

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

(612) 339-8551 RES. 927-6456

MICHAEL L. FLANAGAN
ATTORNEY AT LAW

VAN VALKENBURG, COMAFORD
2350 I D S CENTER
MINNEAPOLIS, MINNESOTA 55402

Hanover Building – 480 Cedar
Saint Paul, MN 55101
Phone (612) 227-9591

MACI
MINNESOTA ASSOCIATION OF COMMERCE AND INDUSTRY

JAMES T. (TED) SHIELDS
Director of Environmental Affairs

~~CMI~~

PAUL W. HALLMAN
GENERAL COUNSEL

CAN MANUFACTURERS INSTITUTE
1625 MASSACHUSETTS AVENUE N. W.
WASHINGTON, D. C. 20036

OFFICE: 202/232-4677

The following is a transcript of an April 25, 1973 meeting of the Minnesota Senate Subcommittee on Environmental Protection, a subcommittee of the full Natural Resources and Agriculture Committee. The following were members of the noted subcommittee: Senator James Lord, Chairman; Senator Charles Berg; Senator Robert Dunn; Senator Wayne Olhoft and Senator Howard Olson. This transcript was prepared from a tape recording of the noted hearing. The tape recording was purchased from the Secretary of the Senate.

This transcript includes the testimony of Senator Lord, the author of Senate File 2197 on certain amendments to the noted bill, primarily the so-called "grandfather clause".

Senator Lord: Mr. Chairman.

Senator Olson: Senator Lord.

Senator Lord: Mr. Chairman, members of the committee. At the last meeting we ran into difficulty and many objections to Section 6 in Senate File 2197. Taking these objections into mind, since the last meeting, I have taken a second look at Section 6---Excuse me---every since I said that naughty word on television I can't talk right---(laughter)--taking the points which were brought up at that last committee meeting which I believe were that we did not want to give all this authority to the Pollution Control Agency, that we would like to retain this with the Legislature, I believe that this was an appropriate objection I mean, an objection of the philosophy which I got from this committee. With rewritten Section 6 we left the final authority of any rules or regulation up to the legislature.

Mr. Chairman, members of the committee, I think all of us recognize one problem, what we're trying to tackle here are new products coming into the market in Minnesota. I am sure all of us agree that we don't like to see a market come on into Minnesota like bottles and cans are here now and then a few years later have this issue brought up to the legislature when there has already been a industry brought in here or something and we find that it's got a hazardous environmental impact yet we've allowed them to construct a facility or make major investments in marketing materials in Minnesota, so to correct this problem with any new

products coming in any new packaging I believe it is appropriate for some state agency to take a look at these products and to work with industry to find out if there are any problems with these packages or containers as far as their adaptability to our solid waste system and the environmental impact of the product. So in Section 6 what I propose is that the Pollution Control Agency, the 9-member board, take a look at the new products that come into Minnesota, if they find that they have a hazardous effect they can hold these products out long enough to let the legislature take a look at them. If the legislature in their wisdom, decides that these products ought to be prohibited from sale in Minnesota the legislature could act upon that measure. However, as Section 6 is now written if they did not act upon the measure by the end of the following legislative session then any prohibition that the Agency would put on a product would be lifted and the products allowed to be sold in Minnesota. Mr. Chairman, I think it successfully tackles the problem that we could see in the future starting out today and looking ahead and avoiding any problems we have now and I site the example of bottles and cans. Mr. Chairman, first I would like to move to amend S.F. 2197, I believe all of you have the amendment, um, the amendment before you though however, I would like to make one author's change, I would like to strike, um, lines 14 I would like to make, scratch "types" and insert "type", 15 strike "containers" and insert "container"; on line 23 after the period strike "the Agency"; strike all of 24 and 25 and Mr. Chairman speaking to this amendment now what it does begins I'd like to read the first subdivision.. "The Agency shall advise and assist industry and business within the state providing and developing packaging and containers that are compatible with solid waste disposal for environmental protection goals of the state." Subdivision 2 it explains how they do this, that after holding appropriate hearings they decide that a package would harm the solid waste disposal system or the environmental protection goals of the state it would have the authority to prohibit the sale of these containers or packages in Minnesota, this prohibition would remain into effect until the legislature got a chance to look at it, it remains in effect until the last day of the following legislature,

legislative session, it says that if the legislature does not adopt that prohibition if the prohibition is lifted in so many words and it also states that if they are not able after the legislature does not act on it to re-establish the prohibition after the legislature goes home, this is also that safety clause in there. It also says that a, I think this will be the practical effect of it too, is that any person wishing to introduce a new material into the Minnesota's market could go to the Agency for their review, if the agency does not, the agency has 120 days to make a determination if they want to prohibit the use of that material in Minnesota and this is another safety clause so that the PCA could not, feasibly I don't think they'd do it, but so that they could not stall and stall and stall and that way prohibit its introduction into Minnesota's markets. After that 120 days, during the 120 days, they can prohibit the use. There is also another safety clause in here, Mr. Chairman, it says if the Agency decides that they have made a mistake they can rescind their prohibition on any product so they are not locked into something, they can't change their mind on. Also in subdivision 4, it says that they shall make a report to the state legislature on this subject and naturally many of these reports may, would deal with, the prohibitions they'd put into effect. Mr. Chairman, this grandfather's in bottles and cans, it doesn't effect them, but it does effect any future type of materials that are going to be introduced into Minnesota, um, when we look at their environmental impacts. I would be very glad to answer any other questions the committee may have.

12-6-74
9 AM

Hearing on PCA Rules

Sandra Sandberg
Jack Mason
Tom Reed
Paul Hallenbeck
WDNR

Jm 1. Stat. req. obj. stds. if const.

PH 2. Basic problems - major ones -

a. lack of obj.
b. Can't self-apply -- too vague
c. Lack alternatives - no legal basis
d. Product bias - g/father clause (SIC code)
e. Amdt. of "new" w/o hearing
f. Exemptions - unreasonable
g. Extended review period (150 stat. max.)
h. Submission for review (SR-5).

SG a, b Vagueness - w/ vague e.g. BTM's
- can only prohibit by amt. hearing w/ data supported - cont. cases
- better if quant. criteria

Jm - problem: vague -- no reliable stds. "later amdts." - premature
mm Could give chemical components

SG - this is gen. policy
- stds. allow determination
- why no basis for comp. w/ alternatives?

↓

PH - law says must det. wh. del. waste problem or be incon. w/ state env. problem -

SG - all approach lets ind. show need -

"adm. bill of attainder"

"despotic prohibitions"

LR - this is unrealistic view of ind. process
SG - says this is obj. to regulation per se
JM - must have ascertainable stds. -- w/ have unfettered power - allows arbitrary decisions
SG - says can make jmts. based on these stds.
PH - says could have actual obj. regs. regardless of alternatives
SG - would it be preferable to ignore product contained?
PH - Law calls for analysis of env. impact
SG - says this process calls for comparison.

Product bias - PA no stat. basis →

SG - problem: grandfather clause →
stat: package or cont. sold at retail
Sandy says this is generic -
Others say no

subd. 2 - look to this for guidance →

SG - says putting diff. package on product can be innovation - or diff. food in same package that exists

* says look to innovation (stat. lang.)
PH says innovation in pkg., w/ what's in it -

SG - says must look at product/pkg combo to evaluate.
says leg. intended existing prod/pack combos -

Orr v. Rochester – 193 M 371
258 NW 569 (1935)

SG – says new or revised plays. (also innovations)
↓
talks to products
Jack Mason Zebra meat in grocery bag hypo

SG – says all. are reference to env. acts + stds. set out therein.

Amdt. of "new" w/o hearing –
Problem – no notice to public
– new defn. more inclusive
– PH says this issue nt specifically addressed @ hearing —

Exemptions – unreasonable
SR 4 A-1 S& deposit →

PH – no basis in record
– legislature rejected this possibility
– no ev. that S& dep. will enc. return –

* SG – says bottlers g/fathered in –

PH – says return w/ mean reuse —

JM – Stat. unconst. as provides no stds
1) – saved only by specific stds.
– can be unconst. in application

2) "Any" means "any"

- Extended review period -

PA (subd. 3) act says - review - failure w/in 120 days + 30 days (for good cause)

Agency - worked in ← add'l 60 days -

Rule 3(c)
10 day notice of review
30 day mfr. subm. of data

w/in 10 da of receipt of plg PA says this shall start proceedings, acc. to stat.

12-16-74 11AM meeting -

Ted Shields
Mike Flanagan
Sandy Goldberg
Nixon

TS Sub. 1 - agency advise -

① subjective guidelines - no certainty of OK plg

MF Sub. 3 - ident. plng subj. to review -

② Don't identify plngs in rules -

③ no discussion of contents of plg.

Ⓐ - purpose of grandfather clause was to help all present plngs. - protect jobs + capital investment (TS agrees w/ PCA -- must look @ combo) need change in leg. - calls for leg. change - need further legislative guidance - no rules now -

Sbt - agrees stat. problems -- but still workable -

- says meets subd. 1 - advise industry - n/grand. Criteria

SG says PCA can make rational jmts. on basis of criteria

TS says guides w/ reflect advice - (of industry)

3M proposed objective criteria
- point system.
SG said w/ workable --
too arbitrary — also w/ produce results wanted →

TS
- says w/ clear wh/ proposals will pass
- "beneficial or adverse effect on labor force"
- how determine ?

↓

if deter new phys. may contravene the intent of law to reduce solid waste

SG - said can determine these things if do homework -

↓

says will take out "econ" language
-- that industry request

RELEVANT? ←

TS - says no tech. basis @ present for obj. criteria →
- w/ workable -
- look at lack of staff

MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Pollution Control Agency - Division of Special Services
(Agency or Board)

Regulation No. SR 1 thru SR 6 (new)

Subject: Packaging Review

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

DEC 31 1974 3:40 PM

BY Eda Staudenmaier
AUTH. SIGNATURE EJ

Stamped and filed with the Secretary of State 12-31-74

Rev. 9-72

PCA Ex 4
7/17/74 KK

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Adoption of Proposed Minnesota Guidelines on Packaging SR-1, SR-2, SR-3, SR-4, SR-5 and SR-6 Including Applicability and Definitions Criteria, Review Procedures, Exemptions, Information Required for Review, and Confidentiality

AFFIDAVIT

I, Randall W. Dunnette, being duly sworn on oath, depose and say that:

1. I am a full-time employee of the Minnesota Pollution Control Agency.

2. On the 13th day of June, 1974, I went to the Secretary of State's Office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or individuals who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the adoption of or amendments to Minnesota Pollution Control regulations.

3. On the 13th day of June, 1974, in response to above request, the Secretary of State provided me with such a list, copy of which is attached hereto and incorporated by reference.

Randall W. Dunnette

Randall W. Dunnette

Subscribed and sworn to before me this 25 day of June, 1974

J. R. Black

Notary Public

JOHN BLACK
Notary Public, Anoka Co., Mn.
MY COMMISSION EXPIRES
April 23, 1976

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Adoption of Proposed Minnesota Guidelines on Packaging SR-1, SR-2, SR-3, SR-4, SR-5 and SR-6, Including Applicability and Definitions, Criteria, Review Procedure, Exemptions, Information Required for Review and Confidentiality

FINDINGS OF FACT

The above-entitled matter came on for public hearing before the Minnesota Pollution Control Agency on the 17th day of July, 1974, at 9 o'clock a.m., in the Board Room of the Agency offices, 1935 W. County Road B2, Roseville, Minnesota, after proper notice required by Minnesota Statute §15.0412 (1971) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording all interested persons an opportunity to present written and oral data, statements and arguments, having considered all of the evidence adduced and upon the records, files and proceedings herein, this Agency finds the following:

1. The definition of "user," contained in SR-1, is needed in order to show that the entity which combines package/container with product to form a retail sales unit has the responsibility for submitting information pursuant to other sections of the regulations. Earlier drafts of the guidelines referred to the "manufacturer," creating confusion as to whether it was the maker of the product or the maker of the package to which the term referred.

2. "Sold at retail" is appropriately defined in SR-1 to indicate that the Agency will review only packages/containers going to the ultimate consumer. The authorizing statute itself makes reference to such a limitation.

3. Comparison by Agency staff of a new or revised package/container with feasible packaging alternatives is an appropriate and reasonable method to assess the environmental impact of a proposed package/container. The six general criteria which will be utilized in assessing packaging alternatives were chosen on the basis of language within the authorizing statute, Minn. Stat. Chapter 116F (Supp. 1973), and its reference to policies enumerated in the Minnesota Environmental Policy Act, Minn. Stat. Chapter 116D (Supp. 1973).

4. Biological harm caused by the release into the environment of chemical substances is one measure of environmental degradation. Therefore, in reviewing new or revised packages/containers, it is reasonable for the Agency to assess the impact of the presence of such materials in the package/container. The choice of metals, hydrocarbons and organic or inorganic chemicals as classes of substances to be considered is designed to be comprehensive of all chemicals with the potential for such harm.

5. A package/container must be assessed to determine if the package/container is likely to be improperly disposed of, and if so, to determine whether it will degrade naturally or will require manual pickup for proper disposal. Therefore, litter potential is appropriate as a criteria for package/container evaluation.

6. The energy requirements for production of package/container represent one of its major environmental impacts and therefore must be assessed. Furthermore, the language of the authorizing statute requires the Agency to consider this parameter in its evaluation of a package/container.

7. The use in packages/containers of non-renewable resources and of non-scarce resources, the acquisition of which significantly degrades the environment, is a major impact of packaging materials and it is therefore necessary and appropriate to consider such use in Agency evaluation of a new or revised package/container.

8. The use of virgin materials in packages/containers requires the use of resources and energy at higher levels than the use of materials which are recycled. Maximizing uses of recycled materials will have the effect of reducing environmental impacts. Accordingly, this factor must be included in any package/container review in order to properly evaluate the package/container.

9. Since encouraging the development of resource recovery systems is one aim of the packaging review program, evaluation of a new or revised package/container's recyclability potential is reasonable. Material and design choices for packages/containers must be made to prevent combinations of materials or design features which would prevent their use in current or projected resource recovery systems.

10. The bulk of packaging solid waste is currently landfilled and will be for the foreseeable future. Reducing the volume of solid waste will result in a reduced demand for landfill space, and hence reduce the environmental impact of solid waste disposal. Therefore, it is reasonable for the Agency, in reviewing a new or revised package/container, to assess its effect on the volume of solid waste generated in Minnesota.

11. The authorizing statute requires the Agency to consider the economic impacts of the implementation of the packaging review program. It is reasonable to consider such impacts for the consumer, for labor and for industry.

12. Proposed Sections SR-2 (D), (E) and (F) have been deleted from the guidelines because evidence does not support such a materials hierarchy.

13. The review process contained in SR-3(B) is essentially that described in the authorizing legislation, Minn. Stat. Chapter 116F.06 (Supp. 1973). To assure that the package/container user is informed of the Agency's decision, a requirement that the Agency notify the user is appropriate. In order to be consistent with the exclusion from review of packages/containers based on the product categorization of the Numerical List of Manufactured Products (New (1972) SIC Basis), it is appropriate to limit the use of approved packages/containers on the same basis.

14. It is reasonable to allow optional submission for review by the package/container user, as well as to provide for initiation of review by the Agency itself or any other person. Allowing package/container users to initiate the review process will avoid uncertainties as to whether the Agency or some other person may initiate review in the future. Because the packaging review program is aimed at the packaging of products sold or transferred directly to consumers in the retail marketplace, consumers can provide valuable assistance to the Agency by drawing to its attention new or revised packages/containers which the Agency may then wish to review.

15. Where someone other than the package/container user initiates the review process, it is necessary to provide an orderly procedure whereby the package/container user may be notified of the Agency's intention to review a package/container. The Notice of Intention to Review meets this need, and the requirement that the Agency send out the Notice within 10 days of identification or receipt of a package/container to be reviewed, assures that the review process will not be unduly delayed, thereby prejudicing the package/container user whose products are already in the market place. Similarly, the 30 day limit on the submission of information provides reasonable assurance that the review process will proceed expeditiously.

16. Evidence indicates that a deposit of five (5) cents or more on packages/containers provides an adequate economic incentive for reuse. Since reuse reduces the consumption of energy and resources and minimizes the environmental impact of packaging, an exemption from review based on this factor is reasonable.

17. Evidence indicates that larger packages/containers require less energy to fabricate and fewer resources to produce. Since such reduction in resource and energy consumption is one of the objectives of the packaging review program, it is appropriate to include an exemption from review for packages/containers having a capacity of greater than two (2) gallons by volume or twenty-five (25) pounds by weight.

18. The exemption from review provided in SR-4 for new or revised packages which are designed to comply with federal health or safety requirements acknowledges that as to some aspects of packaging design and fabrication the federal government has preempted the states from acting. While such acknowledgment may not be strictly necessary, its inclusion will avoid confusion for package/container users subject to several regulatory programs. It is reasonable that the exemption be narrowly drawn, however, in order to assure that it is not used to circumvent the review of changes which are outside the scope of other regulatory requirements.

19. An exemption for new or revised packages/containers which convey meat products subject to inspection by the U.S. Department of Agriculture pursuant to the Federal Meat Inspection Act is appropriate inasmuch as that act specifically preempts the states from imposing different packaging requirements for such products.

20. Evidence indicates that approximately 85% of the residential packaging solid waste stream is composed of packages/containers which originally conveyed products coming within Industry numbers 20111 - 20999 inclusive, 28412 - 28424 inclusive, 28441 - 28445 inclusive of the Numerical List of Manufactured Products (New (1972) SIC Basis). Therefore, limiting Agency review to these categories of packaging constitutes an efficient use of staff time while at the same time subjecting the majority of new or revised packages/containers to potential Agency review.

21. Evidence presented at the public hearing indicates that the proposed exemption for packages/containers clearly intended for multiple reuse, is ambiguous and may provide a "loophole" for packages which should be subject to Agency review. Consequently, this exemption has been deleted from the guidelines.

22. SR-4 (B) provides for exemptions from review for certain new or revised packages/containers where the modifications are minimal and of a routine nature. It is reasonable to exclude these inasmuch as their review could create excessive administrative and financial burdens for both the Agency and package/container users, and their environmental impact is either non-existent or insignificant. The specific inclusion of otherwise exempt modifications which involve the use of foamed resin plastic

materials is based upon special environmental impacts associated with water transport of these materials.

23. The implementation of the "grandfather clause" of the authorizing statute, §116F.06 (Supp. 1973), is appropriate in that it identifies the types of packages/containers which are not subject to review by reference to the types of products which they convey. "Grandfathering" types of packages/containers on this basis allows the Agency to control the proliferation of environmentally unsound packages/containers, while giving industry very specific help in determining what packages/containers are subject to review.

24. In order to allow the packaging industry to make use of temporary packaging alternatives, it is appropriate to provide for a limited deferment of the review process under certain specified circumstances. Such a deferment is reasonable in cases of test marketing and seasonal and promotional packages/containers since such packages/containers come into the state only in limited numbers and therefore have little potential to impact the solid waste stream or cause other environmental damage. In emergency situations, where an acceptable package is temporarily unavailable due to materials shortage or other reasons, it is necessary for a package user to be able to make a short-term substitution without subjecting himself or the Agency to the potential work of reviewing the package.

25. The provision for Certification of Exemption is a reasonable method for assuring a package/container user or manufacturer that a package/container which he considers exempt from review is also considered exempt by the Agency. It will provide a degree of certainty to the packaging industry with regard to exempt packages/containers which it would not otherwise have.

26. In order to allow the Agency to compare the new or revised package/container with feasible packaging alternatives, certain information with regard to both the new or revised package/container and any existing package/container and/or feasible alternatives is needed.

27. A description of the package/container (or a sample) is necessary in order to allow an evaluation of design features which may have a bearing on its environmental impact.

28. The submission of an engineering drawing in lieu of an actual package/container sample is appropriate in order to allow review to commence before substantial investment in dies or machinery is made.

29. Because of varying needs of product protection for various classes of products, e.g., solids/powders, liquids or frozen products, information as to the product to be contained in the new or revised package/container and its product classification is needed in order to evaluate the package/container.

30. Submission of the trade name and/or common names of all components is necessary in order to evaluate the constituent materials of a package/container and conforms with U.S. Food and Drug Administration practices for reporting packaging materials.

31. The chemical name of all components above a certain weight is needed by the Agency to determine the potential environmental impacts of a package/container and the form conforms to reporting practices required by the U.S. Food and Drug Administration.

32. The exact percentage of recycled materials from post-consumer waste utilized in a package/container may be difficult to ascertain with any degree of accuracy; however, if known this information would contribute to an evaluation of the package/container, since encouraging the recycling of packaging materials is one objective of the packaging review program.

33. While the exact amount of recycled materials from post-consumer waste may be unknown, specifications excluding its use from packaging materials are available to package users. Discrimination against such materials, where not specifically required by U.S. Food and Drug Administration regulations, tends to reduce the market for recyclable materials, and hence encourages greater use of virgin materials.

34. While the accuracy and precision of estimates of fabrication or conversion energy requirements is less than optimum, some estimates are available. Since reducing energy consumption is one program objective, requiring such estimates, where available, is appropriate. In addition, the accumulation of a data base on this matter will allow development of more objective packaging review criteria in the future.

35. A review of specifications which explicitly limit undesirable impurities to lowest levels practicable is appropriate inasmuch as the presence or absence of such materials is one factor to be considered in evaluating the package/container's potential for environmental harm. Therefore, information as to these specifications is necessary for a thorough review.

36. An estimate of the probable effects on industry of the Agency's approval or prohibition of a package/container is required so that the Agency may assess these positive or negative effects and thereby fulfill its statutory charge to consider the economic effects of the packaging regulatory program.

37. The estimate of probable effects on the labor force is required so that the Agency might fulfill its statutory obligation to consider the economic effects of its actions on the labor force.

38. An estimate of unit price of product in the package/container is necessary in order for the Agency to implement its packaging criteria relative to the economic impact of a given package/container on consumers.

39. Requiring submission of the name and address of the responsible person in a firm seeking or subject to review, is reasonable in order to coordinate queries for additional information as to a given package/container under review.

40. Requiring the submission of information as to assumptions and methods of calculations used in developing certain other data, is necessary in order to allow the Agency to properly evaluate and weigh the data, and to make the necessary comparisons between packaging alternatives.

41. The information required by SR-5 (C) is similar to that required for packages in SR-5 (B) and is necessary to compare the new or revised package/container with the existing package/container.

42. Standard industrial practice is such that two or more packages/containers are compared by package/container users to optimize packaging choices. The Agency requirement that the package/container user supply information as to other alternatives is necessary in order to implement the comparison procedure described in the "Criteria" regulation, SR-2.

43. The provision allowing a package/container user or manufacturer to certify as confidential information and samples submitted to the Agency is required by the authorizing statute. It is based upon the need of members of the packaging industry to preserve trade secrets and information which would effect competition.

44. The information required to be submitted pursuant to SR-5 is reasonably available to package/container users and its submission will not create undue economic or other burdens.

