

1 Pollution Control Agency

2

3 Adopted Permanent Rules Relating to Procedural Rules

4

5 Rules as Adopted

6 7000.0050 PURPOSE.

7 This chapter describes how the agency makes decisions and  
8 how members of the public may involve themselves in agency  
9 decision making. The procedures and standards of conduct  
10 established in this chapter are intended to ensure an orderly  
11 and fair decision-making process, to preserve the integrity and  
12 independence of agency decisions, and to promote public  
13 confidence in those decisions.

14 7000.0100 DEFINITIONS.

15 [For text of subpart 1, see M.R.]

16 Subp. 1a. **Administrative law judge.** "Administrative law  
17 judge" means the person assigned by the chief administrative law  
18 judge pursuant to Minnesota Statutes, section 14.50, to preside  
19 at a rulemaking hearing or contested case hearing.

20 Subp. 2. **Agency or agency members.** "Agency" or "agency  
21 members" means the nine persons appointed to the Minnesota  
22 Pollution Control Agency, pursuant to Minnesota Statutes,  
23 section 116.02, subdivision 1.

24 Subp. 2a. **Commissioner.** "Commissioner" means the chief  
25 executive officer of the Minnesota Pollution Control Agency.

26 Subp. 2b. **Contested case.** "Contested case" has the  
27 meaning given in Minnesota Statutes, section 14.02, subdivision  
28 3.

29 [For text of subps 3 and 5, see M.R.]

30 Subp. 5a. **Interested person.** "Interested person" means  
31 persons who have submitted their names and addresses to the  
32 agency for inclusion on an agency list of persons to receive  
33 notice concerning a specific agency matter. Persons can place  
34 their names and addresses on an agency list for a specific  
35 matter by:

1           A. making an oral presentation on the specific agency  
2 matter at an agency meeting and registering their names and  
3 addresses with the agency at that time;

4           B. submitting to the commissioner a written statement  
5 in which they request to be treated as an interested person and  
6 in which they provide their names and addresses and identify the  
7 specific agency matter in which they are interested;

8           C. registering their names and addresses for the  
9 purpose of receiving notice of all agency rulemakings pursuant  
10 to Minnesota Statutes, section 14.14, subdivision 1a; or

11           D. being named as a party to a contested case hearing  
12 for a specific agency matter.

13           In addition, for any matter regarding a permit, the  
14 permittee is an interested person.

15           Subp. 5b. **Material issue of fact.** A "material issue of  
16 fact" means a fact question, as distinguished from a policy  
17 question, whose resolution could have direct bearing on a final  
18 agency decision.

19           Subp. 6. [See repealer.]

20                       [For text of subps 7 to 11, see M.R.]

21           Subp. 12. **Service; serve.** "Service" or "serve" means  
22 personal service, service by mail, or service by facsimile as  
23 described in items A to C.

24           A. Personal service upon the agency is made by  
25 handing an item to the commissioner or by delivering the item to  
26 the office of the commissioner and leaving it with a person  
27 assigned to that office. Personal service upon an interested  
28 person or agency member is made by handing an item to that  
29 person or by delivering the item to the person's last known home  
30 or business address and leaving it with a competent person  
31 residing or working at that address.

32           B. Service by mail is made by placing the item in  
33 first class United States mail, postage prepaid, addressed to  
34 the last known address of the person being served. Service by  
35 mail is complete upon depositing the item in the mail. A person  
36 may use an overnight delivery service to effect service by mail

1 instead of using United States mail.

2 C. Service by facsimile is made by telefaxing a  
3 document to a person known to have a facsimile machine. Service  
4 by facsimile is complete upon receipt of the facsimile. Service  
5 by facsimile must be followed by personal service or service by  
6 mail within one day after a facsimile service.

7 Upon request, the commissioner will make available the  
8 names and service addresses of agency members.

9 [For text of subps 13 and 14, see M.R.]

#### 10 7000.0200 COMPUTATION OF TIME.

11 In computing any period of time prescribed by this chapter,  
12 the day of the last act, event, or default from which the  
13 designated period of time begins to run is not included. The  
14 last day of the period so computed is included unless it is a  
15 Saturday, Sunday, or legal holiday. When this chapter requires  
16 service within a certain number of days, the term "day" includes  
17 weekdays, weekend days, and holidays.

#### 18 7000.0400 OFFICERS, COMMITTEES, AND DUTIES.

19 Subpart 1. Officers. The officers of the agency are the  
20 chair, vice-chair, and commissioner.

21 Subp. 2. Electing and term of the chair. Each year, at  
22 its annual meeting, the agency shall elect a chair to serve a  
23 one-year term. The chair must be elected by a majority of all  
24 agency members. No member elected to the office of chair may  
25 serve in that capacity more than two full terms consecutively.

26 Subp. 3. Electing and term of the vice-chair. Each year,  
27 at its annual meeting, the agency shall elect a vice-chair to  
28 serve a one-year term. The chair must be elected by a majority  
29 of all agency members. No member elected to the office of  
30 vice-chair may serve in that capacity more than two full terms  
31 consecutively.

32 Subp. 4. Duties. The chair shall preside at all agency  
33 meetings and shall assist the commissioner in proposing dates,  
34 times, and agendas for agency meetings and in coordinating  
35 agency actions. The vice-chair shall discharge the duties of

1 the chair during the absence or disability of the chair. The  
2 commissioner shall have the duties prescribed by statute or by  
3 rule or delegation of the agency.

4 Subp. 5. **Vacancies.** If a permanent vacancy occurs in the  
5 office of chair of the agency, the vice-chair shall become the  
6 chair until such time as new officers are elected at the next  
7 annual meeting. If a permanent vacancy occurs in the office of  
8 vice-chair, the agency shall, as soon as possible after the  
9 permanent vacancy, elect a new vice-chair to fill out the term  
10 of the vacated office of vice-chair.

11 Subp. 6. **Removal.** The chair or vice-chair may be removed  
12 from office by an affirmative vote of two-thirds of all agency  
13 members. The vote to remove a chair or vice-chair shall be made  
14 at the next regular meeting of the agency following the meeting  
15 at which the removal motion is made.

16 [For text of subp 7, see M.R.]

17 Subp. 8. **Execution of documents.** Contracts, stipulation  
18 agreements, and other documents approved by the agency pursuant  
19 to law shall be executed on the agency's behalf by the chair and  
20 the commissioner unless the agency authorizes some other form of  
21 signing.

22 7000.0500 AGENCY MEETINGS.

23 Subpart 1. **Regular and annual meetings.** Twelve regular  
24 monthly meetings of the agency shall be held each calendar  
25 year. A date for each regular meeting shall be set by the  
26 agency. The annual meeting, also conducted as a regular  
27 meeting, shall be held during the month of July of each year.  
28 The time and place of each regular meeting, including the annual  
29 meeting, shall be designated by the commissioner after  
30 consultation with the chair. The chair may direct that a  
31 regular meeting be postponed or advanced to accommodate a state  
32 holiday, weather emergency, or scheduling conflicts of agency  
33 members.

34 Subp. 2. **Special meetings.** Upon concluding that a special  
35 meeting would assist the agency in accomplishing its work or

1 upon receiving a request for a special meeting from three agency  
2 members, the commissioner shall call a special meeting of the  
3 agency. The time and place of the special meeting shall be  
4 designated by the commissioner after consultation with the  
5 chair. In setting the time and place of a special meeting, the  
6 commissioner shall consider the extent to which time is of the  
7 essence and whether it would be unreasonable or unfair to  
8 interested persons for the agency to postpone consideration of  
9 the agenda for the special meeting to allow as much notice as  
10 would be required for a regular meeting of the agency.

