

Minnesota Attorney General: Administrative Rules Proceedings

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STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Myron S. Greenberg, being first duly sworn, deposes and states that on the 14th day of January, 1977, at Room 300, 1745 University Avenue, St. Paul, Minnesota, he served the annexed Report of Hearing Examiner upon Mr. Tom Rulland, Manager of Environmental Management Programs for the Environmental Quality Council, by handing to and leaving with Greg Corcoran, clerk with the State Planning Agency.

Myron S. Greenberg

Subscribed and sworn to before me
this 14th day of January, 1977.

Eileen A. Gaiovnik

EILEEN A. GAIOVNIK
Notary Public, Ramsey Co. Mn.
MY COMMISION EXPIRES
December 14, 1980

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE ENVIRONMENTAL QUALITY COUNCIL OF THE
STATE PLANNING AGENCY

In the Matter of the Proposed
Rules of the MEQC for Assessing
the Cost of Preparing Environ-
mental Impact Statements.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Myron S. Greenberg of the Minnesota Office of Hearing Examiners on November 17, 1976 at 9:00 a.m. in Conference Room A, Capitol Square Building, St. Paul, Minnesota.

William Dorigan, Special Assistant Attorney General, appeared as counsel for the Environmental Quality Council of the State Planning Agency (hereinafter "EQC"). Tom Rulland, Manager of Environmental Management Programs for the EQC, Nancy Onkka, Environmental Planner, and Charles Kenow testified on behalf of the EQC. The hearing continued until all interested groups or persons had an opportunity to be heard concerning the adoption of the proposed rules.

Pursuant to Minn. Stat. § 15.052, subd. 3 (1975 Supp.), this Report will include Findings of Fact, Conclusions and Recommendations. The EQC and the Office of Hearing Examiners will make a copy of this Report available for review to any interested person upon request. Copies of the Report will be furnished at a nominal cost by the Office of Hearing Examiners.

The EQC shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record to the Chief Hearing Examiner, pursuant to HE 108, no earlier than ten days subsequent to the receipt of this Report. It shall include the rules as originally proposed, and the rules as proposed for adoption in final form. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the EQC on the issue of substantial changes in the rules within ten calendar days. The EQC will be responsible for filing the rules with the Attorney General.

Based upon the proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

1. On September 17, 1976, the EQC filed the following documents with the Chief Hearing Examiner:

(a) A proposed Order for Hearing;
(b) A proposed Notice of Hearing with the proposed rules attached;
(c) A statement of the number of persons expected to attend and estimated length of hearing; and
(d) A Certificate of the EQC's Authorizing Resolution for the Hearing.

2. On October 8, 1976, the EQC mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice, and other interested persons known to the EQC.

3. On October 22, 1976, the EQC filed with the Office of Hearing Examiners the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The affidavit of receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Statement of Need and Evidence (combined);
(f) The affidavit of mailing of a notice pursuant to Minn. Stat. § 15.0412, subd. 6, a copy of the Notice and material received pursuant to the Notice; and
(g) The names of EQC personnel who will represent the EQC.

The documents were available for inspection at the Office of Hearing Examiners from the date of filing to the date of the hearing.

4. The record was closed after allowing 20 days for submission of written comments at the end of the day on December 7, 1976.

5. Statutory authority to promulgate the proposed rules is found at Minn. Stat. § 116D.045, subd. 1 (1976). This authority was cited by the EQC in its Statement of Need and Evidence (EQC Ex.11, p. 1)

6. General support and opposition to the rules was noted both at the hearing and in comments received thereafter. Most of these comments are associated with specific suggestions or criticisms

of the proposed rules and are dealt with in Findings concerning such rules. General opposition to the rules is found in Exhibits 16, 17 and 21. General support for the rules is found in Exhibits 18 and 26, as well as T.114, T.126 and T.131.*

MEQC 22

7. MEQC 22 is reasonably and necessarily amended to add definitions covering terms used in proposed rules MEQC 41 through 46. These definitions were not criticized at the hearing or in comments as to their substance.

The State Planning Agency's suggestion for clarification of MEQC 22(bb) (Pub. Ex. 22) appears to the Examiner to be in line with the EQC's intent of that definition (as stated in the Statement of Need) and would, if incorporated, improve the clarity of that rule.

Additional comments regarding proposed MEQC 22 were offered by the the 3M Company. (Pub. Ex. 28) These comments suggest the addition of a definition for the term "proposer cost" to clarify what is perceived by 3M and others as some ambiguity in the rules' determination of what project developers must pay for and what they would be allowed to take credit for under proposed MEQC 42(c) and 44(a)(1)(cc). (See § 11.C., infra) The suggested definition includes a concept not specifically included in the proposed rules (costs incurred by the proposer in addition to those which would have been incurred for project planning had an EIS not been required), but which was discussed at the hearing and was familiar to participants at the hearing. If adopted by the EQC, incorporation of the definition of "proposer cost" would necessitate review of all the rules to ensure internal consistency. The rules which would be affected are noted in Public Exhibit 28 at page 2.

