, subd. 5 (1982) establishes the authority for the Environmental Quality Board to adopt rules governing its own administration and procedures. A statement of need and reasonableness that describes the need for and reasonableness of the proposed rules has been prepared and is available for inspection by the public during regular business hours or a copy may be provided upon request to the address below.

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

Unless seven (7) or more persons submit written requests for a public hearing on the proposed rules within the 30 day comment period, a public hearing will not be held. In the event a public hearing is required, the Board will proceed according to the provisions of Minnesota Statutes 14.13-14.20 (1982/Supp. 1983). While not required, it would be helpful to the Board if persons requesting a public hearing identify the particular provisions objected to, the suggested

modifications to the proposed rules, and the reasons or data relied on to support the suggested modifications.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written request to the address below.

A copy of the proposed rules follows this notice. Additional copies may be obtained at the address below.

Persons who wish to submit comments or a written request for a public hearing, or who wish to receive a copy of the final rule or to be informed when the rule is submitted to the Attorney General, should submit comments or requests to:

Shirley M. Dougherty
Environmental Quality Board
Room 110, Capitol Square Building
St. Paul, MN 55101
(612) 296-2723

In the Matter of the Proposed Adoption
of Rules of the State Environmental
Quality Board Governing Operating
Procedures for Conduct of Business

AFFIDAVIT OF
MAILING

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

I, Patricia R. Blom, being first duly sworn deposes and says:

That on the 23rd day of March, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Environmental Quality Board for the purpose of receiving notice of the proposed adoption of rules by this Board.

Patricia R. Blom
Patricia R. Blom

Subscribed and sworn to before me
this 13th day of June, 1984

Marilyn Eakin
Notary Public

MARILYN EAKIN
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires May 31, 1985

CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA

In the Matter of the Proposed Adoption
of Rules of the State Environmental
Quality Board Governing Operating
Procedures for Conduct of Business

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subdivision 1, that their names be placed on file with and maintained by the State Environmental Quality Board for the purpose of receiving notice of the proposed adoption of rules by this Board is accurate and complete as of 8:00 a.m. this 23rd day of March, 1984.

Shirley Dougherty

Shirley Dougherty
Administrator

Environmental Quality Board

Proposed Adoption of Rules Governing Operating Procedures for Conduct of Business of the Environmental Quality Board

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Environmental Quality Board proposes to adopt the above-entitled rules without a public hearing. The Board has determined that the proposed adoption of the rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sections 14.21-14.28 (1982/Supp. 1983).

Minnesota Statute section 116C.04, subd. 5 (1982) establishes the authority for the Environmental Quality Board to adopt rules governing its own administration and procedures. A statement of need and reasonableness that describes the need for and reasonableness of the proposed rules has been prepared and is available for inspection by the public during regular business hours or a copy may be provided upon request to the address below.

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

Unless seven (7) or more persons submit written requests for a public hearing on the proposed rules within the 30 day comment period, a public hearing will not be held. In the event a public hearing is required, the Board will proceed according to the provisions of Minnesota Statutes 14.13-14.20 (1982/Supp. 1983). While not required, it would be helpful to the Board if persons requesting a public hearing identify the particular provisions objected to, the suggested modifications to the proposed rules, and the reasons or data relied on to support the suggested modifications.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written request to the address below.

A copy of the proposed rules follows this notice. Additional copies may be obtained at the address below.

Persons who wish to submit comments or a written request for a public hearing, or who wish to receive a copy of the final rule or to be informed when the rule is submitted to the Attorney General, should submit comments or requests to:

Shirley M. Dougherty
Environmental Quality Board
Room 110, Capitol Square Building
St. Paul, MN 55101
(612) 296-2723

Rules as Proposed (all new material)

4405.0100 DEFINITIONS.

Subpart 1. Scope. For the purpose of this chapter, the following terms have the meanings given them.

Subp. 2. Agency. "Agency" means a member agency of the board as defined in Minnesota Statutes, section 116C.03, subdivision 2.

Subp. 3. Board. "Board" means the Minnesota Environmental Quality Board.

