

CHAPTER 4405

ENVIRONMENTAL QUALITY BOARD

OPERATING PROCEDURES

<p>4405 0100 DEFINITIONS</p> <p>4405 0200 STATUTORY AUTHORITY</p> <p>4405 0300 DUTY OF CANDOR</p> <p>4405 0400 EX PARTE COMMUNICATION</p> <p>4405 0500 BOARD OFFICERS AND DUTIES</p> <p>4405 0600 BOARD MEETING PROCEDURES</p> <p>4405 0700 SOUTHERN MINNESOTA RIVERS BASIN COUNCIL</p> <p>4405 0800 BOARD SUBCOMMITTEES, TASK FORCES</p>	<p>4405 0900 EXCEPTIONS AND PROPOSED FINDINGS</p> <p>4405 1000 PARTIES</p> <p>4405 1100 INTERVENTION</p> <p>4405 1200 FINAL DECISIONS AND ORDERS</p> <p>4405 1300 RECONSIDERATION AND REHEARING</p>
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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.

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.

4405.0100 OPERATING PROCEDURES

68

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.

Statutory Authority: *MS s 116C.04 subd 5*

History: *9 SR 333*

4405.0200 STATUTORY AUTHORITY.

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

Statutory Authority: *MS s 116C.04 subd 5*

History: *9 SR 333*

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.

Statutory Authority: *MS s 116C.04 subd 5*

History: *9 SR 333*

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.

Statutory Authority: *MS s 116C.04 subd 5*

History: *9 SR 333*

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.

Statutory Authority: *MS s 116C.04 subd 5*

History: *9 SR 333*

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 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.

Statutory Authority: *MS s 116C.04 subd 5*

History: 9 SR 333

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.

Statutory Authority: *MS s 116C.04 subd 5*

History: 9 SR 333

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.

Statutory Authority: *MS s 116C.04 subd 5*

History: 9 SR 333

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.

Statutory Authority: *MS s 116C.04 subd 5*

History: 9 SR 333

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.

Statutory Authority: *MS s 116C.04 subd 5*

History: *9 SR 333*

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

Statutory Authority: *MS s 116C.04 subd 5*

History: *9 SR 333*

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.

Statutory Authority: *MS s 116C.04 subd 5*

History: *9 SR 333*

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 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; 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.

Statutory Authority: *MS s 116C.04 subd 5*

History: *9 SR 333*