

6-28-84

1 Environmental Quality Board

2

3 Adopted Rules Governing Operating Procedures for Conduct of
4 Business

5

6 Rules as Adopted

7 4405.0100 DEFINITIONS.

8 Subpart 1. Scope. For the purpose of this chapter, the
9 following terms have the meanings given them.

10 Subp. 2. Agency. "Agency" means a member agency of the
11 board as defined in Minnesota Statutes, section 116C.03,
12 subdivision 2.

13 Subp. 3. Board. "Board" means the Minnesota Environmental
14 Quality Board.

15 Subp. 4. Chairperson. "Chairperson" means the person
16 designated in Minnesota Statutes, section 116C.03, subdivision
17 3a to chair board meetings and perform duties as designated in
18 Minnesota Statutes, chapters 116C and 116D, or as directed by
19 the board or by rules adopted by the board.

20 Subp. 5. Contested case. "Contested case" means a
21 proceeding as defined in Minnesota Statutes, section 14.02,
22 subdivision 3 and conducted in accordance with Minnesota
23 Statutes, sections 14.57 to 14.62 and parts 1400.5200 to
24 1400.8500.

25 Subp. 6. EQB Monitor. "EQB Monitor" means the publication
26 of the board which contains notices required under Minnesota
27 Statutes, chapters 116C and 116D or under rules adopted by the
28 board and of other relevant information.

29 Subp. 7. Hearing. "Hearing" means a fact-finding
30 proceeding held under Minnesota Statutes, chapters 116C and 116D
31 and rules adopted under these chapters or any other fact-finding
32 proceeding authorized by the board which is not conducted under
33 Minnesota Statutes, chapter 14.

34 Subp. 8. Hearing examiner. "Hearing examiner" means the
35 person or persons assigned by the chief hearing examiner under
36 Minnesota Statutes, section 14.50.

1 Subp. 9. Interested persons. "Interested persons" means
2 those persons who have expressed interest in receiving notice of
3 all board meetings or those persons who have expressed interest
4 in a specific project or action of the board.

5 Subp. 10. Party. "Party" means any person whose legal
6 rights, duties, or privileges may be determined in a contested
7 case or board hearing and any person who has intervened in a
8 contested case or hearing.

9 Subp. 11. Person. "Person" means a natural person, state,
10 municipality, or other governmental unit or political
11 subdivision or other agency or instrumentality, a public or
12 private corporation, partnership, firm, association, or other
13 organization, receiver, trustee, assignee, agent, or other legal
14 representative of the foregoing, and any other entity.

15 Subp. 12. Presiding officer. "Presiding officer" means
16 the person who chairs the board meeting in the absence of both
17 the chairperson and vice chairperson.

18 Subp. 13. Quorum. "Quorum" means a majority of the
19 permanent members of the board as established under Minnesota
20 Statutes, section 116C.03, subdivision 2, excluding vacancies.

21 Subp. 14. Regular meeting. "Regular meeting" means the
22 board meeting regularly scheduled for the third Thursday of each
23 month.

24 Subp. 15. Service; serve. "Service" or "serve" means
25 personal service or, unless otherwise provided by law, service
26 by first class United States mail, postage prepaid, and
27 addressed to the party at the last known address. Service by
28 mail is complete upon the placing of the item to be served in
29 the mail. Agencies of the state of Minnesota may also serve by
30 depositing the item with central mailing section, Department of
31 Administration.

32 Subp. 16. Southern Minnesota Rivers Basin
33 Council. "Southern Minnesota Rivers Basin Council" means the
34 council as defined in Minnesota Statutes, section 116C.82,
35 subdivision 2.

36 Subp. 17. Special meeting. "Special meeting" means

1 meetings of the board other than the regular meetings.

2 Subp. 18. Subcommittee. "Subcommittee" means a group of
3 board members, less than a quorum, authorized by the board to
4 accomplish a specific objective.

5 Subp. 19. Task force. "Task force" means a group of
6 individuals authorized by the board to accomplish a specific
7 objective.

