

## CHAPTER 9200

### ENVIRONMENTAL QUALITY BOARD

### SUPPLEMENTARY REVIEW

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**9200.3400** [Renumbered 9215.0410]

**9200.3500** [Renumbered 9215.0420]

**9200.3600 DEFINITIONS.**

Subpart 1. **Scope.** For the purposes of parts 9200.3600 to 9200.5300, the following terms have the meanings given them unless the context requires otherwise.

Subp. 2. **Agency.** "Agency" means the Pollution Control Agency.

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

Subp. 4. **Chair.** "Chair" means the chair of the Environmental Quality Board.

Subp. 5. **Person.** "Person" means any human being, any municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity, but does not include the Pollution Control Agency or the Environmental Quality Board.

Subp. 6. **Political subdivision.** "Political subdivision" means any municipal corporation, government subdivision of the state, local government unit, special district, or local or regional board, commission, or authority authorized by law to plan or provide for waste management.

**Statutory Authority:** *MS s 115A.32*

**History:** *L 1999 c 73 s 5*

**9200.3700 SUPPLEMENTARY REVIEW OF DECISIONS CONCERNING ESTABLISHMENT OF CERTAIN FACILITIES.**

Parts 9200.3600 to 9200.5300 establish the procedures by which the Environmental Quality Board will review petitions for supplementary review. Under Minnesota Statutes, sections 115A.32 to 115A.39, the Environmental Quality Board may entertain a petition for supplementary review whenever an authorized applicant has received all necessary permits from the Pollution Control Agency for a proposed facility but a political subdivision has refused to approve the establishment or operation of the facility.

**Statutory Authority:** *MS s 115A.32*

**History:** *L 1999 c 73 s 5*

**9200.3800 ELIGIBILITY FOR SUPPLEMENTARY REVIEW.**

Subpart 1. **Eligible persons.** The following persons are eligible to request supplementary review by the board pursuant to Minnesota Statutes, sections 115A.32 to 115A.39:

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

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

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

D. a person who has been issued permits by the agency for a commercial hazardous waste processing facility at a site included within one of the areas on the board's inventory of preferred areas for these facilities adopted pursuant to Minnesota Statutes, section 115A.09; and

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

Subp. 2. **Supplementary review petition.** Persons eligible to request supplementary review under subpart 1 shall submit a petition to the board that demonstrates that the required permits have been issued by the agency and that a political subdivision has refused to approve the establishment or operation of the facility. If the political subdivision fails to give final approval or denial to the establishment or operation of the facility within six months after agency permits are issued, the political subdivision is considered to have refused approval to the facility.

**Statutory Authority:** *MS s 115A.06; 115A.32*

**History:** 8 SR 502

**9200.3900 REVIEW OF PETITIONS FOR SUPPLEMENTARY REVIEW.**

Subpart 1. **Acceptance of petition.** The chair on behalf of the board shall accept a petition for review if it conforms to the requirements of subpart 2. If the petition does not conform to the requirements of subpart 2, the chair shall return it to the petitioners with a statement identifying the deficiencies in the petition.

Subp. 2. **Contents of petition.** A petition must include:

- A. the name, address, and telephone number of the petitioner;
- B. the name, address, and telephone number of each owner or operator of the proposed facility if different from the petitioner specified in item A;
- C. the street address and legal description of the location of the proposed facility;
- D. a description of the proposed facility;
- E. a list of the existing permits and pending permit applications for the proposed facility together with a copy of any permits which have been issued;
- F. an estimate of the required construction time;
- G. an estimate of the functional life of the proposed facility;

- H. for processing facilities, a description of the types of processes to be used;
- I. for processing facilities, a statement of the design capacity of each process;
- J. for processing facilities, a description of the materials which will be treated at the proposed facility as specified in the agency permit application;
- K. a copy of the resolution, order, or other action of a political subdivision refusing to approve the establishment or operation of the proposed facility, a statement that the required approval has been refused, or a statement that the political subdivision has failed to give final approval or denial to the establishment or operation of the facility within six months after agency permits are issued;
- L. for petitioners who qualify for review under part 9200.3800, item B, a copy of the required solid waste plan conforming to the requirements of Minnesota Statutes, section 115A.46; and
- M. for petitioners who qualify for review under part 9200.3800, item D or E, a brief discussion showing how the proposed facility is consistent with the hazardous waste management plan required under Minnesota Statutes, section 115A.11, if the plan has been adopted at the time the petition is submitted.