The Examiner finds that inclusion of the suggested definition would be reasonable but refrains from any specific recommendation to the EQC regarding its adoption.

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*Where written comments have been read in full into the record, reference to such comments is by citation only to the transcript, unless the written document contains supplementary material.

MEQC 27

8. MEQC 27 is reasonable and necessary to allow early designation by the EQC of the agency responsible for preparation of an EIS, if it is later determined that an EIS is required. Such provision will allow early cooperation between the proposer and such responsible agency in determining what information shall be necessary for the EIS, a determination of the costs involved, and consideration of who shall bear the various costs. The rule as proposed does not allow a third party to request such early determination of the responsible agency because such provision would result in the EQC having to make a "predetermination" that there "probably will be an EIS" required before all the facts of the proposed action are known. (See T.131-32 and T.135)

9. Existing rule MEQC 41, dealing with the effective date of the rules, is deleted and replaced by proposed MEQC 46. Placement of the provision dealing with the effective date of the rules at the end of the rules is reasonable for clarity and organization purposes. The substance of the proposed replacement rule is considered in Section 15, infra.

MEQC 41

10. Proposed MEQC 41 is necessary as a statement of which actions will result in the assessment to the proposer of the preparation costs for an EIS. This rule is "needed to identify which proposers of projects requiring EIS's will be assessed and to indicate that only the reasonable costs of preparing and distributing the EIS may be assessed. . . that costs incurred for preparation of preliminary environmental review documents . . . cannot be assessed, and that public agencies which are project proposers cannot be assessed." (EQC Ex. 11, p. 4) Substantial discussion at the hearing of this rule resulted in the suggestion that the first line of the rule be changed to read, "When a private person proposes to undertake an action, and the final determination has been made that an EIS will be prepared by a public agency on that action. . . ." (Pub. Ex. 13, pp. 1 and 2; Pub. Ex. 18, p. 1; Pub. Ex. 27, p. 2; T. 29-30; T. 57-66; T.71-72; and T.75-76.) Such suggested language change was accepted by

the EQC (T. 66) and, in the opinion of the Examiner, reasonably clarifies the rule without substantially changing it.

MEQC 42

11. MEQC 42 contains the "meat" of the proposed rules for assessing the cost of preparing EIS's. There was little opposition to the main concepts behind the rule, namely, early cooperation by and between proposers and responsible agencies and predictability of expenses to be incurred in preparing an EIS. Most of the comments were addressed to subsection (c) of the rule although such comments also relate to subsections (a) and (b). Other comments are also noted below.

Sections of the rule which are not specifically discussed are found to be reasonable and necessary for the reasons enunciated in the EQC's Statement of Need and Evidence (EQC Ex. 11, pp. 4-8).

MEQC 42(a)

A. Support for MEQC 42(a) stressed that "using a cooperative approach to establish the EIS assessed cost is highly beneficial" for the responsible agency and the developer (as well as, presumably, the public and the environment). (T. 126) The only opposition to 42(a) indicated that written agreements between proposers and municipalities might be unnecessary where distribution of cost is determined by ordinance. (Pub. Ex. 21, p. 1) On balance, the Examiner finds that the provision is reasonable and necessary for the purposes and reasons stated by the EQC (EQC Ex. 11, pp. 4-5).

MEQC 42(b)

B. Criticism of MEQC 42(b) (Pub. Ex. 21, pp. 1-2) appears to the Examiner to be inappropriate because that rule is essentially a restatement of the statutory provisions of Minn. Stat. § 116D.045, subd. 5 (1976), with the additional proviso that a proposer may voluntarily agree to accept as the EIS assessed cost an amount greater than the maximum set by law and restated in the rule. As noted by the State Planning Agency, "This will

be particularly valuable when a small local agency is the responsible agency." (T. 127)

Allowing the proposer to agree to a higher EIS assessed cost is in keeping with the spirit of the law. The statutory limits set for EIS assessed costs are for the proposer's benefit. If a proposer wishes to waive that limitation, he is free to do so. Even if the limit could not be waived, the proposer could still provide the responsible agency with a monetary gift to cover EIS cost which would have the same effect as the discretionary agreement provided for by MEQC 42(b).

Other criticisms regarding the establishment of maximum costs and the content of EIS's (Pub. Ex. 21, p. 2) are irrelevant to these rules and are more properly directed to the State's legislative bodies. (See also, Pub. Ex. 29(a), p. 4).