Subp. 4. Chairperson. "Chairperson" means the person designated in Minnesota Statutes, section 116C.03, subdivision 3a to chair board meetings and perform duties as designated in Minnesota Statutes, chapters 116C and 116D, or as directed by the board or by rules adopted by the board.

Subp. 5. Contested case. "Contested case" means a proceeding as defined in Minnesota Statutes, section 14.02, subdivision 3 and conducted in accordance with Minnesota Statutes, sections 14.57 to 14.62 and parts 1400.5200 to 1400.8500.

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.

Subp. 6. EQB Monitor. "EQB Monitor" means the publication of the board which contains notices required under Minnesota Statutes, chapters 116C and 116D or under rules adopted by the board and of other relevant information.

Subp. 7. Hearing. "Hearing" means a fact-finding proceeding held under Minnesota Statutes, chapters 116C and 116D and rules adopted under these chapters or any other fact-finding proceeding authorized by the board which is not conducted under Minnesota Statutes, chapter 14.

Subp. 8. Hearing examiner. "Hearing examiner" means the person or persons assigned by the chief hearing examiner under Minnesota Statutes, section 14.50.

Subp. 9. Interested persons. "Interested persons" means those persons who have expressed interest in receiving notice of all board meetings or those persons who have expressed interest in a specific project or action of the board.

Subp. 10. Party. "Party" means any person whose legal rights, duties, or privileges may be determined in a contested case or board hearing and any person who has intervened in a contested case or hearing.

Subp. 11. Person. "Person" means a natural person, state, municipality, or other governmental unit or political subdivision or other agency or instrumentality, a public or private corporation, partnership, firm, association, or other organization, receiver, trustee, assignee, agent, or other legal representative of the foregoing, and any other entity.

Subp. 12. Presiding officer. "Presiding officer" means the person who chairs the board meeting in the absence of both the chairperson and vice chairperson.

Subp. 13. Quorum. "Quorum" means a majority of the permanent members of the board as established under Minnesota Statutes, section 116C.03, subdivision 2, excluding vacancies.

Subp. 14. Regular meeting. "Regular meeting" means the board meeting regularly scheduled for the third Thursday of each month.

Subp. 15. Service; serve. "Service" or "serve" means personal service or, unless otherwise provided by law, service by first class United States mail, postage prepaid, and addressed to the party at the last known address. Service by mail is complete upon the placing of the item to be served in the mail. Agencies of the state of Minnesota may also serve by depositing the item with central mailing section, Department of Administration.

Subp. 16. Southern Minnesota Rivers Basin Council. "Southern Minnesota Rivers Basin Council" means the council as defined in Minnesota Statutes, section 116C.82, subdivision 2.

Subp. 17. Special meeting. "Special meeting" means meetings of the board other than the regular meetings.

Subp. 18. Subcommittee. "Subcommittee" means a group of board members, less than a quorum, authorized by the board to accomplish a specific objective.

Subp. 19. Task force. "Task force" means a group of individuals authorized by the board to accomplish a specific objective.

Subp. 20. Technical representative. "Technical representative" means a designated representative of an agency member of the board.

Subp. 21. Vice chairperson. "Vice chairperson" means the person elected by the board to serve as chairperson in the absence of the chairperson.

4405.0200 STATUTORY AUTHORITY.

Chapter 4405 is adopted under authority granted in Minnesota Statutes, sections 14.06, and 116C.04, subdivision 5.

4405.0300 DUTY OF CANDOR.

Subpart 1. Duty. In all formal or informal negotiations, communications, proceedings, and other dealings between any person and any member, employee, or agent of the board, it is the duty of each person and each member, employee, or agent of the board to act in good faith and with complete truthfulness, accuracy, disclosure, and candor.

Subp. 2. Violation. The board may deny, suspend, or revoke a permit, certificate, or approval issued by the board if the person seeking or holding the permit, certificate, or approval makes a material misstatement, act, or omission with respect to the permit, certificate, or approval that results in a breach of the duty of candor.

