

6 MCAR 8

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8-10-82

1 Waste Management Board

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3 Adopted Rules Governing Supplementary Review

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5 Rules as Adopted

6 6 MCAR S 8.201 Supplementary review of decisions concerning

7 establishment of certain facilities. Rules 6 MCAR SS

8 8.201-8.218 establish the procedures by which the Waste

9 Management Board will review petitions for supplementary

10 review. Under Minn. Stat. SS 115A.32-115A.39, the Waste

11 Management Board may entertain a petition for supplementary

12 review whenever an authorized applicant has received all

13 necessary permits from the Pollution Control Agency for a

14 proposed facility but a political subdivision has refused to

15 approve the establishment or operation of the facility.

16 6 MCAR S 8.202 Definitions. For the purposes of 6 MCAR SS

17 8.201-8.218, the following terms have the meanings given them

18 unless the context requires otherwise.

19 A. Agency. "Agency" means the Pollution Control Agency.

20 B. Board. "Board" means the Waste Management Board.

21 C. Chairperson. "Chairperson" means the chairperson of the

22 Waste Management Board.

23 D. Person. "Person" means any human being, any municipality

24 or other governmental or political subdivision or other public

25 agency, any public or private corporation, any partnership,

26 firm, association, or other organization, any receiver, trustee,

27 assignee, agent, or other legal representative of any of the

28 foregoing, or any other legal entity, but does not include the

29 Pollution Control Agency or the Waste Management Board.

30 E. Political subdivision. "Political subdivision" means any

31 municipal corporation, government subdivision of the state,

32 local government unit, special district, or local or regional

33 board, commission, or authority authorized by law to plan or

34 provide for waste management.

35 6 MCAR S 8.203 Eligibility for supplementary review. The

1 following persons shall be eligible to request supplementary  
2 review by the board pursuant to Minn. Stat. SS 115A.32-115A.39:

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

10 B. A political subdivision which has been issued permits by  
11 the agency, or a political subdivision acting on behalf of a  
12 person who has been issued permits by the agency, for a solid  
13 waste facility which is located outside the metropolitan area  
14 and which is no larger than 250 acres, not including any  
15 proposed buffer area, provided that if the petitioner is a  
16 political subdivision acting on its own behalf, the political  
17 subdivision shall have completed a plan conforming to the  
18 requirements of Minn. Stat. S 115A.46;

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

24 D. A person who has been issued permits by the agency for a  
25 commercial hazardous waste processing facility at a site  
26 included within one of the areas on the board's inventory of  
27 preferred areas for such facilities adopted pursuant to Minn.  
28 Stat. S 115A.09;

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

33 6 MCAR S 8.204 Review of petitions for supplementary review.

34 A. Acceptance of petition. The chairperson on behalf of the  
35 board shall accept a petition for review if it conforms to the  
36 requirements of B. If the petition does not conform to the

1 requirements of B., the chairperson shall return it to the  
2 petitioners with a statement identifying the deficiencies in the  
3 petition.

4 B. Contents of petition. A petition shall include:

5 1. The name, address, and telephone number of the  
6 petitioner;

7 2. The name, address, and telephone number of each owner  
8 or operator of the proposed facility if different from the  
9 petitioner specified in 1.;

10 3. The street address and legal description of the  
11 location of the proposed facility;

12 4. A description of the proposed facility;

13 5. A list of the existing permits and pending permit  
14 applications for the proposed facility together with a copy of  
15 any permits which have been issued;

16 6. An estimate of the required construction time;

17 7. An estimate of the functional life of the proposed  
18 facility;

19 8. For processing facilities, a description of the types  
20 of processes to be used;

21 9. For processing facilities, a statement of the design  
22 capacity of each process;

23 10. For processing facilities, a description of the  
24 materials which will be treated at the proposed facility as  
25 specified in the agency permit application;

26 11. A copy of the resolution, order, or other action of a  
27 political subdivision refusing to approve the establishment or  
28 operation of the proposed facility or a statement that the  
29 required approval has been refused;

30 12. For petitioners who qualify for review under 6 MCAR S  
31 8.203 B., a copy of the required solid waste plan conforming to  
32 the requirements of Minn. Stat. S 115A.46; and

33 13. For petitioners who qualify for review under 6 MCAR S  
34 8.203 D. or E., a brief discussion showing how the proposed  
35 facility is consistent with the hazardous waste management plan  
36 required under Minn. Stat. S 115A.11, if the plan has been

1 adopted at the time the petition is submitted.