**Statutory Authority:** *MS s 115A.06; 115A.32*

**History:** 8 SR 502

#### **9200.4000 ADDITIONAL INFORMATION TO BE SUBMITTED.**

The chair may request the petitioner to submit additional information whenever the chair determines that the information would be necessary or useful in deciding whether the petition should be approved or disapproved.

**Statutory Authority:** *MS s 115A.32*

#### **9200.4100 PROCEDURE FOR SUPPLEMENTARY REVIEW.**

Subpart 1. **First phase.** The first phase of the supplementary review process shall take place in the 90-day period following acceptance of a petition. In this phase of the review, temporary board members shall be appointed, the issues which will be the subject of review shall be identified, and mediation services shall be made available to the petitioner and the political subdivision.

Subp. 2. **Second phase.** The second phase of the supplementary review process shall commence with the board's decision on the scope and procedures for the review and shall extend for a period of 90 days following the decision. During the second phase of the review, the board shall hold any required public hearings and make its final decision on approving or not approving the proposed facility.

**Statutory Authority:** *MS s 115A.32*

#### **9200.4200 IDENTIFICATION OF ISSUES.**

Subpart 1. **Meetings with petitioner and political subdivision.** Within 40 days after the board has accepted a petition for review, the chair shall prepare a compilation of the issues which may be relevant to the supplementary review. To assist in the identification of these issues, the chair may meet with the petitioner and representatives of the political subdivision, either separately or together, or the chair may request a written statement of the issues which the petitioner and the political subdivision believe should be addressed in the review.

Subp. 2. **Public meetings.** Within 60 days after the board has accepted a petition for review, the board shall hold an informal public meeting in the area where the facility is proposed. The purpose of this meeting shall be to permit members of the public to discuss the issues which should be reviewed by the board.

Subp. 3. **Public meeting procedures.** The board shall announce the public meeting by providing press releases to newspapers and radio and television stations in the area where

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the facility is proposed and by letter to the political subdivisions within which the facility is proposed to be located. The meeting shall be held in the area in which the facility is proposed to be located. The meeting shall be conducted by the chair or the chair's designee.

Copies of the compilation of issues prepared by the chair shall be available for review. Members of the public shall be given an opportunity to suggest additional issues which should be considered and present reasons why particular issues should or should not be considered. A summary of the issues raised at the public meeting shall be prepared.

**Statutory Authority:** *MS s 115A.32*

**History:** *17 SR 1279*

**9200.4300 APPOINTMENT OF TEMPORARY BOARD MEMBERS.**

Subpart 1. **Notification to political subdivision.** Within ten days after a petition has been accepted for review, the chair shall notify the political subdivisions which have the responsibility to appoint temporary board members that a petition affecting their areas has been accepted.

Subp. 2. **Appointment by political subdivision.** The political subdivisions shall appoint temporary board members in accordance with Minnesota Statutes, section 115A.34 within 45 days after the date the petition was accepted by the board.

Subp. 3. **Failure to appoint members.** If a political subdivision fails to appoint the required temporary board members within 45 days after the date the petition was accepted by the board, the chair shall notify the governor's office within five working days of the failure to appoint. The appointment of the temporary board members shall then be made by the governor in accordance with Minnesota Statutes, section 115A.34.

**Statutory Authority:** *MS s 115A.32*

**9200.4400 MEDIATION.**

Subpart 1. **Notice of mediation.** Within ten days following acceptance of a petition for review, the chair shall notify both the petitioner and the political subdivision that the services of an impartial mediator will be made available to the petitioner and the political subdivision to assist in the resolution of the issues separating the petitioner and the political subdivision.

Subp. 2. **Conditions for mediation.** Mediation services shall be offered in every dispute involving supplementary review. The offer of mediation services shall terminate 25 days after a petition is accepted. Mediation services may be requested by either the petitioner or the political subdivision; however, the petitioner and the political subdivision must agree to mediation.

Subp. 3. **Selection of mediator.** A single impartial mediator shall be selected for each review. The petitioner and the political subdivision shall have a ten-day period after notification of an agreement to mediate to select a mediator acceptable to both parties. If an impartial mediator has not been selected within this ten-day period, a mediator shall be appointed by the chair.

Subp. 4. **Length of mediation.** Mediation shall be conducted for a period of 30 days following the appointment of a mediator by the chair unless the chair determines that continued mediation services will be beneficial to the resolution of the case.

