

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*

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