Subp. 3. Imposition of sanctions. In a case of an alleged violation of the duty of candor in which the board seeks to deny, suspend, or revoke a permit, certificate, or approval issued or granted by the board, a contested case hearing must be held to determine whether a violation of the duty of candor has occurred.

4405.0400 EX PARTE COMMUNICATION.

No party to a matter for which a hearing, a contested case, or rulemaking proceeding under Minnesota Statutes, chapter 14 has been ordered by the board may communicate with a board member concerning the matter except in writing, or orally as part

of a presentation at a board meeting. Copies of any written communication must be sent to all parties to the matter and to all board members.

4405.0500 BOARD OFFICERS AND DUTIES.

Subpart 1. Chairperson. The chairperson shall preside at board meetings and perform other duties as assigned under law, rule, or as directed by the board.

Subp. 2. Vice chairperson. At its first meeting in February of each year, the board shall elect a member to serve as vice chairperson. In the absence or disability of the chairperson, the vice chairperson shall preside at board meetings and perform the other duties of the chairperson.

Subp. 3. Presiding officer. At a board meeting, if both the chairperson and vice chairperson are absent or are abstaining from discussing or voting on a matter, the board shall elect a presiding officer who shall serve only for that meeting or until either the chairperson or vice chairperson is available to chair the meeting.

4405.0600 BOARD MEETING PROCEDURES.

Subpart 1. Decisions at open meetings. All regular and special board meetings, and board-authorized subcommittee and task force meetings, must be open to the public. All board decisions must be made at open meetings.

Subp. 2. Posting of meeting notices. All notices of regular and special board meetings and meetings of board subcommittees and task forces must be posted in a conspicuous place in the board offices.

Subp. 3. Notice of regular meetings. The chairperson shall designate the time and place of each regular meeting. At least ten calendar days prior to a regular meeting, written notice of the time, place, and matters to be considered must be posted and served on all board members, technical representatives, interested persons, and each party to a matter being considered at the meeting. Notice of the meeting must be published in the EQB Monitor prior to the meeting. The chairperson may direct that any regular meeting be rescheduled. Written notice of a rescheduled regular meeting shall be given in the manner described in subpart 4.

Subp. 4. Notice of special meetings. The chairperson, vice chairperson, or a majority of the board members may call a special meeting when deemed necessary or desirable. At least three calendar days prior to a special meeting, written notice of the time, place, and matters to be considered must be posted and served on board members, technical representatives, interested persons, and each party to a matter being considered at the meeting.

Subp. 5. Agenda preparation. The chairperson shall prepare a proposed agenda of business to be conducted for all meetings of the board. The agenda must include the time and place of the meeting and a list of all matters to be considered. Items may be placed on the agenda by notifying the chairperson of the matter at least 14 calendar days prior to a regular meeting. The chairperson shall determine whether or not a matter should be placed on the agenda and shall advise the board of all matters not placed on the agenda. A copy of an agenda constitutes written notice of board meetings when served as required in subparts 3 and 4.

Subp. 6. Filing of written material. Written material related to a matter to be decided by the board at a regular meeting must be served on all parties and 14 copies delivered to the board offices at least seven calendar days before a regular meeting. Written material related to a matter to be decided at a special meeting must be personally served on all parties, board members, and at the board offices at least two calendar days before the special meeting. The chairperson may grant an extension of time or allow the submission of fewer copies due to time constraints or economic hardship.

Subp. 7. Quorum. A quorum must be present for transaction of board business.

Subp. 8. Parliamentary procedure. Except as specifically provided under statute or these parts, the most current revision o Roberts Rules of Order Revised governs any question of parliamentary procedure that arises at a board meeting.

Subp. 9. Adoption of agenda. The first order of business at the meeting must be adoption of the agenda, which may be amended or modified by the board prior to taking up other business. No matter may be voted upon at a regular or special board meeting unless it has been placed on the agenda as required under subparts 4 and 5. Discussion or informational items for which no decision will be made at the meeting may be added to the agenda at the meeting.

Subp. 10. Public forum. The chairperson may include a portion of time on each regular meeting agenda for persons to present

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.

statements on matters which are within the board's jurisdiction but are not on the agenda. The chairperson shall determine the limits of time and the relevancy of the statement to the board's jurisdiction.