MINNESOTA POLLUTION CONTROL AGENCY

Marion Watson, Vice-Chairwoman

Grant J. Merritt
Executive Director

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

Address Reply To:
OFFICE OF ATTORNEY GENERAL
MINNESOTA POLLUTION CONTROL AGENCY
1935 W. County Road B2
Roseville, Minnesota 55113
612/296-7342

December 20, 1974

Michael Miller, Esq.
Special Assistant Attorney General
Department of Administration
208 Administration Building
St. Paul, Minnesota

Dear Mike:

Pursuant to your memorandum of December 18, 1974, the Minnesota Pollution Control Agency has reviewed regulation SR-3 and made the following change: The last sentence of Section (C) which read "The review period shall begin upon the date of receipt of information" has been changed to read as follows: "The review period shall begin upon the date of identification or submission of a package/container."

I believe this will correct the deficiencies you found in the earlier draft of the regulations. Please notify me when you have filed the regulation with the Secretary of State.

Sincerely yours,

Sandra S. Gardebring

Sandra S. Gardebring
Special Assistant
Attorney General

SSG:mcs

cc: Marion Watson
Edward M. Pryzina

MINNESOTA POLLUTION CONTROL AGENCY
DIVISION OF SPECIAL SERVICES
REGULATIONS FOR PACKAGING REVIEW
DECEMBER 20, 1974

SR-1 APPLICABILITY AND DEFINITION

(A) Scope

These regulations and criteria govern the review of new or revised packages/containers sold at retail within the State of Minnesota after May 25, 1973, in accordance with Minn. Stat. Chapter 116F (Supp. 1973).

The purpose of these regulations is to:

(1) Identify the types of new or revised packages/containers which may be subject to Agency review;

(2) Set forth the criteria which the Agency will use in evaluating the new or revised packages/containers;

(3) Establish the types of samples and information that shall be requested or required by the Agency for evaluation of new or revised packages/containers;

(4) Establish a procedure for the manner in which samples and information shall be submitted and reviewed;

(5) Establish exemptions for some new or revised packages/containers.

(B) Definitions

(1) Agency. "Agency" means the Minnesota Pollution Control Agency, its agent or representative;

(2) Closure. "Closure" means any article, device, or contrivance made in whole or in part of paper, paperboard, fiber, wood, ceramic, glass, metal, plastic or any combination of such materials, including, but not limited to caps, clips, covers, lids, tabs or seals for the purpose of closing or fastening a package/container, but not including staples, metal tacks, nails, glues and adhesives;

(3) New or Revised. "New or Revised" means either a new packaging concept not previously sold at retail in Minnesota or any change in a package/container sold at retail before May 25, 1973, or approved for sale at retail under these regulations. Such changes include: change from one product to another product (different five-digit product codes of the Numerical List of Manufactured Products (New (1972) SIC Basis)) contained in the package/container; change in the chemical formulation of any constituent material; substitution of one or more constituent materials; substitution of closure; substitution of label; changes in design; and all other changes, except any changes in size, color, printing, or shape. Changes from one product to another within the same five-digit product code of the

Numerical List of Manufactured Products (New (1972) SIC Basis) shall not be considered a change of product for purposes of this definition.

(4) Package/Container. "Package/Container" means any article, receptacle, device or contrivance made in whole or in part of paper, fiber, wood, ceramic, glass, metal, plastic or any combination of such materials, including but not limited to bags, baskets, bottles, boxes, cans, cartons, carrying cases, cups, cylinders, envelopes, glasses, jars, jugs, pails, tubs, sacks, trays, tubes, tumblers, and vessels intended for use in conveying any product for sale at retail. Such term does not include any shipping carton not intended to be sold at retail;

(5) Person. "Person" means any human being, any municipality or other governmental or political subdivision, or any other public agency, any public or private corporation, any partnership, firm, association or other organization, any receiver, trustee, assignee, agent or other legal representative of any of the foregoing, or any other legal entity, but does not include the Minnesota Pollution Control Agency;

(6) Review Period. "Review Period" means the one hundred and twenty (120) day time period in which the Agency may review submitted samples and the accompanying information. The Agency may, for good cause shown, order the one hundred and twenty (120) day period to be extended for an additional period not to exceed thirty (30) days;

(7) Sold at Retail. "Sold at Retail" means sale or other transfer to the household of the ultimate consumer;

(8) User. "User" means an industry which combines packages/containers and products to create a unit intended for sale at retail.

(C) Severability

If any provision of any packaging regulation or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or application of any other part of such regulation or any other regulation which can be given effect without the invalid provision or application; and to this end all provisions of all packaging regulations and the various applications thereof are declared to be severable.

SR-2 CRITERIA

(A) In determining whether a package/container is consistent with state environmental policy, the Agency shall place emphasis upon state responsibilities and policies established by the Environmental Policy Act, Minn. Stat. 116D.02 subd. 2 (Supp. 1973), and by Minn. Stat. 116F.01 and 116.05 (Supp. 1973).

(B) The Agency staff will compare a new or revised package/container with packaging alternatives. The object of this comparison will be to encourage those alternatives which maximize material and energy conservation while minimizing adverse environmental impact and increased economic costs to the people of the state. The staff will assess the relative merits of alternatives and encourage those alternatives which:

(1) Minimize the potential for environmental contamination, including but not limited to the release of metals or substances with the potential for biological harm;

(2) Minimize the total system energy costs;

(3) Minimize the use of scarce or non-renewable resources;

(4) Minimize the use of virgin materials;

(5) Are most recyclable where recyclability is consistent with (1) and (2) above;

(6) Minimize adverse economic effects on the consumer, the labor force, and industry, consistent with (1) and (2) above.

(C) In reviewing a new or revised package/container the Agency shall compare it to the existing package/container and/or all feasible alternatives submitted pursuant to SR-5. The decision to approve a new or revised package/container shall be based on a finding that the total positive impacts of the new or revised package/container outweigh the total negative impacts in comparison to the existing package/container and/or all feasible alternatives submitted pursuant to SR-5. The agency shall assess whether the new or revised package/container:

(1) Contains greater or lesser quantities of metals, hydrocarbons, organic or inorganic chemicals, or other substances which upon release into the environment through incineration, leaching, or littering have or may have potential for biological harm when compared with the existing package/container and/or feasible alternatives submitted pursuant to SR-5;

(2) Has a potential for creating an environmental problem as litter, which is higher or lower than the existing package/container and/or feasible alternatives submitted pursuant to SR-5;

(3) Requires more or less Btu/kg of product than the existing package/container and/or feasible alternatives submitted pursuant to SR-5 for the same

package/container size;

(4) Requires more or less scarce or non-renewable resources than the existing package/container and/or feasible alternatives submitted pursuant to SR-5, for the same package/container size;

(5) Has a higher or lower virgin materials content than the existing package/container and/or feasible alternatives submitted pursuant to SR-5;

(6) Has more or less current potential for recycling than the existing package/container and/or feasible alternatives submitted pursuant to SR-5;

(7) Results in an increase or decrease in the volume of solid waste in comparison to the existing package/container and/or feasible alternatives submitted pursuant to SR-5;

(8) Has a beneficial or adverse economic effect on the consumer, in comparison to the existing package/container and/or feasible alternatives submitted pursuant to SR-5;

(9) Has a beneficial or adverse economic effect on the labor force, in comparison to the existing package/container and/or feasible alternatives submitted pursuant to SR-5; and

(10) Has a beneficial or adverse economic effect on industry in comparison to the existing package/container and/or feasible alternatives submitted pursuant to SR-5.

SR-3 REVIEW PROCEDURE

(A) Package/container review by the Agency may be initiated in any of the following ways:

(1) A package/container user may submit the information and samples described in SR-5. While such submission for review is not mandatory, any package/container user wishing to initiate the review process must submit all the information requested in SR-5;

(2) The Agency itself may identify a package/container which it believes is subject to its review and shall proceed according to SR-3(C);

(3) Any other person may submit to the Agency a package/container for review, and if the Agency determines that such package/container is subject to its

review, the Agency shall proceed according to SR-3(C).

(B) Once the review process is initiated, the Agency shall review the new or revised package/container during the review period. If the Agency determines that the package/container constitutes a solid waste disposal problem or is inconsistent with state environmental policies, as manifested in the criteria of SR-2, the Agency may by order made after notice and hearing as provided in Chapter 15, Minn. Stat. (1971), and following an additional period not to exceed thirty (30) days during which the Minnesota Environmental Quality Council may review the proposed action, prohibit the sale of the package/container within the state. Any such prohibition shall continue in effect until revoked by the Agency or until the last legislative day of the next following legislative session, whichever occurs first, unless extended by action of the legislature. If the Agency fails to issue an order prohibiting a package/container by the end of the review period or to provide written notice of its acceptability, the Agency may not thereafter prohibit it, pursuant to Minn. Stat. Chapter 116F (Supp. 1973). If it is determined that the package/container is acceptable, the Agency will so notify the submitting user. Any package/container approved by the Agency may subsequently be used to enclose or convey other products within the same five-digit product group of the Numerical List of Manufactured Products (New (1972) SIC Basis), as the product in the approved package/container without further review by the Agency, but use of a package/container to enclose or convey products within other product groups may subject package/container to review initiated pursuant to SR-3(A).

(C) Where the Agency or any other person initiates the review process by identification or submission of a package/container, a Notice of Intention to Review shall be sent to the user of the package/container within ten (10) days of identification or receipt of the package/container. Upon receipt of such Notice, the package/container user shall have thirty (30) days to submit the information required by SR-5. The review period shall begin upon the date of identification or submission of a package/container.

SR-4 EXEMPTIONS

(A) A new or revised package/container, will not be reviewed by the Agency if:

(1) It is marketed with a deposit of five (5) cents or more to encourage its return to the distribution system for reuse;

(2) It has a capacity of over two (2) gallons by volume or twenty-five (25) pounds by weight;

(3) It is required by federal laws and regulations

relating to health or safety. Any modification of a package ostensibly intended to achieve compliance with federal law, which involves changes of a kind different than those required for compliance with the law or regulation shall negate the exempt status of the package;

(4) It conveys products which are subject to the regulation of the U.S. Department of Agriculture pursuant to the Federal Meat Inspection Act, 21 U.S.C. 601-691;

(5) It conveys products other than those which come within Industry Numbers 20111 - 20999 inclusive, 28412 - 28424 inclusive, 28441 - 28445 inclusive of the Numerical List of Manufactured Products (New (1972) SIC Basis).

(B) A new or revised package/container, will not be reviewed by the Agency;

(1) When a package/container is made substantially of glass, and the change is of the following nature:

(a) Any change in the chemical formulation of the glass or its coloring agents; or

(b) Any change in enamels or coatings which are for color or identification; or

(c) Any change in coatings or surface treatments used to facilitate lubricity in manufacture or handling as long as such coating is not a structural portion of the package/container.

(2) When a package/container is made substantially of aluminum or steel, and the change is of the following nature:

(a) Any change in the alloy chemistry or temper thereof within the same metal type; or

(b) Any gauge change; or

(c) Any change in seam construction or solders or adhesives; or

(d) Any change in the inside coatings of metal packages/containers as long as such materials were in use for any steel or aluminum package/container coatings prior to May 25, 1973, or are approved by the United States Food and Drug Administration for contact with food surfaces and provided that such coatings do not exceed .0025 inch in gauge.

(3) When a package/container is made substantially of

paper or paper products and the change is of the following nature:

(a) Any change in board or paper coatings of clay, waxes, lacquers, or polyolefin compounds as long as such substitute materials were in use as board or paper coatings prior to May 25, 1973, or are approved for contact with food surfaces by the United States Food and Drug Administration; or

(b) Any change of foil laminates which do not exceed .0005 inch in gauge in those cases where scientific or engineering data substantiate the need for a functional barrier; or

(c) Any change in caliper or basis weight; or

(d) Any change in board or paper furnish where such change does not represent a specification change by the user with the effect of reducing recycled content.

(4) When a package/container is made substantially of plastic-type materials and the change is of the following nature:

(a) For rigid wall containers:

(1) Any change in density; or

(2) Any substitution of standard formulations within the same monomer group.

(b) For pouches, liners, chubs, and other film packaging including laminates with a wall thickness not exceeding .010 inch:

(1) Any substitution within or between the following groups:

a. Nylons
b. Polyester
c. PVDC
d. Polyethelene
e. Polypropylene
f. Ionomers
g. Polyethelene terephthalate; or

(2) Any change in density or caliper of any material constituents so long as the total gauge does not exceed .010 inches; or

(3) Any substitution individually or in combination of substrate materials of paper,

glass, nylon or cotton fabric.

(c) A new or revised package/container otherwise exempt from review pursuant to SR-4 (B) (4) may be reviewed by the Agency if the revision involves the use of any foamed resins.

(C) Notwithstanding any other provision of these regulations, no package/container shall be reviewed if:

(1) It is identical in all ways to a package/container sold at retail in Minnesota before May 25, 1973, or if any changes do not bring it within the definition of "new or revised" contained in SR-1, and

(2) The product to be packaged in the package/container is within the same product group as a product sold at retail before May 25, 1973, in such identical container. For products within the Numerical List of Manufactured Products (New (1972) SIC Basis) subject to review the five-digit product code shall be used to determine whether the products are within the same product group.

(D) If the user certifies that the package/container has been introduced into the Minnesota retail market for test marketing, seasonal, or promotional purposes, and further certifies the period of time necessary to complete such test marketing, seasonal or promotional purpose, the Agency may, upon request of the user defer review for that period of time equal to the test marketing, seasonal and promotional time period so certified by the user; provided, however, that in no event shall such deferral extend for longer than one hundred and eighty (180) days. In addition, the Agency may defer review for a fixed period of time (not to exceed one hundred and eighty (180) days where the user certifies that an emergency situation has arisen; the term "emergency situation" includes specifically, but is not limited to, any change made in a package which is temporary and caused by an inability to obtain supplies.

(E) Notwithstanding any other provisions of SR-4, the user or manufacturer of any package/container who believes the package/container to be exempt under SR-4 (A), (B) or (C) may, but is not required to:

(1) Submit to the Agency a request for Certification of Exemption which identifies the subdivision of SR-4 that the user, or manufacturer believes is applicable and which contains appropriate documentation. The Agency may request the submission of additional information necessary to determine whether such Certification of Exemption is appropriate.

(2) Initiate the review process, pursuant to SR-3 (A) (1), by submitting the information and samples

described in SR-5.

SR-5 INFORMATION REQUIRED FOR REVIEW

(A) Where the package/container review process has been initiated pursuant to SR-3, the package/container user may, but is not required to, submit a sample of the new or revised package/container. The sample may, but need not, contain the product retailed in it. Such samples and products will not be returned to the submitting party.

(B) The package/container user who intiates the review process pursuant to SR-3 (A) (1) or who receives a Notice of Intention to Review issued pursuant to SR-3 (C) shall submit to the Agency the following information on the new or revised package/container:

(1) A brief description of the package/container and closure including its appearance, weight (in grams of each sub-assembly), volume of package/container and weight of product to be contained therein;

(2) In the event a sample is not submitted, an engineering drawing of the package/container with closure must accompany the application for review;

(3) A brief description of the product to be retailed in the new or revised package/container and the five-digit product group of the Numerical List of Manufactured Products (New (1972) SIC Basis) thereof;

(4) The trade name and/or common names of all components present in quantities greater than 1% by weight in the package/container and closure;

(5) The chemical name (following the nomenclature of Chemical Abstracts) of all components present in quantities greater than 1% by weight in the package/container and closure including but not limited to resins, catalysts, plasticizers, stabilizers, coatings, coloring agents, metals and preservatives. The total mass of each such constituent shall be listed in grams. However other chemical constituents or contaminants constituting less than 1% by weight should be reported if known;

(6) The percent of recycled content from post-consumer waste of each component if known;

(7) A brief statement as to whether the user's specifications for the package/container specifically

discriminate against the use of recycled materials from post-consumer waste in cases where the United States Food and Drug Administration does not prohibit such reuse;

(8) The best estimate of energy requirements for fabrication or conversion of the package/container and closure;

(9) Any specifications for the package/container and closure which limit total heavy metals and which specifically limit any undesirable impurities such as unreacted monomer, catalysts or reaction-by-products to lowest levels consistent with good manufacturing practices;

(10) An estimate by the package/container user of effects on the labor force of acceptance or prohibition of the package/container. This estimate shall include both positive and negative effects;

(11) An estimate by the package/container user of effects on industry of acceptance or prohibition of the package/container. This estimate shall include both positive and negative effects;

(12) An estimate by the package/container user of unit price per ounce of product sold at retail for the same package/container size;

(13) The approximate date the package/container will be introduced into the Minnesota retail market;

(14) A listing of assumptions and methods of computation used to determine the calculated data required by SR-5 (B) (6), (8), (10), (11) and (12).

(15) The name and address of the user of the package/container, including the name of a person within the company who may be contacted for additional information.

(C) The package/container user who initiates the review process, pursuant to SR-3(A) (1) or who receives a Notice of Intention to Review issued pursuant to SR-3(C) shall submit to the Agency for purposes of comparison the following information on any original package/container:

(1) A brief description of the original package/container and closure including its appearance, weight (in grams of each sub-assembly), volume of package/container and volume of product to be contained therein;

(2) In the event a sample is not submitted, an engineer-

ing drawing of the package/container with closure shall accompany the other information;

(3) A brief description of the product retailed in the original package/container and the five-digit product group of the Numerical List of Manufactured Products (New (1972) SIC Basis) thereof;

(4) The trade name and/or common names of all components in the package/container and closure;

(5) The chemical name (following the nomenclature of Chemical Abstracts) of all components present in quantities greater than 1% by weight in the package/container and closure including but not limited to resins, catalysts, plasticizers, stabilizers, coatings, coloring agents, metals and preservatives. The total mass of each constituent shall be listed in grams. However other chemical constituents or contaminants constituting less than 1% by weight should be reported if known;

(6) The percent of recycled content from post-consumer waste of each component if known;

(7) The best estimate of energy requirements for fabrication or conversion of the package/container and closure;

(8) Any specifications for the package/container and closure which limit total heavy metals and which specifically limit any undesirable impurities such as unreacted monomer, catalysts or reaction-by-product to lowest levels consistent with good manufacturing practice;

(9) An estimate by the package/container user on unit price per ounce of product at retail for the same package/container size.

(D) In the case of a new or revised package/container the user shall evaluate the merits of feasible alternative packages/containers. The user shall submit to the Agency all information required pursuant to SR-5 (B) on all feasible alternatives so considered.

SR-6 CONFIDENTIALITY

(A) If the manufacturer and/or user of a new or revised package/container certifies at the time of submission of any sample and required information that disclosure of any of the information will affect the company's competitive position the Agency shall keep such sample and information confidential except as may be necessary for public hearings as requested by the user required under SR-3.

APPROVED AS TO FORM AND LEGALITY

DEC 31 1974 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Michael B. Miller

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED — 3:15 pm
DEC 31 1974
Arlen I. Erdahl
Secretary of State

FILED
RICHARD L. [illegible] PACHER
Commissioner [illegible]tration
DEC 31 1974 3:40 PM
BY Cedar Lauterman
AUTH. SIGNATURE

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Adoption of Proposed Minnesota Guidelines on Packaging SR-1, SR-2, SR-3, SR-4, SR-5 and SR-6 Including Applicability and Definitions, Criteria, Review Procedure, Exemptions, Information Required for Review, and Confidentiality

ORDER FOR HEARING

To effectively implement review of packages and containers to determine whether they are consistent with the environmental policies of the state, the Minnesota Pollution Control Agency deems it necessary to consider adoption of the proposed guidelines captioned above pursuant to authority vested in the Agency by Minn. Stat. §116F.06 (Supp. 1973).

NOW, THEREFORE, it is ordered this 3rd day of June, 1974, that a public hearing on the proposed regulations captioned above be held in the Board Room of the offices of the Minnesota Pollution Control Agency in the City of Roseville, Minnesota, 1935 W. County Road B2, beginning at 9:00 a.m. on Wednesday, July 17, 1974, to continue until all interested persons, representatives and organizations have had an opportunity to be heard.

IT IS FURTHER ORDERED that notice of said hearing be given to all representatives of associations or other interested groups or individuals who have registered their names with the Secretary of State for that purpose.

Dated this 3rd day of June, 1974.

Grant J. Merritt
Executive Director

PCA Exh 1
7/17/74 KK

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Adoption of Proposed Minnesota Guidelines on Packaging SR-1, SR-2, SR-3, SR-4, SR-5 and SR-6 Including Applicability and Definitions, Criteria, Review Procedure, Exemptions, Information Required for Review, and Confidentiality

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held pursuant to Minnesota Statutes, sections 15.0412 and 116F.06 (Supp. 1973) in the Board Room of the offices of the Minnesota Pollution Control Agency in the City of Roseville, Minnesota, 1935 W. County Road B2, beginning at 9:00 a.m. on Wednesday, July 17, 1974, to continue until all interested persons, representatives and organizations have had an opportunity to be heard concerning the adoption of the proposed regulations captioned above, by submitting oral or written data, statement, comments or arguments. All testimony shall be given under oath or affirmation. Statements may be mailed to the Agency at the address below for submission into the record at any time prior to closing of the record. The record shall close at 4:30 on the twentieth day following the adjournment of the hearing.

The Agency proposes SR-1 which includes the purposes of the packaging guidelines as well as definitions for terms utilized in the packaging guidelines.

The Agency proposes SR-2 which identifies the criteria which shall be employed by the Agency in reviewing packages and determining which packages may be inconsistent with state environmental policies or may constitute a solid waste disposal problem. Specifically, these criteria are concerned with minimizing the potential for environmental contamination, minimizing total system energy costs, minimizing the use of scarce or non-renewable resources, minimizing the use of virgin materials and minimizing the adverse economic effects on the consumer, labor force and industry.

The Agency proposes SR-3 which identifies the ways in which the review process may be initiated and describes the review procedure.

PCA Exh 2
7/17/74 RK

The Agency proposes SR-4 which establishes a series of general exemptions as well as specific exemptions to the guidelines.

The Agency proposes SR-5 which describes the information required by the Agency in order to review non-exempt new or revised packages/containers. For purposes of comparison, in the case of revised packages/containers it requires that the user provide the Agency with specific information on the existing package/container and in the case of new packages/containers it requires the user to provide the Agency with specific information on all feasible alternative packages/containers.

The Agency proposes SR-6 which establishes that the user of a new or revised package/container may certify the samples and/or information submitted as confidential so as not to affect the competitive position of the user.

A copy of the proposed packaging guidelines is enclosed with this Notice of Hearing. Additional copies may be obtained by writing to Ms. Karen Wendt, Division of Special Services, Minnesota Pollution Control Agency, 1935 W. County Road B2, Roseville, Minnesota, 55113, phone: (612) 296-7287. Copies will also be available at the hearing. These guidelines are proposed guidelines and are subject to alterations or modifications as the Agency deems necessary and appropriate from its consideration of all the evidence adduced at the public hearing and all statements and exhibits entered into the record.

Dated this 12th day of June, 1974.