2 6 MCAR S 8.205 Additional information. The chairperson may  
3 request the petitioner to submit additional information whenever  
4 the chairperson determines that the information would be  
5 necessary or useful in deciding whether the petition should be  
6 approved or disapproved.

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7 6 MCAR S 8.206 Procedure for supplementary review.

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

15 B. Second phase. The second phase of the supplementary  
16 review process shall commence with the board's decision on the  
17 scope and procedures for the review and shall extend for a  
18 period of 90 days following the decision. During the second  
19 phase of the review, the board shall hold any required public  
20 hearings and make its final decision on approving or not  
21 approving the proposed facility.

22 6 MCAR S 8.207 Identification of issues.

23 A. Meetings with petitioner and political subdivision.  
24 Within 40 days after the board has accepted a petition for  
25 review, the chairperson shall prepare a compilation of the  
26 issues which may be relevant to the supplementary review. To  
27 assist in the identification of these issues, the chairperson  
28 may meet with the petitioner and representatives of the  
29 political subdivision, either separately or together, or the  
30 chairperson may request a written statement of the issues which  
31 the petitioner and the political subdivision believe should be  
32 addressed in the review.

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33 B. Public meetings. Within 60 days after the board has  
34 accepted a petition for review, the board shall hold an informal  
35 public meeting in the area where the facility is proposed. The

1 purpose of this meeting shall be to permit members of the public  
2 to discuss the issues which should be reviewed by the board.

3 C. Public meeting procedures.

4 1. The board shall announce the public meeting by  
5 providing press releases to newspapers and radio and television  
6 stations in the area where the facility is proposed and by  
7 letter to the political subdivisions within which the facility  
8 is proposed to be located.

9 2. The meeting shall be held in the area in which the <sup>specific</sup>  
10 facility is proposed to be located. *be specific*

11 3. The meeting shall be conducted by the chairperson or  
12 his designee. *be conducted for the board statute applicable to*

13 4. Copies of the compilation of issues prepared by the  
14 chairperson shall be available for review. *014, 212 D.*

15 5. Members of the public shall be given an opportunity to  
16 suggest additional issues which should be considered and present  
17 reasons why particular issues should or should not be considered.

18 6. A summary of the issues raised at the public meeting  
19 shall be prepared.

20 6 MCAR S 8.208 Appointment of temporary board members.

21 A. Notification to political subdivision. Within ten days  
22 after a petition has been accepted for review, the chairperson  
23 shall notify the political subdivisions which have the  
24 responsibility to appoint temporary board members that a  
25 petition affecting their areas has been accepted.

26 B. Appointment by political subdivision. The political  
27 subdivisions shall appoint temporary board members in accordance  
28 with Minn. Stat. S 115A.34 within 45 days after the date the  
29 petition was accepted by the board.

30 C. Failure to appoint members. If a political subdivision  
31 fails to appoint the required temporary board members within 45  
32 days after the date the petition was accepted by the board, the  
33 chairperson shall notify the governor's office within five  
34 working days of the failure to appoint. The appointment of the  
35 temporary board members shall then be made by the governor in  
36 accordance with Minn. Stat. S 115A.34.

1 6 MCAR S 8.209 Mediation.

2 A. Notice of mediation. Within ten days following  
3 acceptance of a petition for review, the chairperson shall  
4 notify both the petitioner and the political subdivision that  
5 the services of an impartial mediator will be made available to  
6 the petitioner and the political subdivision to assist in the  
7 resolution of the issues separating the petitioner and the  
8 political subdivision.