Subp. 11. Argument and presentations. A person who wishes to present a statement on a matter that is on the agenda for the meeting shall be allowed to present statements to the board at the meeting: provided, however, that all written supporting materials must be filed as required under subpart 6. If the board determines that a person affected by an oral or written statement has not had adequate opportunity to respond, the board shall allow additional time to respond.

The chairperson shall determine the limits of time and the relevancy of discussion or debate on any matter before the board.

Subp. 12. Voting. An affirmative vote of a majority of all members of the board is necessary to take action, including the adoption, amendment, or repeal of rules and orders. All members present, including the chairperson, shall vote or abstain on every matter presented for board action.

When computing a majority of all members of the board, absences or abstentions must be included and vacancies must be excluded.

Unless otherwise provided by law or rule, whenever a motion for final adoption of a decision, resolution, or other action fails to receive the vote required and no contrary motion for final adoption has received the required vote, no action may be taken and the matter must be placed on the agenda of the next regular meeting or a special meeting without need for a determination to reopen, rehear, or otherwise reconsider the matter.

Subp. 13. Record of meetings. The board shall keep full and accurate minutes of all meetings, including a record of all votes of individual members.

Subp. 14. Notice of decisions. Following each regular or special meeting, a copy of all decisions or resolutions adopted by the board must be served on all parties to an action. Notice of board decisions must be published in the EQB Monitor.

4405.0700 SOUTHERN MINNESOTA RIVERS BASIN COUNCIL.

Subpart 1. Recommendations. Recommendations from the council must be submitted to the board. Minority recommendations on an issue may also be submitted. Recommendations must be submitted as required under part 4405.0600, subpart 6.

Subp. 2. Meetings. All meetings of the council are open to the public. Notice of time, place, and matters to be considered must be posted as established in part 4405.0600, subpart 2.

4405.0800 BOARD SUBCOMMITTEES; TASK FORCES.

Subpart 1. Establishment. The board may establish citizen or interdepartmental task forces or subcommittees to aid in performing its duties. The board shall specify the charge, duration, size, membership, meeting notice requirements, and other procedures to be followed for each group. The board may specify a chairperson for each task force or subcommittee.

Subp. 2. Purpose. Task forces and subcommittees shall advise the board on matters for which the board has charged them responsible.

Subp. 3. Recommendations. Recommendations from task forces and subcommittees must be submitted to the board. Minority recommendations on an issue may also be submitted. Recommendations must be submitted as required under part 4405.0600, subpart 6.

Subp. 4. Meetings. All meetings of subcommittees and task forces are open to the public. Notice of the time, place, and matters to be considered must be posted as established in part 4405.0600, subpart 2 and as specified in subpart 1.

4405.0900 EXCEPTIONS AND PROPOSED FINDINGS.

Subpart 1. Exceptions to report of hearing examiner. If a hearing examiner acting under contested case procedures in Minnesota Statutes, chapter 14 has submitted a report, and a party wishes to file exceptions to the report, a copy of the exceptions must be served on all parties and 14 copies of the exceptions must be filed with the chairperson within 14 calendar days after the availability of the report. The chairperson may grant an extension of time for filing exceptions, and may allow fewer copies to be submitted due to time constraints or economic hardship.

Subp. 2. Proposed findings in other than contested cases. If the board has conducted a hearing, parties to the proceeding may submit proposed findings and conclusions for the board's consideration. A copy of the proposed findings must be served on all parties and 14 copies must be filed within ten working days of the close of the record of the proceeding. The period for submitting proposed findings and conclusions and the number of copies required may be changed as set forth in subpart 1.

4405.1000 PARTIES.

Subpart 1. Contested cases. In proceedings conducted under Minnesota Statutes, chapter 14, parties have the rights and obligations specified in applicable rules established by the Office of Administrative Hearings.