11 Subp. 3. [See repealer.]

12 Subp. 3a. **Committee meetings.** The committee chair or the  
13 commissioner shall call a committee meeting when the  
14 commissioner concludes that a committee meeting would assist the  
15 agency in accomplishing its work or upon receiving a request for  
16 a committee meeting from a member of the agency committee. The  
17 time and place of the committee meeting shall be designated by  
18 the commissioner after consultation with the committee chair.

19 Subp. 3b. **Informational meetings.** Part 7001.0120  
20 addresses informational meetings on permits. For all other  
21 matters, the agency or commissioner shall call a public  
22 informational meeting upon concluding that a public  
23 informational meeting would provide the agency with information  
24 that would assist it in accomplishing its work or would  
25 otherwise be in the public interest. The time and place of the  
26 informational meeting shall be designated by the commissioner  
27 after consultation with the chair.

28 Subp. 4. [See repealer.]

29 Subp. 5. [See repealer.]

30 Subp. 6. [See repealer.]

31 Subp. 7. [See repealer.]

32 Subp. 8. **Quorum necessary for regular and special**  
33 **meetings.** A majority of the members of the entire agency  
34 constitutes a quorum, and a quorum must be present for the  
35 transaction of business. A committee meeting or an  
36 informational meeting may be held with less than a quorum of the

1 agency.

2 Subp. 9. **Presiding officer.** The chair shall preside at  
3 all regular and special meetings of the agency. The vice-chair  
4 shall preside in the chair's absence. If the chair and  
5 vice-chair are both absent, the remaining members shall  
6 designate one of the agency members present to preside over the  
7 meeting until the chair or vice-chair arrives.

8 Subp. 10. **Adoption of and consideration of matters on**  
9 **agency agenda.** As the first order of business at a regular,  
10 special, or committee meeting, the agency or committee shall  
11 review its proposed agenda, amend or modify it if appropriate,  
12 and then adopt it. Thereafter, the agency shall act on agency  
13 matters at the approximate times shown on its adopted agenda.  
14 However, by consensus of all agency members present, the agency  
15 may group noncontroversial agenda items or agenda items  
16 ministerial in nature for approval by a single agency vote.

17 Subp. 11. [See repealer.]

18 Subp. 12. [See repealer.]

19 Subp. 13. **Open meetings.** Except as provided by law, all  
20 meetings of the agency must be open to the public.

21 Subp. 14. [See repealer.]

22 Subp. 15. [See repealer.]

23 Subp. 16. **Record of meetings.** The agency shall keep full  
24 and accurate minutes of all meetings, including a record of all  
25 votes of individual members.

26 Subp. 17. **Parliamentary procedure.** Except as specifically  
27 provided in this chapter, Robert's Rules of Order, as amended,  
28 shall govern any question of parliamentary procedure that may  
29 arise at any meeting of the agency.

30 Subp. 18. **Continuation or recess of agency meetings.** The  
31 agency may continue or recess an agency meeting to a later time  
32 or date if necessary to allow for the drafting of findings of  
33 fact as directed by agency members or further discussion or  
34 deliberation concerning a matter on a meeting agenda. If an  
35 agency meeting is continued or recessed and the time, date, and  
36 place for reconvening is announced and recorded at the time the

1 meeting is recessed or continued, no further notice of the  
2 reconvening is necessary. If the agency provided an opportunity  
3 for public comments on a specific matter before a meeting is  
4 recessed or continued, the chair may rule that no further  
5 comments will be heard when the meeting is reconvened. However,  
6 agency members may ask questions of agency staff and interested  
7 persons even when no further public comment is to be taken.

8 7000.0550 AGENDA FOR AGENCY MEETINGS.

9 Subpart 1. **Agenda items and related written materials.** No  
10 matter may be considered at a meeting of the agency unless it is  
11 on the agenda and related written materials have been made  
12 available as provided in part 7000.0650.

13 Subp. 2. **Agenda preparation.** The commissioner shall  
14 prepare an agenda for each regular, special, and committee  
15 meeting of the agency. The agenda shall identify the date and  
16 place of the meeting, and the approximate times for considering  
17 each item on the agenda. Each agenda must be prepared in  
18 sufficient time to allow for notice as specified in this  
19 chapter. Each agenda must identify all matters to be considered  
20 by the agency. Agency members may place items on the regular  
21 meeting agenda by notifying the commissioner at least 14 days  
22 prior to the meeting. Agency members may place items on the  
23 agenda of a special or committee meeting by notifying the  
24 commissioner at least ten days prior to a scheduled special or  
25 committee meeting.

26 Subp. 3. **Agency member notice of meetings.** The  
27 commissioner shall serve on each agency member a copy of the  
28 proposed agenda for each agency meeting, together with the  
29 related written materials for the items on the agenda. However,  
30 if the related written materials are so voluminous as to make it  
31 impractical to serve them on all agency members, the  
32 commissioner may provide a notice stating that there are  
33 additional related written materials for review at the offices  
34 of the agency. Service shall be made as described in items A  
35 and B.

1           A. For a regular meeting of the agency, service shall  
2 be made at least ten days before the meeting.

3           B. For a special meeting or committee meeting of the  
4 agency, service by mail shall be made at least six days before  
5 the meeting. Personal service or service by facsimile shall be  
6 made at least three days before the meeting. However, the  
7 notice provisions of this part do not apply to emergencies which  
8 are addressed by the agency or commissioner under part 7000.5000.

9 7000.0650 PUBLIC PARTICIPATION IN AGENCY MEETINGS.

10           Subpart 1. Public inspection of agency meeting agenda and  
11 related written materials. The agenda and related written  
12 materials for meetings of the agency shall be available for  
13 public inspection at the central office of the agency as  
14 described in items A and B.

15           A. For regularly scheduled meetings, the agenda and  
16 related written materials shall be available at least ten days  
17 prior to the regular agency meeting.

18           B. For special or committee meetings, the agenda and  
19 related written materials shall be available as soon as possible  
20 and, in any event, no later than three days prior to the special  
21 or committee meeting. However, the inspection provisions of  
22 this part do not apply to emergencies which are addressed by the  
23 agency or commissioner under part 7000.5000.

24           Subp. 2. Service on interested persons. The commissioner  
25 shall serve on each interested person a copy of the proposed  
26 agenda for each agency meeting together with a copy of the  
27 agenda item prepared by agency staff. If the related written  
28 materials for the agenda item are not voluminous, the  
29 commissioner shall serve these materials, too. However, if the  
30 commissioner finds that the related written materials are so  
31 voluminous as to make it impractical for the commissioner to  
32 serve them on all interested persons, the commissioner shall  
33 serve on interested persons a notice stating that there are  
34 additional related written materials for the item in which the  
35 person is interested and that these additional related written



1 materials can be viewed at the offices of the agency or can be  
2 requested from the agency. Service shall be made as described  
3 in items A and B.

4 A. For a regular meeting of the agency, service shall  
5 be made at least ten days before the meeting.

6 B. For a special meeting or committee meeting of the  
7 agency, service by mail shall be made at least six days before  
8 the meeting. Personal service or service by facsimile shall be  
9 made at least three days before the meeting. However, the  
10 notice provisions of this part do not apply to emergencies which  
11 are addressed by the agency or commissioner under part 7000.5000.

12 The agency does not intend the notice and service  
13 requirements of this chapter or any other requirements of this  
14 chapter to prevent it from seeking to recover reasonable copying  
15 and preparation costs as authorized under Minnesota Statutes,  
16 section 13.03, subdivision 3. This subpart does not limit the  
17 agency staff from presenting written materials at agency  
18 meetings as described in subpart 7.