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

15 C. Selection of mediator. A single impartial mediator shall  
16 be selected for each review. The petitioner and the political  
17 subdivision shall have a ten-day period after notification of an  
18 agreement to mediate to select a mediator acceptable to both  
19 parties. If an impartial mediator has not been selected within  
20 this ten-day period, a mediator shall be appointed by the  
21 chairperson.

22 D. Length of mediation. Mediation shall be conducted for a  
23 period of 30 days following the appointment of a mediator by the  
24 chairperson unless the chairperson determines that continued  
25 mediation services will be beneficial to the resolution of the  
26 case.

27 E. Termination of mediation. The mediator, the petitioner,  
28 or the political subdivision may terminate mediation at any  
29 time. The mediator shall immediately notify the chairperson of  
30 the termination of mediation.

31 F. Compensation of mediator. The board shall pay the costs  
32 of mediation.

33 G. Decision. If an agreement is reached by the close of the  
34 mediation period, the agreement shall be referred to the board  
35 for review.

1 6 MCAR S 8.210 Recommended statement of issues. At least ten  
2 days before the board meeting held to determine the scope and  
3 procedures for review and to commence the supplementary review  
4 process, the chairperson shall prepare a recommended statement  
5 of the issues involved in the review. The chairperson shall  
6 make copies of the recommended statement available to members of  
7 the public. Copies of the recommended statement of issues shall  
8 be provided to the petitioner and the political subdivision.

9 6 MCAR S 8.211 Board meeting to establish scope and procedures  
10 for the second phase of the review.

11 A. Scope; statement of issues. At the meeting held to  
12 commence the supplementary review process, the chairperson shall  
13 present the recommended statement of issues involved in the  
14 review to the board including the temporary board members. The  
15 board, after providing an opportunity for public comment, shall  
16 adopt a statement of issues for review.

17 B. Procedures.

18 1. If no mediated agreement has been reached, the board  
19 shall direct that a contested review be conducted under 6 MCAR S  
20 8.213.

21 2. If a mediated agreement has been reached which may  
22 require the imposition of more stringent permit terms,  
23 conditions, or requirements, or if significant issues are  
24 identified in the statement of issues adopted by the board which  
25 were not addressed in the agreement, the board shall direct that  
26 a review hearing be conducted under 6 MCAR S 8.212.

27 3. If a mediated agreement has been reached which does  
28 not require the imposition of more stringent permit terms,  
29 conditions, or requirements, and if all significant issues which  
30 were identified in the statement of issues are addressed in the  
31 agreement, the board shall suspend the review pending final  
32 approval of the proposed facility by the political subdivision  
33 and shall dismiss the petition and terminate the review upon  
34 final approval of the proposed facility by the political  
35 subdivision.

1 6 MCAR S 8.212 Hearing procedures following mediated agreement.

2 A. Timing of hearing. The public hearing on the mediated  
3 agreement shall be held within 45 days after the board meeting  
4 held to establish the scope and procedures for review.

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

12 1. Specify the date, time, and location of the hearing;

13 2. Describe the proposed facility and its location;

14 3. Describe the permits which have been issued for the  
15 proposed facility;

16 4. Briefly set out the process by which the agreement was  
17 reached and the scope and procedures which will be used in the  
18 supplementary review;

19 5. Identify the location or locations within the city,  
20 town, or county where copies of the agreement, the permit  
21 applications, agency permits, and the board's scope and  
22 procedures for review are available for review; and

23 6. Include the name of a person on the board's staff to  
24 whom questions about the review may be directed.

25 C. Location of hearing. The hearing shall be held in the  
26 county where the facility is proposed to be located and as near  
27 as practical to the site of the proposed facility.

28 D. Procedures for the hearing.

29 1. The hearing shall be conducted by a hearing examiner  
30 from the Office of Administrative Hearings.