MEQC 42(c)

C. The most extensive discussion regarding the proposed rules dealt with MEQC 42(c). Within that subsection, the second sentence (allowing up to one-third of the EIS assessed cost to be offset by credit given for material supplied by the proposer and used in the EIS) received the most attention. Basically, three positions were taken in oral and written comments regarding such credit: (1) the one-third limit should be eliminated and unlimited credit given for the proposer's material used in the EIS; (2) there should be no credit given; and (3) the one-third limit should be left as proposed.

Arguments favoring elimination of any stated limit on credit to be given for material provided by the proposer and used in the EIS or its preparation stressed that such credit would encourage early environmental study and planning by project developers. (See Pub. Ex. 18, p. 1; Pub. Ex. 25; Pub. Ex. 26; Pub. Ex. 27; Pub. Ex. 28, pp. 3-4; T. 17-19 with EQC response at Pub. Ex. 29(a), p. 4; T. 30-31, 44, 48-49, 56-57). Limiting such credit, on the other hand, would create a "disincentive" because the expenses incurred by the proposer (a) might not be recognized by the responsible agency, or (b) might exceed the one-third limit but be included in the assessed cost nonetheless and billed to

the proposer, thereby resulting in a double payment by the proposer for work which he did or contracted to have done. Many comments noted that it is to the advantage of the responsible agency to have the proposer do as much work as possible, but that work would only be done if credit for it was assured. (Pub. Ex. 27).

Proponents of removing the second sentence of MEQC 42(c) also criticized the one-third credit limit as arbitrary. (Id.; see also Pub. Ex. 24, pp. 1-2; T. 77-80, 88, 106-107)

A very credible argument was propounded for not allowing any credit at all for "in-kind" contributions to the EIS by proposers. The argument is based on the proposition that the underlying legislation does not provide a basis to allow offsets against amounts assessed to the proposer. The Examiner, upon review of Minn. Stat. § 116D.045 finds no indication that the "assessed cost" must be the full cost for preparation of the EIS. Absent such indication, it appears reasonable that the EQC may establish a formula for determining the assessed costs and also for determining that "reasonable costs of preparing and distributing an environmental impact statement" should be borne by the proposer.

The Examiner is also not convinced that the complete elimination of some or full credit for materials provided by the proposer for the EIS would not have a deleterious effect on the manner of and time required for EIS preparation.

Support for adoption of the proposed rule (unmodified) emphasized its compromise nature, i.e., allowing credit for proposer's contributions to an EIS while assuring the responsible agency's recovery of costs incurred in the process of preparing and distributing the EIS. (See EQC Ex.11, pp. 6-7; Pub. Ex. 29(a); T. 127-128)

The Examiner recognizes that the proposed rules, in general, are designed and intended to facilitate and expedite a cooperative effort by proposer and responsible agency in the EIS preparation process. Proposed MEQC 42(a) and 42(b) go to great lengths to provide for easy and early identification of respon-

sibilities, costs and potential or real problems in cooperation. Other parts of the proposed rules provide for resolution of such problems as may arise. It appears to the Examiner that by identifying the elements of the EIS, assigning responsibility for various parts of the EIS, estimating the costs for preparation and review of elements of the EIS, and agreeing to apportionment of such costs by either submission of material or money eliminates the necessity for the one-third limitation on credit contained in MEQC 42(c). Accordingly, that provision is found unnecessary, and it is recommended that the second sentence be deleted from the rule.

The Examiner further recognizes that problems with apportionment and assumption of costs are likely to arise where the estimated or actual EIS costs exceed the limits established by Minn. Stat. § 116D.045, subd. 5, and MEQC 42(b). To minimize or eliminate such problems, the Examiner recommends that the following language proposed by Dayton Hudson Properties in Public Exhibit 20, be substituted for the second sentence of MEQC 42(c):

> "If the EIS estimated cost exceeds the limit established in MEQC 42(b), the Proposer and the Responsible Agency shall include in the EIS assessed cost that proportion of the Proposer's costs for the collection and analysis of technical data which the Responsible Agency incorporates into the EIS which equals the proportion which those same Proposer's costs are of the EIS estimated cost."

This would allow for equitable assumption of expenses exceeding the limits without excessively burdening either the responsible agency or the proposer. The recommended proposal was presented and discussed at some length at the hearing (T. 89-110) and, in the opinion of the Examiner, its adoption would not constitute a substantial change.

It must be pointed out that the proposer's assumption of costs exceeding the statutory maximums must be voluntary on the part of the proposer. This discretion is provided by the first line of MEQC 42(b). Without such provision for voluntary agreement by the proposer, the suggested/recommended language stated above would clearly go beyond the EQC's statutory authority (See also, T. 108-109).