Subp. 5. **Termination of mediation.** The mediator, the petitioner, or the political subdivision may terminate mediation at any time. The mediator shall immediately notify the chair of the termination of mediation.

Subp. 6. **Compensation of mediator.** The board shall pay the costs of mediation.

Subp. 7. **Decision.** If an agreement is reached by the close of the mediation period, the agreement shall be referred to the board for review.

**Statutory Authority:** *MS s 115A.32*

**9200.4500 RECOMMENDED STATEMENT OF ISSUES.**

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

**Statutory Authority:** *MS s 115A.32*

**9200.4600 BOARD MEETING TO ESTABLISH SCOPE AND PROCEDURES FOR THE SECOND PHASE OF THE REVIEW.**

Subpart 1. **Scope and statement of issues.** At the meeting held to commence the supplementary review process, the chair shall present the recommended statement of issues involved in the review to the board including the temporary board members. The board, after providing an opportunity for public comment, shall adopt a statement of issues for review.

Subp. 2. **Procedures.** If no mediated agreement has been reached, the board shall direct that a contested review be conducted under part 9200.4800. If a mediated agreement has been reached which may require the imposition of more stringent permit terms, conditions, or requirements, or if significant issues are identified in the statement of issues adopted by the board which were not addressed in the agreement, the board shall direct that a review hearing be conducted under part 9200.4700. If a mediated agreement has been reached which does not require the imposition of more stringent permit terms, conditions, or requirements, and if all significant issues which were identified in the statement of issues are addressed in the agreement, the board shall suspend the review pending final approval of the proposed facility by the political subdivision and shall dismiss the petition and terminate the review upon final approval of the proposed facility by the political subdivision.

**Statutory Authority:** *MS s 115A.32*

**9200.4700 HEARING PROCEDURES FOLLOWING MEDIATED AGREEMENT.**

Subpart 1. **Timing of hearing.** The public hearing on the mediated agreement shall be held within 45 days after the board meeting held to establish the scope and procedures for review.

Subp. 2. **Notice of hearing.** The board shall provide written notice of the hearing to each political subdivision in which the facility is proposed to be located. The board shall also publish notice of the supplementary review hearing in a newspaper or newspapers of general circulation in the area for two successive weeks ending at least 15 days before the date of the hearing. The published notice shall:

- A. specify the date, time, and location of the hearing;
- B. describe the proposed facility and its location;
- C. describe the permits which have been issued for the proposed facility;
- D. briefly set out the process by which the agreement was reached and the scope and procedures which will be used in the supplementary review;
- E. identify the location or locations within the city, town, or county where copies of the agreement, the permit applications, agency permits, and the board's scope and procedures for review are available for review; and
- F. include the name of a person on the board's staff to whom questions about the review may be directed.

Subp. 3. **Location of hearing.** The hearing shall be held in the county where the facility is proposed to be located and as near as practical to the site of the proposed facility.

Subp. 4. **Procedures for the hearing.** The hearing shall be conducted by an administrative law judge from the Office of Administrative Hearings. A majority of the permanent

board members shall be present at the hearing. The hearing shall be opened by the administrative law judge who will explain the hearing procedures. A member of the board's staff shall explain the purpose of the hearing, the statement of issues adopted by the board, and any additional permit terms, conditions, or requirements which the board is considering to implement the agreement. The political subdivision and the petitioner shall explain the mediated agreement.

Members of the public shall have an opportunity to comment upon the agreement, the issues identified in the statement of issues, and any proposed additional permit terms, conditions, or requirements. Questions may be directed to any representative of the political subdivision or the petitioner regarding the mediated agreement and to any person who presents a statement at the hearing.

The chair may request any person who has information related to the hearing to present the information if the chair determines the information would be helpful in reaching a decision in the case. The administrative law judge may exclude testimony or disallow questions which are irrelevant, unduly repetitious, argumentative, harassing, or adversarial in nature. No person shall interfere with the conduct of the hearing or disrupt or threaten to disrupt the hearing. A transcript of the hearing shall be prepared.

**Statutory Authority:** *MS s 115A.32*

**History:** *L 1984 c 640 s 32*

#### **9200.4800 CONTESTED SUPPLEMENTARY REVIEW HEARING.**

Subpart 1. **Timing of hearing.** A contested supplementary review hearing shall be held within 45 days after the board meeting held to establish the scope and procedures for review.