8 Subp. 20. Technical representative. "Technical
9 representative" means a designated representative of an agency
10 member of the board.

11 Subp. 21. Vice chairperson. "Vice chairperson" means the
12 person elected by the board to serve as chairperson in the
13 absence of the chairperson.

14 4405.0200 STATUTORY AUTHORITY.

15 Chapter 4405 is adopted under authority granted in
16 Minnesota Statutes, sections 14.06, and 116C.04, subdivision 5.

17 4405.0300 DUTY OF CANDOR.

18 Subpart 1. Duty. In all formal or informal negotiations,
19 communications, proceedings, and other dealings between any
20 person and any member, employee, or agent of the board, it is
21 the duty of each person and each member, employee, or agent of
22 the board to act in good faith and with complete truthfulness,
23 accuracy, disclosure, and candor.

24 Subp. 2. Violation. The board may deny, suspend, or
25 revoke a permit, certificate, or approval issued by the board if
26 the person seeking or holding the permit, certificate, or
27 approval makes a material misstatement, act, or omission with
28 respect to the permit, certificate, or approval that results in
29 a breach of the duty of candor.

30 Subp. 3. Imposition of sanctions. In a case of an alleged
31 violation of the duty of candor in which the board seeks to
32 deny, suspend, or revoke a permit, certificate, or approval
33 issued or granted by the board, a contested case hearing must be
34 held to determine whether a violation of the duty of candor has
35 occurred.

1 4405.0400 EX PARTE COMMUNICATION.

2 No party to a matter for which a hearing, a contested case,
3 or rulemaking proceeding under Minnesota Statutes, chapter 14
4 has been ordered by the board may communicate with a board
5 member concerning the matter except in writing, or orally as
6 part of a presentation at a board meeting. Copies of any
7 written communication must be sent to all parties to the matter
8 and to all board members.

9 4405.0500 BOARD OFFICERS AND DUTIES.

10 Subpart 1. Chairperson. The chairperson shall preside at
11 board meetings and perform other duties as assigned under law,
12 rule, or as directed by the board.

13 Subp. 2. Vice chairperson. At its first meeting in
14 February of each year, the board shall elect a member to serve
15 as vice chairperson. In the absence or disability of the
16 chairperson, the vice chairperson shall preside at board
17 meetings and perform the other duties of the chairperson.

18 Subp. 3. Presiding officer. At a board meeting, if both
19 the chairperson and vice chairperson are absent or are
20 abstaining from discussing or voting on a matter, the board
21 shall elect a presiding officer who shall serve only for that
22 meeting or until either the chairperson or vice chairperson is
23 available to chair the meeting.

24 4405.0600 BOARD MEETING PROCEDURES.

25 Subpart 1. Decisions at open meetings. All regular and
26 special board meetings, and board-authorized subcommittee and
27 task force meetings, must be open to the public. All board
28 decisions must be made at open meetings.

29 Subp. 2. Posting of meeting notices. All notices of
30 regular and special board meetings and meetings of board
31 subcommittees and task forces must be posted in a conspicuous
32 place in the board offices.

33 Subp. 3. Notice of regular meetings. The chairperson
34 shall designate the time and place of each regular meeting. At
35 least ten calendar days prior to a regular meeting, written

1 notice of the time, place, and matters to be considered must be
2 posted and served on all board members, technical
3 representatives, interested persons, and each party to a matter
4 being considered at the meeting. Notice of the meeting must be
5 published in the EQB Monitor prior to the meeting. The
6 chairperson may direct that any regular meeting be rescheduled.
7 Written notice of a rescheduled regular meeting shall be given
8 in the manner described in subpart 4.

9 Subp. 4. Notice of special meetings. The chairperson,
10 vice chairperson, or a majority of the board members may call a
11 special meeting when deemed necessary or desirable. At least
12 three calendar days prior to a special meeting, written notice
13 of the time, place, and matters to be considered must be posted
14 and served on board members, technical representatives,
15 interested persons, and each party to a matter being considered
16 at the meeting.

