

1 Pollution Control Agency

2

3 Adopted Amendments of Agency Procedural Rules

4

5 Rules as Adopted

6 6 MCAR S 4.3001 Definitions.

7 A. Scope. As used in 6 MCAR SS 4.3001-4.3016 the following  
8 words shall have the meanings given them.

9 B. Agency. "Agency" means the Minnesota Pollution Control  
10 Agency, as constituted pursuant to Minnesota Statutes, section  
11 116.02, subdivision 1.

12 C. Days. "Days" means calendar days.

13 D. Director. "Director" means the executive director and  
14 chief executive officer of the agency.

15 E. Emergency. "Emergency" means imminent and substantial  
16 danger to the health and welfare of the people of the state, or  
17 any part thereof, as a result of the pollution of air, land, or  
18 water.

19 F. Hearing examiner. "Hearing examiner" means the person  
20 assigned by the chief hearing examiner pursuant to Minnesota  
21 Statutes, section 15.052, subdivision 3, to preside at a  
22 rulemaking hearing or contested case hearing.

23 G. Order. "Order" means any written command or direction  
24 made by the agency or the director, as provided by law.

25 H. Permit. "Permit" means every discharge, emission, and  
26 disposal authorization, every construction, installation, or  
27 operation authorization, and every other agency authorization  
28 designated "permit" in Minnesota Statutes, chapters 115 and 116,  
29 as now in force or hereafter amended, including Minnesota  
30 Statutes, sections 115.03, subdivision 1, 115.07, 116.07,  
31 subdivision 4, clause (a), 116.081, and 116.091. "Permit" does  
32 not include an "order," "variance," or "stipulation agreement"  
33 as defined in this rule, and does not include a "certification."

34 I. Person. "Person" means any human being, any municipality  
35 or other governmental or political subdivision or other public  
36 department or agency, any public or private corporation, any

NOV 29, 1982

1 partnership, firm, association, or other organization, any  
2 receiver, trustee, assignee, agency, legal entity, other than a  
3 court of law, or any legal representative of any of the  
4 foregoing, but does not include the agency.

5 J. Public informational meeting. "Public informational  
6 meeting" means a meeting called by the agency to solicit public  
7 comment and statements on a matter before the agency.

8 K. Schedule of compliance. "Schedule of compliance" means a  
9 schedule of remedial measures including an enforceable sequence  
10 of actions or operations leading to compliance with an effluent  
11 limitation, other limitation, prohibition, or standard.

12 L. Service; serve. "Service" or "serve" means personal  
13 service or, unless otherwise provided by law, service by first  
14 class United States mail, postage prepaid, addressed to a person  
15 or party at his or her last known address. Service by mail is  
16 complete upon the placing of the item served in the mail.

17 Agencies of the state of Minnesota may also serve by depositing  
18 the item to be served with the Central Mailing Section,  
19 Publications Division, Department of Administration.

20 M. Stipulation agreement. "Stipulation agreement" means any  
21 agreement entered into between the agency and any person or  
22 persons establishing a schedule for compliance with applicable  
23 statutes, rules, or standards by designated dates, or otherwise  
24 providing for settlement for noncompliance with applicable  
25 statutes, rules, or standards.

26 N. Variance. "Variance" means an authorization from the  
27 agency that grants an exemption from the requirements of any  
28 rule or standard of the agency and which does not require  
29 compliance with the rule or standard for the duration of the  
30 authorization. "Variance" does not include permits, stipulation  
31 agreements, schedules of compliance, or any modifications  
32 thereto, or any order of the agency which allows interim  
33 operation during completion of a compliance program, nor does  
34 variance include a time extension of an existing variance.

35 6 MCAR S 4.3002 Computation of time. In computing any period of  
36 time prescribed by these rules, the day of the last act, event,

1 or default from which the designated period of time begins to  
2 run is not included. The last day of the period so computed is  
3 included unless it is a Saturday, Sunday, or legal holiday.

4 6 MCAR S 4.3003 Duty of candor. In all formal or informal  
5 negotiations, communications, proceedings, and other dealings  
6 between any person and any member, employee, or agent of the  
7 agency, it shall be the duty of each person and each member,  
8 employee, or agent of the agency to act in good faith and with  
9 complete truthfulness, accuracy, disclosure, and candor. Any  
10 violation of the aforesaid duty shall be cause for imposition of  
11 -----  
sanctions as provided in MPCA 11.  
-----

12 6 MCAR S 4.3004 Officers, committees, and duties.

13 A. Officers. The officers of the agency are the  
14 chairperson, vice chairperson, and director.

15 B. Electing the chairperson. The chairperson must be  
16 elected by a majority of all agency members at each annual  
17 meeting for a term of one year. No member elected to the office  
18 of chairperson may serve in that capacity more than two full  
19 terms consecutively.

20 C. Electing the vice chairperson. The vice chairperson must  
21 be elected by a majority of all agency members at each annual  
22 meeting for a term of one year. No member elected to the office  
23 of vice chairperson may serve in that capacity more than two  
24 full terms consecutively.