19 Subp. 3. **Petitions to place matters on an agency agenda.**  
20 Any person who wishes to place a matter on the agenda for an  
21 agency meeting may submit a petition identifying the matter that  
22 person would like placed on the agenda and the reasons for  
23 placing it on the agenda. The petition must be served on the  
24 commissioner by mail at least 24 days before the meeting during  
25 which a petitioner would like the matter to be considered or by  
26 personal service or facsimile at least 21 days before the  
27 meeting. The commissioner shall grant or deny the petition. If  
28 the commissioner decides not to place a matter on the agenda,  
29 the commissioner shall advise the agency and the petitioner of  
30 the reasons for the denial.

31 Subp. 4. **Petition for informational meeting.**

32 A. Any person may petition the agency to hold a  
33 public informational meeting described in part 7000.0500,  
34 subpart 3b. The petition must identify the matter of concern  
35 and the reasons the agency should hold the informational meeting.

36 B. If the matter involves a permit for which a public

1 notice has been issued under part 7001.0100, subpart 4, or  
2 7007.0850, subpart 2, the petition must be submitted to the  
3 commissioner within the comment period established in the public  
4 notice and must conform to the requirements of parts 7001.0110  
5 and 7001.0120.

6 C. If item B does not apply and the matter is not on  
7 the agenda for an agency meeting, the petition must be submitted  
8 to the commissioner. The commissioner shall grant or deny the  
9 petition. If the commissioner decides not to hold the meeting,  
10 the commissioner shall advise the agency and the petitioner of  
11 the reasons for the denial.

12 D. If item B does not apply and the matter is on the  
13 agenda for an agency meeting, the petition must be submitted to  
14 the agency in accordance with the time frames for submitting  
15 written materials set out in subpart 6. The agency shall grant  
16 or deny the petition.

17 Subp. 5. Oral presentations at agency meetings.  
18 Consistent with the provisions of part 7000.0500, subpart 18,  
19 the agency shall afford interested persons a reasonable  
20 opportunity to make oral statements concerning matters on an  
21 agency meeting agenda. To ensure an opportunity for full and  
22 fair consideration of all views, the chair may limit the time  
23 and scope of each speaker's presentation and may require  
24 speakers with similar views to select a spokesperson. Oral  
25 statements must be relevant to the matter before the agency.  
26 Oral presentations following a rulemaking or contested case  
27 hearing must be limited to the record for the matter.

28 Subp. 6. Written materials. The agency shall consider  
29 timely, relevant written materials that interested persons  
30 submit concerning a matter on an agenda for an agency meeting.  
31 Recessing or continuing a meeting as provided under part  
32 7000.0500, subpart 18, does not create a new opportunity to  
33 submit written comments, unless the chair states otherwise and  
34 establishes a schedule for submittal of additional written  
35 materials. ~~If comments are not submitted to the agency in a~~  
36 ~~timely manner before a meeting is recessed or continued, the~~

1 ~~comments shall not be considered timely even if they are~~  
 2 ~~submitted before the date the meeting is reconvened.~~ Written  
 3 statements will be considered timely and relevant only if they  
 4 meet the following conditions:

5           A. for matters for which a contested case hearing has  
 6 been held, written comments must conform to the requirements and  
 7 time limits of part 7000.2000;

8           B. for matters for which a rulemaking hearing has  
 9 been held, written comments must be limited to the record of the  
 10 rulemaking hearing and must be served on the agency at least  
 11 five days before the agency meeting during which the agency is  
 12 scheduled to act on the proposed rules;

13           C. for matters for which a contested case hearing has  
 14 not been held but a permit comment period has been established  
 15 under chapter 7001 or 7007, any additional written permit  
 16 comments must be served on the agency at least five days before  
 17 the agency meeting;

18           D. for all matters except those under items A to C,  
 19 the chair or commissioner may establish a reasonable schedule  
 20 for submitting written comments. If a schedule is established  
 21 under this item and the commissioner serves notice of the  
 22 schedule on interested persons, service is timely if made within  
 23 the established deadlines; and

24           E. for all matters except those under items A to D,  
 25 service is timely as follows:

26                   (1) for regular meetings of the agency and  
 27 special meetings noticed ten or more days before the meeting;  
 28 service is timely if all agency members and the commissioner are  
 29 served at least five days before the meeting; and

30                   (2) for special meetings of the agency noticed <sup>less</sup>  
 31 than ten days before the meeting, service is timely if all  
 32 agency members and the commissioner are served personally or by  
 33 facsimile before the agenda item is scheduled to be heard.

34 ~~Notwithstanding the other restrictions of this subpart, the~~  
 35 ~~agency may give limited consideration to untimely written~~  
 36 ~~materials served under this item if consideration of the late~~

1 ~~materials does not prejudice other interested persons and there~~  
2 ~~is reasonable time for the agency to consider the materials.~~

3 Subp. 7. Written presentations at agency

4 meetings. Notwithstanding the restrictions of subparts 2 and 6,  
5 the agency shall consider relevant written materials presented  
6 by an interested person or by agency staff at an agency meeting  
7 if such consideration does not prejudice other interested  
8 persons and there is reasonable time for the agency to consider  
9 the materials during the course of the meeting. These materials  
10 may include, but are not limited to, materials responsive to  
11 relevant information that was not available prior to the  
12 established deadlines of subpart 6, written versions or  
13 summaries of oral presentations, letters, visual aids, and  
14 clarifications or corrections of written materials.

15 7000.0750 AGENCY RECORDS AND FINAL DECISION MAKING.

16 Subpart 1. Final decisions of agency. Final decisions of  
17 the agency shall be made at agency regular and special  
18 meetings. No final decisions shall be made on any agency matter  
19 unless it is on the adopted agency agenda at a regular or  
20 special meeting.

21 Subp. 2. Rulemaking records upon which agency makes its  
22 decision. The record upon which the agency shall make a final  
23 decision concerning the adoption, amendment, or repeal of a rule  
24 consists of the following:

25 A. the agenda and related materials for an agency  
26 meeting during which the proposed rule was considered and the  
27 minutes, transcripts, and recordings of the meeting;

28 B. for rules adopted without a public hearing, the  
29 documents listed in part 2010.0300 or, for emergency rules, part  
30 2010.0400, and the attorney general's written statement of  
31 required modifications or disapproval, if any;

32 C. for rules adopted with a public hearing, the  
33 documents listed in part 1400.0900, including the report of the  
34 administrative law judge and the report of the chief  
35 administrative law judge, if any; and

1 D. written comments submitted to the agency as  
2 allowed by part 7000.0650, subpart 6, and recordings or  
3 transcripts of oral statements as allowed by part 7000.0650,  
4 subpart 5.

5 Subp. 3. **Contested case record upon which agency makes its**  
6 **decision.** The record upon which the agency shall make a final  
7 decision after a contested case hearing consists of the record  
8 as described in part 1400.7400.

9 Subp. 4. **Record upon which the agency makes other**  
10 **decisions.** The record upon which the agency shall make a final  
11 decision in all matters other than rulemaking and contested case  
12 hearings consists of the following:

13 A. the agenda and related materials for an agency  
14 meeting during which the matter was considered and the minutes,  
15 transcripts, and recordings of the meeting;

16 B. relevant written materials submitted to the agency  
17 within an established comment period, including requests for an  
18 informational meeting and petitions for contested case hearings;

19 C. written materials submitted to the agency as  
20 allowed by part 7000.0650, subpart 6, and recordings or  
21 transcripts of oral statements as allowed by part 7000.0650,  
22 subpart 5;

23 D. written documents containing relevant information,  
24 data, or materials compiled, referenced, and relied upon by the  
25 commissioner and agency staff in recommending a proposed action  
26 or decision; and

27 E. all other relevant information or material  
28 received into the record and considered by the agency at an  
29 agency meeting.