31 2. A majority of the permanent board members shall be  
32 present at the hearing.

33 3. The hearing shall be opened by the hearing examiner  
34 who will explain the hearing procedures.

35 4. A member of the board's staff shall explain the  
36 purpose of the hearing, the statement of issues adopted by the



1 board, and any additional permit terms, conditions, or  
2 requirements which the board is considering to implement the  
3 agreement.

4 5. The political subdivision and the petitioner shall  
5 explain the mediated agreement.

6 6. Members of the public shall have an opportunity to  
7 comment upon the agreement, the issues identified in the  
8 statement of issues, and any proposed additional permit terms,  
9 conditions, or requirements.

10 7. Questions may be directed to any representative of the  
11 political subdivision or the petitioner regarding the mediated  
12 agreement and to any person who presents a statement at the  
13 hearing.

14 8. The chairperson may request any person who has  
15 information related to the hearing to present the information if  
16 the chairperson determines the information would be helpful in  
17 reaching a decision in the case.

18 9. The hearing examiner may exclude testimony or disallow  
19 questions which are irrelevant, unduly repetitious,  
20 argumentative, harassing, or adversarial in nature.

21 10. No person shall interfere with the conduct of the  
22 hearing or disrupt or threaten to disrupt the hearing.

23 11. A transcript of the hearing shall be prepared.

24 6 MCAR S 8.213 Contested supplementary review hearing.

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

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

35 1. Specify the date, time, and location of the hearing;

36 2. Describe the proposed facility and its location;

1           3. Describe the permits which have been issued for the  
2 proposed facility;

3           4. Briefly set out the scope and procedures which will be  
4 used in the supplementary review;

5           5. Identify the location or locations within the city,  
6 town, or county where copies of the permit applications, agency  
7 permits, and the board's scope and procedures for review are  
8 available for review and where copies may be obtained;

9           6. Include the name of a person on the board's staff to  
10 whom questions about the review may be directed.

11       C. Location of hearing. The hearing shall be held in the  
12 county where the facility is proposed to be located and as near  
13 as practical to the site of the proposed facility.

14       D. Definition; party. "Party" for the purposes of E.-V.  
15 means the petitioner, the political subdivision which refused to  
16 authorize the facility, and any person who is granted  
17 intervention under I.

18       E. Hearing examiner; duties. The hearing shall be conducted  
19 by a hearing examiner assigned by the Chief Hearing Examiner.  
20 The hearing examiner shall perform the following duties:

21           1. Hear and rule on motions;

22           2. Grant or deny requests for discovery including the  
23 taking of depositions;

24           3. Receive and act upon requests for subpoenas when  
25 appropriate;

26           4. Preside at the hearing;

27           5. Administer oaths and affirmations;

28           6. Examine witnesses when the hearing examiner deems it  
29 necessary to make a complete record;

30           7. Make preliminary, interlocutory, or other orders as  
31 the hearing examiner deems appropriate;

32           8. Rule on objections;

33           9. Do all things necessary and proper to the performance  
34 of 1.-8.; and

35           10. Perform other duties which may be delegated to the  
36 hearing examiner by the board.

1 The hearing examiner will not prepare a report following  
2 the hearing.

3 F. Disqualification of hearing examiner. The hearing  
4 examiner shall withdraw from participation in a contested review  
5 at any time if he deems himself disqualified for any reason.  
6 Upon the filing in good faith by a party of an affidavit of  
7 prejudice, the Chief Hearing Examiner shall determine the matter  
8 as a part of the record. The affidavit must be filed no later  
9 than five days prior to the date set for hearing.

10 G. Waste Management Board members. A majority of the  
11 permanent board members shall be present at the hearing.  
12 Members of the board may address questions to any witness or  
13 party.

14 H. Right to counsel. Any party may be represented by legal  
15 counsel throughout the proceedings by a person of his choice or  
16 by himself if not otherwise prohibited as the unauthorized  
17 practice of law.