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

By _____
Grant J. Merritt
Executive Director

7/17/74 KK

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Adoption of Proposed Minnesota Guidelines on Packaging SR-1, SR-2, SR-3, SR-4, SR-5 and SR-6 Including Applicability and Definitions, Criteria, Review Procedures, Exemptions, Information Required for Review, and Confidentiality

AFFIDAVIT

I, Elaine S. Carney, being first duly sworn on oath, depose and say that:

1. I am a full-time employee of the Minnesota Pollution Control Agency.

2. On the 14th day of June, 1974, in the City of Roseville, County of Ramsey, State of Minnesota, I served the attached Notice of Hearing upon each of the individuals and organizations named in the attached list by depositing in the United States mail, with postage prepaid, envelopes containing a true and correct copy of said Notice, addressed to those names and addresses on the attached list.

Elaine S. Carney

Elaine S. Carney

Subscribed and sworn to before me this 24 day of JUNE, 1974

R R Black

Notary Public

JOHN BLACK
Notary Public, Anoka Co. Mn.
MY COMMISSION EXPIRES
April 23, 1976

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Grant J. Merritt, do hereby certify that I am the Executive Director of the Minnesota Pollution Control Agency, an Agency duly authorized under the laws of the State of Minnesota, and that a resolution was adopted at the meeting of the Agency duly and properly called and held on the 14th day of June, 1973; that a quorum was present at said meeting; that the resolution was passed by a majority of those present; that the resolution is set forth in the minutes of said meeting and has not been rescinded or modified; that the resolution authorized the Minnesota Pollution Control Agency staff to call a public hearing for the purpose of promulgating regulations regarding the review and regulation of packaging and to perform all acts necessary to the holding of said hearing; that the resolution was reaffirmed by a majority vote of those present at the meeting of the Agency held on June 18, 1974.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 6th day of November, 1974.

Grant J. Merritt
Executive Director

Subscribed and sworn to before
me this 6th day of November, 1974:

MARY E. WYATT
NOTARY PUBLIC — MINNESOTA
DAKOTA COUNTY
My Commission Expires July 30, 1981

Mary E. Wyatt
Notary Public

CERTIFICATE OF AGENCY'S
ADOPTION OF RULES RESOLUTION

I, Grant J. Merritt, do hereby certify that I am the Executive Director of the Minnesota Pollution Control Agency, an Agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Agency duly and properly called and held on the 29th day of October, 1974; that a quorum was present at said meeting; that the resolution was passed by a majority of those present; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified:

RESOLVED that rules SR 1, 2, 3, 4, 5 and 6, as proposed by the staff in its October 4 draft, be and they are hereby approved and adopted with the following changes:

1. The definition of "new or revised" is changed to read as follows:

(3) New or Revised. "New or Revised" means either a new packaging concept not previously sold at retail in Minnesota or any change in a package/container sold at retail before May 25, 1973, or approved for sale at retail under these regulations. Such changes include: change from one product to another product (different five-digit product codes of the Numerical List of Manufactured Products (New (1972) SIC Basis)) contained in the package/container; change in the chemical formulation of any constituent material; substitution of one or more constituent materials; substitution of closure; substitution of label; changes in design; and all other changes, except any changes in size, color, printing or shape. Changes from one product to another within the same five-digit product code of the Numerical List of Manufactured Products (New (1972) SIC Basis) shall not be considered a change of product for purposes of this definition.

2. In place of the word "guidelines" in the fifth line of SR 1(A), insert the word "regulations."

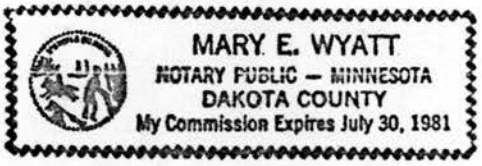
These regulations are adopted pursuant to authority vested in the Minnesota Pollution Control Agency by Minn. Stat. §116F.06 (Supp. 1973) and §15.0412, subd. 1 (1971).

BE IT FURTHER RESOLVED that Marion Watson, Vice-Chairwoman of the Agency, and Grant J. Merritt, Director of the Agency, be and they are hereby authorized to sign Findings of Fact in support of these regulations and an Order adopting these regulations.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 6th day of November, 1974.

Grant J. Merritt
Executive Director

Subscribed and sworn to before
me this 6th day of November, 1974:



Mary E. Wyatt
Notary Public

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Adoption of Proposed Minnesota Guidelines on Packaging SR-1, SR-2, SR-3, SR-4, SR-5 and SR-6, Including Applicability and Definitions, Criteria, Review Procedure, Exemptions, Information Required for Review and Confidentiality

STATEMENT OF NEED

The above-captioned regulation is a new regulation and is not an amendment to an existing rule or regulation.

The need to adopt the above-captioned regulation arises for the following reasons:

The Minnesota Pollution Control Agency staff has calculated that 6.2 billion pounds of municipal waste were disposed of in Minnesota in 1972 at a cost of $62 million. Roughly 33% of this total resulted from the disposal of packaging waste. Per capita consumption of packaging is expected to rise from an estimated 525 pounds per person in 1966 to a projected 661.1 pounds per person in 1976. According to staff calculations, this represents some 1.7 billion pounds of packaging waste in Minnesota in 1966, and is projected to reach 2.4 billion pounds by 1976. Using the average total cost of 1¢ per pound for collection, transportation and disposal of solid waste, Minnesotans spent $17 million for the disposal of packaging waste in 1966 and will spend roughly $24 million in 1976.

Much of this packaging, of course, serves a primary function-product protection. But it is clearly evident that more and more packaging is only for consumer convenience or sales appeal at a massive public cost in energy, resources and solid waste.

In addition, the trend in new packaging has been toward multi-material packages and containers, making their recyclability less economical and feasible. These factors have contributed to a growing impact on the environment, resulting directly from packaging wastes, and an increasing drain on mineral and energy resources. Recognizing the environmental significance of packaging solid waste, the 1973 Minnesota Legislature enacted Minnesota Statutes, Chapter 116F, establishing within the Minnesota Pollution Control Agency the authority to review new or revised packages for environmental impact.

A need exists to guarantee that no industry will be placed at a competitive disadvantage by designing, marketing or using a new or revised package or container which is more costly to produce or use, but which has lower overall costs when the full resource or environmental costs are included. Conserving of natural resources and protection of the environment constitutes an area of public concern which parallels the concern for public health and safety. Regulation by the Federal Food and Drug Administration ensures that new drugs, food additives and food packaging are reviewed prior to marketing in order to protect public health. This concept has been applied to new or revised packages and containers under Chapter 116F as a means of ensuring that this packaging will not constitute a state solid waste disposal problem or be inconsistent with state environmental policies.

In particular, Minnesota Statutes, Chapter 116F is intended to ensure that a new package or container represents that alternative which maximizes the conservation of energy and materials with the least impact on the environment.

Dated this 23rd day of November, 1974.

MINNESOTA POLLUTION CONTROL AGENCY

Marion E. Watson

Marion Watson
Vice-Chairwoman

Grant J. Merritt

Grant J. Merritt
Executive Director

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Adoption of Proposed Minnesota Guidelines on Packaging SR-1, SR-2, SR-3, SR-4, SR-5 and SR-6, Including Applicability and Definitions, Criteria, Review Procedure, Exemptions, Information Required for Review and Confidentiality

ORDER ADOPTING REGULATIONS

The above-entitled matter came on for hearing before the Minnesota Pollution Control Agency on the 17th day of July, 1974, at 9:00 a.m. in the Board Room of the offices of the Minnesota Pollution Control Agency, 1935 W. County Road B2, Roseville, Minnesota, after proper notice required by Minnesota Statute §15.0412 (1971) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above-captioned regulations:

NOW, THEREFORE, IT IS ORDERED that these regulations identified as regulations SR-1, SR-2, SR-3, SR-4, SR-5 and SR-6 are adopted this 29th day of October, 1974, pursuant to authority vested in the Minnesota Pollution Control Agency by Minn. Stat. §116F.06 (Supp. 1973).

MINNESOTA POLLUTION CONTROL AGENCY

Grant J. Merritt
Executive Director

Marion E. Watson

Marion Watson, Vice-Chairwoman

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Sandra S. Gardebring, Special Assistant Attorney General, do hereby declare that I have examined the proposed packaging regulations and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Rulemaking Procedures have been followed.

Sandra S. Gardebring

Sandra S. Gardebring
Special Assistant Attorney General

Dated: November 8, 1974

Page

41 Reporting w/ req. -

42 Exemption of size changes bad

49 Unworkable, illegal burden on I/C, emphasis on categories

50 Notice period vs. statutory

52 Exceptions from statute SR-1 (B)(7) color size shape printing

53 Exemption for cont. reusable by consumer - w/rel. to purpose

Product by, - should be clearer -

Product approach illegally varies the statute

(+) 75 Product defines phg -- must consider both

ADMIN. 1000

STATE OF MINNESOTA

DEPARTMENT Attorney General-MPCA

Office Memorandum

TO : Michael Miller
Special Assistant Attorney General
Dept. of Administration

DATE: 12/10/74

FROM : Sandra S. Gardebring

SUBJECT:

As I indicated to you, a letter addressed to Warren from David Priebe, of General Mills legal staff, has been forwarded to me. I am enclosing a copy of it. You will note that Mr. Priebe raises basically the same points that Paul Hallman has raised in his memo. I have responded to Mr. Priebe's letter by indicating that you are aware of these points and have received a copy of his letter.

SSG:mcs

Enclosure

RECEIVED
NOV 29 1974
ATTORNEY GENERAL
102 STATE CAPITOL
ST. PAUL, MINN. 55101

GENERAL MILLS, INC. • EXECUTIVE OFFICES • 9200 Wayzata Boulevard • Minneapolis, Minnesota

DAVID C. PRIEBE
Associate Counsel

November 27, 1974

The Honorable Warren Spannaus
The Attorney General
102 State Capitol
St. Paul, Minnesota 55155

RE: Packaging Guidelines Proposed by the Minnesota Pollution Control Agency

Dear Sir:

It is our understanding that the above referenced proposed guidelines have been submitted to your office for approval pursuant to the Minnesota Procedures Act. As you are well aware, there have been numerous hearings at the MPCA staff level regarding these guidelines and, accordingly, statements previously submitted by General Mills regarding the same are in the record.

Aside from such statements, I would like to take this opportunity to point out to you some areas where I feel the guidelines as proposed by the MPCA are legally deficient without submitting a legal brief on the same.

1. The criteria described in Section SR-2 are vague and uncertain and, with regard to many packages, will be contradictory with the result that the determination by the MPCA staff on any package will be without effective review due to the overall subjectiveness of the same.

2. The proposed guidelines exceed statutory authority contained in the enabling legislation. MSA § 116 F.06 provides in subdivision 2 that that subdivision is not applicable to "any package or container sold in retail in this state prior to final enactment of sections 116 F.01 to 116 F.08" (emphasis added). The guidelines limit such exemption to packages or containers not used to contain a different product.

General Mills has many other objections to the guidelines encompassing both legal and economic problems; however, I feel the foregoing two points are the most serious legal concerns that we have.

If you would like additional information from General Mills regarding this matter, please write or call me at 540-2280. Your careful review of these guidelines will be very much appreciated.

Very truly yours,

David C. Priebe

DCP:lmm

Mailing Address: P.O. Box 1113 Minneapolis, Minnesota 55440

MEMORANDUM TO QUESTION THE LEGALITY OF RULES

BEFORE THE

ATTORNEY GENERAL

STATE OF MINNESOTA

In The Matter Of:

Regulations for Packaging Review
Minnesota Pollution Control Agency

By:

Can Manufacturers Institute
1625 Massachusetts Avenue, N.W.
Washington, D. C.

MEMORANDUM TO QUESTION THE LEGALITY OF RULES
BEFORE THE
ATTORNEY GENERAL
STATE OF MINNESOTA

In The Matter Of:

Regulations for Packaging Review
Minnesota Pollution Control Agency

By:

Can Manufacturers Institute
1625 Massachusetts Avenue
Washington, D. C.

1. The Can Manufacturers Institute (CMI) is the national non-profit trade association of producers of metal and composite cans and suppliers to the can manufacturing industry. Five CMI member companies operate nine metal can plants in Minnesota, producing over a billion cans a year for their customers here and in neighboring states. Other CMI member companies manufacture cans which may ultimately be filled and offered for sale in Minnesota.

As representatives of a significant segment of the packaging industry, CMI has testified at each of the public hearings held by the Minnesota Pollution Control Agency (MPCA) during the course of its development of these Regulations for Packaging Review in implementation of Section 6 of Chapter 748, Minnesota Laws 1973 (the Act). CMI has also participated in technical sessions and discussions with the MPCA staff and has made formal comments for the record in this matter. Following the public hearing of July 17, 1974, CMI submitted a Statement (Appendix A) pointing out the major legal, technical, and practical deficiencies in the draft Revised Guidelines for Packaging Review dated June 14, 1974 (Appendix B). These draft Guidelines, with some amendments, were adopted by the Agency on October 29, 1974 as the Regulations in question (Appendix C).

2. The Minnesota Administrative Procedure Act, Section 15.0412, Subdivision 4, empowers the Attorney General to review proposed rules for legality and to disapprove rules determined to be illegal. The Rules and Regulations of the Attorney General set forth the basis (at Minn. Reg. Atty Gen 305(b)(2)) for disapproval of proposed rules as to legality. This Memorandum is submitted pursuant to Atty Gen 305(c) which permits a person or association to question the legality of the Regulations.

3. The Regulations are illegal because they set forth a scheme for Agency control of a major segment of commerce, both within Minnesota and interstate, which is clearly beyond and, in several important respects, in stark conflict with the authority granted in Section 6 of the Act. Specifically, the Regulations represent impermissible abuses of the Agency's powers and discretionary privileges in each of the following ways:

a. Contrary to the clear and precise instructions in Section 6 to review packages and containers on the basis of consistency with environmental policies of the state, principally the solid waste disposal problem, the Agency arbitrarily has taken unto itself the power to control the retail sale of all packaged foods and kindred products, household detergents, polishes and sanitation goods, and toilet and cosmetic preparations. This impermissible usurpation of authority is achieved in the "Definitions" (SR-1(B)(3)) and "Exemptions" (SR-4(A)(5)) sections of the Regulations, whereby all packaged products falling within a broad range of SIC Codes are subject to Agency review and control. Review and control of packaged products is nowhere authorized in the Act. The single mention of "product" in Section 6 (on which these Regulations must be based) is in Subdivision 2, which provides that "[W]hen the agency determines that any new or revised package or

container would constitute a solid waste disposal problem or be inconsistent with state environmental policies, the manufacturer of the product may withdraw it from further consideration until such time as the manufacturer may resubmit such product to the agency. . ." (emphasis added). Clearly, the Legislature intended "product" to be synonymous with "package or container" in this context.

In clear and precise language, Subdivision 2 authorizes the Agency to review only

(1) "new or revised packages or containers except when such changes involve only color, size, shape or printing";

(2) "innovations including, but not limited to, changes in constituent materials or combinations thereof and changes in closures."

By thus describing the type of "innovations" and "changes" in packages and containers and closures therefor, the Legislature provided the necessary interpretative guidance for the Agency to carry out its review responsibility. The Legislature specifically exempted from Agency review "any package or container sold at retail in this state prior to final enactment of this Act."

In violation of these precise statutory limits, however, the Agency has rewritten its power, in SR-1(B)(3), to include a package or container sold at retail in Minnesota prior to enactment if that package or container is used to convey a product in a different SIC Code. In other words, the Agency has taken upon itself the authority to proscribe a useful and practical application of an existing packaging system if it determines that such existing packaging system should not be allowed to fulfill its full utilitarian promise in the Minnesota marketplace. This flies in the face of a clear and

unmistakable statutory exemption and cannot be justified on any grounds having to do with the Agency's responsibility to review new or revised packages or containers for their consistency with Minnesota's environmental policies. The Agency cannot avoid legislatively imposed limits on its authority through the device of redefining "new or revised". The Agency, in its "Findings of Fact" adopted at the special session on October 29 (Appendix D), attempts to justify its "product" bias as a convenience to the staff (paragraph 20) and as an appropriate means to allow the Agency ". . .to control the proliferation of environmentally unsound packages/containers. . ." (paragraph 23). However, there is no evidence in the hearing record to support the notion that existing packages or containers used to convey products different than those conveyed at the time of enactment of the Act would impact at all on Minnesota's solid waste problem, and that notion is in sharp conflict with the legislative history of Section 6. Indeed, by exempting containers and packaging already developed and in commercial use and requiring review of only "new and revised" packages and containers, the Legislature expressed a preference for wider use, where practicable, of existing packaging systems. This principle is consistent both with good business practices and desirable environmental goals, in Minnesota and throughout the nation.

Had the Legislature intended the grant of such sweeping and drastic powers over a major segment of Minnesota commerce, it would have done so with careful and distinct language. Instead, it expressly excluded from Agency review all packages and containers in commercial use prior to enactment and took the extra precaution of defining the type of "innovations" and "changes" in packages or containers the Agency was to

review. The Agency's improper attempt to circumvent these limits to its power by means of these Regulations render them illegal.

b. Contrary to the clear and precise instructions in Section 6, Subdivision 1, of the Act that " [t]he agency shall advise and assist industry and business within the state in providing and developing packaging and containers consistent with environmental policies of the state," which instructions are to be carried out by review guidelines pursuant to Subdivision 3, the Agency has substituted so-called criteria (SR-2) which provide no such assistance or advice. The criteria contained in the Regulations are patently subjective, and are not capable of being applied by package manufacturers or users in advance of review by Agency staff. While the broad outlines of what will be considered during such review are given, the most basic terms remain undefined and ambiguous. Indeed, the Statement of Explanation presented by the MPCA staff at the July 17 hearing admits that the criteria are subjective but expresses the hope the Regulations can later ". . . be amended to include more and more firm criteria as data accumulates and studies are completed which will allow more accurate and precise determinations of a given package or packaging material as it impacts on the solid waste stream." (Appendix E, at page 10). Further, paragraph 34 of the Findings of Fact states that ". . . the accumulation of a data base on this matter [energy required for fabrication] will allow development of more objective packaging review criteria in the future." These data should be accumulated and studies completed <u>before</u> the Regulations are adopted. The Regulations provide, in SR-2(B), that "[t]he staff will assess the relative merits of alternatives. . ." and, in SR-2(C), that "[i]n reviewing a new or revised package/container the Agency shall compare it to the existing package/container and/or all feasible alternatives submitted pursuant to SR-5." There is absolutely no statutory basis for such a

comparison between what the staff perceives to be feasible alternatives. The Act directs the MPCA to determine whether a given package or container would constitute a solid waste disposal problem or be inconsistent with state environmental policies. This determination can and should be made independently and without reference to other packaging systems. The Agency's attempt to compare packages or containers with existing ones or with feasible alternatives exceeds its statutory authority.

c. Despite the specific requirement in Section 6, Subdivision 3 that adoption or amendment of guidelines identifying the types of new or revised containers and packaging subject to review shall be after notice and hearing pursuant to Minnesota Statutes 15.0412 Subdivision 4, the Agency has amended the definition of "new or revised" (SR-1(B)(3) without following this administrative procedure. The redefinition is a substantive change in that it greatly expands the scope of packaging ostensibly subject to Agency review, yet opportunity for formal comment has not been granted to interested parties. Notice of the amendment of the Regulation was in the form of a memorandum from the MPCA staff, dated October 18, 1974, which advised that the staff would recommend the change to the Board at its October 29 meeting (Appendix F). This failure to provide proper notice and hearing clearly conflicts with both the enabling statute and the Minnesota Administrative Procedure Act.

d. Several other legal deficiencies in the Regulations are discussed in the appended Statement. These include the Agency's attempt, in SR-3(C), to extend by up to 40 days the review period mandated by the Act (discussed at pages 16 and 17 of the Statement); the Agency's attempt to usurp the role of the Legislature by providing an exemption for containers on which a five-cent deposit is charged, with no basis for such action in the record (pages 17 and 18 of the Statement); and the Agency's requirement, not founded on

any provision of the Act, that package manufacturers or users submit certain ill-defined data to the staff (pages 21 and 22 of the Statement). In each of these areas, the Regulations clearly exceed the MPCA's statutory authority.

4. The hearing record does not support the Agency's illegal actions. To the contrary, the record is replete with evidence that the Regulations do not carry out the legislative mandate and that the Regulations are overly burdensome, unworkable, and unreasonable. The Findings of Fact and Statement of Explanation clearly illustrate the Agency's unwillingness to be guided by the Act or the intent of the Legislature.

5. We respectfully request that the Attorney General rule the Regulations illegal in substance and procedure.

Respectfully submitted,

CAN MANUFACTURERS INSTITUTE

BY: Paul W. Hallman

Paul W. Hallman
General Counsel

APPENDIX A

BEFORE THE

MINNESOTA POLLUTION CONTROL AGENCY

STATEMENT OF

CAN MANUFACTURERS INSTITUTE, INC.

1625 Massachusetts Avenue, N. W.

Washington, D. C. 20036

REVISED GUIDELINES FOR PACKAGING REVIEW

DRAFT PROPOSAL OF JUNE 14, 1974

BEFORE THE

MINNESOTA POLLUTION CONTROL AGENCY

STATEMENT OF

CAN MANUFACTURERS INSTITUTE, INC.

1625 Massachusetts Avenue, N. W.

Washington, D. C. 20036

REVISED GUIDELINES FOR PACKAGING REVIEW

DRAFT PROPOSAL OF JUNE 14, 1974

The Can Manufacturers Institute (CMI) is a non-profit trade association with membership composed of domestic producers of metal cans and suppliers to the can manufacturing industry. Our 42 container making members range in size from large companies manufacturing several types of packaging to very small specialty can makers. These firms accounted for 84 percent of the approximately 83 billion cans produced in 1973. The nine metal can plants operated in Minnesota by five CMI member companies employ some 1650 workers with an annual payroll of nearly 24 million dollars. These plants produce over a billion cans a year for their customers in Minnesota and neighboring states, and pay over 1.5 million dollars annually in state and local taxes. The Revised Guidelines for Packaging Review proposed by the Minnesota Pollution Control Agency staff in implemention of Section 6 of Chapter 748, Minnesota Laws

1973, would clearly impact these Minnesota can plants as well as the entire can manufacturing industry, and it is on behalf of our members that this statement is presented.

This statement will supplement and expand upon the oral testimony given by Mr. Paul Hallman, CMI General Counsel, before the Minnesota Pollution Control Agency (MPCA) at the July 17, 1974 public hearing. It will explore in greater detail a number of the specific issues raised in oral testimony and will attempt to be responsive to those points which we perceive to be of particular concern to members of the MPCA Board and staff.