17 Subp. 5. Agenda preparation. The chairperson shall
18 prepare a proposed agenda of business to be conducted for all
19 meetings of the board. The agenda must include the time and
20 place of the meeting and a list of all matters to be
21 considered. Items may be placed on the agenda by notifying the
22 chairperson of the matter at least 14 calendar days prior to a
23 regular meeting. The chairperson shall determine whether or not
24 a matter should be placed on the agenda and shall advise the
25 board of all matters not placed on the agenda. A copy of an
26 agenda constitutes written notice of board meetings when served
27 as required in subparts 3 and 4.

28 Subp. 6. Filing of written material. Written material
29 related to a matter to be decided by the board at a regular
30 meeting must be served on all parties and 14 copies delivered to
31 the board offices at least seven calendar days before a regular
32 meeting. Written material related to a matter to be decided at
33 a special meeting must be personally served on all parties,
34 board members, and at the board offices at least two calendar
35 days before the special meeting. The chairperson may grant an
36 extension of time or allow the submission of fewer copies due to

1 time constraints or economic hardship.

2 Subp. 7. Quorum. A quorum must be present for transaction
3 of board business.

4 Subp. 8. Parliamentary procedure. Except as specifically
5 provided under statute or these parts, the most current revision
6 of Roberts Rules of Order Revised governs any question of
7 parliamentary procedure that arises at a board meeting.

8 Subp. 9. Adoption of agenda. The first order of business
9 at the meeting must be adoption of the agenda, which may be
10 amended or modified by the board prior to taking up other
11 business. No matter may be voted upon at a regular or special
12 board meeting unless it has been placed on the agenda as
13 required under subparts 4 and 5. Discussion or informational
14 items for which no decision will be made at the meeting may be
15 added to the agenda at the meeting.

16 Subp. 10. Public forum. The chairperson may include a
17 portion of time on each regular meeting agenda for persons to
18 present statements on matters which are within the board's
19 jurisdiction but are not on the agenda. The chairperson shall
20 determine the limits of time and the relevancy of the statement
21 to the board's jurisdiction.

22 Subp. 11. Argument and presentations. A person who wishes
23 to present a statement on a matter that is on the agenda for the
24 meeting shall be allowed to present statements to the board at
25 the meeting; provided, however, that all written supporting
26 materials must be filed as required under subpart 6. If the
27 board determines that a person affected by an oral or written
28 statement has not had adequate opportunity to respond, the board
29 shall allow additional time to respond.

30 The chairperson shall determine the limits of time and the
31 relevancy of discussion or debate on any matter before the board.

32 Subp. 12. Voting. An affirmative vote of a majority of
33 all members of the board is necessary to take action, including
34 the adoption, amendment, or repeal of rules and orders. All
35 members present, including the chairperson, shall vote or
36 abstain on every matter presented for board action.

1 When computing a majority of all members of the board,
2 absences or abstentions must be included and vacancies must be
3 excluded.

4 Unless otherwise provided by law or rule, whenever a motion
5 for final adoption of a decision, resolution, or other action
6 fails to receive the vote required and no contrary motion for
7 final adoption has received the required vote, no action may be
8 taken and the matter must be placed on the agenda of the next
9 regular meeting or a special meeting without need for a
10 determination to reopen, rehear, or otherwise reconsider the
11 matter.

12 Subp. 13. Record of meetings. The board shall keep full
13 and accurate minutes of all meetings, including a record of all
14 votes of individual members.

15 Subp. 14. Notice of decisions. Following each regular or
16 special meeting, a copy of all decisions or resolutions adopted
17 by the board must be served on all parties to an action. Notice
18 of board decisions must be published in the EQB Monitor.

19 4405.0700 SOUTHERN MINNESOTA RIVERS BASIN COUNCIL.