18 I. Intervention. Any person who desires to intervene as a  
19 party shall submit a petition to intervene to the hearing  
20 examiner at least ten days before the hearing. Copies of the  
21 petition to intervene shall be served on the parties to the  
22 hearing. The petition shall state how the petitioner will be  
23 affected by the hearing, shall set forth grounds and purposes  
24 for which intervention is sought, and shall show that no other  
25 party is able to adequately represent the petitioner's interests  
26 at the hearing. At a time determined by the hearing examiner,  
27 but no later than the commencement of the hearing, the hearing  
28 examiner shall review any petitions for intervention and shall  
29 permit the parties to the hearing to present their objections to  
30 the intervention. Intervention shall be allowed unless the  
31 hearing examiner determines that the petitioner's interest is  
32 adequately represented by one or more parties participating in  
33 the case.

34 J. Default. The board may decide a review adverse to a  
35 party which defaults. Upon default, the allegations and  
36 evidence provided by the nondefaulting party shall be deemed

1 true without further evidence. A default occurs when a party  
2 fails to appear at a hearing, fails to comply with any  
3 interlocutory orders of the hearing examiner, or fails to timely  
4 prefile testimony, and is unable to demonstrate that good cause  
5 existed for any failure.

6 K. Participation by the public. The hearing examiner may  
7 hear the testimony of and receive exhibits from any person at  
8 the hearing, but no person shall become, or be deemed to become,  
9 a party by reason of the person's participation. Persons  
10 offering testimony or exhibits may be questioned by parties to  
11 the proceeding.

12 L. Prefiled testimony. The petitioner, the political  
13 subdivision which refused to approve the facility, and any party  
14 seeking to intervene shall file their testimony with the  
15 hearing examiner and the board at least ten days before the  
16 hearing unless the hearing examiner directs otherwise.

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

19 M. Rights of parties. Parties shall have the right to  
20 present evidence, rebut evidence, argue with respect to the  
21 issues, and cross-examine witnesses.

22 N. Witnesses. Any party may be a witness or may present  
23 witnesses on the party's behalf at the hearing. All oral  
24 testimony shall be under oath or affirmation. The board may  
25 call its own witnesses if the board or the chairperson acting on  
26 behalf of the board determines that testimony from the witness  
27 would be helpful in reaching a decision in the case. The  
28 board's staff may also present evidence during the review.

29 O. Prehearing procedures.

30 1. The purpose of the prehearing conference is to obtain  
31 stipulations regarding foundation for testimony or exhibits, to  
32 consider the proposed witnesses for each party, and to consider  
33 other matters that may be necessary or advisable to consider.  
34 Upon the request of any party or upon his own motion, the  
35 hearing examiner may, in his discretion, hold a prehearing  
36 conference prior to each contested review hearing. The hearing

1 examiner may require the parties to file a prehearing statement  
2 prior to the prehearing conference. The statement shall contain  
3 items the hearing examiner deems necessary to promote a useful  
4 prehearing conference. A prehearing conference shall be an  
5 informal proceeding conducted expeditiously by the hearing  
6 examiner. Agreements on any matters considered by the  
7 prehearing conference may be entered on the record or may be  
8 made the subject of an order by the hearing examiner. The  
9 hearing examiner shall hold any prehearing conferences in a  
10 manner and at a time which will not interfere with the  
11 completion of the review process in the time allowed by Minn.  
12 Stat. S 115A.35 and this rule.

13         2. Any application to the hearing examiner for an order  
14 shall be by motion, shall state the grounds for the order, and  
15 shall set forth the relief or order sought. A written notice of  
16 any motion shall be provided to all parties and to the board and  
17 shall be served five days prior to the submission of the motion  
18 except where impractical. All orders by the hearing examiner,  
19 other than those made during the course of the hearing, shall be  
20 in writing and shall be served upon all parties of record and  
21 the board. In ruling on motions where these procedures are  
22 silent, the hearing examiner shall apply the Rules of Civil  
23 Procedure for the District Courts for the State of Minnesota to  
24 the extent that he or she determines that it is appropriate to  
25 do so in order to promote a fair and expeditious proceeding.