Subp. 2. Hearings. In hearings not conducted under Minnesota Statutes, chapter 14, the chairperson shall identify as a party any person with direct responsibility for proposing or undertaking an action or study, or for obtaining approval of an action, plan, or a proposal. Other persons not named as parties may intervene to the extent provided in part 4405.1100.

Subp. 3. Rights and obligations. Rights and obligations of parties in proceedings not under chapter 14 include all rights of the public at large and:

A. the right to make motions pertinent to the matter under consideration;

B. the right to notice other than published notice of board decisions;

C. the right to present argument to the board;

D. the right to submit proposed findings and conclusions; and

E. the obligation to serve other parties with copies of documents or other writings filed with the board as required under part 4405.0600, subpart 6.

4405.1100 INTERVENTION.

Subpart 1. Contested cases. In proceedings conducted under Minnesota Statutes, chapter 14, persons desiring to intervene shall intervene in accordance with applicable rules established by the Office of Administrative Hearings.

Subp. 2. Hearings. In other hearings, persons desiring to intervene shall intervene by submitting a timely petition to intervene to the board and to all parties showing both the persons' interest in the matter, and the likelihood that this interest will not be adequately represented by existing parties. The chairperson shall determine the timeliness of the petition for each hearing based on circumstances at the time of filing. The chairperson of the board may grant permission to intervene. Intervenors have the rights and obligations accorded parties in matters before the board as established in this part. Intervention is not required before a person may submit evidence, make statements, or ask questions regarding matters before the board.

4405.1200 FINAL DECISIONS AND ORDERS.

Subpart 1. Decision. The board shall make all final decisions and orders in those matters for which a hearing, contested case, or rulemaking proceeding conducted under Minnesota Statutes, chapter 14 has been held. When required by law, the board's decision or order must be based solely on the record from the hearing. Nothing in this rule precludes argument concerning the application of law to matters of record.

Subp. 2. Findings and conclusions. 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. If the proposed statements of findings and conclusions submitted to the board are not adopted, the board shall direct its staff to prepare additional findings and conclusions. Rejection of the proposed findings and conclusions is considered an interim decision. A final decision on the matter must be made after the board has adopted a statement of findings and conclusions. When the board or its staff has prepared proposed findings and conclusions, a copy must be served on all parties at least ten calendar days before the meeting at which the board intends to make its decision or order.

Subp. 3. Remand. The board may remand a matter to the hearing examiner for further proceedings if the board determines that the record is inadequate.

4405.1300 RECONSIDERATION AND REHEARING.

Subpart 1. Board right to reconsider and rehear. Under the procedures in this part, the board may reconsider or rehear a final decision. The right to reconsider or rehear under this part may be exercised unless it is lost by appeal or the granting of a writ or certiorari.

Subp. 2. Reconsideration. A board member or a party to a matter may request the board to reconsider a final decision by notifying the chairperson in writing within ten calendar days after the board meeting at which the final decision on a matter was made. The chairperson shall place the request for reconsideration on the agenda for the board meeting next following the meeting at which the decision was made. Absent a motion to reconsider by a board member at the board meeting next following the meeting at which the decision was made, the request for reconsideration is deemed to be denied.

Subp. 3. Obtaining a rehearing. At any time within ten calendar days after the board's final decision on a matter for which the board held a hearing or a contested case, a board member or a party to the matter may request a rehearing by filing with the

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.

chairperson in writing both a request for reconsideration and a petition for rehearing. The chairperson shall place the request for reconsideration and rehearing on the agenda for the board meeting next following the meeting at which the decision was made. The petition must contain the name, address, and telephone number of the petitioner; the board designation for the matter; and the reasons for the petition.

A petition for rehearing submitted after a final decision on the matter has been reached by the board may not be acted upon unless the board has first decided to reconsider its decision. Absent a motion by a board member to reconsider at the board meeting next following the board meeting at which the decision was made, the request for reconsideration and the petition for rehearing is deemed to be denied. The board shall grant or deny a petition for rehearing as part of the record of the decision. This petition must be granted upon a showing that there are irregularities in the hearing which affected the outcome of a hearing, errors of law, or that there is newly discovered material evidence of such importance it would have likely altered the outcome of the hearing. A rehearing petition must also be granted upon a showing of good cause for failure to have answered or appeared at the hearing.