CMI and the can manufacturing industry have consistently supported passage and implementation of modern, comprehensive solid waste management legislation at the state and Federal level. We supported the Federal Resource Recovery Act of 1970 (amending the Solid Waste Disposal Act) and have recently submitted testimony in favor of the Solid Waste Utilization Act of 1974, which was introduced by the Chairman of the Senate Public Works Committee. Among the can manufacturing industry's many efforts at the state level, we supported creation of the Connecticut Resource Recovery Authority, which is charged with developing a comprehensive plan to construct ten resource recovery facilities by 1985. CMI also successfully supported legislation to create a Solid Waste Recycling Authority in Wisconsin. Since its inception four years ago we have co-sponsored the National Center for Resource Recovery, which is working throughout the nation to develop modern solid waste management systems and technology that reduce environmental degradation and enable

the recovery of valuable materials and energy. CMI was one of two national trade associations to testify before the MPCA at the public hearing of July 24, 1973 on the Proposed Guidelines for Packaging Review. We testified again at the public hearings held on December 20 and 21 and participated in the subsequent technical sessions conducted by the MPCA staff.

At those hearings and technical sessions, and in other meetings and discussions with members of the staff, we pledged our full cooperation in the development of regulations and criteria to effectuate Section 6 of Chapter 748, Minnesota Laws 1973, (the "Act"), and offered to make available the considerable technical expertise of the can manufacturing industry. We reaffirm these commitments now.

CMI welcomes the opportunity to again present comments on the implementation of Section 6 of the Act. We feel that the draft Revised Guidelines, while considerably improved over earlier versions, still contain serious legal, technical, and practical deficiencies which need to be rectified. We further believe that there are several positive approaches and alternatives that can be suggested for the MPCA's consideration.

GENERAL

Chapter 748 addresses itself specifically to Minnesota's solid waste problem. It sets forth various procedures and programs to be followed by the Pollution Control Agency in dealing with solid waste within the total framework of Minnesota's environmental policy. Under the Act, containers and packages are recognized as being part of the solid

waste problem and, by several provisions in the Act, the legislature has directed the MPCA to evaluate the environmental character of containers and packaging. This evaluation is clearly to be conducted in the broad context of Minnesota's total solid waste problem, however, and not in the narrow, competitive, packaging alternative context suggested by the staff and reflected in the present draft of the Guidelines.

The legislative purpose in adoption of Section 6 of the Act was to provide for the promulgation of guidelines whereby new or revised packages or containers (that is, packages and containers introduced into the Minnesota market after May 24, 1973) would be discouraged if found, under appropriate evaluation criteria, to constitute a solid waste disposal problem or be inconsistent with State environmental policies. If a given package or container does not constitute a solid waste disposal problem, or is not inconsistent with State environmental policy, the legislature has properly excluded such package or container from agency review or consideration.

The specific assignment mandated to the agency by the legislature is necessarily a two step procedure. The first and indispensable step is to thoroughly analyze the role of packaging and containers in Minnesota's solid waste stream in order to derive appropriate environmental impact criteria which reflect the legislature's intent that packaging and containers sold after May 24, 1973 be "... consistent with environmental policies of the state."

This task clearly requires a thorough understanding of all materials entering Minnesota's solid waste stream, in whatever form, as

well as those factors which reflect the statutory limitations of Section 5, Subdivision 3 of the Act, namely alternatives which maximize the conservation of energy and materials while minimizing the environmental impact and the cost to the people of the state, plus economic factors including effects on the labor force. In short, the legislature has addressed what it perceives to be the total solid waste problem, and has directed the agency to formulate programs to deal with that problem in the manner set forth in Section 5, Subdivision 1. To accomplish this the agency must know, for example, the various sources of a pound of steel that ultimately finds its way into Minnesota's solid waste stream. It is crucial to arriving at workable solutions to know whether it has come in the form of a discarded appliance, wrecked automobile, construction debris, or in the form of a pea, paint, or beverage can.

This legislative purpose cannot be met, however, by acceptance of or reliance upon general national averages estimated by the Federal Environmental Protection Agency. Surveys of the actual composition of municipal solid waste indicate enormous variations from one area to another. Paper wastes, for example, were found by actual measurement to constitute 61.8 percent of the solid waste collected in Weber County, Utah. In Flint, Michigan, paper accounted for only 13 percent of municipal solid waste. Metal made up 12.2 percent of the solid waste collected in New Orleans, Louisiana, but only 6.7 percent in Madison, Wisconsin. Municipal solid waste in Wilmington, Delaware was found to contain 14.7 percent glass; in Tampa, Florida, glass constituted 6 percent. It is at best unrealistic to apply estimated national averages to Minnesota's

solid waste stream to determine its composition. The same holds true for determining the source of the state's solid waste. Nor is it realistic to use what the MPCA's Statement of Need declares to be "the average total cost of 1¢ per pound for collection, transportation, and disposal of solid waste" to determine cost to the people of Minnesota. Are the costs associated with solid waste the same in the Minneapolis-St. Paul area where half the State's population live as they are in the balance of the state? Are the composition and source of solid waste the same in the Twin Cities area as they are elsewhere in the state? Are proposed solutions which may prove effective in urban areas likely to be successful in rural counties?

The legislature adopted Chapter 748 in an attempt to deal with Minnesota's entire solid waste problem. The problem cannot be dealt with, and the above questions cannot be answered, by estimated national statistics developed by Federal agencies. The Act is aimed at coping with Minnesota's solid waste; implementation of the purposes of the legislation necessitate that a thorough analysis of the State's solid waste first be undertaken.

Having completed this critical first step, then and only then can the agency hope to carry out the mandate of Section 6 to promulgate workable and informative guidelines by which manufacturers and users of packages and containers can determine whether or not a contemplated new or revised package or container would be environmentally acceptable. Because packaging and container developments are costly and involve extremely complex and time-consuming procedures by which materials and

designs must be carefully matched to product requirements and many health and safety (and now environmental) regulations must be met, it is absolutely imperative that the packaging industry have firm guidance in advance of these costs. That the legislature recognized this need is clear from the first paragraph of Section 6, which directs the agency to "... advise and assist industry and business within the state in providing and developing packaging and containers consistent with environmental policies of the state." Otherwise, the packaging industry engaged in supplying the Minnesota market would be thrown into virtual chaos.

It is obvious from this latest attempt at the drafting of packaging guidelines that the staff has failed to comprehend the legislative instructions and, in a very real sense, has got the cart before the horse; that is, the staff has attempted to promulgate guidelines on an extremely complex subject before undertaking the scientific analysis necessary to a proper understanding of that subject.

SR-1 APPLICABILITY AND DEFINITIONS

(A) SCOPE

Pursuant to the requirements of Section 6, Subdivision 3 of the Act, SR-1(A)(1) of the draft proposal affirms that one of the purposes of the guidelines is to "[i]dentify the types of new or revised packages/containers ... subject to Agency review." SR-1(A)(1) goes beyond mere statement of purpose, however, in that it specifies a series of Standard Industrial Classification (SIC) codes for products, the packaging of which

may be subject to MPCA review. The packaging of products which do not fall within these SIC codes are thus exempt from review. This product oriented approach (as contrasted with a packaging or container approach) is not only irrational from an environmental standpoint, it is clearly beyond both the legislative intent and the language of the enabling statute.

Karen A. Wendt, Research Scientist, Division of Special Services, MPCA, said in her Statement of Explanation presented at the July 17, 1974 public hearing:

> "While the legislature authorized the Agency to review all new and revised packages and containers ... the Agency has chosen to limit that review." (Emphasis added.)

Subdivision 2 of Section 6 of the Act, however, provides that "[t]he agency shall review new or revised packages or containers ..." and Subdivision 3 of that Section provides further that "[t]he agency shall adopt and may amend or rescind guidelines identifying the types of new or revised containers and packaging that are subject to its review ...." (Emphasis added.) The legislature, then, has not merely "authorized" the MPCA to review all new and revised packages and containers; it has clearly directed the agency to do so. Nor can the MPCA "choose" to limit that review arbitrarily. Operating within the framework of the Act, the agency can limit its responsibilities with regard to new or revised packages or containers only by identification of the types of such packages or containers which are subject to its review. The staff of the MPCA surely does not contend that an aerosol can of hairspray (a product within the enumerated SIC codes) is a different "type" of packaging

than an aerosol can of paint (which is not within those SIC codes).

The product bias evidenced by the staff in this draft of the Revised Guidelines is not only beyond the intent and language of the Act, there is also no evidence in the record that it is grounded on environmental considerations. Does a can of hairspray constitute more of a solid waste disposal problem than a can of paint? Should the hairspray can be subject to review (and possible prohibition) based upon consistency with state environmental policies, while the paint can is not subject to such review? Is a foil pouch of pipe tobacco so much more environmentally acceptable than a foil pouch of dehydrated soup that only the latter need come under the watchful scrutiny of the MPCA? Is the display packaging of perfume an environmental degradation but not the display packaging of toys or hardware?

The staff again uses estimated national averages to justify its exclusion from review of all packaging except that used to convey products within the specified SIC codes. The MPCA's Statement of Need declares that "[r]oughly 33% of this total [of municipal waste] resulted from the disposal of packaging waste." The Statement of Explanation contains the following justification for the SIC codes selected by the staff:

> "These classes basically include food and beverages, household cleaning supplies, and toiletries and cosmetics. According to available data, these three product classes constitute approximately 85% of the packaging residential solid waste."

(It is interesting to note in this connection that the Statement of Explanation accompanying the November 27, 1973 version of the draft Revised Guidelines also stated that "... approximately 85 percent of packaging by weight will be included in these categories." That version of the

draft guidelines, however, while it contained all the SIC codes of the present draft, also included Pharmaceutical Preparations and Non-household Soap and Detergents.) Assuming only for purposes of argument that these estimated national figures are valid, and assuming further that they reflect the actual composition and source of Minnesota's solid waste stream (for which there is no evidence in the record), these statistics ignore the basic fact that the Act directs the MPCA to review all new or revised packaging and containers. It does not logically follow that if 85 percent of current packaging, whether by weight, unit, or volume, is used to convey products within the specified SIC codes the same percentage of new or revised packages or containers will thus be subject to agency review. There is no rational basis for assuming that there will be more new or revised packaging introduced in these product areas than in the scores of others excluded by the staff.

The MPCA staff argues that it has chosen to limit its review authority in an effort to reduce the administrative burden on both industry and the agency's staff (Statement of Explanation, page 4). It is specious to claim that this will alleviate industry's administrative burden. Packaging manufacturers will face the prospect of developing new packaging concepts which can be applied for excluded products but which may not be permitted for products within the specified SIC classifications. User industries which are already subject to package review will not be less burdened by the exclusion of other product categories. User industries which are now exempt would certainly bear an additional burden if their products were included, but this was of no apparent concern to the staff

when it was deciding which classifications of product packaging would be subject to review.

Nor is it sound administrative practice that the agency may go beyond both the law and reasonableness in an effort to reduce the burden on its staff. This argument is on its face inconsistent with the staff's claim that these three product classes were selected because they constitute approximately 85 percent of packaging solid waste. Moreover, proper interpretation of the so-called "grandfather clause" (discussed in detail, infra), would legitimately reduce the staff's administrative burden by exempting all containers and packaging in use prior to enactment of the Act, as the legislature directed, and by allowing industry to determine for itself the environmental acceptability of new or revised packaging or containers. In any event, a regulatory agency may not go beyond its enabling legislation in the interest of reducing its administrative burden.

In short, the legislature has directed that the MPCA conduct an environmental review of all new or revised packages or containers. It has, however, given the agency the discretion to limit its review to certain types of containers. The agency, in basing its review upon the product conveyed in the package or container, has failed to comply with the legislative mandate. The product orientation of the current draft Revised Guidelines cannot be justified from the language or intent of the Act nor from any other reasonable basis appearing in the record.

(B) DEFINITIONS

(1) Acceptable Plastic. This term is defined to include "... a plastic that was in use for packaging products ... prior to May 25, 1973 ...." Since plastics have many possible applications (some as yet unforeseen), this definition is somewhat ambiguous. For example, would a plastic that was in use prior to May 25, 1973 as an overwrap be an "acceptable plastic" if later used as a liner or laminate? It is our interpretation that a plastic in use for packaging prior to enactment of the Act would then be acceptable under this definition for other types of packaging applications.

(2) New. The term "new," as it relates to packages or containers is here defined in terms of the product it conveys. For the reasons discussed in detail under SR-1(A)(1), above, we strongly object to this unwarranted extension of the Act. There is also a logical inconsistency here, in that a package radically different from any currently in existence would not be considered "new" if it were used for a product previously sold at retail in Minnesota. A wooden soft drink container, for example, would not be a "new" package or container under this definition. Moreover, there is at least some question as to whether such a container could be considered "revised" under the definition of that word in SR-1(B)(7). Unlike "new," the draft guidelines do not define "revised" in terms of the product conveyed in the package or container. A wooden soft drink container represents far more than a mere change in the package or container as contemplated in the definition given in SR-1(B)(7) or in other provisions of the guidelines dealing with

packaging revisions. This inconsistency does not come from the definition of "revised," however, but rather from defining "new" packages or containers in terms of products conveyed therein.

(5) Package/Container. As currently drafted, this definition of packages and containers would appear to include shipping cartons since they are articles intended for use in "conveying" products for sale at retail. As we do not believe this to be the staff's intent, shipping cartons should be specifically excluded from the definition of "package/container."

(6) Review Period. The review period is here defined strictly in terms of the enabling legislation. We suggest, however, that the agency further define "good cause" which would permit an extension of the initial 120 day period. Would an administrative backlog within the agency constitute "good cause" without any further showing?

(7) Revised. This definition has been discussed under the definition of "new," above. In addition, SR-1(B)(7) provides that label substitution shall be considered a package or container revision. We question the relevance of package labeling to Minnesota's solid waste problems. The definition of "revised" does not include changes in shape, pursuant to the Act, but does include changes in design and configuration. These terms should be defined to make clear how they are distinct from shape.

(8) Sold at Retail. The definition of "sold at retail," as presently drafted, would not include vending machine sales, or other sales of products intended to be consumed other than in the "household

of the ultimate consumer." This definition would also exclude promotional items. We suggest that the definition of "sold at retail" be changed to read "... sale or other transfer to the ultimate consumer."

(C) SEVERABILITY

SR-1(C) declares that "... all the provisions of all packaging regulations ..." are severable, and that if "... any provision of any packaging regulation ..." or its application is held invalid, such invalidity shall not affect other regulatory provisions (emphasis added). We assume that the staff means provisions of these packaging guidelines and is not referring to packaging regulations promulgated pursuant to other Minnesota statutes. Nonetheless, an administrative agency does not have the authority to declare its regulations, or portions thereof, to be severable. This is an usurpation of the judicial function. We recommend therefore that SR-1(C) be deleted.

SR-2 CRITERIA

One of our major concerns since the initiation of this regulatory process has been that the criteria ultimately adopted be objective and capable of being understood and applied by packaging manufacturers and users. While the criteria section of this version of the Revised Guidelines is greatly expanded over earlier drafts, the additional length has added neither objectivity nor precision. The MPCA staff has recognized this shortcoming and apologized for it but has not moved to remedy it. The Statement of Explanation declares that it may be possible to achieve objective criteria sometime in the future:

> "While our Criteria Section may still be viewed by some industries as subjective instead of objective, I would like to point out that we expect the regulations to be amended to include more and more firm criteria as data accumulates and studies are completed which will allow more accurate and precise determinations of a given package or packaging material as it impacts on the solid waste stream. If we were to adopt fixed objectives and numerical criteria at this time, some packages would of necessity be rejected that might have overriding social merit in the areas of safety, economics, etc., while potential problems might receive less than a full review and be arbitrarily passed."

The staff here admits that insufficient data has been accumulated and that studies have not been completed which allow more accurate and precise determinations of the impact of packaging on the solid waste stream. Until such information is obtained it is unreasonable for the MPCA to attempt to implement these Guidelines, staff apologies notwithstanding.

The agency has a statutory responsibility to "... advise and assist industry and business within the state in providing and developing packaging and containers consistent with environmental policies of the state." (Section 6, Subdivision 1.) Examination of the criteria discloses that they provide no such assistance or advice. SR-2 of the current draft guidelines is an amalgam of generalities and principles. Crucial terms, such as "total system energy costs," "potential for environmental contamination," and "adverse economic effects," remain undefined and hence ambiguous. Ultimately, these criteria tell industry only that the staff will somehow "... assess the relative merits of alternatives ...."

The draft guidelines do not even provide for consideration of all pertinent factors that the legislature has declared to be the

environmental policy of the state. The can manufacturing industry, for example, is justifiably proud of its record in the critical area of air and water pollution abatement. The Minnesota Environmental Policy Act declares it to be state policy to use all practicable means to "[r]educe the deleterious impact on air and water quality from all sources ...." Yet this policy does not appear as a consideration to be weighed by the staff in assessing the relative environmental merits of alternative packages or containers.

The state's environmental policies have been clearly enunciated by the legislature. The MPCA has both a legal and moral responsibility to translate these policies into objective criteria as they pertain to packaging. Workable quidelines demand that environmental decisions not be the exclusive province of the agency staff. Packaging manufacturers and users need to be able to apply these environmental criteria themselves at the earliest stages of package development and design.

SR-3 REVIEW PROCEDURE

SR-3(B) correctly states that the sale of a package or container which is subject to review may be prohibited "[i]f the Agency determines that the package/container constitutes a solid waste disposal problem or is inconsistent with state environmental policies...." The Statement of Explanation, however, is at variance with this:

> "If after reviewing such package or container, the Agency finds that it may cause a solid waste disposal problem or be inconsistent with state environmental policies, the Agency has further been authorized to prohibit the retail sale of the package or container ..." (Emphasis in original.)

The draft guidelines' description of the MPCA's authority for prohibiting the retail sale of packaging is consistent with the enabling statute. The Statement of Explanation should therefore be corrected or clarified when final guidelines are promulgated.

SR-3(C) outlines the packaging review procedure in the event such review is initiated by other than the package user, and is an improper attempt by the agency to extend the statutory review period. The Act provides, in Section 6, Subdivision 3, that:

> "If the agency fails to issue an order prohibiting sale of a package or container within 120 days after the sample was submitted, the agency shall not prohibit it thereafter. The agency may, however, for good cause order the 120 day period to be extended for an additional period not to exceed 30 days." (Emphasis added.)

The statutory language is clear and unambiguous. The review period is begun when the sample is submitted and continues for 120 days. For good cause, the agency may extend the review period to a total of 150 days from the time the sample is submitted. By SR-3(C), however, the agency has attempted to increase the review period to a maximum of 190 days. This administrative extension of the review period goes clearly beyond the grant of authority contained in the statute.

SR-4 EXEMPTIONS

SR-4(A) lists five specific but generally applicable exemptions from agency review.

(1) The first exemption is clearly aimed at beverage containers and is an attempt to accomplish administratively a measure which the legislature refused to adopt, namely a mandatory deposit for beverage containers. There is no basis in the record, however, for such an exemp-

tion from agency review. There is no evidence that a five cent deposit will in fact effect a sufficient return (trippage rate) of packages and containers to the distribution system for reuse that a net environmental gain will be realized.

(2) The exemption for packages and containers which have a capacity of over two gallons or 25 pounds is granted irrespective of the volume impact such packaging would have on the solid waste stream. This is inconsistent with the assessment to be made by the staff pursuant to SR-2(C)(7).

(3) The exemption for packages and containers required by Federal or Minnesota laws and regulations relating to health or safety is a recognition by the staff that health and safety concerns relative to packaging must take precedence over environmental concerns. The proviso in this paragraph, however, would work to weaken health and safety advances. For example, the Federal Poison Prevention Packaging Act of 1970, and regulations promulgated thereunder, require that certain classes of toxic products be packaged in child-resistant packaging. The minimum standard for compliance calls for 85 percent effectiveness in resisting the efforts of statistically selected test panels of children to gain entry to the package. Under the draft Guidelines, however, a package that was 95 percent child-resistant would be subject to review. The exemption is lost if the package or container exceeds minimum health or safety requirements. We suggest, therefore, that the second sentence of SR-4(A)(3) be deleted.

(4) This exemption, like the large-size package exemption contained in SR-4(A)(2), is not supported by any evidence in the record.

There is nothing to show that packages and containers intended for multiple reuse will therefore have less impact on Minnesota's solid waste disposal problems or will therefore be consistent with environmental policies of the state. A package intended to convey a product to a consumer, then be reused twice, and finally be disposed of may present as many environmental problems as a single-use package or container.

(5) The product orientation of these draft Guidelines is here reemphasized by specifically exempting from review all packaging and containers which do not convey products within the enumerated SIC codes. As discussed above, we take exception to this unlawful and unwarranted extension of the Act.

SR-4(B) deals with technically-based exemptions for revised packages or containers in terms of the material of which they are made. Paragraph (2) of this subsection lists changes in metal containers that will not be subject to review. Generally, SR-4(B)(2) recognizes the myriad of environmentally insignificant changes that may be made in metal can specifications. These provisions represent the single greatest improvement of the draft Guidelines over earlier versions and prove that industry, representatives of environmental organizations, and agency staff can work together to achieve meaningful and realistic packaging guidelines.

Subparagraph (c) of this paragraph, however, specifically denies these technically-based exemptions "... if the revision involves a closure which is an integral part of the package/container body or ends." Obviously aimed at easy-open ends of metal cans, there is no

basis in the record for denial of the exemption because the change involves the closure. A change in the alloy chemistry or temper of an aluminum can, for example, would be exempt from agency review pursuant to SR-4(C)(2)(a). A change in the alloy chemistry or temper of an aluminum pull-top, however, would be subject to agency review. This is patently unreasonable. Moreover, no other type of packaging is denied a technically-based exemption because the change occurs in a particular physical part of the package or container. We urge that SR-4(B)(2)(e) be deleted.

The enabling legislation specifically excludes from agency review packages and containers sold in Minnesota prior to adoption of the Act. The agency staff, in SR-4(C) of the draft Guidelines, has attempted to restrict this statutory exclusion and to recast it as an exemption. The draft Guidelines provide that a package or container is "grandfathered" only if it is identical to a package or container sold at retail in the state prior to May 25, 1973 (or if any changes are such as to exempt it from review) and the product to be packaged therein is within the same product group as a product sold at retail before May 25, 1973, in such identical container. This is clearly at odds with the statutory provision of Section 6, Subdivision 2:

> "This subdivision shall not apply to any package or container sold at retail in this state prior to final enactment of this act." (Emphasis added.)

The exclusion thus granted by the legislature is without regard to package content or industry SIC code. The sole test for exclusion under this "grandfather" clause is whether or not the package or

container was sold at retail in Minnesota prior to final enactment of the law. The language of the Act is so clear and unambiguous in this regard that it is difficult to comprehend the staff's unwillingness to accept this legislative statement of policy. There is simply no statutory basis for conditioning the "grandfather" clause upon the product to be conveyed in the package or container.

SR-4(E) provides an administrative procedure whereby packaging users may seek a Certification of Exemption from the MPCA. While commendable in purpose, this subsection ignores commercial realities. The packaging industry is a highly competitive one, and there will be a clear commercial advantage to marketing a package or container which is either MPCA-approved or which is exempt from agency review. In many cases, it is reasonable to expect that a packaging manufacturer's potential customers will not consider a package or container which is not acceptable for sale in Minnesota. The package user will expect the package manufacturer to have obtained Minnesota "clearance" beforehand. It is important, therefore, that final Guidelines provide a mechanism for package manufacturers to seek a Certification of Exemption and to obtain, on their own behalf, MPCA review of new or revised packages or containers.