30 Subp. 5. **Decisions and voting.** Except as otherwise  
31 specifically provided, a majority vote of the entire agency is  
32 necessary to make any decision. All members present shall vote  
33 or abstain on every matter presented for decision. If the final  
34 vote taken on an agenda item does not result in a decision, but  
35 half or more of the voting members vote affirmatively, the  
36 matter must be placed on the agenda of the next regular monthly

1 meeting or considered at a special meeting, unless the agenda  
2 item concerns rescission of a decision as provided in subpart  
3 8. No final decisions of the agency shall be made at agency  
4 committee meetings even if a quorum of the agency is present.

5 Subp. 6. **Agency deliberations.** During agency deliberation  
6 and consideration of a specific agenda matter, agency members  
7 may ask questions of agency staff, counsel, or interested  
8 persons, and may discuss and amend proposed findings,  
9 conclusions, and resolutions or propose alternative findings,  
10 conclusions, or resolutions based on the record before the  
11 agency. As provided in part 7000.0500, subpart 18, the agency  
12 may decide to continue or recess a meeting with instructions to  
13 counsel, agency staff, or interested persons to draft findings  
14 consistent with the agency's directions. Upon reconvening to  
15 consider the findings, the agency need not provide an  
16 opportunity for additional oral or written comments.

17 Subp. 7. **Reconsideration of decision.** Any decision of the  
18 agency may be reconsidered during the course of the same meeting  
19 at which the original decision was made if an agency member who  
20 voted on the prevailing side makes a motion for reconsideration  
21 before the agency moves on to its next agenda item or if all  
22 interested persons are present and given an opportunity to  
23 comment.

24 Subp. 8. **Rescission of decision.** Upon placement on the  
25 agenda by an agency member as provided in part 7000.0550 and  
26 upon the affirmative vote of two-thirds of the entire agency,  
27 any decision of the agency or commissioner may be rescinded as  
28 permitted by applicable law.

29 Subp. 9. **Stay of decision.** A person may petition for a  
30 stay of an agency decision. Petitions must comply with the  
31 requirements of part 7000.2100.

32 7000.0850 DELEGATION PROCEDURE.

33 The agency may delegate the exercise of specified authority  
34 or duties to the commissioner as follows:

35 A. at any time, the commissioner may request in

1 writing that the agency delegate specified authority or duties.  
2 The request must be specific as to what authority or duty the  
3 agency is to delegate and why the delegation is appropriate;

4 B. the request must be placed on the agency meeting  
5 agenda in accordance with part 7000.0550;

6 C. the agency may grant, deny, or modify the request  
7 for the delegation as the agency deems reasonable and  
8 appropriate and shall state the conditions under which the  
9 delegated authority may be exercised;

10 D. the chair and the vice-chair must sign and date  
11 the delegation once it is given;

12 E. all approved delegations must be filed with the  
13 Secretary of State;

14 F. the agency may review, modify, revoke, or approve  
15 a delegation at any time;

16 G. during the October meeting, the agency must review  
17 all delegations and must renew, amend, or revoke existing  
18 delegations and consider new delegations; and

19 H. the commissioner shall maintain records of all  
20 delegations and these records must be made available for public  
21 inspection.

22 7000.0900 INFORMAL COMPLAINTS.

23 Any person may file with the commissioner an informal  
24 complaint concerning a pollution source or environmental  
25 problem. The informal complaint may be either written or oral  
26 and must state the name and address of the person filing the  
27 informal complaint, the name and address of the alleged  
28 pollution source, and a description of the matter giving rise to  
29 the complaint. A person making an oral complaint may be asked  
30 to submit the complaint in writing. Upon receipt of this  
31 informal complaint, the commissioner shall make such  
32 investigation as is deemed necessary and appropriate. At an  
33 appropriate time, the commissioner shall notify the person  
34 responsible for the alleged pollution source that an informal  
35 complaint has been filed. At any time after an informal

1 complaint is filed, the commissioner may take whatever action  
2 deemed necessary and appropriate. The person who filed the  
3 complaint shall be notified of the disposition of his or her  
4 complaint. In all actions taken pursuant to this part, the  
5 commissioner shall comply with the provisions of Minnesota  
6 Statutes, chapter 13.

7                   **CONTESTED CASE HEARING PROCEDURES**

8 7000.1750 CONTESTED CASE HEARINGS.

9           **Subpart 1. Objectives.** All contested case hearings  
10 required by statute or rule and all contested case hearings  
11 ordered by the agency shall be conducted in accordance with the  
12 procedures set forth in the rules of the Office of  
13 Administrative Hearings, parts 1400.5200 to 1400.8401, and in  
14 accordance with parts 7000.1000 to 7000.1150, and in accordance  
15 with this part. No person's rights, privileges, or duties may  
16 be determined without regard for fundamental fairness. To that  
17 end, parts 7000.1750 to 7000.4000 are intended to assure that  
18 all parties are provided a just and speedy contested case  
19 hearing.

20           Subp. 2. [See repealer.]

21           Subp. 3. [See repealer.]

22           **Subp. 4. Parties.** Any person whose legal rights, duties,  
23 or privileges are to be determined in the matter for which the  
24 contested case hearing is to be held is a party. When a  
25 contested case hearing is held pursuant to a petition for a  
26 hearing, the person or persons petitioning for the hearing are  
27 parties to the matter. In any hearing on an application for a  
28 permit or variance, the applicant is a party. The commissioner  
29 is a party in any hearing ordered by the agency. Any person who  
30 has properly intervened in the contested case under part  
31 1400.6200 is a party.

32           Subp. 5. [See repealer.]

33           Subp. 6. [See repealer.]

34           **Subp. 7. Consolidation.** The agency may consolidate two or  
35 more matters for which contested case hearings are scheduled and



1 hold a joint hearing if no party objects to the consolidation.

2 Subp. 8. [See repealer.]

3 Subp. 9. [See repealer.]

4 7000.1800 PETITION FOR CONTESTED CASE HEARING.

5 Subpart 1. Petition for contested case hearing. Any  
6 person may petition the agency to hold a contested case  
7 hearing. To be considered by the agency, a petition must be  
8 submitted in writing, must contain the information specified in  
9 subpart 2, and must be timely. Timeliness shall be determined  
10 as follows:

11 A. for permit matters, a petition for a contested  
12 case hearing must be submitted during the public comment period  
13 established under parts 7001.0100 and 7007.0850;

14 B. for matters other than those covered by item A,  
15 the chair or the commissioner may establish deadlines for  
16 persons to petition for a contested case hearing. If the chair  
17 or commissioner establishes deadlines to petition for a  
18 contested case hearing, petitions for a contested case hearing  
19 will be considered timely if they are served on all agency  
20 members and the commissioner within the established deadlines;  
21 and

22 C. if item A does not apply and no deadlines are  
23 established as provided in item B, a petition for a contested  
24 case shall be considered timely as follows:

25 (1) for regular meetings of the agency and  
26 special meetings noticed ten or more days before the meeting,  
27 service is timely if all agency members and the commissioner are  
28 served five days before the meeting; and

29 (2) for special meetings of the agency noticed  
30 less than ten days before the meeting, service is timely if all  
31 agency members and the commissioner are served personally or by  
32 facsimile before the agenda item is scheduled to be heard.

33 Subp. 2. Contested case petition contents.

34 A. A petition for a contested case hearing shall  
35 include the following information:

1           A. (1) a statement of reasons or proposed  
2 findings supporting an agency decision to hold a contested case  
3 hearing pursuant to the criteria in part 7000.1900, subpart  
4 1; and

5           B. (2) a statement of the issues proposed to be  
6 addressed by a contested case hearing and the specific relief  
7 requested; or resolution of the matter.