25 D. Duties. The chairperson shall have the duties prescribed  
26 by rule of the agency. The vice chairperson shall discharge all  
27 duties of the chairperson during the absence or disability of  
28 the chairperson. The director shall have the duties prescribed  
29 by statute or by rule of the agency.

30 E. Vacancies. Upon a vacancy (for example, death,  
31 resignation, or removal) in the office of chairperson of the  
32 agency, the vice chairperson shall become the chairperson until  
33 such time as new officers are elected at the next annual  
34 meeting. Upon a vacancy in the office of vice chairperson, a  
35 special election shall be held at the next regular meeting, for

1 a term ending at the next annual meeting.

2 E. Removal. The chairperson or vice chairperson is removed  
3 from office by the affirmative vote of two-thirds of all members  
4 of the agency, this vote to be taken at the next regular meeting  
5 following the motion for removal.

6 (b) [see repealer and relettering instruction.]

7 G. Committees. The agency may from time to time establish  
8 committees of agency members as it may deem necessary and  
9 desirable to facilitate its work. All committee recommendations  
10 shall be duly submitted to the agency for appropriate action.

11 H. Execution of documents. Contracts, stipulation  
12 agreements, and other documents approved by the agency pursuant  
13 to law shall be executed on the agency's behalf by the  
14 chairperson and the director.

15 6 MCAR S 4.3005 Agency meetings.

16 A. Regular meetings. Twelve regular monthly meetings of the  
17 agency shall be held each calendar year. A date for each  
18 regular meeting shall be set by the agency. The annual meeting,  
19 also conducted as a regular meeting, shall be held during the  
20 month of July of each year. The time and place of each regular  
21 meeting, including the annual meeting, shall be designated by  
22 the chairperson. The chairperson may direct that any regular  
23 meeting, except the annual meeting, be postponed or advanced.

24 B. Special meetings. The chairperson, or in the  
25 chairperson's absence the vice chairperson, or in their absence  
26 the director of the agency, may call a special meeting of the  
27 agency when, in his or her opinion, a meeting is necessary or  
28 desirable. The chairperson shall call a special meeting upon  
29 receipt of a request from three members of the agency.

30 C. Notice of regular meetings. The director shall give  
31 written notice of the time and place of each regular meeting to  
32 all agency members at least ten days prior to any regular  
33 meeting.

34 D. Notice of special meetings. The chairperson or the  
35 director shall give as much notice as possible to all agency  
36 members prior to any special meeting. This notice shall state

1 the time, place, and subject matter of the meeting. Except as  
2 provided in 6 MCAR S 4.3006, this notice shall be given at least  
3 two days prior to any special meeting.

4 E. Public notice of meetings. The director shall give  
5 public notice of the time and place of regular and special  
6 meetings in the manner provided in G.

7 F. Agenda preparation. At least ten days prior to all  
8 regular meetings of the agency, the director shall prepare a  
9 proposed agenda of business to be conducted at the meeting.  
10 Except when exigencies of time and circumstances warrant, an  
11 agenda must be prepared for all special meetings as far in  
12 advance of the special meeting as possible. The agenda must  
13 include a list of all matters to be considered at the meeting.  
14 Agency members may place items on the agenda by notifying the  
15 director at least 14 days prior to a regular meeting. Citizens  
16 may request in writing that items be placed on the agenda by  
17 notifying the director at least 14 days prior to a regular  
18 meeting. The director may in his or her discretion determine  
19 whether to place a citizen item on the agenda, but the director  
20 shall advise the agency of all items the director decides not to  
21 place on the agenda. Items may be placed on the agenda for a  
22 special meeting in the same manner as for regular meetings.

23 G. Notice of agenda. At least ten days prior to the regular  
24 meeting, the director shall mail a copy of the agenda to every  
25 member of the agency, to each person directly affected by a  
26 decision of the agency on an agenda matter, and to each person  
27 the director deems appropriate in the circumstances. The agenda  
28 for a regular meeting must be available for public inspection in  
29 the agency offices at least ten days prior to the regular  
30 meeting for which the agenda has been prepared. The agenda for  
31 a special meeting must be available for public inspection in the  
32 agency offices at least two days prior to the meeting, and as  
33 far in advance of the meeting as reasonably possible, except as  
34 provided in 6 MCAR S 4.3006.

35 H. Quorum. A majority of the members of the entire agency  
36 constitute a quorum, and a quorum must be present for the

1 transaction of business.

2 I. Presiding officer. The chairperson shall preside at all  
3 agency meetings. The vice chairperson shall preside in the  
4 chairperson's absence. The remaining members shall elect a  
5 presiding officer from among the members present whenever the  
6 chairperson and vice chairperson are both absent. The presiding  
7 officer shall serve only for that meeting or until the  
8 chairperson or vice chairperson shall arrive.

9 J. Agenda. The first order of business at the meeting shall  
10 be adoption of the agenda, which may be amended or modified by  
11 the agency at this time.