20 Subpart 1. Recommendations. Recommendations from the
21 council must be submitted to the board. Minority
22 recommendations on an issue may also be submitted.
23 Recommendations must be submitted as required under part
24 4405.0600, subpart 6.

25 Subp. 2. Meetings. All meetings of the council are open
26 to the public. Notice of time, place, and matters to be
27 considered must be posted as established in part 4405.0600,
28 subpart 2.

29 4405.0800 BOARD SUBCOMMITTEES; TASK FORCES.

30 Subpart 1. Establishment. The board may establish citizen
31 or interdepartmental task forces or subcommittees to aid in
32 performing its duties. The board shall specify the charge,
33 duration, size, membership, meeting notice requirements, and
34 other procedures to be followed for each group. The board may
35 specify a chairperson for each task force or subcommittee.

1 Subp. 2. Purpose. Task forces and subcommittees shall
2 advise the board on matters for which the board has charged them
3 responsible.

4 Subp. 3. Recommendations. Recommendations from task
5 forces and subcommittees must be submitted to the board.
6 Minority recommendations on an issue may also be submitted.
7 Recommendations must be submitted as required under part
8 4405.0600, subpart 6.

9 Subp. 4. Meetings. All meetings of subcommittees and task
10 forces are open to the public. Notice of the time, place, and
11 matters to be considered must be posted as established in part
12 4405.0600, subpart 2 and as specified in subpart 1.

13 4405.0900 EXCEPTIONS AND PROPOSED FINDINGS.

14 Subpart 1. Exceptions to report of hearing examiner. If a
15 hearing examiner acting under contested case procedures in
16 Minnesota Statutes, chapter 14 has submitted a report, and a
17 party wishes to file exceptions to the report, a copy of the
18 exceptions must be served on all parties and 14 copies of the
19 exceptions must be filed with the chairperson within 14 calendar
20 days after the availability of the report. The chairperson may
21 grant an extension of time for filing exceptions, and may allow
22 fewer copies to be submitted due to time constraints or economic
23 hardship.

24 Subp. 2. Proposed findings in other than contested cases.
25 If the board has conducted a hearing, parties to the proceeding
26 may submit proposed findings and conclusions for the board's
27 consideration. A copy of the proposed findings must be served
28 on all parties and 14 copies must be filed within ten working
29 days of the close of the record of the proceeding. The period
30 for submitting proposed findings and conclusions and the number
31 of copies required may be changed as set forth in subpart 1.

32 4405.1000 PARTIES.

33 Subpart 1. Contested cases. In proceedings conducted
34 under Minnesota Statutes, chapter 14, parties have the rights
35 and obligations specified in applicable rules established by the

1 Office of Administrative Hearings.

2 Subp. 2. Hearings. In hearings not conducted under
3 Minnesota Statutes, chapter 14, the chairperson shall identify
4 as a party any person with direct responsibility for proposing
5 or undertaking an action or study, or for obtaining approval of
6 an action, plan, or a proposal. Other persons not named as
7 parties may intervene to the extent provided in part 4405.1100.

8 Subp. 3. Rights and obligations. Rights and obligations
9 of parties in proceedings not under chapter 14 include all
10 rights of the public at large and:

11 A. the right to make motions pertinent to the matter
12 under consideration;

13 B. the right to notice other than published notice of
14 board decisions;

15 C. the right to present argument to the board;

16 D. the right to submit proposed findings and
17 conclusions; and

18 E. the obligation to serve other parties with copies
19 of documents or other writings filed with the board as required
20 under part 4405.0600, subpart 6.

21 4405.1100 INTERVENTION.

22 Subpart 1. Contested cases. In proceedings conducted
23 under Minnesota Statutes, chapter 14, persons desiring to
24 intervene shall intervene in accordance with applicable rules
25 established by the Office of Administrative Hearings.