8           C. B. To the extent known by the petitioner, a  
9 petition for a contested case hearing may also include the  
10 following information:

11           (1) a proposed list of ~~reasonably-known~~  
12 prospective witnesses to be called, including experts, with a  
13 brief description of proposed testimony or summary of evidence  
14 to be presented at a contested case hearing;

15           D. (2) a proposed list of ~~reasonably-known~~  
16 publications, references, or studies to be introduced and relied  
17 upon at a contested case hearing; and

18           E. (3) an estimate of time required for  
19 petitioner to present the matter at a contested case hearing.

20           C. A petitioner is not bound or limited to the  
21 witnesses, materials, or the estimated time identified in the  
22 petition if the requested contested case is granted by the  
23 agency.

24           Subp. 3. **Written responses to petitions for contested case**  
25 **hearings.** Any person may serve timely responses to a petition  
26 for a contested case hearing. Timeliness shall be determined as  
27 described in items A and B.

28           A. If the chair or commissioner has established a  
29 schedule as provided in subpart 1, item A or B, responses to a  
30 petition for a contested case hearing must be submitted within  
31 the deadlines established.

32           B. If no schedule has been established, responses to  
33 a petition for a contested case hearing must be personally  
34 served on or facsimiled to all agency members and the  
35 commissioner at any time prior to the time at which the matter  
36 will be considered by the agency.

1 Subp. 4. **Untimely petition for a contested case hearing.**

2 The agency shall deny a petition for a contested case hearing if  
3 the petition is not timely served as provided in subpart 1.

4 However, the agency may consider a petition that is not timely  
5 if the petition contains the information listed in subpart 2,  
6 and the petitioner demonstrates that the petition could not have  
7 been submitted to the agency any earlier because it relies on  
8 newly discovered material facts that could not have been  
9 discovered until after the petition period ended.

10 7000.1900 AGENCY CRITERIA TO HOLD CONTESTED CASE HEARING.

11 Subpart 1. **Agency decision to hold contested case**  
12 **hearing.** The agency must grant the petition to hold a contested  
13 case hearing or order upon its own motion that a contested case  
14 hearing be held if it finds that:

15 A. there is a material issue of fact in dispute  
16 concerning the matter pending before the agency;

17 B. the agency has the jurisdiction to make a  
18 determination on the disputed material issue of fact; and

19 C. there is a reasonable basis underlying the  
20 disputed material issue of fact or facts such that the holding  
21 of a contested case hearing would allow the introduction of  
22 information that would aid the agency in resolving the disputed  
23 facts in making a final decision on the matter.

24 Subp. 2. **Scope of contested case.** If the agency decides  
25 to hold a contested case hearing, the agency shall identify the  
26 issues to be resolved and limit the scope and conduct of the  
27 hearing in accordance with applicable law, due process, and  
28 fundamental fairness. Alternatively, the agency may request the  
29 administrative law judge to identify the issues and determine  
30 the appropriate scope and conduct of the hearing in accordance  
31 with applicable law, due process, and fundamental fairness.

32 Subp. 3. **Agency decision not to hold contested case**  
33 **hearing.** If the agency decides not to hold a contested case  
34 hearing, the agency may hold a public informational meeting as  
35 provided in part 7000.0550, subpart 4.

1 7000.2000 FINAL DECISIONS AND ORDERS IN CONTESTED CASES.

2 Subpart 1. Time for filing comments and exceptions. The  
 3 agency shall take no final action with respect to a matter for  
 4 which a contested case hearing has been held for at least ten  
 5 days after the date of issuance of the administrative law  
 6 judge's report. Any person may serve written comments on or  
 7 exceptions to the findings of fact, conclusions, and  
 8 recommendations of the administrative law judge at any time up  
 9 to five days prior to the agency meeting at which the matter  
 10 will be considered for final decision. However, these comments  
 11 and exceptions must be based solely upon the record of the  
 12 hearing.

13 Subp. 2. Service of comments and exceptions. Any person  
 14 who serves written comments on or exceptions to the  
 15 administrative law judge's report shall serve these comments or  
 16 exceptions upon each agency member and upon all parties.

17 Subp. 3. Appearance at agency meeting. Any party may  
 18 appear at the agency meeting at which the matter will be  
 19 considered for final decision and present oral comments and  
 20 arguments, limited to evidence in the record, subject to time  
 21 limitations and conditions that the chair prescribes in  
 22 accordance with part 7000.0650, subpart 5.

23 [For text of subp 4, see M.R.]

24 Subp. 5. Time. The agency shall reach a final decision or  
 25 order on the matter as expeditiously as possible after receipt  
 26 of the administrative law judge's report and recommendation.

27 [For text of subps 6 and 7, see M.R.]

28 Subp. 7a. Informal disposition. Informal disposition by  
 29 stipulation, agreed settlement, or consent order may be made of  
 30 any matter for which a contested case hearing is scheduled, or  
 31 any contested issue, at any point in the proceeding, subject to  
 32 agency approval of this informal disposition and its terms.

33 [For text of subp 8, see M.R.]

34 7000.2100 PETITION FOR STAY AND REOPENING OF AGENCY'S FINAL  
 35 DECISION FOLLOWING CONTESTED CASE HEARING.

1 Subpart 1. **Petition for a stay and reopening.** At any time  
2 up to ten days after the agency's final decision, any party to a  
3 contested case hearing may petition in writing the agency for an  
4 order that the agency's final decision be stayed and that the  
5 matter be reopened and, if necessary, remanded to the  
6 administrative law judge. The petition must be served upon all  
7 agency members and parties. Any response to the petition by  
8 other parties must be served any time up to seven days after  
9 receipt of the petition on all the agency members and parties to  
10 the matter.

11 Subp. 2. **Petition contents.** The written petition shall  
12 contain the name and address of the petitioner, the agency  
13 designation for the matter, and the specific grounds as  
14 described in subpart 3 for staying and reopening the matter.

15 Subp. 3. **Grounds for granting or denying the petition.**  
16 The petition shall be granted upon a showing that there are  
17 irregularities in the hearing, errors of law, or newly  
18 discovered material issue of fact or facts of such importance as  
19 are likely to have altered the outcome of the decision.

20 Subp. 4. **Agency's consideration of petition.** Within 30  
21 days of the agency's final decision, the agency must schedule a  
22 meeting to determine whether or not to deny or grant the  
23 petition submitted under subpart 1.

24 7000.2200 DECISION AFTER REOPENING AND REMAND.

25 The decision after reopening of the hearing and remand to  
26 the administrative law judge must be made in the same manner  
27 prescribed in part 7000.2000.

28 EMERGENCY AND VARIANCE PROCEDURES

29 7000.5000 DECLARATION OF EMERGENCY.

30 [For text of subps 1 to 5, see M.R.]

31 Subp. 6. **Notice.** The notice requirements of parts  
32 7000.0550 and 7000.0650 do not apply when the agency or the  
33 commissioner is considering the exercise of emergency powers,  
34 but the agency and the commissioner shall give such notice to  
35 the public as is possible under the circumstances.

1 [For text of subp 7, see M.R.]

2 7000.7000 VARIANCES.

3 [For text of subps 1 to 3, see M.R.]