26         P. Discovery.

27         1. Each party shall, within ten days of a demand by  
28 another party, disclose the names and addresses of all witnesses  
29 that a party intends to call at the hearing. All witnesses  
30 unknown at the time of the disclosure shall be disclosed as soon  
31 as they become known. Each party shall also disclose any  
32 relevant written or recorded statements made by the party or by  
33 witnesses on behalf of a party. The demanding party shall be  
34 permitted to inspect and reproduce those statements. Any party  
35 unreasonably failing upon demand to make the disclosure required  
36 by this rule may, in the discretion of the hearing examiner, be

1 foreclosed from presenting any evidence at the hearing through  
2 witnesses not disclosed or through witnesses whose statements  
3 are not disclosed.

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

15       3. Upon the motion of a party, the hearing examiner may  
16 order discovery of any other relevant material or information,  
17 provided that privileged work product of attorneys,  
18 investigators, and similar people shall not be discoverable.  
19 The hearing examiner shall also recognize all other privileged  
20 information or communications which are recognized at law. Upon  
21 proper motion made to the hearing examiner, any means of  
22 discovery available pursuant to the Rules of Civil Procedure for  
23 the District Courts of the State of Minnesota may be allowed  
24 provided that the request can be shown to be needed for the  
25 proper presentation of a party's case, can be completed within  
26 the time allowed in this rule, and the issues are significant  
27 enough to warrant extensive discovery. Upon the failure of a  
28 party to reasonably comply with this type of order by the  
29 hearing examiner, the hearing examiner may order that the  
30 subject matter of the order for discovery or any other relevant  
31 facts shall be taken as established for the purposes of the case  
32 in accordance with the claim of the party requesting the order,  
33 or may refuse to allow the party failing to comply to support or  
34 oppose designated claims or defenses, or may prohibit him from  
35 introducing designated matters in evidence.

36       4. When a party is asked to reveal material which he

1 considers to be proprietary information or trade secrets, he  
2 shall bring the matter to the attention of the hearing examiner  
3 who shall make protective orders which are reasonable and  
4 necessary or as otherwise provided by law.

5       5. Discovery shall be conducted in a manner to ensure the  
6 completion of the review in the time permitted by Minn. Stat. S  
7 115A.35 and this rule. The hearing shall not be continued to  
8 permit additional time for discovery.

9       Q. Depositions to preserve testimony. Upon the request of  
10 any party, the hearing examiner may order that the testimony of  
11 any witness be taken by deposition to preserve the testimony in  
12 the manner prescribed by law for depositions in civil actions.  
13 The request shall indicate the relevancy of the testimony and  
14 shall make a showing that the witness will be unable or cannot  
15 be compelled to attend the hearing or show other good cause.

16       R. Subpoenas. Requests for subpoenas for the attendance of  
17 witnesses or the production of documents shall be made in  
18 writing to the hearing examiner, shall contain a brief statement  
19 demonstrating the potential relevance of the testimony or  
20 evidence sought, shall identify any documents sought with  
21 specificity, and shall name all persons to be subpoenaed. A  
22 subpoena shall be served in the manner provided by the Rules of  
23 Civil Procedure for the District Courts of the State of  
24 Minnesota unless otherwise provided by law. The cost of  
25 service, fees, and expenses of any witnesses subpoenaed shall be  
26 paid by the party at whose request the witness appears. The  
27 person serving the subpoena shall make proof of service by  
28 filing the subpoena with the hearing examiner, together with his  
29 affidavit of service. Upon motion made promptly, and in any  
30 event at or before the time specified in the subpoena for  
31 compliance with it, the hearing examiner may quash or modify the  
32 subpoena if he finds that it is unreasonable or oppressive.