12 K. Agenda items. No matter may be considered at a regular  
13 agency meeting unless it has been placed on the agenda and all  
14 relevant public information has been made available for public  
15 inspection at least ten days prior to the regular meeting,  
16 except where the agency in its discretion by unanimous vote of  
17 those members present determines otherwise. Public information  
18 regarding matters to be considered at a special meeting must  
19 have been available for public inspection at least two days  
20 prior to the meeting, and as far in advance of the special  
21 meeting as reasonably possible, except as provided in 6 MCAR S  
22 4.3006.

23 L. Voting. Except as otherwise specifically provided, a  
24 majority vote of the entire agency is necessary to make any  
25 decision. All members present, including the presiding officer,  
26 shall vote or abstain on every matter presented for decision.  
27 If the final vote taken on an agenda item does not result in a  
28 decision, but half or more of the voting members vote  
29 affirmatively, the matter must be placed on the agenda of the  
30 next regular monthly meeting or considered at a special meeting,  
31 unless the agenda item concerns rescission of a decision.

32 M. [See Relettering Instruction.] Decisions at open  
33 meetings. All regular and special meetings of the agency must  
34 be open to the public, and all decisions of the agency must be  
35 made at these meetings. However, if the chairperson, or in the  
36 chairperson's absence the vice chairperson, determines that the

1 exigencies of time and circumstances warrant, then an agency  
 2 decision may be made by telephone poll or other appropriate  
 3 means. The unavailability of any agency member shall not  
 4 postpone the making of the any decision. In the event that an  
 5 agency decision is made by telephone poll or other appropriate  
 6 means, this decision must be subject to confirmation at the next  
 7 agency meeting.

8 N. Reconsideration of decision. On the same day as  
 9 originally made, upon the motion of any agency member who voted  
 10 on the prevailing side and upon the affirmative vote of a  
 11 majority of the entire agency, Any decision of the agency may be  
 12 reconsidered if an agency member who voted on the prevailing  
 13 side makes a motion for reconsideration and if the motion for  
 14 reconsideration is made during the course of the same meeting at  
 15 which the original decision was made.

16 O. Rescission of decision. Upon placement on the agenda by  
 17 an agency member as provided in F. and upon the affirmative vote  
 18 of two-thirds of the entire agency, any decision of the agency  
 19 or director may be rescinded.

20 P. Record of meetings. The agency shall keep full and  
 21 accurate minutes of all meetings, including a record of all  
 22 votes of individual members.

23 Q. Parliamentary procedure. Except as specifically provided  
 24 in these rules, Robert's Rules of Order shall govern any  
 25 question of parliamentary procedure that may arise at any  
 26 meeting of the agency.

27 6 MCAR S 4.3006 Declaration of emergency.

28 A. Delegation to director. The agency herewith delegates to  
 29 the director the authority to exercise, in accordance with the  
 30 limitations and procedures hereinafter enumerated, emergency  
 31 powers granted to the agency by Minnesota Statutes, section  
 32 116.11.

33 B. Notification to agency. If the director anticipates that  
 34 emergency conditions may be approaching, the director shall keep  
 35 the agency informed of these conditions by any means  
 36 practicable. Upon declaration of an emergency by the director,

1 the director shall immediately notify all agency members that an  
2 emergency has been declared, and shall poll the members on the  
3 action taken by the director. Notification may be by telegram,  
4 telephone, or any other means practicable. The unavailability  
5 of any agency member shall not postpone the implementation of  
6 any emergency orders. If, pursuant to the poll, a majority of  
7 all members of the agency disapprove of the declaration of  
8 emergency, the declaration and the action taken shall be  
9 discontinued immediately. If, pursuant to the poll, a majority  
10 of all members of the agency disapprove of the action taken by  
11 the director, but agree that an emergency exists, the action of  
12 the director shall remain in effect until the agency orders  
13 different action to be taken.

14 C. Duration. Any action taken by the director pursuant to  
15 the declaration of emergency shall remain effective according to  
16 the following provisions:

17 1. for not to exceed three days, unless approved by a  
18 majority of the members of the agency pursuant to the poll  
19 required in B.; or

20 2. if extended beyond three days, as provided in item 1.,  
21 then the period until the date of the next agency meeting,  
22 unless extended by the agency at the meeting; or

23 3. items 1. and 2. notwithstanding, until notice,  
24 hearing, and determination are effected pursuant to law; or

25 4. until discontinued by the declaration of the director  
26 or by majority vote of the agency.

27 D. Report. Any action taken by the director pursuant to a  
28 declaration of emergency must be included on the agenda of the  
29 next meeting of the agency, at which time the director shall  
30 report to the agency on the status of the emergency.

31 E. Agency action. The agency may by majority vote exercise  
32 its emergency powers. The action of the agency taken in an  
33 emergency situation shall remain effective until discontinued by  
34 majority vote of the agency or until notice, hearing, and  
35 determination are effected pursuant to law.

36 F. Notice. The notice requirements of 6 MCAR S 4.3005 do



1 not apply when the agency or the director is considering the  
2 exercise of emergency powers, but the agency and the director  
3 shall give such notice to the public as is possible under the  
4 circumstances.