4 Subp. 4. **Preliminary determination; preparation of public**  
5 **notice.** After a variance application is complete, the  
6 commissioner shall make a preliminary determination as to  
7 whether the variance should be issued or denied. The  
8 commissioner shall prepare a notice of the completed application  
9 and the preliminary determination. The notice must include a  
10 statement as to the manner in which the public may submit  
11 comments on the variance application and the manner in which a  
12 person may serve a request pursuant to part 7000.0650, subpart 4  
13 or 7000.1800, asking that a contested case hearing or public  
14 informational meeting be held on the variance application. The  
15 notice must provide the public 30 days in which to submit these  
16 comments or requests.

17 [For text of subps 5 to 7, see M.R.]

18 Subp. 8. **Agency decision.** The agency shall make all final  
19 decisions on variance applications. The agency shall approve or  
20 deny each application. The agency may grant a variance upon  
21 such conditions as the agency may prescribe.

22 If a contested case hearing has been held, the agency shall  
23 act on each variance application as expeditiously as possible  
24 after receipt of the administrative law judge's report and  
25 recommendation, or after submission of the application if no  
26 hearing is held. Any person may submit to the agency an oral or  
27 written statement or recommendation regarding a variance  
28 application in accordance with part 7007.1800.

29 [For text of subps 9 to 13, see M.R.]

30 ETHICAL CONDUCT AND STANDARDS

31 7000.9000 CONFLICT OF INTEREST.

32 Subpart 1. **Conflict of interest.** Any member of the agency  
33 who has a direct and substantial financial or employment  
34 interest relating to any matter before the agency, which  
35 interest is reasonably likely to affect the impartiality or

1 judgment of the agency member in the matter, shall make known  
2 this interest and shall refrain from participating in or voting  
3 upon the matter.

4 Subp. 2. **Outside employment.** No employee or agent of the  
5 agency, including the commissioner, shall engage in any outside  
6 employment or other conduct that is likely to affect adversely  
7 the effectiveness or efficiency of any functions or duties  
8 performed for the agency.

9 Subp. 3. **Postagency representation.** For one year after  
10 leaving the agency, an agency member must not represent an  
11 interested person or party before the agency on behalf of an  
12 interested person or party regarding a matter that previously  
13 was identified as an item on any agency meeting agenda.

14 7000.9100 PROHIBITED EX PARTE COMMUNICATIONS.

15 Subpart 1. **Ex parte communication.** "Ex parte  
16 communication" means an oral or written, off-the-record  
17 communication made between an agency member and a person or  
18 party, without notice to other interested persons or parties,  
19 that is directed to the merits or outcome of a contested case  
20 proceeding or rulemaking proceeding after public hearing. This  
21 term does not include procedural, scheduling, and status  
22 inquiries or other inquiries or for information that have no  
23 bearing on the merits or outcome of the proceeding.

24 Subp. 2. **Communication with agency members.** An oral or  
25 written ex parte communication must not be made or attempted to  
26 be made either directly or indirectly between an agency member  
27 and a person or party concerning a material issue of fact during  
28 a pending contested case proceeding or rulemaking public  
29 hearing, from the date the agency decides to hold the contested  
30 case hearing or the date the rulemaking public hearing is  
31 ordered, until the agency issues its final order or makes a  
32 final decision.

33 Subp. 3. **Disclosure of ex parte communication.** If a  
34 person or party makes a prohibited oral ex parte communication  
35 to an agency member, the agency member must advise the person or

1 party who makes the communication that the communication is  
2 prohibited and shall immediately terminate the communication.  
3 If a prohibited written or oral ex parte communication is  
4 received by an agency member, that agency member must promptly  
5 disclose the following information to the commissioner or agency  
6 chair prior to any decision regarding the contested case or  
7 rulemaking proceeding that is the subject of the ex parte  
8 communication:

9           A. to the extent known, the name and address of the  
10 person making the communication and the relationship, if any, to  
11 the parties to or interested persons in the pending matter or  
12 proceeding;

13           B. the date and time of the communication, its  
14 duration, and the means by and circumstances under which it was  
15 made;

16           C. a copy of the written document or a written  
17 summary of the matters discussed; and

18           D. whether the person or party making the prohibited  
19 communication persisted after being advised that the  
20 communication was prohibited.

21           **Subp. 4. Record of ex parte communication.** The  
22 commissioner must make the tape recording or meeting transcript  
23 showing disclosure of ex parte contacts and all disclosed  
24 written ex parte communications part of the record of the  
25 proceeding to which those communications relate.

26           **Subp. 5. Agency member abstention.** Any agency member not  
27 disclosing information regarding a prohibited ex parte  
28 communication may voluntarily abstain or may be required to  
29 abstain from voting on the matter that is the subject of the  
30 prohibited communication. A determination of an abstention must  
31 be made by a majority of agency members, based on a finding that  
32 a prohibited ex parte communication with an agency member  
33 occurred and was not disclosed in accordance with subpart 3.

34 7001.0110 PUBLIC COMMENTS.

35           **Subpart 1. Submission of written comments.** During the



1 public comment period established in the public notice of an  
2 agency permit, an interested person, including the applicant,  
3 may submit written comments on the application or on the draft  
4 permit. If the subject of the draft permit and public notice is  
5 the modification of a permit, these comments must be limited to  
6 the portion of the permit proposed to be modified. During the  
7 public comment period, the person may also submit a petition for  
8 a public informational meeting or a contested case hearing on  
9 the application. Petitions for an informational meeting must  
10 meet the requirements of part 7000.0650, subpart 4. Petitions  
11 for a contested case hearing must meet the requirements of part  
12 7000.1800.

13 [For text of subp 2, see M.R.]

14 Subp. 3. **Public informational meeting.** If a person  
15 requests a public informational meeting, the comments must  
16 include the items listed in subpart 2 and a statement of the  
17 reasons the person desires the agency to hold a public  
18 informational meeting and the issues that the person would like  
19 the agency to address at the public informational meeting.

20 [For text of subp 4, see M.R.]

21 7001.0125 MEETING WITH AND REPORT OF COMMISSIONER.

22 Subpart 1. **Meeting with commissioner.** Petitioners for a  
23 contested case hearing may request to meet with the  
24 commissioner. The commissioner shall review petitions for a  
25 contested case hearing and, upon concluding that a meeting would  
26 assist the agency in resolving controversy, narrowing issues, or  
27 in otherwise reviewing the matter, ~~and that there is sufficient~~  
28 ~~time for a meeting,~~ the commissioner shall arrange a  
29 meeting with petitioners to discuss:

30 A. whether the petition meets the criteria for a  
31 contested case hearing in parts 7000.1800 and 7001.0110; and

32 B. whether the issues raised in the petition can be  
33 resolved without a hearing and, if not, whether the scope of a  
34 hearing can be limited by mutual agreement of the petitioners  
35 and persons who might be parties to the hearing.

1 Subp. 2. **Commissioner report.** Unless the agency has held  
2 a contested case hearing on the matter, the commissioner shall  
3 prepare a report and shall serve that report upon all agency  
4 members and interested persons at least ten days before a  
5 meeting at which the agency is scheduled to take final action on  
6 the issuance, revocation, or modification of a permit. The  
7 report shall:

8 A. state whether the agency has received any requests  
9 for a public informational meeting and whether those requests  
10 meet the requirements of part 7000.0650, subpart 4;

11 B. state whether the agency has received any  
12 petitions for a contested case hearing and whether those  
13 petitions meet the requirements of parts 7000.0110 and  
14 7000.1800. If not, the report shall describe what requirements  
15 have not been met;

16 C. state whether any meetings have been held under  
17 subpart 1 and, if so, the results of the meetings;

18 D. recommend changes to the proposed permit or other  
19 actions that the commissioner believes are reasonable in  
20 response to comments submitted during the comment period; and

21 E. recommend whether a contested case hearing should  
22 be held and, if so, the issues and scope of the hearing.

23 7001.0130 CONTESTED CASE HEARING.