33       S. Rules of evidence.

34       1. The hearing examiner may admit all evidence which  
35 possesses probative value, including hearsay, if it is the type  
36 of evidence on which reasonable prudent persons are accustomed

1 to rely in the conduct of their serious affairs. The hearing  
2 examiner shall utilize the rules of privilege recognized by  
3 law. Evidence which is incompetent, irrelevant, or unduly  
4 repetitious may be excluded.

5 2. All evidence to be considered in the case shall be  
6 offered and made a part of the record in the case. No other  
7 factual information or evidence shall be considered in the  
8 determination of the case.

9 3. Documentary evidence in the form of copies or excerpts  
10 may be received or incorporated by reference in the discretion  
11 of the hearing examiner or upon agreement of the parties.

12 4. The hearing examiner or the board may take notice of  
13 judicially cognizable facts but shall do so on the record and  
14 with the opportunity for any party to contest the facts so  
15 noticed.

16 5. A party may call an adverse party, his agent or  
17 employees, and interrogate him or them by leading questions and  
18 contradict and impeach him or them on material matters in all  
19 respects as if he had been called by the adverse party. The  
20 adverse party may be examined by his counsel upon the subject  
21 matter of the examination in chief under the rules applicable to  
22 direct examination, and may be cross-examined, contradicted, and  
23 impeached by any other party adversely affected by his testimony.

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

26 T. The record. The board shall maintain the official record  
27 in each contested review hearing. The record in a contested  
28 review shall contain:

- 29 1. All pleadings, motions, and orders;
- 30 2. Evidence received or considered;
- 31 3. Offers of proof, objections, and rulings on them;
- 32 4. All memoranda or data submitted by any party in  
33 connection with the case; and
- 34 5. The transcript of the hearing.

35 U. Conduct of hearing. Unless the hearing examiner  
36 determines that the public interest will be equally served



1 otherwise, the hearing shall be conducted substantially in the  
2 following manner:

3 1. The hearing examiner shall briefly review the  
4 procedural rules for the hearing;

5 2. Each party may make an opening statement in a sequence  
6 determined by the hearing examiner;

7 3. Each party may then present a summary of its prefiled  
8 testimony in a sequence determined by the hearing examiner;

9 4. Cross-examination of witnesses shall be conducted in a  
10 sequence determined by the hearing examiner;

11 5. When all parties and witnesses have been heard,  
12 opportunity shall be offered to present final argument in a  
13 sequence determined by the hearing examiner. Final argument  
14 may, in the discretion of the board, be in the form of written  
15 memoranda or oral argument. Written memoranda may, in the  
16 discretion of the board, be submitted simultaneously or  
17 sequentially and within time periods the board may prescribe;  
18 provided, however, that all written material shall be submitted  
19 at least 30 days before the close of the supplementary review  
20 period; and

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

26 V. Completion of hearing. The hearing examiner shall  
27 conduct the hearing in a manner to ensure its completion in the  
28 time required by Minn. Stat. S 115A.35 and this rule.

29 6 MCAR S 8.214 Reconciliation procedures. At least 30 days  
30 before making its final decision in a review, the board shall  
31 make a determination as to whether a report should be made to  
32 the legislature and whether intervention should be requested as  
33 provided in Minn. Stat. S 115A.38.

34 6 MCAR S 8.215 Decision of Waste Management Board.

35 A. The record. No factual information or evidence which is

1 not a part of the hearing record shall be considered by the  
2 board in the determination of the case.

3 B. Administrative notice. The board may utilize its  
4 experience, technical competence, and specialized knowledge in  
5 the evaluation of the evidence in the hearing record.

6 C. Participation in decision. Board members not present at  
7 the hearing may participate in the final decision to approve or  
8 not approve the proposed facility following a review of the  
9 record of the hearing.