5 G. Emergency powers. Nothing contained in 6 MCAR SS  
6 4.3001-4.3016 shall be construed to preempt, repeal, or conflict  
7 with this rule or any other rule or statute that provides for  
8 acts to be taken or procedure to be followed by the agency or  
9 the director in an emergency.

10 6 MCAR S 4.3007 Variances.

11 A. Scope. This rule governs the procedure for issuance of  
12 all variances by the agency, except to the extent otherwise  
13 specifically provided by statute or rule.

14 B. Written application. In no case shall the agency grant a  
15 variance unless a written application has been made to the  
16 agency. The application must be served upon the director.

17 The written application must contain:

18 1. the name and address of the applicant and the person  
19 who prepared the application;

20 2. the signature of the applicant or authorized  
21 representative;

22 3. a description, including the location, of the  
23 business, plant, system, or facility for which a variance is  
24 sought;

25 4. the nature of the variance sought, including an  
26 identification of the applicable rules or standards from which a  
27 variance is sought, the period of time for which it is sought,  
28 and the reasons relied upon by the applicant in requesting the  
29 variance;

30 5. if the applicant seeks a variance primarily on grounds  
31 of economic burden, financial statements prepared or approved by  
32 a certified public accountant, or other person acceptable to the  
33 agency, which shall fairly set forth the status of the business,  
34 plant, system, or facility for each of the three financial years  
35 immediately preceding the year of the application, and an  
36 analysis of the effect of such financial status if the variance

1 is not granted (if the business, plant, system, or facility has  
2 not been in operation for this period, then the financial  
3 statements and analysis must be based on the most complete data  
4 available);

5 6. if the applicant seeks a variance on grounds that  
6 compliance is not technologically feasible, a report from a  
7 registered professional engineer, or other person acceptable to  
8 the agency, stating fully the reasons why compliance is not  
9 technologically feasible;

10 7. other additional data or information that is required  
11 by any applicable agency rule or standard; and

12 8. any other relevant data or information that the agency  
13 or the director deems essential to a determination on the  
14 application, including but not limited to the following:

15 a. a general description of the materials handled or  
16 processed by the applicant that are pertinent to the subject  
17 application, and a statement of the nature and quantity of the  
18 materials being discharged, emitted, or disposed of, and that  
19 can reasonably be expected to be discharged, emitted, or  
20 disposed of during the period of the proposed variance, and  
21 proposed methods for the control of these materials;

22 b. a comprehensive proposed plan indicating the steps  
23 to be taken by the applicant during the period of the variance,  
24 even if the applicant is seeking a permanent variance, to reduce  
25 emission levels or discharges to the lowest limits practical;

26 c. a concise statement of the effect upon the air,  
27 water, and land resources of the state and upon the public and  
28 other persons affected, including those residing in the area  
29 where the variance will take effect, which will result from  
30 agency approval of the requested variance;

31 d. a statement of the alternatives to the proposed  
32 operation under the variance which have been considered by the  
33 applicant; and

34 e. a concise statement of the effect on the  
35 establishment, maintenance, operation, and expansion of  
36 business, commerce, trade, traffic, and other economic factors

1 that may result from approval and from denial of the requested  
2 variance.

3 (c)-(d) [See Repealer.]

4 C. Review of applications. The director shall review all  
5 variance applications for completeness. If the director finds  
6 that the application is incomplete or otherwise deficient, the  
7 director shall promptly advise the applicant of the  
8 incompleteness or deficiency. The director shall suspend  
9 further processing of the portion of the application affected by  
10 the deficiency until the applicant has supplied the necessary  
11 information or otherwise corrected the deficiency.

12 D. Preliminary determination; preparation of public notice.  
13 After a variance application is complete, the director shall  
14 make a preliminary determination as to whether the variance  
15 should be issued or denied. The director shall prepare a notice  
16 of the completed application and the preliminary determination.  
17 The notice must include a statement as to the manner in which  
18 the public may submit comments on the variance application and  
19 the manner in which a person may file a request pursuant to 6  
20 MCAR SS 4.3010 B. or 4.3015 B. asking that a contested case  
21 hearing or public informational meeting be held on the variance  
22 application. The notice must provide the public 30 days in  
23 which to submit these comments or requests.

24 E. Availability of public notice. The director shall make a  
25 copy of the public notice available at the main agency office  
26 and at the applicable agency regional office.

27 F. Mailing of public notice. The director shall mail a copy  
28 of the public notice to the applicant, to all persons who have  
29 registered their names on the mailing list established under  
30 Minnesota Statutes, section 15.0412, subdivision 4, and to any  
31 person upon request.

32 G. Circulation of public notice. The director shall  
33 circulate the public notice within the geographical area of the  
34 facility or activity that is the subject of the variance  
35 request. The director shall designate the geographical area,  
36 which shall as a minimum include the county in which the

1 facility or activity is or will be located.

2       The director shall circulate the public notice in one or  
3 more of the following ways: posting the notice in the post  
4 office, public library, or other buildings used by the general  
5 public in the designated geographical area; posting the notice  
6 at or near the entrance of the applicant's premises, if located  
7 near the facility that is the subject of the variance  
8 application; or publishing the notice in one or more newspapers  
9 or periodicals of general circulation in the designated  
10 geographical area.

