

Statement of Need and Reasonableness  
Operating Rules for  
Environmental Quality Board

6 MCAR §§ 3.001 - 3.013

Procedural rules are needed because the board makes difficult decisions on frequently controversial subjects with much public interest in the decision. The board encourages public participation in its decision-making process, therefore a predictable, orderly and fair method of conducting the business of the board is required.

In 1973 the board adopted procedural operating guidelines and has amended them occasionally as circumstances required. Generally, these proposed rules follow the procedures adopted through the years by the board. These procedures have been found to work and also meet the criteria of predictability, orderliness and fairness. The rules extend the procedures established in Robert's Rules of Order to accommodate the particular situations the board may face.

These rules will not directly affect small businesses and are therefore exempt from the requirements of Minn. Stat. Ch. 14.115, Small Business Considerations in Rulemaking. Since these rules do not set performance, design or operational standards nor compliance reporting requirements, exemption under Minn. Stat. Ch. 14.115, subd. 7b is applicable. In general, these rules should positively impact small business by establishing an orderly, fair and predictable method of interaction with the board.

6 MCAR § 3.001 Authority.

It is not essential that the authority for promulgating rules be included, however, it is included for the purpose of directing the reader to the proper statutory references. This is particularly important since the board frequently is involved in matters in which large numbers of citizens unfamiliar with administrative procedures participate.

6 MCAR § 3.002 Definitions.

Definitions are provided to clarify references to specific terms used in the rules.

6 MCAR § 3.003 Duty of candor.

It is necessary that accurate information is received from persons interacting with the board. This section, therefore, requires truthfulness and candor from all persons dealing with the Environmental Quality Board. To ensure that accurate information is provided, this section also establishes the types of penalties the board may impose if the duty of candor is violated. These penalties are stated in general terms and could vary according to the offense and the authority of the board. Finally, an orderly and open method (a contested case hearing) is provided to determine if a violation of duty of candor has occurred.

6 MCAR § 3.004 Ex parte communication.

This rule is necessary because it provides that all comments received by board members from parties on a matter subject to a hearing will be disclosed to all board members and all parties. This rule prohibits individual lobbying efforts by parties to a matter that could be used to inappropriately sway the opinions of individual board members.

The rule is reasonable and provides that board procedures are consistent with notions of due process and fundamental fairness. The Minnesota Supreme Court has noted that ex parte contacts may violate principles of fundamental constitutional protection and due process. See e.g., Crosby-Ironton Federation of Teachers, Local 1325 v. Independent School District No. 182, Crosby-Ironton, 285 N.W.2d 667 (Minn., 1979). In that case the Court noted that "[a]ny case reaching this court where ex parte contacts are under dispute, without notifying all other parties to the dispute, will raise a strong presumption that the ultimate award was procured by corruption, fraud, or other undue means..." Id at 670.

6 MCAR § 3.005 Board officers and duties.

A. Chairperson. It is necessary that the board function in an orderly and predictable manner. Therefore, assignment of personal responsibility for board functions is reasonable. Although Minn. Stat. Ch. 116 C designates the chairperson, it is reasonable to refer to other legislation as well as board adopted rules which also contain functions delegated to the chairperson.

B. Vice Chairperson. It is necessary to the orderly functioning of the board that a substitute chairperson is designated. It is reasonable that the board elect the vice chairperson annually. Since citizen board member appointments are staggered and expire the first Monday in January, it is reasonable that a vice chairperson be elected from the members in February of each year.

C. Presiding officer. For the orderly conduct of board business it is necessary that a meeting for which a quorum is present is held. It is reasonable that the board elect a presiding officer for the meeting or a portion of the meeting when both the chairperson and vice chairperson are unavailable.

6 MCAR § 3.006 Board meeting procedures.

A. Decisions at open meetings. Although Minn. Stat. § 471.705 (1982) and Minn. Stat. § 116C.04, subd. 1 (1982) provides that all board meetings are open and all board decisions are made in an open and public forum, it is reasonable and necessary to repeat the requirement because of the large number of citizens who participate in EQB meetings, some of whom may be unfamiliar with the open meeting law.

B. Posting of meeting notices. This rule is needed to fully implement the requirements for holding open, public meetings. (See Minn. Stat. § 471.705 (1982)) It is reasonable to designate a conspicuous place in the board offices where notice for all board-authorized meetings must be placed.