24 Subpart 1. **Required hearing.** Parts 7000.1750 to 7000.2200  
25 apply to permits governed by this chapter. The agency's  
26 decisions concerning a contested case on a permit matter shall  
27 be made as provided in parts 7000.1750 to 7000.2200.

28 [For text of subps 2 to 4, see M.R.]

29 7001.0140 FINAL DETERMINATION.

30 [For text of subps 1 and 2, see M.R.]

31 Subp. 3. **Contested case hearing.** If a contested case  
32 hearing has been held, the agency shall comply with the  
33 procedures set forth in part 7000.2000 of the agency procedural  
34 rules prior to making a final determination.

35 Subp. 4. **Agency decision when an environmental impact**

1 statement must be prepared. When an environmental impact  
2 statement is required to be prepared before the agency makes a  
3 final decision on a proposed permit, the agency shall not make  
4 its final decision until 25 days or more after the adequacy  
5 decision is made under part 4410.2800.

6 7001.0500 SCOPE.

7 Parts 7001.0010 to 7001.0210 and 7001.0500 to 7001.0730  
8 govern the application procedures, the issuance, and the  
9 conditions of hazardous waste facility permits. Chapter 7000  
10 and parts 7001.0010 to 7001.0210 and 7001.0500 to 7001.0730  
11 shall be construed to complement each other.

12 7001.1000 SCOPE AND CONSTRUCTION OF RULES.

13 Parts 7001.1000 to 7001.1100 govern the application  
14 procedures, the issuance, and the conditions of a National  
15 Pollutant Discharge Elimination System permit. Chapter 7000 and  
16 parts 7001.0010 to 7001.0210 and 7001.1000 to 7001.1100 shall be  
17 construed to complement each other.

18 7001.1400 APPLICABILITY.

19 Parts 7001.1400 to 7001.1470 govern the processing of  
20 certifications by the agency under section 401 of the Clean  
21 Water Act, United States Code, title 33, section 1341  
22 (hereinafter "section 401 certifications"). Parts 7001.0010 to  
23 7001.0210 apply to the processing of section 401 certifications  
24 except as specifically otherwise provided in parts 7001.1400 to  
25 7001.1470. In applying parts 7001.0010 to 7001.0210 to the  
26 processing of section 401 certifications, the word "permit"  
27 shall be construed to mean "section 401 certification" and the  
28 term "permittee" shall be construed to mean "certificate  
29 holder." Chapter 7000 and parts 7001.0010 to 7001.0210 and  
30 7001.1400 to 7001.1470 shall be construed to complement each  
31 other.

32 7001.3000 SCOPE.

33 Parts 7001.0010 to 7001.0210 and 7001.3000 to 7001.3550  
34 govern the application procedures, the issuance, and the

1 conditions of solid waste management facility permits. Chapter  
2 7000 and parts 7001.0010 to 7001.0210 and 7001.3000 to 7001.3550  
3 are construed to complement each other.

4 7007.0850 PERMIT APPLICATION NOTICE AND COMMENT.

5 [For text of subps 1 and 2, see M.R.]

6 Subp. 3. Petitions for meetings and hearings. During the  
7 public comment period, a person may, in regard to any draft  
8 permit or amendment subject to public notice under subpart 2,  
9 items A to D, petition for:

10 A. a public informational meeting pursuant to parts  
11 7000.0650, subpart 4, and 7001.0110, subpart 3;

12 B. a contested case hearing pursuant to part  
13 7000.1800; or

14 C. placement of the permit on the agenda of an agency  
15 board meeting pursuant to part 7000.0650, subpart 3.

16 The decision to grant or deny the petition for a public  
17 informational meeting shall be based on the criteria in part  
18 7001.0120 and any meeting held shall be in accordance with that  
19 part. The decision to grant or deny the petition for a  
20 contested case hearing shall be based on the criteria in part  
21 7000.1900 and any hearing held shall be in accordance with parts  
22 7000.1700 to 7000.2200, and 7001.0130.

23 [For text of subp 4, see M.R.]

24 7023.9000 SCOPE.

25 Parts 7001.0010 to 7001.0210 and 7023.9000 to 7023.9050  
26 govern application procedures for and the issuance and  
27 conditions of indirect source permits. Chapter 7000 and parts  
28 7001.0010 to 7001.0210 and 7023.9000 to 7023.9050 shall be  
29 construed to complement each other.

30 7037.1100 APPROVAL PROCEDURES FOR LAND TREATMENT SITES.

31 [For text of subps 1 to 3, see M.R.]

32 Subp. 4. Denial of approval. The commissioner shall deny  
33 letters of approval for sites that do not meet the criteria  
34 established in parts 7037.0900 and 7037.1000. If the

1 commissioner denies a letter of approval but finds that the site  
2 could be operated in compliance with chapters 7035, 7050, and  
3 7060 if enforceable conditions were established in a permit, the  
4 commissioner shall inform the applicant that the applicant may  
5 apply for a solid waste management permit under parts 7001.0010  
6 to 7001.0210 and chapter 7035. If the commissioner finds that  
7 no conditions could be established that would enable the site to  
8 operate in compliance with chapters 7035, 7050, and 7060, the  
9 commissioner shall notify the applicant of the commissioner's  
10 intent to deny the application and afford the applicant the  
11 opportunity to request a contested case hearing as provided in  
12 part 7000.1800.

13 7037.1300 APPROVAL PROCEDURES FOR LAND TREATMENT OF BATCHES OF  
14 PETROLEUM CONTAMINATED SOIL AT APPROVED LAND TREATMENT SITES AND  
15 FACILITIES.

16 [For text of subps 1 to 3, see M.R.]

17 Subp. 4. **Denial of approval.** The commissioner shall deny  
18 approval of an application for a letter of approval if  
19 acceptance of the batch of petroleum contaminated soil would  
20 cause a land treatment site to operate in violation of the  
21 limitations established in part 7037.1000 or other operating  
22 requirement established in parts 7037.1500 to 7037.2700, or  
23 cause a land treatment facility to violate a condition  
24 established in its solid waste management facility permit. The  
25 commissioner shall notify the applicant of the commissioner's  
26 intent to deny the application and afford the applicant the  
27 opportunity to request a contested case hearing as provided in  
28 part 7000.1800.

29 7047.0040 DEMONSTRATION OF ATTEMPT TO RENDER A HAZARDOUS WASTE  
30 NONHAZARDOUS.

31 [For text of subps 1 to 5, see M.R.]

32 Subp. 6. **Procedure.** The proposer may request, pursuant to  
33 chapter 7001 and parts 7023.9000 to 7023.9050, that a contested  
34 case hearing be held on the determination whether the proposer  
35 has made a satisfactory attempt to render a hazardous waste

1 nonhazardous. Any other person may also request a contested  
2 case hearing pursuant to part 7000.1800.

3 7050.0216 REQUIREMENTS FOR AQUACULTURE FACILITIES.

4 Subpart 1. Definitions. For the purposes of this part,  
5 the terms in items A to J have the meanings given them.

6 [For text of items A to D, see M.R.]

7 E. "Concentrated aquatic animal production facility"  
8 means a hatchery, fish farm, or other facility that contains,  
9 grows, or holds aquatic animals as described in subitems (1) to  
10 (4).

11 [For text of subitems (1) and (2), see M.R.]

12 (3) Case-by-case designation of concentrated  
13 aquatic animal production facilities. The commissioner may  
14 designate any warm, cool, or cold water aquatic animal  
15 production facility as a concentrated aquatic animal facility  
16 upon determining that it may cause a violation of an applicable  
17 state or federal water quality rule or regulation. In making  
18 this designation, the commissioner shall consider the following  
19 factors:

20 (a) the location and quality of the  
21 receiving waters;

22 (b) the holding, feeding, and production  
23 capacities of the facility; and

24 (c) the quantity and nature of the  
25 pollutants reaching waters of the state.