11       H. Agency decision. The agency shall make all final  
12 decisions on variance applications. The agency shall approve or  
13 deny each application. The agency may grant a variance upon  
14 such conditions as the agency may prescribe.

15       If a contested case hearing has been held, the agency shall  
16 act on each variance application as expeditiously as possible  
17 after receipt of the hearing examiner's recommendation, or after  
18 submission of the application if no hearing is held. Any person  
19 may submit to the agency an oral or written statement or  
20 recommendation regarding a variance application in accordance  
21 with 6 MCAR S ~~4.3011~~ 4.3015.

22       I. Notification. -----  
23 Every decision of the agency on a variance  
24 application shall be served on the applicant and upon all  
25 persons who have submitted to the agency a request to receive a  
26 copy of the decision.

27       J. Agency remedies preserved. During the pendency of a  
28 variance application, the agency may, in its discretion, avail  
29 itself of any legal, equitable, or administrative remedy  
30 provided by law for violation of Minnesota Statutes or rules.

31       K. Amendment or modification. In the event a variance has  
32 been granted by the agency, the person holding the variance may  
33 file with the agency at any time a written application for  
34 modification or amendment of the variance. The application for  
35 modification or amendment, and the agency's consideration of the  
36 application, shall comply with the requirements of these rules.  
This provision shall not apply to a time extension of an

1 existing variance.

2 L. Assignment. No variance may be assigned or transferred  
3 by the holder without the approval of the agency.

4 M. Violation by variance holder. Any variance holder who  
5 violates a provision of the variance is subject to revocation or  
6 suspension of the variance, or other sanction as authorized or  
7 provided by law. No revocation, suspension, or other sanction  
8 may be imposed before notice to the variance holder and  
9 opportunity for a contested case hearing.

10 6 MCAR S 4.3008 Stipulation agreements.

11 A. Data or information. Whenever any person or the agency  
12 proposes that a stipulation agreement be entered into, the  
13 person who is proposed as a signer of the stipulation agreement  
14 shall furnish such information or data as is deemed essential by  
15 the agency or the director in making a determination regarding  
16 the proposed stipulation agreement.

17 B. Interim operation. The agency may in its discretion  
18 provide under the terms of a stipulation agreement for the  
19 operation of existing systems pending completion of compliance  
20 under the schedule therefor, and under such further conditions  
21 as it may prescribe in the stipulation agreement. Completion of  
22 performance under the stipulation agreement shall not relieve  
23 any party thereto of any requirement of law or agency rules to  
24 apply for all necessary permits or variances.

25 6 MCAR S 4.3009 Informal complaints. Any person may file  
26 with the director an informal complaint concerning a pollution  
27 source. The informal complaint may be either written or oral  
28 and must state the name and address of the person filing the  
29 informal complaint, the name and address of the alleged  
30 pollution source, and a description of the matter giving rise to  
31 the complaint. A person making an oral complaint may be asked  
32 to submit his or her complaint in writing. Upon receipt of this  
33 informal complaint, the director shall make such investigation  
34 as is deemed necessary and appropriate. Within 20 days after  
35 the complaint is filed, the director shall notify the person

1 responsible for the alleged pollution source that an informal  
2 complaint has been filed. At any time after a complaint is  
3 filed, the agency may take whatever action it deems necessary  
4 and appropriate. The person who filed the complaint shall be  
5 notified of the disposition of his or her complaint. In all  
6 actions taken pursuant to this rule, the director shall comply  
7 with the provisions of Minnesota Statutes, sections 15.1611 to  
8 15.1699.

9 6 MCAR S 4.3010 Contested case hearings.

10 A. Objectives. All contested case hearings required by  
11 statute or rule and all contested case hearings ordered by the  
12 agency shall be conducted in accordance with the procedures set  
13 forth in the rules of the Office of Administrative Hearings, 9  
14 MCAR SS 2.201-2.299, and in accordance with this rule. No  
15 person's rights, privileges, or duties may be determined without  
16 regard for fundamental fairness. To that end, this rule is  
17 intended to assure that all parties are provided a just and  
18 speedy contested case hearing.

19 B. Public requests for contested case hearing. Any person  
20 may request the agency to hold a contested case hearing on any  
21 matter. The person may submit this request at an agency meeting  
22 if the matter is on the agenda for consideration by the agency.  
23 If the matter is not on an agenda, the person shall request the  
24 director to place the matter on the agenda for the next agency  
25 meeting. This request must be made pursuant to 6 MCAR S 4.3005

26 F. The agency shall not consider a request for a contested case  
27 hearing on a matter unless the matter is properly on the agenda  
28 for the agency meeting. The person requesting that a hearing be  
29 held shall accompany the request with a document stating the  
30 person's reasons for requesting the hearing, the manner in which  
31 the person has been aggrieved, and the relief requested.