Subp. 2. **Notice of hearing.** Written notice of the hearing shall be provided to each political subdivision in which the facility is proposed to be located. The board shall also publish notice of a contested review hearing in a newspaper or newspapers of general circulation in the area for two successive weeks ending at least 15 days before the date of the hearing. The published notice shall:

- A. specify the date, time, and location of the hearing;
- B. describe the proposed facility and its location;
- C. describe the permits which have been issued for the proposed facility;
- D. briefly set out the scope and procedures which will be used in the supplementary review;
- E. identify the location or locations within the city, town, or county where copies of the permit applications, agency permits, and the board's scope and procedures for review are available for review and where copies may be obtained; and
- F. include the name of a person on the board's staff to whom questions about the review may be directed.

Subp. 3. **Location of hearing.** The hearing shall be held in the county where the facility is proposed to be located and as near as practical to the site of the proposed facility.

Subp. 4. **Definition of party.** "Party" for the purposes of parts 9200.4800, subparts 5 to 22 means the petitioner, the political subdivision which refused to authorize the facility, and any person who is granted intervention under subpart 9.

Subp. 5. **Duties of the administrative law judge.** The hearing shall be conducted by an administrative law judge assigned by the chief administrative law judge. The administrative law judge will not prepare a report following the hearing. The administrative law judge shall perform the following duties:

- A. hear and rule on motions;
- B. grant or deny requests for discovery including the taking of depositions;
- C. receive and act upon requests for subpoenas when appropriate;

- D. preside at the hearing;
- E. administer oaths and affirmations;
- F. examine witnesses when the administrative law judge deems it necessary to make a complete record;
- G. make preliminary, interlocutory, or other orders as the administrative law judge deems appropriate;
- H. rule on objections;
- I. do all things necessary and proper to the performance of items A to H; and
- J. perform other duties which may be delegated to the administrative law judge by the board.

Subp. 6. **Disqualification of administrative law judge.** The administrative law judge shall withdraw from participation in a contested review at any time if the judge deems herself or himself disqualified for any reason. Upon the filing in good faith by a party of an affidavit of prejudice, the chief administrative law judge shall determine the matter as a part of the record. The affidavit must be filed no later than five days prior to the date set for hearing.

Subp. 7. **Environmental Quality Board members.** A majority of the permanent board members shall be present at the hearing. Members of the board may address questions to any witness or party.

Subp. 8. **Right to counsel.** Any party may be represented by legal counsel throughout the proceedings by a person of the party's choice or by herself or himself if not otherwise prohibited as the unauthorized practice of law.

Subp. 9. **Intervention.** Any person who desires to intervene as a party shall submit a petition to intervene to the administrative law judge at least ten days before the hearing. Copies of the petition to intervene shall be served on the parties to the hearing. The petition shall state how the petitioner will be affected by the hearing, shall set forth grounds and purposes for which intervention is sought, and shall show that no other party is able to adequately represent the petitioner's interests at the hearing. At a time determined by the administrative law judge, but no later than the commencement of the hearing, the administrative law judge shall review any petitions for intervention and shall permit the parties to the hearing to present their objections to the intervention. Intervention shall be allowed unless the administrative law judge determines that the petitioner's interest is adequately represented by one or more parties participating in the case.

Subp. 10. **Default.** The board may decide a review adverse to a party which defaults. Upon default, the allegations and evidence provided by the nondefaulting party shall be deemed true without further evidence. A default occurs when a party fails to appear at a hearing, fails to comply with any interlocutory orders of the administrative law judge, or fails to timely prefile testimony, and is unable to demonstrate that good cause existed for any failure.

Subp. 11. **Participation by the public.** The administrative law judge may hear the testimony of and receive exhibits from any person at the hearing, but no person shall become, or be deemed to become, a party by reason of the person's participation. Persons offering testimony or exhibits may be questioned by parties to the proceeding.

Subp. 12. **Prefiled testimony.** The petitioner, the political subdivision which refused to approve the facility, and any party seeking to intervene shall file their testimony with the administrative law judge and the board at least ten days before the hearing unless the administrative law judge directs otherwise. Testimony in the hearing shall be limited to the issues identified by the board in its statement of issues.

Subp. 13. **Rights of parties.** Parties shall have the right to present evidence, rebut evidence, argue with respect to the issues, and cross-examine witnesses.