C. Notice of regular meetings. This rule fulfills the need for adequate board member and public notice before regular meetings. It is reasonable to schedule regular meetings for once each month thus allowing the board time to complete the tasks required by Minn. Stat. 116C, while providing enough time between meetings for adequate public notification and staff work prior to each meeting. Designation of the time, place, and advancement or postponement of the regular meetings by the chairperson is reasonable since it allows some flexibility in the meeting schedule to respond to the various situations that may arise. Board meeting notice is routinely distributed to 500 or more individuals and the media ten days in advance of the meeting. This lead-time has worked well in the past. Posting of a regular meeting notice and publication in the EQB Monitor is a reasonable method of general notice of meetings.

D. Notice of special meetings. With the numerous requirements of the board and the sensitive nature of the decisions the board must make, it is likely that occasionally a meeting may need to be held in addition to or at a different time than the regularly scheduled meeting. This rule responds to the need and reasonably requires fewer days notice in special circumstances.

E. Agenda preparation. It is necessary for the orderly conduct of business that all participants in a meeting know what is to occur at a meeting. It is reasonable to prepare an agenda in advance of a Board meeting which alerts the public and the board of the issues to be decided or discussed at the board meeting and allows time for adequate preparation for the meeting. Notifying the chairperson of an agenda matter 14 days in advance is necessary because of the number of agendas which are printed and distributed 10 days before a regular meeting. It is reasonable that the chairperson determines the agenda items, and that the board is notified of the chairperson's decision and may determine to place an item on a subsequent agenda or hold a special meeting.

F. Filing of written materials. For the orderly conduct of business it is necessary that written materials are received prior to a meeting. Providing copies to board members and parties 7 days before a meeting is a reasonable method for distribution of relevant materials concerning an agenda item and reasonable time for both board and party review. The chairperson is authorized to waive the requirements--for just cause--which allows the flexibility to respond to unusual circumstances.

G. Quorum. This rule is reasonable because it provides a minimum number of board members which are required to transact business but allows some members to be absent without precluding the board from conducting business.

H. Parliamentary procedures. It is necessary that procedures are established for circumstances not covered in these rules. This rule is reasonable because it provides for the orderly conduct of board meetings when such circumstances arise.

I. Adoption of agenda. It is necessary for the orderly conduct of business that the chairperson prepare an agenda. It is necessary also that board members have input into the agenda and that the public may rely on the agenda. This rule is reasonable because it provides board members an opportunity for input into agenda decisions while guaranteeing that board action on a matter will not occur without prior public notice. The rule also gives flexibility by allowing agenda modifications which may be necessary due to changed circumstances occurring after agenda preparation.

J. Public forum. It is necessary that the public have some method of access to the board. This rule reasonably provides a method for public access to the board as well as a method of control to ensure that the orderly transaction of agenda business occurs.

K. Arguments and presentations.

1. For full and open discussion, it is necessary that public input be allowed on all agenda matters. This rule is a reasonable method of ensuring public input into matters which have not had public hearings. A time frame is established to allow board member review of written materials prior to a meeting. A method is established which provides adequate time for response from persons affected by a statement to ensure fairness and provides opportunity for an open and balanced discussion of all sides of an issue before a board decision.

2. It is necessary that the board transact business in an orderly, fair manner. This rule reasonably gives the chairperson the authority to limit debate and discussion before the Board. This helps to ensure that board meetings will be conducted in an orderly, but fair, manner and that irrelevant debate will not keep the board from completing its scheduled work.

L. Voting.

1. It is necessary that an orderly, predictable manner of decision-making is established. The reasonable requirement that a majority vote of all members is necessary for a decision ensures that a minority position will not prevail simply because opposing board members were absent from a meeting.

2. It is necessary that a method of computing a majority is established for predictable decision-making. This rule provides a reasonable method for computing a majority, which is consistent with Minn. Stat. ch. 116 C and court decisions concerning majorities. (Ram Development Co. v. Shaw, 309 Minn. 139, 244 N.W.2d 110 (1976); Van Cleve v. Wallace, 216 Minn. 500, 13 N.W.2d 467 (1944); State ex rel. Peterson v. Hoppe, 194 Minn. 186, 260 N.W. 215 (1935))

3. It is necessary that a predictable method is established for making board decisions. Because of the stringent majority requirements established under Minn. Stat. Ch. 116 C, it is likely that board action may not occur on some agenda items. This rule reasonably establishes that, in such a case, the matter will be before the board at the next meeting and until action has been taken.

M. Record of meetings. It is necessary that records of meetings and decisions are kept. (See Minn. Stat. § 471.705 (1982)) It is reasonable to require minutes since minutes taken at board meetings provide the board with an accurate record of past decisions and discussions and provide the public with a record of previous board actions.