32 C. Agency decision to hold contested case hearing. The  
33 agency shall grant the hearing request or may order upon its own  
34 motion that a contested case hearing be held if it finds all  
35 three of the following:

36 1. that there is a material issue of fact or of the

1 application of fact to law related to the matter pending before  
2 the agency;

3 2. that the agency has the jurisdiction to make  
4 determinations on the issue of fact or of the application of  
5 facts to law; and

6 3. that there is a reasonable basis underlying the issue  
7 of fact or of the application of facts to law such that the  
8 holding of a contested case hearing would aid the agency in  
9 making a final determination on the matter.

10 If the agency decides not to hold a contested case hearing  
11 the agency may, in its discretion, order that a public  
12 informational meeting be held as provided in 6 MCAR S 4.3015 C.

13 (c)-(d) [See Repealer.]

14 ~~E-~~ D. Parties. Any person whose legal rights, duties, or  
15 privileges may be determined in the matter for which the  
16 contested case hearing is to be held is a party. When a  
17 contested case hearing is held pursuant to a request for a  
18 hearing, the person or persons requesting the hearing are  
19 parties to the matter. In any hearing on an application for a  
20 permit or variance, the applicant is a party. The agency  
21 director is a party in any hearing to issue, reissue, modify,  
22 deny, revoke and reissue, revoke without reissuance, or suspend  
23 a permit or variance. Any person who has properly intervened in  
24 the contested case is a party.

25 (f) [See Repealer.]

26 ~~D- Right to counsel-~~ Any party may be represented by legal  
27 counsel throughout the contested case hearing-

28 ~~E- Ex parte communication-~~ No person shall communicate with  
29 any agency member concerning a matter for which a contested case  
30 hearing has been ordered by the agency except in writing, or  
31 orally after providing reasonable notice to all parties of the  
32 meeting at which the matter will be discussed- Copies of any  
33 written communication must be sent to all parties to the matter  
34 and to all agency members-

35 ~~F-~~ E. Informal disposition. Informal disposition by  
36 stipulation, agreed settlement, or consent order may be made of

1 any matter for which a contested case hearing is scheduled, or  
2 any contested issue, at any point in the hearing, subject to  
3 agency approval of this informal disposition or its terms.

4 ~~G. F.~~ Consolidation. The agency may consolidate two or more  
5 matters for which contested case hearings are scheduled and hold  
6 a joint hearing. The requirements of these rules shall be  
7 followed when consolidation is ordered. Any party may object to  
8 consolidation by filing a petition for severance with the agency  
9 at least 20 days before the hearing. The agency may sever the  
10 matter to which the petitioner is a party from the joint hearing.

11 (j)-(m) [See Repealer.]

12 ~~H. Default.~~ Whenever any party with adequate notice fails  
13 to appear at the contested case hearing, the hearing examiner  
14 may decide all issues in the matter adversely to the defaulting  
15 party, may terminate the hearing, may proceed with the hearing,  
16 or may take other appropriate action, without further notice to  
17 the party. The hearing examiner shall consider the rights of  
18 other parties to the matter when a party defaults.

19 (o)-(q) [See Repealer.]

20 ~~I. G.~~ Petition for reopening of hearing and remand to  
21 hearing examiner. At any time up to ten days after the agency's  
22 final decision, any party to a contested case hearing may  
23 request that the hearing be reopened and the matter be remanded  
24 to the hearing examiner by filing a petition. This petition  
25 shall contain the name and address of the petitioner, the agency  
26 designation for the matter, and the reasons for the petition.

27 The agency shall grant or deny a petition as part of the  
28 record. This petition shall be granted upon a showing that  
29 there are irregularities in the hearing, errors of law, or newly  
30 discovered material evidence of such importance as likely to  
31 have altered the outcome of the hearing. A petition may be  
32 granted upon a showing of good cause for failure to answer or  
33 appear at the hearing. Evidence and argument may be presented  
34 at the discretion of the agency in written or oral form, or  
35 both, by any party to the matter with respect to the granting or  
36 denial of the petition.



1       J- Reopened hearing, procedure. The hearing of a contested  
2 case that has been reopened and remanded to the hearing examiner  
3 must be conducted in the same manner prescribed for a contested  
4 case hearing.

5       K- H. Decision after reopening and remand. The decision  
6 after reopening of the hearing and remand to the hearing  
7 examiner must be made in the same manner prescribed for the  
8 decision after a contested case hearing.

9       (s) [See Repealer.]

10 6 MCAR S 4.3011 Final decisions and orders in contested cases.

11       A. Time for filing comments and exceptions. The agency  
12 shall take no final action with respect to a matter for which a  
13 contested case hearing has been held for at least 20 days after  
14 the date of issuance of the hearing examiner's report. Any  
15 person may file written comments on or exceptions to the  
16 findings of fact, conclusions, and recommendations of the  
17 hearing examiner at any time up to ten days prior to the agency  
18 meeting at which the matter will be considered for final  
19 decision. However, these comments and exceptions must be based  
20 solely upon the record of the hearing.

21       B. Service of comments and exceptions. Any person who files  
22 written comments on or exceptions to the hearing examiner's  
23 report shall serve these comments or exceptions upon each  
24 individual agency member and upon all parties.