A rehearing must be noticed and conducted in the same manner as the original hearing or contested case on a matter; provided that, in a contested case, the hearing examiner may permit service of the notice less than 30 days prior to the rehearing of a contested case.

Pollution Control Agency
Water Quality Division

Proposed Rules Governing Standards for the Protection of the Quality and Purity of the Waters of the State; and Proposed Rules Governing Classification of Waters of the State

Notice of Hearing

Notice is hereby given that on Monday, April 23, 1984, a public hearing on proposed amendments to 6 MCAR §§ 4.8014 and 4.8024 and the proposed repeal of 6 MCAR §§ 4.8015 and 4.8025 (commonly known as WPC 14, 15, 24, and 25 and to be codified in Minnesota Rules as Chapter 7050) will commence at 9:30 a.m. in the Board Room of the Minnesota Pollution Control Agency at 1935 W. County Road B-2, Roseville, Minnesota. The hearing will continue on additional days, if necessary, at times and places determined during the hearing. Also, the hearing will continue at the following times and locations:

1. Tuesday, April 24, 1984, 1:00 p.m. and 7:00 p.m.
   Friedel Building
   1200 South Broadway
   Rochester, Minnesota
2. Monday, April 30, 1984, 7:00 p.m.
   Building IL
   Room 219
   Southwest State College
   Marshall, Minnesota
3. Tuesday, May 1, 1984, 7:00 p.m.
   Department of Transportation
   1000 W. Highway 10
   Detroit Lakes, Minnesota
   (Use lower level entrance.)
4. Wednesday, May 2, 1984, 2:00 p.m. and 7:00 p.m.
   St. Louis County Courthouse
   Duluth, Minnesota

The hearing will be conducted by Hearing Examiner Allan Klein, Office of Administrative Hearings, 400 Summit Bank Building, 310 S. 4th Avenue, Minneapolis, Minnesota 55415, telephone (612) 341-7609.

WPC 14 and 15 establish standards and classifications for the intrastate and interstate waters of the state, respectively. WPC 24 and 25 classify the intrastate and interstate waters. Under the proposed amendments, the distinction between intrastate and

CERTIFICATE OF ENVIRONMENTAL QUALITY BOARD'S

RESOLUTION ADOPTING RULES

I, Tom Triplett, do hereby certify that I am a member and the Chairman of the Environmental Quality Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Environmental Quality Board, duly and properly called and held on the 7th day of June, 1984, that a quorum was present at said meeting, that a majority of those present voted for the resolution, and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

> "RESOLVED, that the rules relating to Operating Procedures for Conduct of Business be and they hereby are approved and adopted, pursuant to authority vested in us by Minnesota Statutes 116C.04, subdivision 5 and that Tom Triplett, the Chairman of the Environmental Quality Board, be and hereby is authorized to sign an order adopting these rules and further is authorized to perform the necessary acts to provide that these rules shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 7th day of June, 1984.

Tom Triplett
Chairman, EQB

Attest by one other Board member

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Pollution Control Agency

TO : Shirley Dougherty, Administrator
Environmental Quality Board

DATE: April 23, 1984

FROM : Jay M. Heffern
Deputy Executive Director

PHONE: 296-7303

SUBJECT: Environmental Quality Board Proposed Rules Governing Operating Procedures

The Minnesota Pollution Control Agency staff has reviewed the above-referenced proposed rules. We have found the rules to be complete and believe that they will allow for smooth operation of the EQB. We further believe that adoption of these rules is most appropriately handled through the noncontroversial rule making procedures and that a hearing is not necessary.

Thank you for the opportunity to review these proposed rules. We would appreciate receiving a copy of the final rule.



In the Matter of the Proposed Adoption
of Rules of the State Environmental
Quality Board Governing Operating
Procedures for Conduct of Business

STATE OF
COMPLIANCE WITH
RULEMAKING PROCEDURES

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

6-13-84

Christie B Eller

Christie B. Eller
Special Assistant Attorney General