SR-5 INFORMATION REQUIRED FOR REVIEW

Section 6, Subdivision 3 of the Act provides that any person may submit a sample package or container to the agency for its review. The agency shall then review the sample and may require that person to

furnish additional samples or information necessary for the review process. Nowhere in the enabling statute is the MPCA given the authority to require packaging users or manufacturers to submit information regarding a new or revised package or container if the user or manufacturer has not initiated the review.

The information that the agency purports to require is often vague and ill-defined. It would at best be enormously burdensome on package users to obtain such information and would frequently be virtually impossible to obtain. The chemical name of all components in the package and closure may often involve trade secrets which the package manufacturer is unwilling to divulge. The percent of recycled content from post-consumer waste is almost never known, even to the package manufacturer. Manufacturers of metal cans, for example, purchase can stock from various suppliers who in turn have different types of facilities and varying opportunities to purchase and use post-consumer scrap. Further, substantial amounts of tinplate have been imported within the past decade so that verification would be extremely difficult to achieve. Does "fabrication or conversion," in terms of energy requirements, include shearing, plate coating, etc., or is it limited to mere assembly? Are effects on the labor force and on industry limited to Minnesota, or do they include repercussions beyond state lines? In addition to exceeding its statutory authority by requiring the submission of information, the agency has so complicated the "required information" that it is likely beyond the ability of package manufacturers or users to supply.

CONCLUSION

We hope our comments and suggestions will be useful to the MPCA and its staff in fashioning workable Guidelines to which all segments of the container packaging industry can subscribe. Many of our criticisms of the present draft point up the fundamental need for a thorough and detailed analysis of Minnesota's solid waste stream. Until that task is completed (which is expressly authorized by Section 5 of the Act), it is difficult to understand how realistic and fair judgments can be applied by the agency to implement the one section of the Act which deals with packaging and containers. To that end, the materials appended hereto should provide the staff with useful reference tools with which to acquire a further understanding of municipal solid waste and the available technologies for dealing with it. The appended material contains a wealth of information on the nature and functions of packaging and the complex industries which make and supply packaging in widely varied forms, an understanding of which is essential to any practical application of the Guidelines.

The Can Manufacturers Institute and its member companies re-affirm their willingness to continue to assist the agency staff, with both technical and manufacturing expertise, in developing the necessary data on which good Guidelines should be based.

Respectfully submitted,

CAN MANUFACTURERS INSTITUTE

Dated: August 5, 1974

BY: _____
Paul W. Hallman
General Counsel

This Appendix includes selected documents and commentary on four topics relevant to the Revised Guidelines as proposed by the Minnesota Pollution Control Agency in implementation of Chapter 748, Minnesota Laws 1973.

A. Energy and Resource Utilization Characteristics of Containers and Packaging

1. Title page, introductory pages 1 - 2, and pages 39 - 53 of Memorandum In Opposition To The Proposed Regulation (submitted May, 1973 to the Illinois Pollution Control Board on the matter of a proposed beverage container regulation). This material deals with the testimony of Professor Bruce Hannon (author of "System Energy and Recycling: A Study Of The Beverage Industry," item 10 on the MPCA list of exhibits) and points up four fundamental errors in Professor Hannon's Study:

   a) The alleged energy savings of 19/100 of 1% by switching to an all-returnable beverage container system is predicated on unrealistic trippage rates of 15 for soft drinks and 19 for beer. No realiable trippage data are available but other studies suggest national average trippage figures much lower than those used by Hannon.

   b) Hannon's study grossly underestimates the additional transportation and handling energy required by an all-returnable system and the energy cost for heavier shipping and carrier cartons. The analysis of Dr. McNabb of Bradley University

(also submitted to the Illinois PCB) puts these considerations into realistic perspective.

c) Hannon's study ignores completely the heavy initial energy surge required to build up a returnable container float to sustain the system. It is estimated that eight returnables are required in the system to maintain one filled container on the retail shelf; thus, eight new containers would have to be manufactured at the outset to replace every displaced one-way container, at a high energy cost.

d) Hannon's study also fails to allocate energy usage to the alleged new jobs or new consumer products purchased from alleged beverage price savings, although he subscribes to Professor Folk's thesis that an all-returnable system is more labor intensive and will cause a shift in consumer spending to new products. This factor alone, if Folk's analysis were accurate, is enough to completely offset Hannon's claimed energy savings.

2. Article in July, 1974 issue of Science magazine, "Mineral Resources, Economic Growth, and World Population." This article puts the problem of mineral resources in rational perspective and suggests that proper application of technology will come into play to ensure a continuing supply of needed minerals.

3. Article in July 15, 1974 issue of Washington Post, "Dwindling Resources: A Myth?"

4. Selected testimony and prepared statements from the record of

the hearings conducted during July, 1974 by the Panel on Materials Policy, Committee on Public Works, U. S. Senate:

a) Statement of George A. Stinson, Chairman of National Steel Corporation, for the American Iron and Steel Institute.

b) Statement of Howard Chester, Executive Secretary of the Stone, Glass and Clay Coordinating Committee.

c) Statement of Andrew J. Biemiller, Director of Department of Legislation, AFL-CIO.

d) Statement of John A. Georges, Director of Environmental Affairs, E. I. DuPont De Nemours and Company.

B. Composition and Growth Data on Solid Waste

1. Chapter 1 of the Second Report To Congress - Resource Recovery and Source Reduction, U. S. EPA 1974

The Table on page 3 and text on page 5 put into sensible perspective the problem of municipal solid waste, its projected growth rate, and the relatively minor role of containers and packaging in the waste stream. This report projects a modest growth rate of 3 - 3.5% (not greatly in excess of population growth) and confirms that "[t]he faster growing segments, such as containers and packaging, would probably by themselves not push the overall waste growth to a highter level." (Emphasis added.) It should be noted that the current level of solid waste in the nation and projected growth rate are substantially less

than the "crisis" levels suggested by some who support the proposed Guidelines; further, the fraction of solid waste attributable to containers and packaging (41.9 MM tons) is significantly less than the 45 MM tons (for just glass, paper, metal and plastic) claimed by Ms. Claussen in an earlier EPA document, item 16 on the MPCA list of exhibits.

2. Article, "Resource Recovery: The Federal Perspective," by Dr. John H. Skinner, U. S. EPA, reprinted from the Jan./Feb. 1974 Waste Age.

This article further confirms that municipal solid waste has been overestimated and points up the great potential for resource recovery systems to deal with the problem, particularly the recovery of energy from the organic fractions (paper, garbage, etc.) after metal and glass fractions have been extracted for recycling. It should be noted that in this very recent publication, the EPA admits to an even lower waste fraction from containers and packaging (11.0 MM tons for paper packaging, Table 2, and 17.1 MM tons for metal and glass containers and packaging, Table 3). This excludes plastic packaging, but using the 2.5 MM tons attributed to plastics in Table 1 of the Second Report To Congress, the total adds up to 28.1 MM tons which is substantially lower than previously asserted by the EPA or other sources. This provides additional confirmation that the contribution of packaging to the solid waste stream has been grossly overstated.

3. NCRR publication, "Municipal Solid Waste .. Its Volume, Composition and Value," reprinted from NCRR Bulletin Vol. III, No. 2.

C. Developments In Solid Waste Management and Resource Recovery Systems

1. NCRR Bulletin Vol. IV, No. 2, Spring 1974.
2. NCRR publication, "Resource Recovery Systems," June, 1974.
3. A Task Force Report, "The States' Roles in Solid Waste Management," The Council of State Governments, 1973.
4. Statement of James A. Zwerneman, Professor of Economics, New Mexico State University, "Economic Aspects of Solid Waste Management," July 10, 1974.
5. Statement of Carl Rampacek, Assistant Director - Metallurgy, U. S. Bureau of Mines.

D. Selected Materials on the Characteristics and Functions of Packaging

1. Arthur D. Little Report, "Packaging in Perspective," January, 1974.
2. Chapter 15, "Containers and Packaging," U. S. Industrial Outlook 1974, U. S. Department of Commerce.
3. Final Report of the National Commission on Materials Policy, "Material Needs and the Environment Today and Tomorrow," June, 1973.
4. Selected testimony and prepared statements from the record of the July 1974 hearings, U. S. Senate Panel on Materials Policy:
   a) Statement of Can Manufacturers Institute
   b) Statement of Frank Sellinger, Group Vice President, Anheuser-Busch, Inc.

MINNESOTA POLLUTION CONTROL AGENCY

DIVISION OF SPECIAL SERVICES

JUNE 14, 1974

REVISED GUIDELINES FOR PACKAGING REVIEW

SR-1 APPLICABILITY AND DEFINITIONS

(A) Scope

These regulations and criteria govern the review of new or revised packages/containers sold at retail within the State of Minnesota after May 25, 1973, in accordance with Chapter 116F, Minn. Stat. (Supp. 1973).

The purpose of these guidelines is to:

(1) Identify the types of new or revised packages/containers which convey products which come within Industry Numbers 20111 - 20999 inclusive, 28412 - 28424 inclusive, 28441 - 28445 inclusive of the Numerical List of Manufactured Products (New (1972) SIC Basis) which may be subject to Agency review;

(2) Set forth the criteria which the Agency will use in evaluating new or revised packages/containers;

(3) Establish the types of samples and information that shall be requested or required by the Agency for evaluation of new or revised packages/containers;

(4) Establish a procedure for the manner in which samples and information shall be submitted and reviewed;

(5) Establish exemptions for some new or revised packages/containers.

(B) Definitions

(1) Acceptable Plastic. "Acceptable plastic" is a plastic that was in use for packaging products within the same five-digit product code of the Numerical List of Manufactured Products (New (1972) SIC Basis), prior to May 25, 1973, or has subsequently been approved by the Agency for packaging products within the same five-digit product group subsequent to May 25, 1973;

(2) Agency. "Agency" is the Minnesota Pollution Control Agency, its agent or representative;

(3) Closure. "Closure" means any article, device or contrivance made in whole or part of paper, paperboard, fiber, wood, ceramic, glass, metal, plastic or any combination of such materials, including, but not limited to caps, clips, covers, lids, tabs or seals for the purpose of closing or fastening a package/container, but not including staples, metal tacks, nails, glues and adhesives;

(4) New. "New" means a package/container designed to convey a product not previously sold at retail in Minnesota;

(5) Package/Container. "Package/Container" means any article, receptacle, device or contrivance

made in whole or in part of paper, fiber, wood, ceramic, glass, metal, plastic or any combination of such materials, including but not limited to bags, baskets, bottles, boxes, cans, cartons, carrying cases, cups, cylinders, envelopes, glasses, jars, jugs, pails, tubs, sacks, trays, tubes, tumblers, and vessels intended for use in conveying any product for sale at retail;

(6) Review Period. "Review Period" is the one hundred and twenty (120) day time period in which the Agency may review submitted samples and the accompanying information. The Agency may, for good cause shown, order the one hundred and twenty (120) day period to be extended for an additional period not to exceed thirty (30) days;

(7) Revised. "Revised" means any change in a package/container sold at retail in Minnesota before May 25, 1973, or approved for sale at retail under these regulations. Such changes include: change in the chemical formulation of any constituent material; substitution of one or more constituent materials; substitution of closure; substitution of label, except changes only in color and/or printing; changes in design or configuration, except changes only in size, color and/or shape; and all other changes, except any changes in size, color, printing, or shape;

(8) Sold at Retail. "Sold at Retail" means sale to the household of the ultimate consumer.

(9) User. "User" means an industry which combines packages/containers and products to create a unit intended for sale at retail.

(C) Severability

If any provision of any packaging regulation or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or application of any other part of such regulation or any other regulation which can be given effect without the invalid provision or application; and to this end all the provisions of all packaging regulations and the various applications thereof are declared to be severable.

SR-2 CRITERIA

(A) In determining whether a package/container is consistent with state environmental policy, the Agency shall place emphasis upon state responsibilities and policies established by the Environmental Policy Act, Minn. Stat. 116D.02, subd. 2 (Supp. 1973), and by Minn. Stat. 116F.01 and 116.05, subd. 3 (Supp. 1973).

(B) The Agency staff will compare a submitted package/container with packaging alternatives. The object of this comparison will be to encourage those alternatives which maximize material and energy conservation while minimizing adverse environmental impact and increased economic costs to

the people of the state. The staff will assess the relative merits of alternatives and encourage those alternatives which:

(1) Minimize the potential for environmental contamination, including but not limited to the release of metals or substances with the potential for biological harm;

(2) Minimize the total system energy costs;

(3) Minimize the use of scarce or non-renewable resources;

(4) Minimize the use of virgin materials;

(5) Are most recyclable where recyclability is consistent with (1) and (2) above;

(6) Minimize adverse economic effects on the consumer, the labor force, and industry, consistent with (1) and (2) above;

(C) In reviewing revised packages/containers the only alternative to be considered shall be the original package(s)/container(s). New packages/containers shall be compared to all feasible alternatives submitted pursuant to SR-5. The decision to approve a revised package/container shall be based on a finding that the total positive impacts of the revised package/container outweigh the total negative impacts in comparison to the existing package/container. The decision to approve a new package/container shall be based on a finding that the total positive impacts of the new package/container outweigh the total negative impacts in comparison to the submitted alternatives pursuant to SR-5.

The agency shall assess whether the new or revised package/container:

(1) Contains greater or lesser quantities of metals, hydrocarbons, organic or inorganic chemicals, or other substances which upon release into the environment through incineration, leaching, or littering have or may have potential for biological harm when compared with the existing package/container or feasible alternatives submitted pursuant to SR-5;

(2) Has a potential for creating an environmental problem as litter, which is higher or lower than the existing package/container or feasible alternatives submitted pursuant to SR-5;

(3) Requires more or less Btu/kg of product than the existing package/container or feasible alternatives submitted pursuant to SR-5 for the same package/container size;

(4) Requires more or less scarce or non-renewable resources than the existing package/container or feasible alternatives submitted pursuant to SR-5, for the same package/container size;

(5) Has a higher or lower virgin materials content than the existing package/container or feasible alternatives submitted pursuant to SR-5;

(6) Has more or less current potential for recycle than the existing package/container or feasible alternatives submitted pursuant to SR-5;

(7) Results in an increase or decrease in the volume of solid waste in comparison to the existing package/container or feasible alternatives submitted pursuant to SR-5;

(8) Has a beneficial or adverse economic effect on the consumer, in comparison to the existing package/container or feasible alternatives submitted pursuant to SR-5;

(9) Has a beneficial or adverse economic effect on the labor force, in comparison to the existing package/container or feasible alternatives submitted pursuant to SR-5; and

(10) Has a beneficial or adverse economic effect on industry in comparison to the existing package/container or feasible alternatives submitted pursuant to SR-5.

(D) As an aid in the design, formulation or selection of revised packages/containers by industry, the following changes will in most applications be considered desirable:

(1) The substitution of paper for single-use metal, single-use glass, single-use acceptable and other plastic;

(2) The substitution of ferrous metal, glass, or acceptable plastic, for single-use plastic with potential for biological harm;

(3) The substitution of ferrous metal, glass, acceptable plastic, or paper for single-use aluminum or other non-ferrous metals;

(4) The substitution of non-pressurized containers for pressurized containers.

(E) As an aid in the design, formulation, or selection of revised packages/containers by industry, the following changes will in most applications be considered to be of neutral value:

(1) The substitution of ferrous metal for single-use glass or single-use acceptable plastic;

(2) The substitution of acceptable plastic for single-use glass or ferrous metal;

(3) The substitution of glass for single-use acceptable plastic or ferrous metal.

(F) As an aid in the design, formulation, or selection of revised packages/containers by industry, the following changes will be considered to be undesirable:

(1) The substitution of single-use plastic, metal or glass or combinations thereof for paper;

(2) The substitution of single-use plastics with higher potential for biological harm for other plastics;

(3) The substitution of single-use non-ferrous metals for acceptable plastic, glass, or ferrous metals;

(4) The substitution of pressurized containers for non-pressurized containers.

SR-3 REVIEW PROCEDURE

(A) Package/container review by the Agency may be initiated in any of the following ways:

(1) A package/container user may submit the information and samples described in SR-5. While such submission for review is not mandatory, any package/container user wishing to initiate the review process must submit all the information requested in SR-5;

(2) The Agency itself may identify a package/container which it believes is subject to its review and shall proceed according to SR-3(C);

(3) Any other person may submit to the Agency a package/container for review, and if the Agency determines that such package/container is subject to its review, the Agency shall proceed according to SR-3(C).

(B) Once the review process is initiated, the Agency shall review the package/container during the review period. If the Agency determines that the package/container constitutes a solid waste disposal problem or is inconsistent with state environmental policies, as manifested in the criteria of SR-2, the Agency may by order made after notice and hearing as provided in Chapter 15, Minn. Stat. (1971), prohibit the sale of the package/container within the state. Any such prohibition shall continue in effect until revoked by the Agency or until the last legislative day of

the next following legislative session, whichever occurs first, unless extended by action of the legislature. If the Agency fails to issue an order prohibiting a package/container by the end of the review period or to provide written notice of its acceptability, the Agency may not thereafter prohibit it, pursuant to Minn. Stat., Chapter 116F (Supp. 1973). If it is determined that the package/container is acceptable, the Agency will so notify the submitting user. Any package/container approved by the Agency may subsequently be used to enclose or convey other products within the same five-digit product group of the Numerical List of Manufactured Products (New (1972) SIC Basis), as the product in the approved package/container without further review by the Agency, but use of package/container to enclose or convey products within other product groups subjects the package/container to review initiated pursuant to SR-3(A).

(C) Where the Agency or any other person initiates the review process by identification or submission of a package/container, a Notice of Intention to Review shall be sent to the user of the package/container within ten (10) days of identification or receipt of the package/container. Upon receipt of such Notice, the package/container user shall have thirty (30) days to submit the information required by SR-5. The review period shall begin upon the date of receipt of information.

SR-4 EXEMPTIONS

(A) A new or revised package/container, will not be reviewed by the Agency if:

(1) It is marketed with a deposit of five (5) cents or more to encourage its return to the distribution system for reuse;

(2) It has a capacity of over two (2) gallons by volume or twenty-five (25) pounds by weight;

(3) It is required by federal or Minnesota laws and regulations relating to health or safety. Provided, however, that any modification of a package ostensibly intended to achieve compliance with federal or Minnesota law, which clearly goes beyond what is required for compliance with the law or regulation shall negate the exempt status of the package;

(4) It is clearly intended for multiple reuse by the consumer and specifically designed so as to be suitable for such multiple reuse; and is a package or container which the consumer might purchase separately on more than one occasion;

(5) It conveys products other than those which come within Industry Numbers 20111 - 20999 inclusive, 28412 - 28424 inclusive, 28441 - 28445 inclusive of the Numerical List of Manufactured Products (New (1972) SIC Basis).

(B) A revised package/container, will not be reviewed by the Agency:

(1) When a package/container is made substantially of glass, and the revision(s) is(are) of the following nature:

(a) Any changes in the chemical formulation of the glass or its coloring agents; or

(b) Any changes in enamels or coatings which are fired to the glass; or

(c) Any changes in coatings used to facilitate lubricity in manufacture or handling as long as such coating is not a structural portion of the package/container.

(2) When a package/container is made substantially of aluminum or steel, and the revision(s) is(are) of the following nature:

(a) Any changes in the alloy chemistry or temper thereof within the same metal type; or

(b) Any gauge changes; or

(c) Any changes in seam construction or solders or adhesives; or

(d) Any changes in the inside coatings of metal packages/containers as long as such materials were in use for any steel or aluminum package/container coatings prior to May 25, 1973, or are approved by the United States Food and Drug

Administration for contact with food surfaces, provided that such coatings do not exceed .0025 inch in gauge;

(e) A revised package/container otherwise exempt from review pursuant to SR-4 (B) (2) may be reviewed by the Agency if the revision involves a closure which is an integral part of the package/container body or ends.

(3) When a package/container is made substantially of paper or paper products and the revision(s) is(are) of the following nature:

(a) Changes in board or paper coatings of clay, waxes, lacquers, or polyolefin compounds as long as such substitute materials were in use as board or paper coatings prior to May 25, 1973, or are approved for contact with food surfaces by the United States Food and Drug Administration; or

(b) Changes of foil laminates which do not exceed .0005 inch in gauge and serve as a functional barrier; or

(c) Changes in caliper or basis weight; or

(d) Changes in board or paper furnish where such changes do not represent a specification change by the user with the effect of reducing recycled content.

(4) When a package/container is made substantially of plastic-type materials and the revision(s) is(are) of the following nature:

(a) For rigid wall containers:

(1) Changes in basis weight; or

(2) Substitution of standard formulations within the same monomer group.

(b) For pouches, liners, chubs, and other flexible packaging including laminates with a wall thickness not exceeding .010 inch:

(1) Substitutions within or between the following groups:

a. Nylons
b. Polyester
c. PVDC
d. Polyethelene
e. Polypropylene
f. Ionomers
g. Polyethelene terephthalate; or

(2) Changes in basis weight or caliper of any material constituants so long as the total gauge does not exceed .010 inches; or

(3) Substitutions individually or in combination of substrate materials of paper, glass or cotton fabric.

(c) A revised package/container otherwise exempt from review pursuant to SR-4 (B) (4) may be reviewed by the Agency if the revision involves the use of any foamed resins.

(C) Notwithstanding any other provision of these regulations, no package/container shall be reviewed if:

(1) It is identical in all ways to a package/container sold at retail in Minnesota before May 25, 1973, or if any changes do not bring it within the definition of "revised" contained in SR-1, and

(2) The product to be packaged in the package/container is within the same product group as a product sold at retail before May 25, 1973, in such identical container. For products within the Numerical List of Manufactured Products (New (1972) SIC Basis) subject to review the five-digit product code shall be used to determine whether the products are within the same product group.

(D) Upon initiation of the review process pursuant to SR-3 by a package/container user, the Agency in consultation with the user may defer review for a fixed period of time (not to exceed 180 days) for test marketing, seasonal, promotional or emergency situations.

(E) Notwithstanding any other provision(s) of SR-4, the user of any package/container who believes the package/container to be exempt under SR-4 (A), (B) or (C) may, but is not required to:

(1) Submit to the Agency a request for Certification of Exemption which identifies the subdivision of SR-4 that the user believes is applicable and which

contains appropriate documentation. The Agency may request the submission of additional information necessary to determine whether such Certification of Exemption is appropriate.

(2) Initiate the review process, pursuant to SR-3 (A) (1), by submitting the information and samples described in SR-5.

SR-5 INFORMATION REQUIRED FOR REVIEW

(A) Where the package/container review process has been initiated pursuant to SR-3, the package/container user may, but is not required to, submit a sample of the new or revised package/container. The sample may, but need not, contain the product to be retailed in it. Such samples and products will not be returned to the submitting party.