25       C. Appearance at agency meeting. Any party may appear at  
26 the agency meeting at which the matter will be considered for  
27 final decision and present comments and arguments, limited to  
28 evidence in the record, subject to time limitations and  
29 conditions that the chairperson prescribes.

30       D. Agency decision. The agency shall make all final  
31 decisions and orders in those matters for which a contested case  
32 hearing has been held. The agency's decision or order must be  
33 based solely on the record from the hearing. The decision or  
34 order must be accompanied by a concise statement of the findings  
35 and conclusions upon each contested issue of fact necessary to  
36 the decision.

1 E. Time. The agency shall reach a final decision or order  
2 on the matter as expeditiously as possible after receipt of the  
3 hearing examiner's recommendation.

4 F. Manner. The director shall place the matter on the  
5 agenda for an agency meeting. The decision or order must be  
6 announced at the agency meeting, and in all cases the decision  
7 or order must be entered in the minutes of the agency meeting.

8 G. Alternatives. The agency may accept, modify, or reject  
9 the recommendation of the hearing examiner, in whole or in  
10 part. The agency may remand the matter to the hearing examiner  
11 for further proceedings.

12 H. Notice. Every final decision or order in a matter for  
13 which a contested case hearing has been held must be served on  
14 all parties to the matter and on all persons who have submitted  
15 to the agency a request to be notified of the decision.

16 6 MCAR S 4.3012 Inspection of public records. All records and  
17 data of the agency that are "public" within the meaning of  
18 Minnesota Statutes, sections 15.1611 to 15.1699 and 116.075, or  
19 copies, are available for inspection and copying by any person,  
20 Monday through Friday, excluding legal holidays, between the  
21 hours of 9:00 a.m. and 4:00 p.m. at the agency offices. No  
22 public records shall be removed from agency offices. Any  
23 inspection or copying of records or data must be made in the  
24 presence of an officer, employee, or agent of the agency. The  
25 agency may charge and collect a reasonable fee for the  
26 reproduction of any public records.

27 6 MCAR S 4.3013 Confidential information.

28 A- (1) Certification. In order to certify records,  
29 information, or objects for the confidential use of the agency,  
30 an owner, or operator, or other person qualified by law, shall  
31 submit to the director a written statement setting forth those  
32 statutory grounds that require the agency to keep the records,  
33 information, or objects confidential. Any certification of  
34 records or information that applies to water pollution sources  
35 must be approved by the director. These records and information

1 shall not be released unless the director denies the  
 2 certification request. Whenever the director denies a  
 3 certification request, the director shall notify the certifier  
 4 of the denial at least ~~seven~~ three days prior to making the  
 5 records or information available to the public. The certifier  
 6 may withdraw the records or information if such an option is  
 7 available to him.

8 ~~B-~~ B- (2) Filing. All certified records, information, or  
 9 objects must be appropriately identified and segregated at the  
 10 offices of the agency.

11 ~~E-~~ E- (3) Agency use. Certified records, information, and  
 12 objects, when approved by the director if required, are only for  
 13 the confidential use of the agency. However, confidential  
 14 information may be used by the agency in compiling or publishing  
 15 analyses or summaries relating to the general condition of the  
 16 state's water, air, and land resources so long as these analyses  
 17 or summaries do not identify any owner or operator who has so  
 18 certified.

19 ~~D-~~ D- (4) Release authorization. Confidential information may  
 20 be released when the agency is specifically authorized to do so  
 21 by ~~statute~~ the person who certified the records, information, or  
 22 objects.

23 ~~E-~~ E- (5) Denial of request. Certified records or information  
 24 that apply to water pollution sources may be released if the  
 25 director denies the certification request. The provisions of ~~A-~~  
 26 (1) apply to this release.

27 ~~F-~~ F- (6) Federal law. Regardless of whether records or  
 28 information are certified confidential, the agency may disclose  
 29 any information which it is obligated to disclose ~~under~~ in order  
 30 to comply with federal law ~~or~~ and regulation, to the extent and  
 31 for the purposes of such federally required disclosure.

32 Whenever the agency is required to release certified information  
 33 pursuant to federal law, ~~the director~~ he shall notify the  
 34 certifier of this requirement at least ~~seven~~ three days prior to  
 35 making the records or information available to the public. The  
 36 certifier may withdraw this information if such an option is

1 available.

2 ~~6-~~ (7) Use in ~~contested~~ case hearings. Confidential  
3 ~~---~~  
4 information that is relevant to a matter for which a ~~contested~~  
5 ~~case~~ public hearing is being held, and that has been made a part  
6 ~~of the record~~, may be considered by the agency in reaching a  
7 decision on the matter, but must not be released to the public  
8 unless the agency is required by statute to release it. When  
9 the agency is required by statute to release the information at  
10 the public hearing, the person who certified the information may  
11 withdraw the information, but the information shall not be  
12 considered by the agency or the hearing ~~examiner~~ officer in  
13 ~~-----~~  
14 reaching a decision or recommendation on the matter. Whenever  
15 confidential information is considered by the agency or a  
16 hearing ~~examiner~~ officer in reaching a decision or  
17 ~~-----~~  
18 recommendation on a matter, that fact must be so stated on the  
19 record.