26 A permit application is not required from a concentrated  
27 aquatic animal production facility designated under this item  
28 until the commissioner has conducted an on-site inspection of  
29 the facility and has determined that the facility is required to  
30 be regulated under the permit program. A permit will be  
31 required under this subitem only after the facility has been  
32 given notice of the commissioner's determination and an  
33 opportunity to request a hearing as provided in part 7000.1800.

34 [For text of subitem (4), see M.R.]

35 [For text of items F to J, see M.R.]

1 [For text of subps 2 to 6, see M.R.]

2 7050.0218 METHODS FOR PROTECTION OF SURFACE WATERS FROM TOXIC  
3 POLLUTANTS FOR WHICH NUMERICAL STANDARDS NOT PROMULGATED.

4 [For text of subpart 1, see M.R.]

5 Subp. 2. Site-specific criteria for pollutants not listed  
6 in parts 7050.0221 to 7050.0227. Site-specific criteria for  
7 toxic pollutants not listed in parts 7050.0221 to 7050.0227  
8 shall be derived by the commissioner using the procedures in  
9 this part.

10 A. A site-specific criterion so derived is specific  
11 to the point source being addressed. Any effluent limitation  
12 derived from a site-specific criterion under this subpart shall  
13 only be required after the discharger has been given notice of  
14 the specific proposed effluent limitations and an opportunity to  
15 request a hearing as provided in part 7000.1800.

16 [For text of item B, see M.R.]

17 [For text of subp 3, see M.R.]

18 Subp. 4. Adoption of USEPA national criteria. The USEPA  
19 establishes aquatic life criteria under section 304(a)(1) of the  
20 Clean Water Act, United States Code, title 33, section 1314.  
21 The USEPA criteria, subject to modification as described in this  
22 subpart, are applicable to Class 2 waters of the state. The  
23 USEPA has described the national methods for developing aquatic  
24 life criteria in "Guidelines for deriving national numerical  
25 water quality criteria for the protection of aquatic organisms  
26 and their uses," available through the National Technical  
27 Information Service, Springfield, VA.

28 USEPA criteria that vary with an ambient water quality  
29 characteristic such as total hardness or pH will be established  
30 for specific waters or reaches using data available to the  
31 commissioner. Central values such as the means or medians for  
32 the characteristic will be used unless there is evidence to  
33 support using different values. Values for water quality  
34 characteristics can be estimated for specific waters or reaches  
35 that have no data by using data from a nearby watershed with

1 similar chemical properties.

2 [For text of items A and B, see M.R.]

3 C. If the commissioner finds that the information  
4 that supports a USEPA criterion is no longer current or complete  
5 for reasons including, but not limited to, changes to the  
6 relationship between a water quality characteristic and  
7 toxicity; the ACR; the weight given to toxicity data for a  
8 commercially or recreationally important species; the RfD; the  
9 ql\*; or the BAF; then the commissioner shall evaluate all  
10 available information and modify the criterion according to the  
11 information and with the objectives in part 7050.0217. Any  
12 effluent limitation determined to be necessary based on criteria  
13 derived under this item shall only be required after the  
14 discharger has been given notice to the specific proposed  
15 effluent limitations and an opportunity to request a hearing as  
16 provided in part 7000.1800.

17 [For text of subps 5 to 10, see M.R.]

18 7050.0222 SPECIFIC STANDARDS OF QUALITY AND PURITY FOR CLASS 2  
19 WATERS OF THE STATE; AQUATIC LIFE AND RECREATION.

20 [For text of subps 1 to 6, see M.R.]

21 Subp. 7. Additional standards. The following additional  
22 standards and requirements apply to all Class 2 waters.

23 [For text of items A to D, see M.R.]

24 E. For carcinogenic or highly bioaccumulative  
25 chemicals with BCFs greater than 5,000 or log Kow values greater  
26 than 5.19, the human health-based CS may be two or more orders  
27 of magnitude smaller than the acute toxicity-based MS. If the  
28 commissioner finds that a very large MS and FAV, relative to the  
29 CS for such pollutants is not protective of the public health,  
30 the MS and FAV shall be reduced according to the following  
31 guidelines:

32 If the ratio of the MS to the CS is greater than 100, the  
33 CS times 100 should be substituted for the applicable MS, and  
34 the CS times 200 should be substituted for the applicable FAV.  
35 Any effluent limitation derived using the procedures of this



1 item shall only be required after the discharger has been given  
2 notice of the specific proposed effluent limitations and an  
3 opportunity to request a hearing as provided in part 7000.1800.

4 Subp. 8. **Site-specific modifications of standards.** The  
5 standards in subparts 2 to 6 are subject to review and  
6 modification as applied to a specific surface water reach or  
7 segment in the course of development of a permit effluent  
8 limitation or the evaluation of a remedial action cleanup  
9 activity. If site-specific information is available that shows  
10 that a site-specific modification is more appropriate than the  
11 statewide standard for a particular water or reach to be  
12 protected by the permit or cleanup activity, the site-specific  
13 information will be applied.

14 The information supporting a site-specific modification can  
15 be provided by the commissioner, or by any person outside the  
16 agency. The commissioner shall evaluate all data in support of  
17 a modified standard and determine whether a change in the  
18 standard for a specific water or reach is justified.

19 Any effluent limitation determined to be necessary based on  
20 a modified standard shall only be required after the discharger  
21 has been given notice to the specific proposed effluent  
22 limitations and an opportunity to request a hearing as provided  
23 in part 7000.1800.

24 7100.0340 CERTIFICATE OF EXEMPTION.

25 [For text of subps 1 to 18, see M.R.]

26 Subp. 19. **Opportunity for public hearing.** Any exempt  
27 person may request, in accordance with part 7000.1800, the  
28 agency to hold a public hearing on the proposed modification,  
29 suspension, or revocation. The agency, upon its own motion, may  
30 order that a public hearing be held. In issuing its order of  
31 modification, suspension, or revocation of a certificate of  
32 exemption, the agency shall state the reasons for such action.

33 [For text of subps 20 and 21, see M.R.]

34 7105.0110 SANCTIONS.

35 [For text of subps 1 to 3, see M.R.]

1 Subp. 4. **Contested case requests.** Upon receipt of a  
 2 contested case hearing request, the commissioner shall either  
 3 grant the request and schedule a hearing or put the matter on  
 4 the agenda for consideration at an agency meeting under part  
 5 7000.0550, subpart 2. If the matter is considered at an agency  
 6 meeting, the provisions of part 7000.1900 shall govern whether a  
 7 hearing request is granted. Contested case hearings under this  
 8 part must comply with the contested case provisions of chapter  
 9 7000 and Minnesota Statutes, chapter 14.

10 [For text of subps 5 to 7, see M.R.]

11

12 **RENUMBERER.** In Minnesota Rules, the parts in column A are  
 13 renumbered as the corresponding parts in column B.

	A	B
14		
15	7000.0600	7000.5000
16	7000.0700	7000.7000
17	7000.1000	7000.1750
18	7000.1100	7000.2000
19	7000.1400	7000.9000
20		

21 **REPEALER.** Minnesota Rules, parts 7000.0100, subpart 6;  
 22 7000.0500, subparts 3, 4, 5, 6, 7, 11, 12, 14, and 15;  
 23 7000.1000, subparts 2, 3, 5, 6, 8, and 9; 7000.1500; and  
 24 7000.1600, are repealed.