Subp. 14. **Witnesses.** Any party may be a witness or may present witnesses on the party's behalf at the hearing. All oral testimony shall be under oath or affirmation. The board may call its own witnesses if the board or the chair acting on behalf of the board determines that testimony from the witness would be helpful in reaching a decision in the case. The board's staff may also present evidence during the review.

Subp. 15. **Prehearing procedures.** The purpose of the prehearing conference is to obtain stipulations regarding foundation for testimony or exhibits, to consider the proposed witnesses for each party, and to consider other matters that may be necessary or advisable to consider. Upon the request of any party or upon the judge's own motion, the administrative law judge may, in his or her discretion, hold a prehearing conference prior to each contested review hearing. The administrative law judge may require the parties to file a prehearing statement prior to the prehearing conference. The statement shall contain items the administrative law judge deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the administrative law judge. Agreements on any matters considered by the prehearing conference may be entered on the record or may be made the subject of an order by the administrative law judge. The administrative law judge shall hold any prehearing conferences in a manner and at a time which will not interfere with the completion of the review process in the time allowed by Minnesota Statutes, section 115A.35 and part 9200.4800.

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

Subp. 16. **Discovery.**

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

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

C. Upon the motion of a party, the administrative law judge may order discovery of any other relevant material or information, provided that privileged work product of attorneys, investigators, and similar people shall not be discoverable. The administrative law judge shall also recognize all other privileged information or communications which are recognized at law. Upon proper motion made to the administrative law judge, any means of discovery available pursuant to the Rules of Civil Procedure for the district courts of the state of Minnesota may be allowed provided that the request can be shown to be needed for

the proper presentation of a party's case, can be completed within the time allowed in this rule, and the issues are significant enough to warrant extensive discovery. Upon the failure of a party to reasonably comply with this type of order by the administrative law judge, the administrative law judge may order that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order, or may refuse to allow the party failing to comply to support or oppose designated claims or defenses, or may prohibit the failing party from introducing designated matters in evidence.

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

E. Discovery shall be conducted in a manner to ensure the completion of the review in the time permitted by Minnesota Statutes, section 115A.35 and part 9200.4800. The hearing shall not be continued to permit additional time for discovery.

Subp. 17. **Depositions to preserve testimony.** Upon the request of any party, the administrative law judge may order that the testimony of any witness be taken by deposition to preserve the testimony in the manner prescribed by law for depositions in civil actions. The request shall indicate the relevancy of the testimony and shall make a showing that the witness will be unable or cannot be compelled to attend the hearing or show other good cause.

Subp. 18. **Subpoenas.** Requests for subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the administrative law judge, shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought, shall identify any documents sought with specificity, and shall name all persons to be subpoenaed. A subpoena shall be served in the manner provided by the Rules of Civil Procedure for the district courts of the state of Minnesota unless otherwise provided by law. The cost of service, fees, and expenses of any witnesses subpoenaed shall be paid by the party at whose request the witness appears. The person serving the subpoena shall make proof of service by filing the subpoena with the administrative law judge, together with the affidavit of service. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance with it, the administrative law judge may quash or modify the subpoena on finding that it is unreasonable or oppressive.

Subp. 19. **Rules of evidence.**

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

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

C. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the administrative law judge or upon agreement of the parties.

D. The administrative law judge or the board may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

E. A party may call an adverse party, his or her agent or employees, and interrogate by leading questions and contradict and impeach on material matters in all respects as if she or he had been called by the adverse party. The adverse party may be examined by his or her counsel upon the subject matter of the examination in chief under the rules

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applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the testimony.

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

Subp. 20. **The record.** The board shall maintain the official record in each contested review hearing. The record in a contested review shall contain: all pleadings, motions, and orders; evidence received or considered; offers of proof, objections, and rulings on them; all memoranda or data submitted by any party in connection with the case; and the transcript of the hearing.

Subp. 21. **Conduct of hearing.** Unless the administrative law judge determines that the public interest will be equally served otherwise, the hearing shall be conducted substantially in the following manner:

A. The administrative law judge shall briefly review the procedural rules for the hearing.

B. Each party may make an opening statement in a sequence determined by the administrative law judge.

C. Each party may then present a summary of its prefiled testimony in a sequence determined by the administrative law judge.

D. Cross-examination of witnesses shall be conducted in a sequence determined by the administrative law judge.

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

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

Subp. 22. **Completion of hearing.** The administrative law judge shall conduct the hearing in a manner to ensure its completion in the time required by Minnesota Statutes, section 115A.35 and part 9200.4800.