20 6 MCAR S 4.3014 Conflict of interest. Any member of the  
21 agency who has a direct and substantial financial or employment  
22 interest relating to any matter before the agency, which  
23 interest is reasonably likely to affect the impartiality or  
24 judgment of the agency member in the matter, shall make known  
25 this interest and shall refrain from participating in or voting  
26 upon the matter.

27 No employee or agent of the agency, including the director,  
28 shall engage in any outside employment or other conduct that is  
29 likely to affect adversely the effectiveness or efficiency of  
30 any functions or duties performed for the agency.

31 6 MCAR S 4.3015 Public participation in agency meetings.

32 A. Agenda items for which no hearing was held. Upon request  
33 made prior to or at an agency meeting, any person who desires to  
34 present a statement on a matter that is on the agenda for the  
35 meeting, and for which no contested case or rulemaking hearing  
was held, must be afforded an opportunity to present an oral  
statement to the agency at the meeting. The chairperson may,  
depending on the circumstances, limit the time and manner of

1 this statement.

2 Persons who desire to present a written statement on the  
3 matter may do so if, at least ~~ten~~ five days before the meeting,  
4 they have served a copy of the written statement upon the  
5 director. The director shall then promptly provide a copy of the  
6 statement to each agency member.

7 The agency may allow any person adversely affected by these  
8 oral or written statements additional time to respond.

9 B. Request for public informational meeting. Any person may  
10 request the agency to hold a public informational meeting on any  
11 matter. The person may submit this request at an agency meeting  
12 if the matter is on the agenda for consideration by the agency.  
13 If the matter is not on the agenda, the person may request the  
14 director, pursuant to 6 MCAR S 4.3005 F., to place the matter on  
15 the agenda as a citizen item for the next agency meeting.

16 The agency shall not consider a request for a public  
17 informational meeting on a matter unless the matter is properly  
18 on the agenda for the agency meeting. The agency shall grant or  
19 deny the request. This rule does not limit the right of the  
20 agency to order, upon its own motion, that a public  
21 informational meeting be held on a matter, and does not limit  
22 the right of the director to hold public meetings.

23 C. Agenda items for which contested case hearing has been  
24 held. When a contested case hearing has been held on an agenda  
25 item the participation of the public and of the parties in the  
26 matter is governed by 6 MCAR SS 4.3010-4.3011.

27 D. Agency items for which rulemaking hearing has been held.  
28 When a rulemaking hearing has been held, the agency shall take  
29 no final action with respect to the matter for at least 20 days  
30 after the date of issuance of the hearing examiner's report.  
31 Any person may file written comments or exceptions to the  
32 findings of fact, conclusions, and recommendations of the  
33 hearing examiner at any time up to ten days prior to the agency  
34 meeting at which the matter will be considered for final  
35 decisions. However, these comments and exceptions must be based  
36 solely upon the record of the hearing.

1 Any person who files written comments on or exceptions to  
2 the hearing examiner's report shall serve these comments or  
3 exceptions upon each individual agency member and upon the  
4 director.

5 Any person may appear at the agency meeting at which the  
6 matter will be considered for final decision, and may present  
7 comments and arguments limited to evidence in the record, within  
8 limits of time and manner as the chairperson may establish under  
9 the circumstances.

10 6 MCAR S 4.3016 Public participation in director's activities.

11 A. Extent of participation. Any person may participate in  
12 the activities of the director. Participation in the director's  
13 activities includes the right to submit statements, the right to  
14 attend meetings and conferences and share in discussions, and  
15 the right to receive sufficient notice of progress in the matter  
16 to adequately exercise these rights.

17 However, if a meeting of the director involves information  
18 that is not public within the meaning of Minnesota Statutes,  
19 sections 15.1611 to 15.1699 or 116.075, the director shall  
20 conduct a closed meeting to discuss the nonpublic information.

21 B. Notice of progress. Any person who wishes to receive  
22 notice of progress in an agency matter shall so advise the  
23 director. Thereafter, the director shall give this person  
24 adequate notice of pending events in the matter.

25

26 Repealer. Rules ~~MPCA 3(b)~~ MPCA 3(b)(1), 3(b)(2), 3(b)(3),  
27 3(b)(4), 3(b)(5)(i), 3(b)(5)(ii), 3(b)(5)(iii), 3(b)(5)(iv),  
28 3(b)(5)(v), 3(b)(5)(vii), 3(b)(5)(viii), MPCA 6(c), 6(d), MPCA  
29 9(c), 9(d), 9(f), 9(j), 9(k), 9(l), 9(m), 9(o), 9(p), 9(q),  
30 9(s), MPCA 11, and MPCA 13 of the Minnesota Pollution Control  
31 Agency are repealed.

32

33 Relettering. Reletter MPCA 3(b)(5)(vi) as 6 MCAR S 4.3005 M.  
-----