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

17 E. Basis of decision. In its decision to approve or not  
18 approve a proposed facility, the board shall consider and base  
19 its decision on the factors listed in 1.-6. Neither the  
20 petitioner nor the political subdivision shall be deemed to have  
21 the burden of proof as to any of the factors. The factors are:

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

29 2. The consistency of the proposed facility with, and its  
30 effect on, existing and planned local land use and development,  
31 local laws, ordinances, and permits; and local public facilities  
32 and services;

33 3. The adverse effects of the facility on agriculture and  
34 natural resources and opportunities to mitigate or eliminate the  
35 adverse effects by additional stipulations, conditions, and  
36 requirements respecting the proposed facility at the proposed

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1 site;

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

7 5. Whether, in the case of solid waste resource recovery  
8 facilities, the applicant has considered the feasible and  
9 prudent waste processing alternatives for accomplishing the  
10 purposes of the proposed project and has compared and evaluated  
11 the costs of the alternatives, including capital and operating  
12 costs and the effects of the alternatives on the cost to  
13 generators; and

14 6. Any issue within the established scope of the  
15 supplementary review which is not addressed by 1.-5.

16 F. Final decision. The board shall review a mediated  
17 agreement and shall approve the agreement unless the agreement  
18 is clearly inappropriate based on the factors set out in 6 MCAR  
19 S 8.215 E. and the record of the hearing, fails to address  
20 significant issues relevant to the review, or requires the  
21 imposition of permit terms, conditions, or requirements outside  
22 of the authority of the board. If the board disapproves a  
23 mediated agreement, the board shall direct the staff to prepare  
24 a recommended decision based on the hearing record. When no  
25 mediated agreement has been reached or when a mediated agreement  
26 has been rejected, the board shall base its decision to approve  
27 or not approve a facility on the factors set out in 6 MCAR S  
28 8.215 E. and the record of the hearing.

29 G. Exparte communication. No party to a hearing shall  
30 communicate with any board member concerning the hearing except  
31 in writing, or orally as part of a presentation at the hearing  
32 or at a board meeting. Copies of any written communication  
33 shall be sent to all parties to the hearing and to all board  
34 members.

35 6 MCAR S 8.216 Terms, conditions, and requirements of permitting  
36 agencies.

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1 A. Board action. The board shall resolve any conflicts  
2 between state agencies regarding terms, conditions, and  
3 requirements for a permit in favor of the more stringent terms,  
4 conditions, and requirements. Should there be a question as to  
5 which term, condition, or requirement is more stringent, the  
6 board shall make the determination of which term, condition, or  
7 requirement is more stringent.

8 B. Addition of provisions. If, based on the factors set out  
9 in 6 MCAR S 8.215 E., the board determines that more stringent  
10 permit terms, conditions, or requirements should be imposed in  
11 connection with the approval of a facility, the board shall  
12 direct that the terms, conditions, or requirements be added to  
13 the permit.

14 C. Notification of decision. The board shall notify  
15 permitting agencies affected by the board's decision requiring  
16 the permitting agencies to impose more stringent terms,  
17 conditions, or requirements within ten days after the board's  
18 final decision.

19 6 MCAR S 8.217 Revocation of approval. The board may revoke its  
20 approval of a facility if, following a contested case hearing  
21 under the Contested Case Procedures of Minn. Stat. SS  
22 15.0418-15.052 and the rules of the Office of Administrative  
23 Hearings relating to contested case proceedings in 9 MCAR SS  
24 2.201-2.222, it is determined that the petitioner knowingly made  
25 material false statement, representations or certifications, or  
26 knowingly withheld material information in any application,  
27 record, report, or other document filed pursuant to the  
28 provisions of 6 MCAR SS 8.210-8.213.

29 6 MCAR S 8.218 Computation of time. In computing any period of  
30 time prescribed under 6 MCAR SS 8.201-8.215, the date of the  
31 last act, event, or default from which the designated period of  
32 time begins to run shall not be included. The last day of the  
33 period so completed shall be included unless it is a Saturday,  
34 Sunday, or legal holiday.