**Statutory Authority:** *MS s 115A.32*

**History:** *L 1984 c 640 s 32; 17 SR 1279; L 1999 c 73 s 5*

**9200.4900 RECONCILIATION PROCEDURES.**

At least 30 days before making its final decision in a review, the board shall make a determination as to whether a report should be made to the legislature and whether intervention should be requested as provided in Minnesota Statutes, section 115A.38.

**Statutory Authority:** *MS s 115A.32*

**9200.5000 DECISION OF ENVIRONMENTAL QUALITY BOARD.**

Subpart 1. **The record.** No factual information or evidence which is not a part of the hearing record shall be considered by the board in the determination of the case.

Subp. 2. **Administrative notice.** The board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence in the hearing record.

Subp. 3. **Participation in decision.** Board members not present at the hearing may participate in the final decision to approve or not approve the proposed facility following a review of the record of the hearing.

Subp. 4. **Recommended disposition.** In the case of a mediated agreement, the mediated agreement shall serve as the recommended decision. When an agreement has not been reached, the board's staff shall prepare and, at least ten days prior to the board's final decision in the case, distribute a recommended decision to each party to the proceeding and to any other person who has requested in writing a copy of the recommended decision.

Subp. 5. **Basis of decision.** In its decision to approve or not approve a proposed facility, the board shall consider and base its decision on the factors listed in items A to F. Neither the petitioner nor the political subdivision shall be deemed to have the burden of proof as to any of the factors. The factors are:

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

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

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

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

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

F. any issue within the established scope of the supplementary review which is not addressed by items A to E.

Subp. 6. **Final decision.** The board shall review a mediated agreement and shall approve the agreement unless the agreement is clearly inappropriate based on the factors set out in subpart 5 and the record of the hearing, fails to address significant issues relevant to the review, or requires the imposition of permit terms, conditions, or requirements outside of the authority of the board. If the board disapproves a mediated agreement, the board shall direct the staff to prepare a recommended decision based on the hearing record. When no mediated agreement has been reached or when a mediated agreement has been rejected, the board shall base its decision to approve or not approve a facility on the factors set out in subpart 5 and the record of the hearing.

Subp. 7. **Ex parte communication.** No party to a hearing shall communicate with any board member concerning the hearing except in writing, or orally as part of a presentation at the hearing or at a board meeting. Copies of any written communication shall be sent to all parties to the hearing and to all board members.

**Statutory Authority:** *MS s 115A.32*

**History:** *L 1999 c 73 s 5*

## **9200.5100 TERMS, CONDITIONS, AND REQUIREMENTS OF PERMITTING AGENCIES.**

Subpart 1. **Board action.** The board shall resolve any conflicts between state agencies regarding terms, conditions, and requirements for a permit in favor of the more stringent terms, conditions, and requirements. Should there be a question as to which term, condition,

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

Subp. 2. **Addition of provisions.** If, based on the factors set out in part 9200.5000, subpart 5, the board determines that more stringent permit terms, conditions, or requirements should be imposed in connection with the approval of a facility, the board shall direct that the terms, conditions, or requirements be added to the permit.

Subp. 3. **Notification of decision.** The board shall notify permitting agencies affected by the board's decision requiring the permitting agencies to impose more stringent terms, conditions, or requirements within ten days after the board's final decision.

**Statutory Authority:** *MS s 115A.32*

**9200.5200 REVOCATION OF APPROVAL.**

The board may revoke its approval of a facility if, following a contested case hearing under the Contested Case Procedures of Minnesota Statutes, sections 14.37, 14.46, and 14.48 to 14.69 the rules of the Office of Administrative Hearings relating to contested case proceedings in parts 1400.5010 to 1400.8400, it is determined that the petitioner knowingly made material false statements, representations, or certifications, or knowingly withheld material information in any application, record, report, or other document filed pursuant to the provisions of parts 9200.4500 to 9200.4800.

**Statutory Authority:** *MS s 115A.32*

**History:** *L 1987 c 384 art 2 s 1; 26 SR 391*

**9200.5300 COMPUTATION OF TIME.**

In computing any period of time prescribed under parts 9200.3600 to 9200.5000, the date of the last act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so completed shall be included unless it is a Saturday, Sunday, or legal holiday.