(B) The package/container user and/or manufacturer who initiates the review process pursuant to SR-3 (A) (1) or who receives a Notice of Intention to Review issued pursuant to SR-3 (C) shall submit to the Agency:

(1) A brief description of the package/container and closure including its appearance, weight (in grams of each sub-assembly), volume of package/container and weight of product to be contained therein;

(2) In the event a sample is not submitted, an engineering drawing of the package/container with closure must accompany the application for review;

(3) A brief description of the product to be retailed in the new revised package/container and the five-digit product group of the Numerical List of Manufactured Products (New (1972) SIC Basis) thereof;

(4) The trade name and/or common names of all components in the package/container and closure;

(5) The chemical name (following the nomenclature of Chemical Abstracts) of all components in the package/container and closure including but not limited to resins, catalysts, plasticizers, stabilizers, coatings, coloring agents, metals and preservatives. The total mass of each such constituent shall be listed in grams;

(6) The percent of recycled content from post-consumer waste of each component if known;

(7) A brief statement as to whether the user's specifications for the package/container specifically discriminate against the use of recycled materials from post-consumer waste in cases where the United States Food and Drug Administration does not prohibit such reuse;

(8) The best estimate of energy requirements for fabrication or conversion of the package/container and closure;

(9) Any specifications for the package/container and closure which limit total heavy metals and which

specifically limit any undesirable impurities such as unreacted monomer, catalysts or reaction-by-products to lowest levels consistent with good manufacturing practices;

(10) An estimate by the package/container user of effects on the labor force of acceptance or prohibition of the package/container. This estimate shall include both positive and negative effects;

(11) An estimate by the package/container user of effects on industry of acceptance or prohibition of the package/container. This estimate shall include both positive and negative effects;

(12) An estimate by the package/container user of unit price per ounce of product sold at retail for the same package/container size;

(13) The approximate date the package/container will be introduced into the Minnesota retail market;

(14) The name and address of the user of the package/container, including the name of a person within the company who may be contacted for additional information.

(C) In the case of a non-exempt revised package/container for purposes of comparison, the user shall submit the following information on the original package/container:

(1) A brief description of the original package/container and closure including its appearance,

weight (in grams of each sub-assembly), volume of package/container and volume of product to be contained therein;

(2) In the event a sample is not submitted, an engineering drawing of the package/container with closure shall accompany the other information;

(3) A brief description of the product retailed in the original package/container and the five-digit product group of the Numerical List of Manufactured Products (New (1972) SIC Basis) thereof;

(4) The trade name and/or common names of all components in the package/container and closure;

(5) The chemical name (following the nomenclature of Chemical Abstracts) of all components in the package/container and closure including but not limited to resins, catalysts, plasticizers, stabilizers, coatings, coloring agents, metals and preservatives. The total mass of each constituent shall be listed in grams;

(6) The percent of recycled content from post-consumer waste of each component if known;

(7) The best estimate of energy requirements for fabrication or conversion of the package/container and closure;

(8) Any specifications for the package/container and closure which limit total heavy metals and which specifically limit any undesirable impurities such as unreacted monomer, catalysts or reaction-by-product to lowest levels consistent with good manufacturing practice;

(9) An estimate by the package/container user on unit price per ounce of product at retail for the same package/container size.

(D) In the case of a new package/container the user shall evaluate the merits of alternative packages/containers. The user shall submit to the Agency all information required pursuant to SR-5 (B) on all alternatives so considered.

SR-6 CONFIDENTIALITY

(1) If the manufactuer of a new or revised package/container certifies at the time of submission of the sample and other required information that disclosure of any of the information will affect the company's competitve position, the Agency shall keep such sample and information confidential except as may be necessary for public hearings as requested by the user required under SR-3.

MINNESOTA POLLUTION CONTROL AGENCY
DIVISION OF SPECIAL SERVICES
REGULATIONS FOR PACKAGING REVIEW
OCTOBER 29, 1974

SR-1 APPLICABILITY AND DEFINITION

(A) Scope

These regulations and criteria govern the review of new or revised packages/containers sold at retail within the State of Minnesota after May 25, 1973, in accordance with Minn. Stat. Chapter 116F (Supp. 1973).

The purpose of these regulations is to:

(1) Identify the types of new or revised packages/containers which may be subject to Agency review;

(2) Set forth the criteria which the Agency will use in evaluating the new or revised packages/containers;

(3) Establish the types of samples and information that shall be requested or required by the Agency for evaluation of new or revised packages/containers;

(4) Establish a procedure for the manner in which samples and information shall be submitted and reviewed;

(5) Establish exemptions for some new or revised packages/containers.

(B) Definitions

(1) Agency. "Agency" means the Minnesota Pollution Control Agency, its agent or representative;

(2) Closure. "Closure" means any article, device, or contrivance made in whole or in part of paper, paperboard, fiber, wood, ceramic, glass, metal, plastic or any combination of such materials, including, but not limited to caps, clips, covers, lids, tabs or seals for the purpose of closing or fastening a package/container, but not including staples, metal tacks, nails, glues and adhesives;

(3) New or Revised. "New or Revised" means either a new packaging concept not previously sold at retail in Minnesota or any change in a package/container sold at retail before May 25, 1973, or approved for sale at retail under these regulations. Such changes include: change from one product to another product (different five-digit product codes of the Numerical List of Manufactured Products (New (1972) SIC Basis)) contained in the package/container; change in the chemical formulation of any constituent material; substitution of one or more constituent materials; substitution of closure; substitution of label; changes in design; and all other changes, except any changes in size, color, printing, or shape. Changes from one product to another within the same five-digit product code of the

Numerical List of Manufactured Products (New (1972) SIC Basis) shall not be considered a change of product for purposes of this definition.

(4) Package/Container. "Package/Container" means any article, receptacle, device or contrivance made in whole or in part of paper, fiber, wood, ceramic, glass, metal, plastic or any combination of such materials, including but not limited to bags, baskets, bottles, boxes, cans, cartons, carrying cases, cups, cylinders, envelopes, glasses, jars, jugs, pails, tubs, sacks, trays, tubes, tumblers, and vessels intended for use in conveying any product for sale at retail. Such term does not include any shipping carton not intended to be sold at retail;

(5) Person. "Person" means any human being, any municipality or other governmental or political subdivision, or any other public agency, any public or private corporation, any partnership, firm, association or other organization, any receiver, trustee, assignee, agent or other legal representative of any of the foregoing, or any other legal entity, but does not include the Minnesota Pollution Control Agency;

(6) Review Period. "Review Period" means the one hundred and twenty (120) day time period in which the Agency may review submitted samples and the accompanying information. The Agency may, for good cause shown, order the one hundred and twenty (120) day period to be extended for an additional period not to exceed thirty (30) days;

(7) Sold at Retail. "Sold at Retail" means sale or other transfer to the household of the ultimate consumer;

(8) User. "User" means an industry which combines packages/containers and products to create a unit intended for sale at retail.

(C) Severability

If any provision of any packaging regulation or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions or application of any other part of such regulation or any other regulation which can be given effect without the invalid provision or application; and to this end all provisions of all packaging regulations and the various applications thereof are declared to be severable.

SR-2 CRITERIA

(A) In determining whether a package/container is consistent with state environmental policy, the Agency shall place emphasis upon state responsibilities and policies established by the Environmental Policy Act, Minn. Stat. 116D.02 subd. 2 (Supp. 1973), and by Minn. Stat. 116F.01 and 116.05 (Supp. 1973).

(B) The Agency staff will compare a new or revised package/container with packaging alternatives. The object of this comparison will be to encourage those alternatives which maximize material and energy conservation while minimizing adverse environmental impact and increased economic costs to the people of the state. The staff will assess the relative merits of alternatives and encourage those alternatives which:

(1) Minimize the potential for environmental contamination, including but not limited to the release of metals or substances with the potential for biological harm;

(2) Minimize the total system energy costs;

(3) Minimize the use of scarce or non-renewable resources;

(4) Minimize the use of virgin materials;

(5) Are most recyclable where recyclability is consistent with (1) and (2) above;

(6) Minimize adverse economic effects on the consumer, the labor force, and industry, consistent with (1) and (2) above.

(C) In reviewing a new or revised package/container the Agency shall compare it to the existing package/container and/or all feasible alternatives submitted pursuant to SR-5. The decision to approve a new or revised package/container shall be based on a finding that the total positive impacts of the new or revised package/container outweigh the total negative impacts in comparison to the existing package/container and/or all feasible alternatives submitted pursuant to SR-5. The agency shall assess whether the new or revised package/container:

(1) Contains greater or lesser quantities of metals, hydrocarbons, organic or inorganic chemicals, or other substances which upon release into the environment through incineration, leaching, or littering have or may have potential for biological harm when compared with the existing package/container and/or feasible alternatives submitted pursuant to SR-5;

(2) Has a potential for creating an environmental problem as litter, which is higher or lower than the existing package/container and/or feasible alternatives submitted pursuant to SR-5;

(3) Requires more or less Btu/kg of product than the existing package/container and/or feasible alternatives submitted pursuant to SR-5 for the same

package/container size;

(4) Requires more or less scarce or non-renewable resources than the existing package/container and/or feasible alternatives submitted pursuant to SR-5, for the same package/container size;

(5) Has a higher or lower virgin materials content than the existing package/container and/or feasible alternatives submitted pursuant to SR-5;

(6) Has more or less current potential for recycling than the existing package/container and/or feasible alternatives submitted pursuant to SR-5;

(7) Results in an increase or decrease in the volume of solid waste in comparison to the existing package/container and/or feasible alternatives submitted pursuant to SR-5;

(8) Has a beneficial or adverse economic effect on the consumer, in comparison to the existing package/container and/or feasible alternatives submitted pursuant to SR-5;

(9) Has a beneficial or adverse economic effect on the labor force, in comparison to the existing package/container and/or feasible alternatives submitted pursuant to SR-5; and

(10) Has a beneficial or adverse economic effect on industry in comparison to the existing package/container and/or feasible alternatives submitted pursuant to SR-5.

SR-3 REVIEW PROCEDURE

(A) Package/container review by the Agency may be initiated in any of the following ways:

(1) A package/container user may submit the information and samples described in SR-5. While such submission for review is not mandatory, any package/container user wishing to initiate the review process must submit all the information requested in SR-5;

(2) The Agency itself may identify a package/container which it believes is subject to its review and shall proceed according to SR-3(C);

(3) Any other person may submit to the Agency a package/container for review, and if the Agency determines that such package/container is subject to its

review, the Agency shall proceed according to SR-3(C).

(B) Once the review process is initiated, the Agency shall review the new or revised package/container during the review period. If the Agency determines that the package/container constitutes a solid waste disposal problem or is inconsistent with state environmental policies, as manifested in the criteria of SR-2, the Agency may by order made after notice and hearing as provided in Chapter 15, Minn. Stat. (1971), and following an additional period not to exceed thirty (30) days during which the Minnesota Environmental Quality Council may review the proposed action, prohibit the sale of the package/container within the state. Any such prohibition shall continue in effect until revoked by the Agency or until the last legislative day of the next following legislative session, whichever occurs first, unless extended by action of the legislature. If the Agency fails to issue an order prohibiting a package/container by the end of the review period or to provide written notice of its acceptability, the Agency may not thereafter prohibit it, pursuant to Minn. Stat. Chapter 116F (Supp. 1973). If it is determined that the package/container is acceptable, the Agency will so notify the submitting user. Any package/container approved by the Agency may subsequently be used to enclose or convey other products within the same five-digit product group of the Numerical List of Manufactured Products (New (1972) SIC Basis), as the product in the approved package/container without further review by the Agency, but use of a package/container to enclose or convey products within other product groups may subject package/container to review initiated pursuant to SR-3(A).

(C) Where the Agency or any other person initiates the review process by identification or submission of a package/container, a Notice of Intention to Review shall be sent to the user of the package/container within ten (10) days of identification or receipt of the package/container. Upon receipt of such Notice, the package/container user shall have thirty (30) days to submit the information required by SR-5. The review period shall begin upon the date of receipt of information.

SR-4 EXEMPTIONS

(A) A new or revised package/container, will not be reviewed by the Agency if:

(1) It is marketed with a deposit of five (5) cents or more to encourage its return to the distribution system for reuse;

(2) It has a capacity of over two (2) gallons by volume or twenty-five (25) pounds by weight;

(3) It is required by federal laws and regulations

relating to health or safety. Any modification of a package ostensibly intended to achieve compliance with federal law, which involves changes of a kind different than those required for compliance with the law or regulation shall negate the exempt status of the package;

(4) It conveys products which are subject to the regulation of the U.S. Department of Agriculture pursuant to the Federal Meat Inspection Act, 21 U.S.C. 601-691;

(5) It conveys products other than those which come within Industry Numbers 20111 - 20999 inclusive, 28412 - 28424 inclusive, 28441 - 28445 inclusive of the Numerical List of Manufactured Products (New (1972) SIC Basis).

(B) A new or revised package/container, will not be reviewed by the Agency;

(1) When a package/container is made substantially of glass, and the change is of the following nature:

(a) Any change in the chemical formulation of the glass or its coloring agents; or

(b) Any change in enamels or coatings which are for color or identification; or

(c) Any change in coatings or surface treatments used to facilitate lubricity in manufacture or handling as long as such coating is not a structural portion of the package/container.

(2) When a package/container is made substantially of aluminum or steel, and the change is of the following nature:

(a) Any change in the alloy chemistry or temper thereof within the same metal type; or

(b) Any gauge change; or

(c) Any change in seam construction or solders or adhesives; or

(d) Any change in the inside coatings of metal packages/containers as long as such materials were in use for any steel or aluminum package/container coatings prior to May 25, 1973, or are approved by the United States Food and Drug Administration for contact with food surfaces and provided that such coatings do not exceed .0025 inch in gauge.

(3) When a package/container is made substantially of

paper or paper products and the change is of the following nature:

(a) Any change in board or paper coatings of clay, waxes, lacquers, or polyolefin compounds as long as such substitute materials were in use as board or paper coatings prior to May 25, 1973, or are approved for contact with food surfaces by the United States Food and Drug Administration; or

(b) Any change of foil laminates which do not exceed .0005 inch in gauge in those cases where scientific or engineering data substantiate the need for a functional barrier; or

(c) Any change in caliper or basis weight; or

(d) Any change in board or paper furnish where such change does not represent a specification change by the user with the effect of reducing recycled content.

(4) When a package/container is made substantially of plastic-type materials and the change is of the following nature:

(a) For rigid wall containers:

(1) Any change in density; or

(2) Any substitution of standard formulations within the same monomer group.

(b) For pouches, liners, chubs, and other film packaging including laminates with a wall thickness not exceeding .010 inch:

(1) Any substitution within or between the following groups:

a. Nylons
b. Polyester
c. PVDC
d. Polyethelene
e. Polypropylene
f. Ionomers
g. Polyethelene terephthalate; or

(2) Any change in density or caliper of any material constituents so long as the total gauge does not exceed .010 inches; or

(3) Any substitution individually or in combination of substrate materials of paper,

glass, nylon or cotton fabric.

(c) A new or revised package/container otherwise exempt from review pursuant to SR-4 (B) (4) may be reviewed by the Agency if the revision involves the use of any foamed resins.

(C) Notwithstanding any other provision of these regulations, no package/container shall be reviewed if:

(1) It is identical in all ways to a package/container sold at retail in Minnesota before May 25, 1973, or if any changes do not bring it within the definition of "new or revised" contained in SR-1, and

(2) The product to be packaged in the package/container is within the same product group as a product sold at retail before May 25, 1973, in such identical container. For products within the Numerical List of Manufactured Products (New (1972) SIC Basis) subject to review the five-digit product code shall be used to determine whether the products are within the same product group.

(D) If the user certifies that the package/container has been introduced into the Minnesota retail market for test marketing, seasonal, or promotional purposes, and further certifies the period of time necessary to complete such test marketing, seasonal or promotional purpose, the Agency may, upon request of the user defer review for that period of time equal to the test marketing, seasonal and promotional time period so certified by the user; provided, however, that in no event shall such deferral extend for longer than one hundred and eighty (180) days. In addition, the Agency may defer review for a fixed period of time (not to exceed one hundred and eighty (180) days where the user certifies that an emergency situation has arisen; the term "emergency situation" includes specifically, but is not limited to, any change made in a package which is temporary and caused by an inability to obtain supplies.

(E) Notwithstanding any other provisions of SR-4, the user or manufacturer of any package/container who believes the package/container to be exempt under SR-4 (A), (B) or (C) may, but is not required to:

(1) Submit to the Agency a request for Certification of Exemption which identifies the subdivision of SR-4 that the user, or manufacturer believes is applicable and which contains appropriate documentation. The Agency may request the submission of additional information necessary to determine whether such Certification of Exemption is appropriate.

(2) Initiate the review process, pursuant to SR-3 (A) (1), by submitting the information and samples

described in SR-5.

SR-5 INFORMATION REQUIRED FOR REVIEW

(A) Where the package/container review process has been initiated pursuant to SR-3, the package/container user may, but is not required to, submit a sample of the new or revised package/container. The sample may, but need not, contain the product retailed in it. Such samples and products will not be returned to the submitting party.

(B) The package/container user who intiates the review process pursuant to SR-3 (A) (1) or who receives a Notice of Intention to Review issued pursuant to SR-3 (C) shall submit to the Agency the following information on the new or revised package/container:

(1) A brief description of the package/container and closure including its appearance, weight (in grams of each sub-assembly), volume of package/container and weight of product to be contained therein;

(2) In the event a sample is not submitted, an engineering drawing of the package/container with closure must accompany the application for review;

(3) A brief description of the product to be retailed in the new or revised package/container and the five-digit product group of the Numerical List of Manufactured Products (New (1972) SIC Basis) thereof;

(4) The trade name and/or common names of all components present in quantities greater than 1% by weight in the package/container and closure;

(5) The chemical name (following the nomenclature of Chemical Abstracts) of all components present in quantities greater than 1% by weight in the package/container and closure including but not limited to resins, catalysts, plasticizers, stabilizers, coatings, coloring agents, metals and preservatives. The total mass of each such constituent shall be listed in grams. However other chemical constituents or contaminants constituting less than 1% by weight should be reported if known;

(6) The percent of recycled content from post-consumer waste of each component if known;

(7) A brief statement as to whether the user's specifications for the package/container specifically

discriminate against the use of recycled materials from post-consumer waste in cases where the United States Food and Drug Administration does not prohibit such reuse;

(8) The best estimate of energy requirements for fabrication or conversion of the package/container and closure;

(9) Any specifications for the package/container and closure which limit total heavy metals and which specifically limit any undesirable impurities such as unreacted monomer, catalysts or reaction-by-products to lowest levels consistent with good manufacturing practices;

(10) An estimate by the package/container user of effects on the labor force of acceptance or prohibition of the package/container. This estimate shall include both positive and negative effects;

(11) An estimate by the package/container user of effects on industry of acceptance or prohibition of the package/container. This estimate shall include both positive and negative effects;

(12) An estimate by the package/container user of unit price per ounce of product sold at retail for the same package/container size;

(13) The approximate date the package/container will be introduced into the Minnesota retail market;

(14) A listing of assumptions and methods of computation used to determine the calculated data required by SR-5 (B) (6), (8), (10), (11) and (12).

(15) The name and address of the user of the package/container, including the name of a person within the company who may be contacted for additional information.

(C) The package/container user who initiates the review process, pursuant to SR-3(A) (1) or who receives a Notice of Intention to Review issued pursuant to SR-3(C) shall submit to the Agency for purposes of comparison the following information on any original package/container:

(1) A brief description of the original package/container and closure including its appearance, weight (in grams of each sub-assembly), volume of package/container and volume of product to be contained therein;

(2) In the event a sample is not submitted, an engineer-

ing drawing of the package/container with closure shall accompany the other information;

(3) A brief description of the product retailed in the original package/container and the five-digit product group of the Numerical List of Manufactured Products (New (1972) SIC Basis) thereof;

(4) The trade name and/or common names of all components in the package/container and closure;

(5) The chemical name (following the nomenclature of Chemical Abstracts) of all components present in quantities greater than 1% by weight in the package/container and closure including but not limited to resins, catalysts, plasticizers, stabilizers, coatings, coloring agents, metals and preservatives. The total mass of each constituent shall be listed in grams. However other chemical constituents or contaminants constituting less than 1% by weight should be reported if known;

(6) The percent of recycled content from post-consumer waste of each component if known;

(7) The best estimate of energy requirements for fabrication or conversion of the package/container and closure;

(8) Any specifications for the package/container and closure which limit total heavy metals and which specifically limit any undesirable impurities such as unreacted monomer, catalysts or reaction-by-product to lowest levels consistent with good manufacturing practice;

(9) An estimate by the package/container user on unit price per ounce of product at retail for the same package/container size.

(D) In the case of a new or revised package/container the user shall evaluate the merits of feasible alternative packages/containers. The user shall submit to the Agency all information required pursuant to SR-5 (B) on all feasible alternatives so considered.

SR-6 CONFIDENTIALITY

(A) If the manufacturer and/or user of a new or revised package/container certifies at the time of submission of any sample and required information that disclosure of any of the information will affect the company's competitive position the Agency shall keep such sample and information confidential except as may be necessary for public hearings as requested by the user required under SR-3.

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Adoption of Proposed Minnesota Guidelines on Packaging SR-1, SR-2, SR-3, SR-4, SR-5 and SR-6, Including Applicability and Definitions, Criteria, Review Procedure, Exemptions, Information Required for Review and Confidentiality

FINDINGS OF FACT

The above-entitled matter came on for public hearing before the Minnesota Pollution Control Agency on the 17th day of July, 1974, at 9 o'clock a.m., in the Board Room of the Agency offices, 1935 W. County Road B2, Roseville, Minnesota, after proper notice required by Minnesota Statute §15.0412 (1971) was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording all interested persons an opportunity to present written and oral data, statements and arguments, having considered all of the evidence adduced and upon the records, files and proceedings herein, this Agency finds the following:

1. The definition of "user," contained in SR-1, is needed in order to show that the entity which combines package/container with product to form a retail sales unit has the responsibility for submitting information pursuant to other sections of the regulations. Earlier drafts of the guidelines referred to the "manufacturer," creating confusion as to whether it was the maker of the product or the maker of the package to which the term referred.

2. "Sold at retail" is appropriately defined in SR-1 to indicate that the Agency will review only packages/containers going to the ultimate consumer. The authorizing statute itself makes reference to such a limitation.

3. Comparison by Agency staff of a new or revised package/container with feasible packaging alternatives is an appropriate and reasonable method to assess the environmental impact of a proposed package/container. The six general criteria which will be utilized in assessing packaging alternatives were chosen on the basis of language within the authorizing statute, Minn. Stat. Chapter 116F (Supp. 1973), and its reference to policies enumerated in the Minnesota Environmental Policy Act, Minn. Stat. Chapter 116D (Supp. 1973).

4. Biological harm caused by the release into the environment of chemical substances is one measure of environmental degradation. Therefore, in reviewing new or revised packages/containers, it is reasonable for the Agency to assess the impact of the presence of such materials in the package/container. The choice of metals, hydrocarbons and organic or inorganic chemicals as classes of substances to be considered is designed to be comprehensive of all chemicals with the potential for such harm.

5. A package/container must be assessed to determine if the package/container is likely to be improperly disposed of, and if so, to determine whether it will degrade naturally or will require manual pickup for proper disposal. Therefore, litter potential is appropriate as a criteria for package/container evaluation.