26 Subp. 2. Hearings. In other hearings, persons desiring to
27 intervene shall intervene by submitting a timely petition to
28 intervene to the board and to all parties showing both the
29 person's interest in the matter, and the likelihood that this
30 interest will not be adequately represented by existing
31 parties. The chairperson shall determine the timeliness of the
32 petition for each hearing based on circumstances at the time of
33 filing. The chairperson of the board may grant permission to
34 intervene. Intervenors have the rights and obligations accorded
35 parties in matters before the board as established in this part.
36 Intervention is not required before a person may submit

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

3 4405.1200 FINAL DECISIONS AND ORDERS.

4 Subpart 1. Decision. The board shall make all final
5 decisions and orders in those matters for which a hearing,
6 contested case, or rulemaking proceeding conducted under
7 Minnesota Statutes, chapter 14 has been held. When required by
8 law, the board's decision or order must be based solely on the
9 record from the hearing. Nothing in this rule precludes
10 argument concerning the application of law to matters of record.

11 Subp. 2. Findings and conclusions. The decision or order
12 must be accompanied by a concise statement of the findings and
13 conclusions upon each contested issue of fact necessary to the
14 decision. If the proposed statements of findings and
15 conclusions submitted to the board are not adopted, the board
16 shall direct its staff to prepare additional findings and
17 conclusions. Rejection of the proposed findings and conclusions
18 is considered an interim decision. A final decision on the
19 matter must be made after the board has adopted a statement of
20 findings and conclusions. When the board or its staff has
21 prepared proposed findings and conclusions, a copy must be
22 served on all parties at least ten calendar days before the
23 meeting at which the board intends to make its decision or order.

24 Subp. 3. Remand. The board may remand a matter to the
25 hearing examiner for further proceedings if the board determines
26 that the record is inadequate.

27 4405.1300 RECONSIDERATION AND REHEARING.

28 Subpart 1. Board right to reconsider and rehear. Under
29 the procedures in this part, the board may reconsider or rehear
30 a final decision. The right to reconsider or rehear under this
31 part may be exercised unless it is lost by appeal or the
32 granting of a writ or certiorari.

33 Subp. 2. Reconsideration. A board member or a party to a
34 matter may request the board to reconsider a final decision by
35 notifying the chairperson in writing within ten calendar days

1 after the board meeting at which the final decision on a matter
2 was made. The chairperson shall place the request for
3 reconsideration on the agenda for the board meeting next
4 following the meeting at which the decision was made. Absent a
5 motion to reconsider by a board member at the board meeting next
6 following the meeting at which the decision was made, the
7 request for reconsideration is deemed to be denied.

8 Subp. 3. Obtaining a rehearing. At any time within ten
9 calendar days after the board's final decision on a matter for
10 which the board held a hearing or a contested case, a board
11 member or a party to the matter may request a rehearing by
12 filing with the chairperson in writing both a request for
13 reconsideration and a petition for rehearing. The chairperson
14 shall place the request for reconsideration and petition for
15 rehearing on the agenda for the board meeting next following the
16 meeting at which the decision was made. The petition must
17 contain the name, address, and telephone number of the
18 petitioner; the board designation for the matter; and the
19 reasons for the petition.

20 A petition for rehearing submitted after a final decision
21 on the matter has been reached by the board may not be acted
22 upon unless the board has first decided to reconsider its
23 decision. Absent a motion by a board member to reconsider at
24 the board meeting next following the board meeting at which the
25 decision was made, the request for reconsideration and the
26 petition for rehearing is deemed to be denied. The board shall
27 grant or deny a petition for rehearing as part of the record of
28 the decision. This petition must be granted upon a showing that
29 there are irregularities in the hearing which affected the
30 outcome of a hearing, errors of law, or that there is newly
31 discovered material evidence of such importance it would have
32 likely altered the outcome of the hearing. A rehearing petition
33 must also be granted upon a showing of good cause for failure to
34 have answered or appeared at the hearing.

35 A rehearing must be noticed and conducted in the same
36 manner as the original hearing or contested case on a matter;

1 provided that, in a contested case, the hearing examiner may
2 permit service of the notice less than 30 days prior to the
3 rehearing of a contested case.