N. Notice of decisions. It is necessary to avoid confusion and to insure due process that those affected by a decision receive written notice of that decision. This rule reasonably establishes a predictable method of providing notification of board actions to both parties and interested persons. This promotes openness and public awareness of board actions.

6 MCAR § 3.007 Southern Minnesota Rivers Basin Council.

A. The Southern Minnesota Rivers Basin Council (SMRBC) became an advisory council to the board on July 1, 1983 by legislative action. It is reasonable that the purpose of the SMRBC is included in the rules to aid understanding of the council as well as its relationship to the board.

B. It is necessary that an orderly method is established for the council to submit its work to the board.

C. It is necessary to establish that all meetings of the council are open and the method of notification for meetings as required by Minn. Stat. § 471.705 (1982) are followed.

6 MCAR § 3.008 Board subcommittees, task forces.

Pursuant to Minn. Stat. § 116C.04, subd. 4 (1982) the board is authorized to establish interdepartmental or citizen task forces or subcommittees to study particular problems. In order to carry out the duties mandated in Minn. Stat. ch. 116C, it is necessary to establish a method for the board to form groups. This rule is reasonable because it:

A. Provides an orderly method for the board to establish groups to aid in performing its duties. The method gives the board direction of the groups and the flexibility to respond to the circumstances for establishing each group;

B. Establishes the over-all advisory purpose of each group and the limits of subcommittee or task force authority;

C. Establishes the output expected by the board from each group and provides an orderly method for the board to receive recommendations from the groups; and

D. Establishes that the public may attend all subcommittee or task force meetings and designates a place for public notice of each meeting as required by Minn. Stat. § 471.705 (1982).

6 MCAR § 3.009 Exceptions and proposed findings.

For the orderly, predictable conduct of board duties, it is necessary that a method is established for timely board receipt of all opinions on an issue.

A. Exceptions to report of hearing examiner. This rule reasonably provides an orderly, timely method for submission of responses to a hearing examiner's finding for a contested case. It is also reasonable to establish criteria for the chairperson to use when responding to a request for waiving the requirements for time for filing or number of copies to be filed.

B. Proposed findings in other than contested cases. This rule is reasonable because it provides an orderly, timely method for submission of proposed findings. It also establishes reasonable criteria for the chairperson to use when responding to a request for waiving the requirements of time for filing or number of copies to be filed.

6 MCAR § 3.010 Parties.

A. It is necessary that parties to a contested case are aware of their rights and obligations. This rule identifies the rules which govern the rights and obligations of parties in contested cases.

B. It is necessary to establish parties in a board hearing. This rule is reasonable because it provides a method for identifying parties to board hearings.

C. This rule is reasonable because it identifies the rights and obligations of parties in board hearings.

6 MCAR § 3.011 Intervention.

A. For contested cases it is necessary that those desiring to intervene are aware of the procedures. This rule is reasonable because it identifies the statute and rules which govern intervention in contested cases.

B. It is necessary that a method is established allowing for intervention in board hearings. This rule reasonably establishes a method for intervening in board hearings which authorizes the chairperson to grant permission for intervention and identifies the rights and obligations of intervenors. The rule also is reasonable because it identifies the rights of any person in a board hearing.

6 MCAR § 3.012 Final Decisions and Orders

A. Decision. To avoid confusion, it is necessary that the final decision maker is established. This rule is reasonable because it establishes that the board must make all final decisions and orders when a hearing, contested case or rulemaking proceeding has been held. It is also reasonable to provide that the board's decision on a matter following a hearing will, when required by law, be based solely on the record of the hearing as required by the Minnesota Administrative Procedures Act, Minn. Stat. § 14.62 (1982).

B. Findings and conclusions. It is necessary that both the public and parties understand the basis for the board's decisions. It is also necessary that every decision and order rendered by an agency in a contested case be in writing and include the agencies' Findings of Fact and Conclusions of Law on material issues (Minn. Stat. § 14.62 (1982)). This rule is reasonable because it requires findings and conclusions for each decision which provides the parties to a matter and the public with a full and public record of the facts considered and reasoning used for the board's decision.

This rule is reasonable because it provides a procedure for the rejection of proposed findings and the adoption of alternative findings by the board. This ensures that the parties to a matter and the public will be given a full explanation of the reasons for the board's decision.

C. Remand. It is necessary that a method is established for further examination of an issue if the circumstances warrant. This rule is reasonable because it authorizes the board to remand a matter and identifies reasonable criteria for making a determination to remand.