6. The energy requirements for production of package/container represent one of its major environmental impacts and therefore must be assessed. Furthermore, the language of the authorizing statute requires the Agency to consider this parameter in its evaluation of a package/container.

7. The use in packages/containers of non-renewable resources and of non-scarce resources, the acquisition of which significantly degrades the environment, is a major impact of packaging materials and it is therefore necessary and appropriate to consider such use in Agency evaluation of a new or revised package/container.

8. The use of virgin materials in packages/containers requires the use of resources and energy at higher levels than the use of materials which are recycled. Maximizing uses of recycled materials will have the effect of reducing environmental impacts. Accordingly, this factor must be included in any package/container review in order to properly evaluate the package/container.

9. Since encouraging the development of resource recovery systems is one aim of the packaging review program, evaluation of a new or revised package/container's recyclability potential is reasonable. Material and design choices for packages/containers must be made to prevent combinations of materials or design features which would prevent their use in current or projected resource recovery systems.

10. The bulk of packaging solid waste is currently landfilled and will be for the foreseeable future. Reducing the volume of solid waste will result in a reduced demand for landfill space, and hence reduce the environmental impact of solid waste disposal. Therefore, it is reasonable for the Agency, in reviewing a new or revised package/container, to assess its effect on the volume of solid waste generated in Minnesota.

11. The authorizing statute requires the Agency to consider the economic impacts of the implementation of the packaging review program. It is reasonable to consider such impacts for the consumer, for labor and for industry.

12. Proposed Sections SR-2 (D), (E) and (F) have been deleted from the guidelines because evidence does not support such a materials hierarchy.

13. The review process contained in SR-3(B) is essentially that described in the authorizing legislation, Minn. Stat. Chapter 116F.06 (Supp. 1973). To assure that the package/container user is informed of the Agency's decision, a requirement that the Agency notify the user is appropriate. In order to be consistent with the exclusion from review of packages/containers based on the product categorization of the Numerical List of Manufactured Products (New (1972) SIC Basis), it is appropriate to limit the use of approved packages/containers on the same basis.

14. It is reasonable to allow optional submission for review by the package/container user, as well as to provide for initiation of review by the Agency itself or any other person. Allowing package/container users to initiate the review process will avoid uncertainties as to whether the Agency or some other person may initiate review in the future. Because the packaging review program is aimed at the packaging of products sold or transferred directly to consumers in the retail marketplace, consumers can provide valuable assistance to the Agency by drawing to its attention new or revised packages/containers which the Agency may then wish to review.

15. Where someone other than the package/container user initiates the review process, it is necessary to provide an orderly procedure whereby the package/container user may be notified of the Agency's intention to review a package/container. The Notice of Intention to Review meets this need, and the requirement that the Agency send out the Notice within 10 days of identification or receipt of a package/container to be reviewed, assures that the review process will not be unduly delayed, thereby prejudicing the package/container user whose products are already in the market place. Similarly, the 30 day limit on the submission of information provides reasonable assurance that the review process will proceed expeditiously.

16. Evidence indicates that a deposit of five (5) cents or more on packages/containers provides an adequate economic incentive for reuse. Since reuse reduces the consumption of energy and resources and minimizes the environmental impact of packaging, an exemption from review based on this factor is reasonable.

17. Evidence indicates that larger packages/containers require less energy to fabricate and fewer resources to produce. Since such reduction in resource and energy consumption is one of the objectives of the packaging review program, it is appropriate to include an exemption from review for packages/containers having a capacity of greater than two (2) gallons by volume or twenty-five (25) pounds by weight.

18. The exemption from review provided in SR-4 for new or revised packages which are designed to comply with federal health or safety requirements acknowledges that as to some aspects of packaging design and fabrication the federal government has preempted the states from acting. While such acknowledgment may not be strictly necessary, its inclusion will avoid confusion for package/container users subject to several regulatory programs. It is reasonable that the exemption be narrowly drawn, however, in order to assure that it is not used to circumvent the review of changes which are outside the scope of other regulatory requirements.

19. An exemption for new or revised packages/containers which convey meat products subject to inspection by the U.S. Department of Agriculture pursuant to the Federal Meat Inspection Act is appropriate inasmuch as that act specifically preempts the states from imposing different packaging requirements for such products.

20. Evidence indicates that approximately 85% of the residential packaging solid waste stream is composed of packages/containers which originally conveyed products coming within Industry numbers 20111 - 20999 inclusive, 28412 - 28424 inclusive, 28441 - 28445 inclusive of the Numerical List of Manufactured Products (New (1972) SIC Basis). Therefore, limiting Agency review to these categories of packaging constitutes an efficient use of staff time while at the same time subjecting the majority of new or revised packages/containers to potential Agency review.

21. Evidence presented at the public hearing indicates that the proposed exemption for packages/containers clearly intended for multiple reuse, is ambiguous and may provide a "loophole" for packages which should be subject to Agency review. Consequently, this exemption has been deleted from the guidelines.

22. SR-4 (B) provides for exemptions from review for certain new or revised packages/containers where the modifications are minimal and of a routine nature. It is reasonable to exclude these inasmuch as their review could create excessive administrative and financial burdens for both the Agency and package/container users, and their environmental impact is either non-existent or insignificant. The specific inclusion of otherwise exempt modifications which involve the use of foamed resin plastic

materials is based upon special environmental impacts associated with water transport of these materials.

23. The implementation of the "grandfather clause" of the authorizing statute, §116F.06 (Supp. 1973), is appropriate in that it identifies the types of packages/containers which are not subject to review by reference to the types of products which they convey. "Grandfathering" types of packages/containers on this basis allows the Agency to control the proliferation of environmentally unsound packages/containers, while giving industry very specific help in determining what packages/containers are subject to review.

24. In order to allow the packaging industry to make use of temporary packaging alternatives, it is appropriate to provide for a limited deferment of the review process under certain specified circumstances. Such a deferment is reasonable in cases of test marketing and seasonal and promotional packages/containers since such packages/containers come into the state only in limited numbers and therefore have little potential to impact the solid waste stream or cause other environmental damage. In emergency situations, where an acceptable package is temporarily unavailable due to materials shortage or other reasons, it is necessary for a package user to be able to make a short-term substitution without subjecting himself or the Agency to the potential work of reviewing the package.

25. The provision for Certification of Exemption is a reasonable method for assuring a package/container user or manufacturer that a package/container which he considers exempt from review is also considered exempt by the Agency. It will provide a degree of certainty to the packaging industry with regard to exempt packages/containers which it would not otherwise have.

26. In order to allow the Agency to compare the new or revised package/container with feasible packaging alternatives, certain information with regard to both the new or revised package/container and any existing package/container and/or feasible alternatives is needed.

27. A description of the package/container (or a sample) is necessary in order to allow an evaluation of design features which may have a bearing on its environmental impact.

28. The submission of an engineering drawing in lieu of an actual package/container sample is appropriate in order to allow review to commence before substantial investment in dies or machinery is made.

29. Because of varying needs of product protection for various classes of products, e.g., solids/powders, liquids or frozen products, information as to the product to be contained in the new or revised package/container and its product classification is needed in order to evaluate the package/container.

30. Submission of the trade name and/or common names of all components is necessary in order to evaluate the constituent materials of a package/container and conforms with U.S. Food and Drug Administration practices for reporting packaging materials.

31. The chemical name of all components above a certain weight is needed by the Agency to determine the potential environmental impacts of a package/container and the form conforms to reporting practices required by the U.S. Food and Drug Administration.

32. The exact percentage of recycled materials from post-consumer waste utilized in a package/container may be difficult to ascertain with any degree of accuracy; however, if known this information would contribute to an evaluation of the package/container, since encouraging the recycling of packaging materials is one objective of the packaging review program.

33. While the exact amount of recycled materials from post-consumer waste may be unknown, specifications excluding its use from packaging materials are available to package users. Discrimination against such materials, where not specifically required by U.S. Food and Drug Administration regulations, tends to reduce the market for recyclable materials, and hence encourages greater use of virgin materials.

34. While the accuracy and precision of estimates of fabrication or conversion energy requirements is less than optimum, some estimates are available. Since reducing energy consumption is one program objective, requiring such estimates, where available, is appropriate. In addition, the accumulation of a data base on this matter will allow development of more objective packaging review criteria in the future.

35. A review of specifications which explicitly limit undesirable impurities to lowest levels practicable is appropriate inasmuch as the presence or absence of such materials is one factor to be considered in evaluating the package/container's potential for environmental harm. Therefore, information as to these specifications is necessary for a thorough review.

36. An estimate of the probable effects on industry of the Agency's approval or prohibition of a package/container is required so that the Agency may assess these positive or negative effects and thereby fulfill its statutory charge to consider the economic effects of the packaging regulatory program.

37. The estimate of probable effects on the labor force is required so that the Agency might fulfill its statutory obligation to consider the economic effects of its actions on the labor force.

38. An estimate of unit price of product in the package/container is necessary in order for the Agency to implement its packaging criteria relative to the economic impact of a given package/container on consumers.

39. Requiring submission of the name and address of the responsible person in a firm seeking or subject to review, is reasonable in order to coordinate queries for additional information as to a given package/container under review.

40. Requiring the submission of information as to assumptions and methods of calculations used in developing certain other data, is necessary in order to allow the Agency to properly evaluate and weigh the data, and to make the necessary comparisons between packaging alternatives.

41. The information required by SR-5 (C) is similar to that required for packages in SR-5 (B) and is necessary to compare the new or revised package/container with the existing package/container.

42. Standard industrial practice is such that two or more packages/containers are compared by package/container users to optimize packaging choices. The Agency requirement that the package/container user supply information as to other alternatives is necessary in order to implement the comparison procedure described in the "Criteria" regulation, SR-2.

43. The provision allowing a package/container user or manufacturer to certify as confidential information and samples submitted to the Agency is required by the authorizing statute. It is based upon the need of members of the packaging industry to preserve trade secrets and information which would effect competition.

44. The information required to be submitted pursuant to SR-5 is reasonably available to package/container users and its submission will not create undue economic or other burdens.

STATEMENT OF EXPLANATION

GUIDELINES FOR PACKAGING REVIEW

Karen A. Wendt
Research Scientist, Division of Special Services
Minnesota Pollution Control Agency

July 17, 1974

During the 1973 Legislative Session, the Minnesota Legislature enacted Chapter 748, a comprehensive law dealing with resource recovery and solid waste source reduction. The Legislature's intent is expressed in the Statement of Policy in Section 1, which reads, in part, as follows:

> "The legislature seeks to encourage both the reduction of the amount and type of material entering the solid waste stream and the reuse and recycling of materials. Solid waste represents discarded material and energy resources, and it also represents an economic burden to the people of the state. The recycling of solid waste materials is one alternative for the conservation of material and energy resources, but it is also in the public interest to reduce the amount of materials requiring recycling or disposal."

To influence and control the composition and quantity of solid waste at its source, the Legislature in Section 6 of the Act directed the Minnesota Pollution Control Agency to review packages and containers sold at retail in Minnesota on or after May 25, 1973. If after reviewing such package or container, the Agency finds that it may cause a solid waste disposal problem or be inconsistent with state environmental policies, the Agency has further been authorized to prohibit the retail sale of the package or container after notice and hearing as provided for by Minnesota Chap. 15. Such prohibition as adopted by the Agency pursuant to Section 6 of the Act is temporary and expires on the last day of the following regular legislative session. The Legislature, however, may at any time take action to rescind an Agency prohibition or enact a law extending such prohibition.

The guidelines before us today are the product of many months of work by MPCA staff members and representatives of numerous industries and environmental groups. The MPCA has held two sets of public hearings -- on July 24 and 25, 1973, and December 20 and 21, 1973. In addition to the hearings, the MPCA has hosted a series of meetings involving representatives of many affected industries and have had numerous mail, phone and personal contacts with individual industry spokesmen.

At this hearing today, I would like to read sections of the proposed guidelines and elucidate those points the staff believes need further clarification.

SR-1 APPLICABILITY AND DEFINITIONS

This section is subdivided into Scope SR-1 (A) and Definitions SR-1 (B). Under Scope we have enumerated the purpose of the guidelines.

(1) Identify the types of new or revised packages/containers which convey products which come within Industry Numbers 20111 - 20999 inclusive, 28412 - 28424 inclusive, 28441 - 28445 inclusive of the Numerical List of Manufactured Products (New (1972) SIC Basis) which may be subject to Agency review;

(2) Set forth the criteria which the Agency will use in evaluating new or revised packages/containers;

(3) Establish the types of samples and information that shall be requested or required by the Agency for evaluation of new or revised packages/containers;

(4) Establish a procedure for the manner in which samples and information shall be submitted and reviewed;

(5) Establish exemptions for some new or revised packages/containers.

While the legislature authorized the Agency to review all new and revised packages and containers, except for changes which involve only color, shape, size or printing the Agency has chosen to limit that review. In an effort to reduce the administrative burden on both industry and the MPCA staff, we have consequently limited our review authority to include only those classes of product packages enumerated in SR-1 (A) (1) according to the Numerical List of Manufactured Products (New (1972) SIC Basis). These classes basically include food and beverages, household cleaning supplies, and toiletries and cosmetics. According to available data, these three product classes constitute approximately 85% of the packaging residential solid waste.

The definition section has been altered only slightly since the last public hearing. We have however, written separate definitions for New and Revised.

> New. "New" means a package/container designed to convey a product not previously sold at retail in Minnesota;

> Revised. "Revised" means any change in a package/container sold at retail in Minnesota before May 25, 1973, or approved for sale at retail under these regulations. Such changes include: change in the

chemical formulation of any constituent material; substitution of one or more constituent materials; substitution of closure; substitution of label, except changes only in color and/or printing; changes in design or configuration, except changes only in size, color and/or shape; and all other changes, except any changes in size, color, printing, or shape;

Under these definitions, a new package would be one conveying a product not previously sold at retail in Minnesota. An example of a new package might be one conveying a product such as papaya flakes. We, therefore expect to review very few "new" packages.

I would also call your attention to the definition of Acceptable Plastic which is an additional definition in this set of guidelines.

(1) Acceptable Plastic. "Acceptable plastic" is a plastic that was in use for packaging products within the same five-digit product code of the Numerical List of Manufactured Products (New (1972) SIC Basis), prior to May 25, 1973, or has subsequently been approved by the Agency for packaging products

within the same five-digit product group subsequent to May 25, 1973;

The staff feels that this definition is necessary because in listing those changes which we would consider desirable, undesirable or neutral in the Criteria section (SR-2) we have referred to Acceptable Plastic. An acceptable plastic is one therefore that has been approved by the Agency or "grandfathered in" for use in packaging products within the same 5-digit product code.

SR-2 CRITERIA

(A) In determining whether a package/container is consistent with state environmental policy, the Agency shall place emphasis upon state responsibility and policies established by the Environmental Policy Act, Minn. Stat. section 116D.02, subd. 2 (Supp. 1973) and by Minn. Stat. section 116F.01 and 116F.05, subd. 3 (Supp. 1973).

This section deals with the policy basis upon which Agency evaluations will be made. The policies are based upon provisions of the Environmental Policy Act affirming that this generation holds

the environment in trust for all succeeding generations and that the state has responsibilities to the nation and the world in exercising all its responsibilities such that the world environmental is best protected and enhanced.

More specific guidance is offered by the enabling statute, Minn. Stat. 116F.05, subd. 3 (Supp. 1973).

> "In exercising its powers under this section, the agency shall seek those alternatives which maximize the conservation of energy and materials while minimizing the environmental impact and the cost to the people of the state. Consideration shall be given to economic factors, including but not limited to, effects on the labor force."

(B) The Agency staff will compare a submitted package/container with packaging alternatives. The object of this comparison will be to encourage those alternatives which maximize material and energy conservation while minimizing adverse environmental impact and increased economic costs to the people of the state. The staff will assess the relative merits of alternatives and encourage those alternatives which:

(1) Minimize the potential for environmental contamination, including but not limited to

> the release of metals or substances with the potential for biological harm;
>
> (2) Minimize the total system energy costs;
>
> (3) Minimize the use of scarce or non-renewable resources;
>
> (4) Minimize the use of virgin materials;
>
> (5) Are most recyclable where recyclability is consistent with (1) and (2) above;
>
> (6) Minimize adverse economic effects on the consumer, the labor force, and industry, consistent with (1) and (2) above;

This section lists those concerns which the Agency staff will address in its review process. While all are self-explanatory, it may be well to mention that all do not carry equal weight. Clearly only the most extraordinary conditions would allow approval of a package with the potential for biological harm, and since the staff feels strongly that a close correlation exists between energy usage and total environmental impact, energy consumption will weigh more heavily in the assessment.

Section C states in part:

> (C) In reviewing revised packages/containers the only alternative to be considered shall be the original package(s)/container(s). New packages/containers

> shall be compared to all feasible alternatives submitted pursuant to SR-5. The decision to approve a revised package/container shall be based on a finding that the total positive impacts of the revised package/container outweigh the total negative impacts in comparison to the existing package/container. The decision to approve a new package/container shall be based on a finding that the total positive impacts of the new package/container outweigh the total negative impacts in comparison to the submitted alternatives pursuant to SR-5.

This section then states that the Agency shall prepare what amounts to an environmental impact statement on the package/container under review. The user, pursuant to SR-5, shall submit information or original packages/containers when submitting a revised package/container for Agency review. When submitting a new package/container for Agency review, the user shall submit information on feasible alternatives considered pursuant to SR-5. Agency staff will then review the package/container in comparison to submitted alternatives, weigh the positive and negative impacts of each and make its decision based upon the comparison.

The rest of Section C is a listing of the questions to be considered in reviewing the package/container. These questions are based on the six stated criteria in SR-2 (B) which I read previously.

In Sections SR-2 (D) (E) and (F) the staff has attempted to provide guidance to package users who are contemplating a materials change. These sections should be interpreted only as a guide since many requirements for product protection, other state and federal regulations or health and safety regulations may lead package designers toward different choices. These materials hierarchies only represent approximations leading to an energy and resource guide without extensive consideration of the complex variables involved in an individual packaging decision. We would however, like to stress that if a package user has the alternative to move in a direction the Agency staff suggests as desirable, it is hoped that this would be done.

While our Criteria Section may still be viewed by some industries as subjective instead of objective, I would like to point out that we expect the regulations to be amended to include more and more firm criteria as data accumulates and studies are completed which will allow more accurate and precise determinations of a given package or packaging material as it impacts on the solid waste stream. If we were to adopt fixed objective and numerical criteria at this time, some packages would of necessity be rejected that might have overriding social merit in the areas

of safety, economics, etc., while potential problems might receive less than a full review and be arbitrarily passed.

SR-3 REVIEW PROCEDURE

(A) Package/container review by the Agency may be initiated in any of the following ways:

(1) A package/container user may submit the information and samples described in SR-5. While such submission for review is not mandatory, any package/container user wishing to initiate the review process must submit all the information requested in SR-5;

(2) The Agency itself may identify a package/container which it believes is subject to its review and shall proceed according to SR-3 (C);

(3) Any other person may submit to the Agency a package/container for review, and if the Agency determines that such package/container is subject to its review, the Agency shall proceed according to SR-3 (C);

Minn. Stat. section 116F.06, subd. 3 (Supp. 1973) states in part:

> "Any person may submit to the Agency a sample of a package or container for Agency review."

Therefore, by SR-3 (A) we have delineated the process by which the package/container review process may be initiated. We have interpreted "any person" to include the package/container user, an Agency staff member, or any other person.

We are taking the position that the MPCA has not been granted mandatory review authority. However, it is our belief that it would be to a package/container user's advantage to submit a questionable package/container to the Agency for review inasmuch as the Agency itself or any other person may initiate the review procedure. This would, of course, prevent costly manufacturing, distribution and marketing of a particular package/container which might be reviewed by the Agency anyway and found undesirable.

Section SR-3 (B) is essentially the same as in the previous set of guidelines, therefore I shall not read it at this time. We have decided to use only the 5-digit product codes of the Numerical List of Manufactured Products. In the previous version of this section we used some 5-digit and some 7-digit product codes. We believe this change will ease the burden on certain affected industries and make for more coherent and uniform guidelines.

Section SR-3 (C) states:

(C) Where the Agency or any other person initiates the review process by identification or submission of a package/container, a Notice of Intention to Review shall be sent to the user of the package/container within ten (10) days of identification or receipt of the package/container. Upon receipt of such Notice, the package/container user shall have thirty (30) days to submit the information required by SR-5. The review period shall begin upon the date of receipt of information.

This section departs from our previous guidelines in that we no longer intend to utilize an interim prohibition of a package/container if we do not receive accompanying information needed to evaluate a package/container. Minn. Stat. section 116F.06, subd. 3 (Supp. 1973) states in part:

> "The Agency shall review the sample, and <u>may</u> require the person to furnish such additional samples and information as may be necessary for it to determine the environmental or solid waste disposal problems that the container or packaging would cause." (Emphasis added.)

Section SR-3 (C) then says that the Agency, within ten days of submission of a package/container pursuant to SR-3 (A) (2) or SR-3 (A) (3), shall send a Notice of Intention to Review to the package/container user who shall then have thirty days after receipt of the Notice to submit the information required by SR-5.

SR-4 EXEMPTIONS

This proposed regulation lists general and special exemptions which the Agency staff feels will effectively reduce the administrative burden on both itself and the packaging industry by limiting the Agency review only to new or revised packaging concepts.

Section SR-4 (A) is devoted to general exemptions applicable to all classes of packaging materials or combinations of materials.

(A) A new or revised package/container will not be reviewed by the Agency if:

(1) It is marketed with a deposit of five (5) cents or more to encourage its return to the distribution system for reuse;

This section is included to encourage reusable containers for those products for which a returnable system is feasible.

> (2) It has a capacity of over two (2) gallons by volume or twenty-five (25) pounds by weight;

This section exempts packages of a size or capacity so that the ratio of product to package is sufficiently high to realize significant conservation of both energy and materials.

> (3) It is required by Federal or Minnesota laws and regulations relating to health or safety. Provided, however, that any modification of a package ostensibly intend to achieve compliance with Federal or Minnesota law, which clearly goes beyond what is required for compliance with the law or regulation shall negate the exempt status of the package;

This provision allows regulations promulgated for health and safety reasons by either the State of Federal Government to take precedence over the packaging regulations. An example will help in the clarification of this section. Suppose a packager is

required by the Consumer Product Safety Division to place a childproof closure on a glass bottle containing Mrs. Widgets Old Caustic Cleaning Fluid. Because of the exemption just read, the change of closures would be exempt from Agency review. However, if the package/container user were to change the whole bottle from glass to PVC, this package/container would then be subject to Agency review unless PVC bottles were already approved for the class of products represented by caustic cleaning fluid.