**Statutory Authority:** *MS s 115A.32*

**9200.6000 [Renumbered 9205.0100]****9200.6001 Subpart 1. [Renumbered 9205.0110, subpart 1]**

- Subp. 2. [Renumbered 9205.0110, subp. 2]
- Subp. 3. [Renumbered 9205.0110, subp. 3]
- Subp. 4. [Renumbered 9205.0110, subp. 4]
- Subp. 5. [Renumbered 9205.0110, subp. 5]
- Subp. 6. [Renumbered 9205.0110, subp. 6]
- Subp. 7. [Renumbered 9205.0110, subp. 7]
- Subp. 8. [Renumbered 9205.0110, subp. 8]
- Subp. 9. [Renumbered 9205.0110, subp. 9]
- Subp. 10. [Renumbered 9205.0110, subp. 10]
- Subp. 10a. [Renumbered 9205.0110, subp. 11]
- Subp. 11. [Renumbered 9205.0110, subp. 12]
- Subp. 12. [Renumbered 9205.0110, subp. 13]
- Subp. 13. [Renumbered 9205.0110, subp. 14]
- Subp. 14. [Renumbered 9205.0110, subp. 15]
- Subp. 15. [Renumbered 9205.0110, subp. 16]

**9200.6002 [Renumbered 9205.0200]****9200.6003 [Renumbered 9205.0210]****9200.6004 [Renumbered 9205.0220]**

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**9200.6005** [Renumbered 9205.0230]

**9200.6006** [Renumbered 9205.0240]

**9200.6007** [Renumbered 9205.0250]

**9200.6008** [Renumbered 9205.0260]

**9200.6009** [Renumbered 9205.0270]

**9200.6010** [Renumbered 9205.0280]

**9200.6011** [Renumbered 9205.0290]

**9200.6050** [Renumbered 9210.0100]

**9200.6100** [Renumbered 9210.0110]

**9200.6200** [Renumbered 9210.0120]

**9200.6300** [Renumbered 9210.0130]

**9200.6400** [Renumbered 9210.0140]

**9200.6500** [Renumbered 9210.0150]

**9200.6600** [Renumbered 9210.0160]

**9200.6700** [Renumbered 9210.0170]

**9200.6800** [Renumbered 9210.0180]

**9200.6890** [Renumbered 9210.0190]

**9200.6895** [Renumbered 9210.0200]

**9200.6900** [Renumbered 9210.0400]

**9200.6901** [Renumbered 9210.0410]

**9200.6902** [Renumbered 9210.0420]

**9200.6903** [Renumbered 9210.0430]

**9200.6904** [Renumbered 9210.0440]

**9200.6905** [Renumbered 9210.0450]

**9200.6906** [Renumbered 9210.0460]

**9200.7100** [Renumbered 9205.0500]

**9200.7200** [Renumbered 9205.0510]

**9200.7300** [Renumbered 9205.0520]

**9200.7400** [Renumbered 9205.0530]

**9200.7500** [Renumbered 9205.0540]

**9200.7600** [Renumbered 9205.0550]

**9200.7700** [Renumbered 9205.0560]

**9200.8100** Subpart 1. [Renumbered 9210.0300, subpart 1]

Subp. 2. [Renumbered 9210.0300, subp. 2]

Subp. 3. [Renumbered 9210.0300, subp. 3]

Subp. 4. [Renumbered 9210.0300, subp. 4]

Subp. 5. [Renumbered 9210.0300, subp. 5]

Subp. 6. [Renumbered 9210.0300, subp. 6]

Subp. 7. [Renumbered 9210.0300, subp. 7]

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- Subp. 8. [Repealed, 9 SR 1480]
- Subp. 9. [Renumbered 9210.0300, subp. 8]
- Subp. 10. [Renumbered 9210.0300, subp. 9]
- Subp. 11. [Renumbered 9210.0300, subp. 10]
- Subp. 12. [Renumbered 9210.0300, subp. 11]
- Subp. 13. [Renumbered 9210.0300, subp. 12]
- Subp. 13a. [Renumbered 9210.0300, subp. 13]
- Subp. 14. [Renumbered 9210.0300, subp. 14]
- Subp. 14a. [Renumbered 9210.0300, subp. 15]
- Subp. 14b. [Renumbered 9210.0300, subp. 16]
- Subp. 15. [Renumbered 9210.0300, subp. 17]
- Subp. 16. [Renumbered 9210.0300, subp. 18]
- Subp. 17. [Renumbered 9210.0300, subp. 19]
- Subp. 18. [Renumbered 9210.0300, subp. 20]
- Subp. 19. [Renumbered 9210.0300, subp. 21]
- Subp. 20. [Renumbered 9210.0300, subp. 22]
- Subp. 21. [Repealed, 11 SR 432]
- Subp. 22. [Renumbered 9210.0300, subp. 23]
- Subp. 23. [Renumbered 9210.0300, subp. 24]
- Subp. 24. [Renumbered 9210.0300, subp. 25]