6 MCAR § 3.013 Reconsideration and rehearing.

A. While the Minnesota Administrative Procedures Act does not specifically provide for reconsideration, it recognizes that reconsideration may occur. See Minn. Stat. § 14.64 (1982). It is necessary that a method is established for reconsidering a decision. This rule is reasonable because it provides an opportunity to reconsider a board decision and identifies exceptions to the board's right to reconsider; and

B. Establishes a method for requesting reconsideration and a method for handling the request.

C. Obtaining a rehearing. It is necessary that a method is established for rehearing a contested case or hearing if the circumstances warrant a rehearing. This rule is reasonable because it:

1. Establishes a process for requesting a rehearing;
2. Establishes reasonable criteria to be used when the board is determining whether to grant a rehearing; and
3. Establishes a predictable method for the notice and conduct of a rehearing.

## OFFICE OF THE REVISOR OF STATUTES

## Proposed Rule

RD472

Agency: Environmental Quality Board

Division:

Agency Contact: Shirley Dougherty 296-2723

Part Numbers: 4405.0100 to 4405.1300

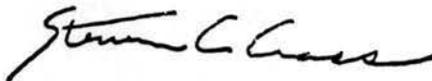
Title: Proposed Operating Rules of the Environmental  
Quality Board

Type of Rules: Permanent

Incorporations by Reference: None

Duplication of Statutory Language: None

The attached rules are approved as to form.



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Steven C. Cross  
Revisor of Statutes

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Maryanne V. Hruby  
Assistant Revisor  
Phone: 297-2948  
Date: February 2, 1984

Environmental Quality Board

In the Matter of the Proposed Adoption of Rules Governing Operating Procedures for  
Conduct of Business of the Environmental Quality Board

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Minnesota Environmental Quality Board proposes to adopt the above-entitled rules without a public hearing. The Board has determined that the proposed adoption of the rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sections 14.21-14.28 (1982/Supp. 1983).

Minnesota Statute section 116C.04, subd. 5 (1982) establishes the authority for the Environmental Quality Board to adopt rules governing its own administration and procedures. A statement of need and reasonableness that describes the need for and reasonableness of the proposed rules has been prepared and is available for inspection by the public during regular business hours or a copy may be provided upon request to the address below.

Persons interested shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Board and do not result in a substantial change in the proposed language.

Unless seven (7) or more persons submit written requests for a public hearing on the proposed rules within the 30 day comment period, a public hearing will not be held. In the event a public hearing is required, the Board will proceed according to the provisions of Minnesota Statutes 14.13-14.20 (1982/Supp. 1983). While not required, it would be helpful to the Board if persons requesting a public hearing identify the particular provisions objected to, the suggested

modifications to the proposed rules, and the reasons or data relied on to support the suggested modifications.

Upon adoption of the final rule without a public hearing, the proposed rule, this notice, the statement of need and reasonableness, all written comments received, and the final rule as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written request to the address below.

A copy of the proposed rules follows this notice. Additional copies may be obtained at the address below. 10

Persons who wish to submit comments or a written request for a public hearing, or who wish to receive a copy of the final rule or to be informed when the rule is submitted to the Attorney General, should submit comments or requests to:

Shirley M. Dougherty  
Environmental Quality Board  
Room 110, Capitol Square Building  
St. Paul, MN 55101  
(612) 296-2723

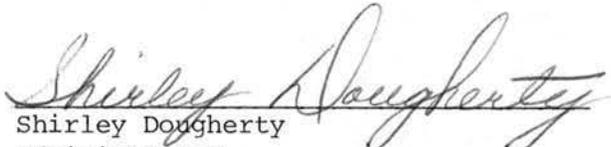


CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA

In the Matter of the Proposed Adoption  
of Rules of the State Environmental  
Quality Board Governing Operating  
Procedures for Conduct of Business

I hereby certify that the list of persons, associations,  
and other interested groups who have requested, pursuant to Minnesota  
Statutes, section 14.14, subdivision 1, that their names be placed on  
file with and maintained by the State Environmental Quality Board for the  
purpose of receiving notice of the proposed adoption of rules by this  
Board is accurate and complete as of 8:00 a.m. this 23rd day of  
March, 1984.

  
Shirley Dougherty  
Administrator

## **Environmental Quality Board**

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Environmental Quality Board  
Room 110, Capitol Square Building  
St. Paul, MN 55101  
(612) 296-2723

#### **Rules as Proposed (all new material)**

##### **4405.0100 DEFINITIONS.**

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

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

**Subp. 3. Board.** "Board" means the Minnesota Environmental Quality Board.

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

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

**KEY: PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **ADOPTED RULES SECTION** — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.