> (4) It is clearly intended for multiple reuse by the consumer and specifically designed so as to be suitable for such multiple reuse; and is a package or container which the consumer might purchase separately on more than one occasion;

This section is designed primarily to exempt those items of packaging in which the package is clearly intended to serve a function in the household after the initial product is used. Examples might include jelly glasses which are suitable for water tumblers, margarine packed in plastic bowls which might be used for storing food left-overs or perhaps instant coffee packed in a glass coffee server. An example of a package which

would not qualify because of non-suitability of design features might include a coffee-cup-shaped package of plastic which would exhibit stress cracking when subjected to hot coffee. Also, this exemption would be inoperative if the consumer could not recognize the possibility of reuse or if it was not a package/container that the consumer might purchase anyway on more than one occasion.

> (5) It conveys products other than those which come within Industry Numbers 20111 - 20999 inclusive, 28412 - 28424 inclusive, 28441 - 28445 inclusive, of the Numerical List of Manufactured Products (New (1972) SIC Basis).

This section reiterates the Agency's intention to limit its review initially to those product classes constituting the largest portion of packaging solid waste, i.e., food and beverage, toiletries and cosmetics and chemicals and household cleaning supplies.

Section SR-4 (B) deals with special exemptions for primary material categories. Inasmuch as these are largely self-explanatory and applicable only to affected industries, I will not read them in their entirety except for those which we feel require some comment.

> (3) When a package/container is made substantially of paper or paper products and the revision(s) is (are) of the following nature:
>
> (b) Changes of foil laminates which do not exceed .0005 inch in gauge and serve as a functional barrier;

The choice of .0005 inch gauge for exemption of foil laminates and the requirement that it serve as a functional barrier needs some amplification. .00035 inch gauge on foil would actually be sufficient to serve as a barrier but because of lamination difficulties at this gauge, the less stringent .0005 inch gauge was selected after discussions with a number of affected industries. The requirement that a functional barrier be served would allow foils to be used in a usage such as oxygen, moisture or light barriers on a primary package. However, the exemption does not cover their decorative use on outer cartons or their use for packaging products which do not require a functional barrier.

In a similar manner in SR-4 (B) (4) (b):

> (b) for pouches, liners, chubs, and other flexible packaging including laminates with a wall thickness not exceeding .010 inch;

The choice of .010 inch was made to conform with the definition of film used in describing film packaging. The definition conforms to (ASTM D883-65aT).

> (C) Not withstanding any other provisions of these regulations, no package/container shall be reviewed if:
>
> (1) It is identical in all ways to a package/container sold at retail in Minnesota before May 25, 1973, or if any changes do not bring it within the definition of "revised" contained in SR-1, and
>
> (2) The product to be packaged in the package/container is within the same product group as a product sold at retail before May 25, 1973, in such identical container. For products within the Numerical List of Manufactured Products (New (1972) SIC Basis) subject to review the five-digit product code shall be used to determine whether the products are within the same product group.

Section (C) reaffirms the Agency's interpretation of the grandfather clause.

(D) Upon initiation of the review process pursuant to SR-3 by a package/container user, the Agency in consultation with the user may defer review for a fixed period of time (not to exceed 180 days) for test marketing, seasonal, promotional or emergency situations.

Section SR-4 (D) is specifically designed to aid an industry in meeting emergency situations. If for example, an industry is faced with any of the above described situations, this section provides for a deferral of the Agency review period.

(E) Notwithstanding any other provision(s) of SR-4, the user of any package/container who believes the package/container to be exempt under SR-4 (A), (B) or (C) may, but is not required to:

(1) Submit to the Agency a request for Certification of Exemption which identifies the subdivision of SR-4 that the user believes is applicable and which contains appropriate documentation. The Agency may request the submission of additional information necessary to determine whether such Certification of Exemption is appropriate;

(2) Initiate the review process, pursuant to SR-3 (A) (1), by submitting the information and samples described in SR-5.

Section SR-4 (E) (1) allows for an affected industry to formally request that the Agency give written concurrence with its judgement that a certain package/container is indeed exempt.

Section SR-4 (E) (2) affirms the right of the affected package user to request formal review in the case where no other party has so requested.

SR-5 INFORMATION REQUIRED FOR REVIEW

(A) Where the package/container review process has been initiated pursuant to SR-3, the package/container user may, but is not required to, submit a sample of the new or revised package/container. The sample may, but need not, contain the product to be retailed in it. Such samples and products will not be returned to the submitting party.

SR-5 (A) simply states that the package/container user is not required to submit a sample package/container but may do so if

he wishes. This will allow the user to begin the review process before making capital investments in equipment.

SR-5 (B) lists those items of information on the chosen packaging alternative which the MPCA staff will need in order to complete the review procedure on the package/container.

SR-5 (C) describes the information the Agency requires on the original package(s)/container(s) for purposes of comparison with the selected alternative. This section then deals with a revised package.

SR-5 (D) states:

> (D) In the case of a new package/container the user shall evaluate the merits of alternative packages/containers. The user shall submit to the Agency all information required pursuant to SR-5 (B) on all alternatives so considered.

This section pertains to the information required on feasible alternatives to a selection of a new package/container. These alternatives will then be compared to the submitted chosen alternative.

SR-6 CONFIDENTIALITY

> (1) If the manufacturer of a new or revised package/container certifies at the time of submission of the sample and other required information that disclosure of any of the information will affect the company's competitive position, the Agency shall keep such sample and information confidential except as may be necessary for public hearings as requested by the user required under SR-3.

Protection of confidential information is authorized in Minn. Stat. section 116F.06, subd. 3 (Supp. 1973). You will note that SR-6 requires the user to certify at the time of submission whether disclosure of any of the information submitted pursuant to SR-5 may affect his company's competitive position. The filing of this certification of confidentiality at the time of submission is important, because the MPCA is a public agency and we are required to give any member of the public access to files and records which have not been certified as confidential. We have made provisions for items and information which have been certified to be confidential to be stored separately from those that have not. Additionally we wish to reaffirm for the record

that we will respect the confidentiality of any information submitted by package/container users. Such data will be used only in a public hearing on the proposed prohibition of the package/container for which the data is submitted.

This concludes my discussion of the guidelines. We at the MPCA wish to commend those industry representatives, environmentalists and legislators who have been of particular assistance to us in drafting the guidelines now before you. As I stated previously, these are the product of thousands of man hours spent by MPCA staff, industry representatives, environmentalists and legislators. This has definitely been a learning experience for all involved. The Agency staff has attained a modicum of packaging expertise while some industries have attained a level of environmental awareness in packaging design. We thank you for your past cooperation and hope for continued cooperation which could ultimately lead us to never ban a package/container from Minnesota while reducing the advserse environmental impacts from packaging in the state.

STATE OF MINNESOTA APPENDIX F

DEPARTMENT Division of Special Services Office Memorandum

TO : Interested Parties DATE: Oct. 18, 1974

FROM : Karen Wendt

SUBJECT: Packaging Regulations

The Agency Board will consider Packaging Regulations SR-1 through SR-6 at a special meeting at 9:00 a.m. on Tuesday, October 29 in the Board room of the MPCA offices at 1935 W. Co. Rd. B2, Roseville, Mn. 55113.

The Agency staff will recommend that the Board adopt the Final Draft of the regulations sent to you on October 4, 1974 with the following changes.

On page 1, in the sentence just before SR-1 (A) (1), delete the word "guidelines" and add in its place the word, "regulations". The sentence should then read, "The purpose of these regulations is to:"

Again on page 1 in SR-1 (B) (3) after the word "include:" and before the words "change in the chemical formulation of any constituent material," add the words: "change in the product contained in the package/container." At the end of the definition (after "or shape;" on the last line), add the following sentence: "Changes from one product to another within the same five-digit product code of the Numerical List of Manufactured Products (New (1972) SIC Basis) shall not be considered a change in the product for purposes of this definition. The definition would then read as follows: New or Revised.. "New or Revised" means either a new packaging concept not previously sold at retail in Minnesota or any change in a package/container sold at retail before May 25, 1973, or approved for sale at retail under these regulations. Such changes include: change in the product contained in the package/container; change in the chemical formulation of any constituent material; substitution of one or more constituent materials; substitution of closure; substitution of label; changes in design; and all other changes, except any changes in size, color, printing or shape. Changes from one product to another within the same five-digit product code of the Numberical List of Manufactured Products (New (1972) SIC Basis) shall not be considered a change in the product for purposes of this definition.

STATE OF MINNESOTA

COUNTY OF RAMSEY

OFFICE OF THE ATTORNEY GENERAL

In the Matter of the Adoption of Proposed Minnesota Guidelines on Packaging SR-1, SR-2, SR-3, SR-4, SR-5 and SR-6, Including Applicability and Definitions, Criteria, Review Procedure, Exemptions, Information Required for Review and Confidentiality

RESPONSE OF MINNESOTA POLLUTION CONTROL AGENCY TO MEMORANDUM FILED BY THE CAN MANUFACTURERS INSTITUTE WITH REGARD TO PACKAGING REGULATIONS

1. Pursuant to authority granted by Minn. Stat. §116F.06 (Supp. 1973), the Minnesota Pollution Control Agency (hereinafter MPCA) at its October 29, 1974, meeting, adopted regulations SR-1, SR-2, SR-3, SR-4, SR-5 and SR-6 (hereinafter packaging regulations). On November 27, 1974, these regulations, along with supporting documents, were sent to Michael B. Miller, Special Assistant Attorney General at the Minnesota Department of Administration, for review, as contemplated in Minn. Stat. §15.0412 (1971).

2. Prior to receipt of the packaging regulations, Mr. Miller was notified that the Can Manufacturers Institute (hereinafter CMI), a national non-profit trade association of producers of metal and composite cans and suppliers to the can manufacturing industry, wished to contest their legality, pursuant to Minn. Reg. Atty. Gen. 305(c).

3. On December 6, 1974, a meeting was held to discuss the objections raised by CMI. In attendance were Paul Hallman, CMI general counsel; Jack Mason, of the law firm of Dorsey, Marquart, Windhorst, West and Halladay, CMI local counsel; Lou Heib, a

member of the legal staff of American Can Co.; Sandra S. Gardebring, Special Assistant Attorney General, counsel to the MPCA, and Michael Miller. At this meeting, MPCA was served with a copy of the CMI memorandum in this matter.

4. The packaging regulations, adopted by MPCA after three public hearings and many individual and group meetings with industry representatives, provide the regulatory framework through which the MPCA will review packages and containers to be sold at retail in Minnesota, as directed by Minn. Stat. §116F.06 (Supp. 1973). SR-1 describes the scope of the regulations, provides for their severability, and defines pertinent terms. SR-2, "CRITERIA," includes a statement of the general policies which will guide the Agency in reviewing packages and containers, as well as a listing of specific factors to be used in assessing the overall environmental and solid waste impact of a new or revised package or container. The criteria manifest the concept of comparison between the new or revised package or container and the existing or feasible alternatives, to determine whether the proposed changes are desirable. SR-3 describes the review process itself. Provision is made for initiation of the process by (a) the package or container user, (b) the Agency itself, or (c) any other person; but the package or container user is not required to submit the new or revised package or container before beginning retail sale in Minnesota. SR-4 describes a series of circumstances which exempt a new or revised package or container from MPCA review. Included is an exemption for packaging which conveys other than certain

products, described by way of their SIC product codes, and an exemption for packaging where regulation is preempted by federal law. In addition, there are "minor" exemptions, which recognize that certain routine, minimal changes in package design have insignificant solid waste and environmental consequences, and therefore need not be reviewed. SR-5 is a listing of information about the package or container which is to be submitted in order for the Agency to be able to make the comparisons described in SR-2. SR-6 concerns the preservation of confidentiality of information submitted pursuant to SR-5.

5. In its memorandum of December 6, CMI raises two major points: (a) the Agency interpretation of the grandfather clause and (b) the "subjectivity" of the regulations, as well as several other less fundamental objections.

6. The so-called "grandfather clause" is derived from two separate provisions of the enabling statute. The last sentence of subd. 2 indicates that there shall be no Agency review of "any package or container sold at retail in this state prior to final enactment of Sections 116F.01 to 116F.08." The beginning of subd. 2 describes the kinds of packages and containers the Agency shall review, namely, those which are "new or revised" (except when such revisions involve color, size, shape or printing) and "innovations including, but not limited to, changes in constituent materials or combinations thereof and changes in closures." Taken together these two sentences describe a scheme whereby the Agency is prohibited from regulating packaging choices made before the effective date

of the legislation but is enabled to review packaging choices which result in changes in packages or containers.

7. Pursuant to this statutory scheme, the Agency has interpreted the grandfather clause by way of a categorization of packages or containers based on the products which they contain. The regulations do not, as CMI has argued in its Memorandum, allow the Agency to review and regulate the sale of products. The reference to products in SR-1(B)(3) and SR-4 (A)(5) is only for the purpose of determining which packages and containers are subject to review, and which are not. This kind of determination is expressly authorized within subd. 3 of §116F.06: "The agency shall adopt and may amend or rescind guidelines identifying the types of new or revised containers and packaging that are subject to its review . . . ." Further, the Agency has not taken it upon itself, as CMI has argued, to restrict "the full utilitarian promise" of any packaging system in use before the effective date of the statute. A restriction on the use of any packaging concept in Minnesota may be made only pursuant to the environmental goals expressed in the statute itself. MPCA was not directed by the Legislature to weigh a package or container's "utilitarian promise" against those environmental goals.

8. The CMI brief has also raised the question of legislative intent as to the specific meaning of the grandfather clause. CMI has said that MPCA's interpretation of the grandfather clause is in "sharp conflict with the legislative history of Section 6." However, CMI does not describe what this legislative history is.

Legislative oversight hearings held before the House Committee on Environmental Preservation and Natural Resources-Subcommittee on Environment and Pollution Control and the Senate Committee on Natural Resources and Agriculture-Subcommittee on Environmental Protection, on May 29, 1974, give quite the opposite impression. Legislators present at that hearing expressed concern that the Agency's interpretation of the grandfather clause was "too liberal" and allowed for the possible proliferation of environmentally unsound packages. One legislator, himself an author of the statute, interpreted the grandfather clause to mean that any company using a particular package or container could go on using it but that for any other company to begin its use would require review by the Agency.

9. Had the Legislature intended the kind of result which CMI argues for it could have expressly so provided by a different drafting of the statute. Had the Legislature said "any kind of package or container sold at retail before the effective date of the statute shall not be subject to review," the position taken by CMI would be entirely correct. However, this is not what the Legislature said and in order to give effect to the express language of the statute the Agency was called upon to categorize packages and containers in some other way. The way it choose was to use a standard product classification familiar to industry and used in other regulatory schemes.

10. The Legislature also gave guidance to the Agency by providing for specific exclusions from review. In subd. 2, the Agency is directed to review new or revised packages or containers

"except when such changes involve any color, size, shape or printing." There is no exclusion for a change in product, and the Legislature could have easily so provided by the addition of one or two words. It is a well-known canon of statutory construction that where a statute designates an exception, the exclusion of one thing is an implied inclusion of all others. See, Maytag Co. v. Commissioner of Taxation, 218 Minn. 460, 17 N.W.2d 37 (1945).

11. Finally, the broad, general language chosen to grant the MPCA review authority also supports its position on this issue. The Agency is directed to review "innovations including, but not limited to, changes in constituent materials or combinations thereof and changes in closures." The Legislature clearly contemplated that innovations in packaging other than those delineated were possible. Because of the inextricable link between packaging and product, the use of a package to convey a product for which it had not been previously used can be -- and often is -- just such an innovation. As discussed, supra, such a change may have environmental and solid waste consequences equally as significant as a change in constituent material, for example.

12. Nor has the Legislature, as CMI has argued, "expressed a preference for wider use, where practicable, of existing packaging systems" (emphasis added). Rather the Legislature has made a rather precise judgment that retroactive restriction of existing packaging choices may be economically unfair and inappropriate, but that expansion of their use should be subjected to MPCA review for evaluation of their environmental consequences.

13. In addition to the guidance provided by the Legislature in this matter, the Agency's expertise in the area of packaging development also dictated the product-package categorization. Packaging choices in today's market are dictated primarily by the characteristics and requirements of the products to be conveyed. The switch to delivery of a product in a package or container previously used only for other products may be a profound change in packaging concepts, and may mark the advent of a whole new era of marketing and sales activity. Therefore, unlike Shakespeare, Gertrude Stein the agency cannot say "A package is a package is a package," since a package to be used for one product may have entirely different solid waste and environmental impacts if used for another product. For example, a package which conveys an item sold only in very limited quantities in Minnesota might be acceptable even though it potentially creates toxic leachate when disposed of in a landfill. However, were the package to be chosen for a product with wide sales in Minensota it might be unacceptable since the potential for leachate would be that much greater.

14. CMI's second major concern with regard to the packaging regulations is aimed at the so-called "subjectivity" of the criteria on which packages and containers are to be evaluated. As to this matter CMI makes three major points: (a) the agency is not advising and assisting industry to develop packaging consistent with state environmental policies, (b) the criteria are not capable of being applied by the packaging industry

prior to agency review, and (c) there is no statutory authority for the comparison of a package or container under review with the existing package or container or with feasible alternatives.

15. The basis for CMI's first charge is language contained in subd. 1 of §116F.06: "The agency shall advise and assist industry and business within the state in providing and developing packaging and containers consistent with environmental policy of the state." In its memorandum CMI has argued that these instructions are "to be carried out by review guidelines pursuant to subd. 3, . . ." There is no indication anywhere in the statute that the rather general policy language contained in subd. 1 is in any way related to the power granted the agency by subd. 3 to adopt, amend or rescind guidelines with regard to packaging. Although CMI has attempted to fashion a Rube Goldberg sort of argument from this language, by saying that it requires the development of quantitative criteria for the packaging determinations, it seems clear that no such link can be made. The rather general precatory language of subd. 1 is similar to that contained in most statutes, a general policy statement directing the agency to cooperate with industry in order to avoid arbitrary and unreasonable restrictions on packaging choices.

16. Even though this rather general language cannot be considered a mandate that the agency act in any specific way, the MPCA has made every attempt to work with industry in developing the regulations, so that packaging manufacturers and users will have a very clear idea of what is expected of them within this

new regulatory framework. A year long series of meetings with industry representatives was begun with a two day session in September, 1973. Individual meetings between representatives of packaging manufacturers and users from all across the country and staff members of the MPCA were held throughout the last year. In addition, a technical advisory group was formed at the request of industry, and met on March 25 and February 25, 1974, to discuss some of the most troublesome areas in the packaging regulations. Representatives of CMI itself participated in the September, 1973, meeting; in individual meetings at other times during the fall of 1973 and the winter of 1974, and also in the technical meetings in the spring of 1974. In addition CMI representatives, along with the other technical committee members, were requested to supply additional information and to assist in the development of more specific, quantitative criteria at both the February and March meetings. The response from industry was not encouraging and very little information was garnered pursuant to these requests. CMI cannot now be heard to argue that the MPCA did not actively seek out and encourage industry input in both the technical and general regulatory areas. Contrary to this assertion, MPCA has gone far beyond even its usual practices to work with industry to achieve fair regulation in this controversial area.

17. CMI's second argument, that the regulations are not capable of being applied by industry, must also fail. While it is true that the regulations do not contain generally applicable quantitative criteria as are present in some other

environmental and other regulatory schemes, the comparison scheme manifested in the criteria section provides that specific numerical and quantitative numbers will be developed within the review of an individual package or container. This individual quantitative determination, combined with the required hearing process if the agency is to prohibit a package, assures that packaging manufacturers will not be subjected to internal subjective judgments made by MPCA staff members. While as to some of the specific factors to be considered in a packaging review, there may be some advantages to developing precise quantitative cutoffs, the data base and the technical information necessary to make such cutoffs better than arbitrary does not seem to be available. This does not mean, however, that the Agency is precluded from instituting the review process based on the development of individual quantitative information for each package reviewed. There is no statutory nor constitutional requirement that regulations promulgated pursuant to Minn. Stat. §116F.06 be quantitative or numerical in the sense that CMI has argued.

18. CMI's final concern about the criteria section of the packaging regulations goes to the comparison process contemplated in SR-2. CMI says in its memorandum "there is absolutely no statutory basis for such comparison between what the staff perceives to be feasible alternatives." CMI's argument shows a misunderstanding of the regulations themselves. The feasible alternatives to be compared when a change is made in the package are to be

presented by the package user itself, and are not chosen by the MPCA staff members. In addition, the use of the comparison concept was at the request of industry representatives, who expressed concern during meetings and public hearings that without such a concept, the MPCA would not be in a position to judge whether a change was environmentally advantageous or not. That there is no specific statutory reference to the comparison process does not help CMI's argument; the statute itself describes general review process and makes reference to general criteria to be used by the agency in evaluating packages and containers. As in the case of other legislation granting authority to regulatory agencies, the statute provides the "bones" of the regulatory scheme, with the agency, with all of its administrative and environmental expertise, left to fill in the "meat" of the regulatory scheme.

19. In addition to the major points discussed supra, CMI raises several additional points and discusses them briefly in its Memorandum of December 6. They are:

(a) The Agency has amended the definition of "new or revised" (SR-1(B)(3)) without following notice and hearing procedures required by statute.

(b) The Agency has attempted to extend the review period by up to 40 days in derogation of the Act.

(c) The Agency has required the submission of information by package or container users without expressed statutory authority to do so.

20. The change in the definition of "new or revised" from the regulations as proposed to that adopted by the MPCA Board

on October 29 was made to clarify the Agency's interpretation of the "grandfather clause." Throughout the July 17 hearing testimony presented by all parties indicated that they believed the grandfather clause to be interpreted as described herein. However, review by the CMI attorney himself indicated that the Agency had not done what it intended; he pointed this out to MPCA counsel in a telephone call shortly before the regulations were to be considered by the Agency. In an attempt to clarify the language of the regulation to avoid any further questions, the change in the definition was made. A review of the record clearly reflects that all parties assumed the grandfather clause to operate as it is now reflected in the definition. Therefore, all parties had adequate opportunity to comment and present testimony at the July 17 hearing itself and during the 20 day record period following the hearing. All statutory requirements for rulemaking have therefore been complied with.

21. The so-called extension of the review period to which CMI objects is contained in Section SR-3(C). As to the time period during which review of a package may proceed, the statute designates the beginning of the 120-day period after the day the sample is submitted. The reference to submission of information, also in subd. 3 indicates that the Agency may require the "person" to furnish such information as may be necessary to make the determination as to possible environmental or solid waste disposal problems. While the reference to person may be said to refer only to the person who submits the sample, it seems clear that in order to make a reasonable and non-arbitrary determination the Agency

must have additional information about the package or container under review. Assuming that the Legislature intended to grant to the Agency those powers which would enable it to carry out the object of the statute, the Agency has adopted by regulation a procedure for requesting information from the package or container user. If the statute were to be interpreted as CMI has argued, such a user would be able to avoid the review process entirely by waiting out the 120-day period after submission of the sample without submitting any information about the package or container. If the Agency then attempted to prohibit the package or container based on its own evaluation, the user could argue that the determination was arbitrary because the Agency did not have full information about the materials and other characteristics of the package or container.

Respectfully submitted,

Sandra S. Gardebring

Sandra S. Gardebring
Special Assistant Attorney General
Counsel for the Minnesota Pollution
Control Agency

Dated: December 16, 1974