**9200.8200** [Renumbered 9210.0310]

**9200.8300** [Renumbered 9210.0320]

**9200.8400** [Renumbered 9210.0330]

**9200.8500** [Renumbered 9210.0340]

**9200.8600** Subpart 1. [Repealed, 9 SR 1480]

- Subp. 1a. [Renumbered 9210.0350, subpart 1]
- Subp. 2. [Repealed, 9 SR 1480]
- Subp. 2a. [Renumbered 9210.0350, subp. 2]
- Subp. 3. [Repealed, 9 SR 1480]
- Subp. 4. [Renumbered 9210.0350, subp. 3]
- Subp. 5. [Renumbered 9210.0350, subp. 4]

**9200.8700** Subpart 1. [Repealed, 11 SR 432]

- Subp. 2. [Renumbered 9210.0360, subpart 1]
- Subp. 3. [Renumbered 9210.0360, subp. 2]
- Subp. 4. [Renumbered 9210.0360, subp. 3]
- Subp. 5. [Renumbered 9210.0360, subp. 4]
- Subp. 6. [Renumbered 9210.0360, subp. 5]

**9200.8800** [Repealed, 11 SR 432]

**9200.8900** [Repealed, 9 SR 1480]

**9200.9000** Subpart 1. [Repealed, 11 SR 432]

- Subp. 2. [Repealed, 11 SR 432]
- Subp. 3. [Repealed, 11 SR 432]
- Subp. 4. [Renumbered 9210.0370, subpart 1]
- Subp. 5. [Renumbered 9210.0370, subp. 2]

Subp. 6. [Renumbered 9210.0370, subp. 3]

**9200.9100** Subpart 1. [Renumbered 9210.0380, subpart 1]

Subp. 2. [Renumbered 9210.0380, subp. 2]

Subp. 3. [Renumbered 9210.0380, subp. 3]

Subp. 4. [Renumbered 9210.0380, subp. 4]

Subp. 5. [Repealed, 11 SR 432]

Subp. 6. [Repealed, 11 SR 432]

**9200.9200** Subpart 1. [Repealed, 11 SR 432]

Subp. 2. [Repealed, 11 SR 432]

Subp. 3. [Repealed, 11 SR 432]

Subp. 4. [Repealed, 9 SR 1480]

Subp. 5. [Repealed, 9 SR 1480]

**9200.9500** [Renumbered 9205.0400]

**9200.9501** Subpart 1. [Renumbered 9205.0410, subpart 1]

Subp. 1a. [Renumbered 9205.0410, subp. 2]

Subp. 2. [Renumbered 9205.0410, subp. 3]

Subp. 3. [Renumbered 9205.0410, subp. 4]

Subp. 4. [Repealed, 10 SR 846]

Subp. 5. [Renumbered 9205.0410, subp. 5]

Subp. 6. [Renumbered 9205.0410, subp. 6]

Subp. 6a. [Renumbered 9205.0410, subp. 7]

Subp. 7. [Renumbered 9205.0410, subp. 8]

Subp. 8. [Renumbered 9205.0410, subp. 9]

Subp. 8a. [Renumbered 9205.0410, subp. 10]

Subp. 9. [Renumbered 9205.0410, subp. 11]

Subp. 10. [Renumbered 9205.0410, subp. 12]

Subp. 10a. [Renumbered 9205.0410, subp. 13]

Subp. 11. [Renumbered 9205.0410, subp. 14]

Subp. 12. [Renumbered 9205.0410, subp. 15]

**9200.9502** [Renumbered 9205.0420]

**9200.9503** [Renumbered 9205.0430]

**9200.9504** Subpart 1. [Repealed, 10 SR 846]

Subp. 2. [Renumbered 9205.0440]

**9200.9505** [Renumbered 9205.0450]

**9200.9506** [Renumbered 9205.0460]

**9200.9507** [Renumbered 9205.0470]

**9200.9508** [Renumbered 9205.0480]