An additional comment relating specifically to proposed MEQC 42(c) pointed out that the phrase "analysis of technical data" is ambiguous and may cause problems by having the proposer evaluate material which is to be included in the EIS, a function of the responsible agency. (Pub Ex. 24, p. 2) The Examiner agrees that there is ambiguity in the phrase, but believes that the functions and costs will be (or should be) determined and specified under MEQC 42(a). It is recommended, however, that the EQC review the rule to eliminate any such ambiguities.

MEQC 43.

12. MEQC 43 is necessary to indicate what circumstances require revision of the EIS cost. The rule, in general, is reasonable in that it protects both the proposer and the responsible agency from inadequate funding and unnecessary delays caused by substantial changes and/or discovery of previously unidentified significant environmental problems in the proposed action. The "safety valve" provisions of MEQC 43 were supported by the EQC and the public at the hearing and in written comments. (EQC Ex. 11, pp. 8-10; T. 80-81) Specific comments regarding parts of the rule are noted below.

MEQC 43(a)(1).

A. The term "estimated" should be substituted for "assessed" as it appears in the first sentence of MEQC 43(a)(1). "This is necessary to make the provisions for revising the costs consistent with the provisions for arriving at them in the first place. The first step is to revise the estimated cost and then to reach agreement about revisions in the assessed cost." (Pub. Ex. 20, p. 2)

MEQC 43(a)(2)(aa) [refers also to MEQC 45(b)]

B. This subsection is intended to specify that, in the event the proposer's payments exceed the responsible agencies expenditures, "the proposer is entitled to a refund and indicates to whom he has to apply." (EQC Ex. 11, p. 9) The rule does not, however, set a time limit for repayment of the excess remission nor does it make such refund mandatory. The following additional language

was suggested by the 3M Company to clarify the rule and make it conform with the EQC's stated intent.

> "The refund shall be paid within 30 days from the date the refund application is filed. Interest will be paid to the proposer for every day beyond this date that the refund is not paid. Interest shall be computed on the basis of 0.05 percent of the refund times the number of days that the refund payment is overdue." (Pub. Ex. 28, p. 3)

The Examiner finds that such change is reasonable and necessary to clarify the rule regarding mandatory refund of unused prepaid monies and to make the rules more equitable, by requiring responsible agencies to act within similar time constraints as those imposed on proposers. (See Pub. Ex. 18, p. 2) The Examiner also finds, however, that the interest/incentive/penalty provision of the suggested addition may constitute a substantial change. The degree of substantiality of change may be mitigated by revising the suggested interest/incentive/penalty provision to reflect the current statutory maximum rate of interest paid on some recognized type of account or the maximum rate of interest indicated in the state usury statutes.

MEQC 43(a)(2)(bb) [refers also to MEQC 45(a)(1), 45(a)(2), 45(a)(3), 45(a)(3)(aa) and 45(a)(3)(bb)]

C. The above-noted rules received much attention because of the ten-day requirement imposed on proposers for payment of funds to the responsible agency. The EQC noted, "The ten days in the rules are a guideline . . . to ensure a timely process . . . but if a proposer blatantly neglects to meet his financial responsibilities, then it would be up to an action in the courts to resolve that. The idea of the time period is to make a predictable process and one which can be carried out in a timely fashion. . . ." (T. 142; see also, EQC Ex. 11, p. 10) Support for this provision was expressed by the State Planning Agency. (T. 128)

Opposition to the ten-day provision stressed that (1) it is unreasonable due to the difficulties inherent in a proposer's administrative procedures for making payments of the magnitude contemplated by the proposed rules; (2) even though there is no penalty for failure to pay within ten days, MEQC 45(e) and 45(f)

serve as incentive for prompt payment by restricting activities in preparation of the EIS and permit issuance until proper payment has been made; and (3) a 30-day payment period is one in which most private enterprises are accustomed to operate. (Pub. Ex. 18, pp. 1-2; Pub. Ex. 27, pp. 1-2; Pub. Ex. 28, pp. 2-3; T. 20, 33-36 and 142)

The Examiner finds that the ten-day period is indeed excessively restrictive and unreasonable. The more reasonable "guideline" is to provide for payment within 30 days as is the normal business practice. Such provision would not preclude earlier payment by the proposer and would suffice as a "guideline" for remittance deadlines.

Specifically related to MEQC 43(a)(2)(bb), it was suggested that the first part of the first sentence be changed to read:

> "If cash payments previously made by the proposer are less than the Responsible Agency's expenditures or irrevocable obligations at the time of notification, the Responsible Agency shall . . ." (Pub. Ex. 20, p.2)

Such suggested change would not be substantial and would make this provision consistent with MEQC 43(a)(2)(aa).

MEQC 44

13. There was general agreement at the hearing that MEQC 44 provides a necessary, reasonable and expeditious method for resolving disagreements or inability to reach agreement about the cost or content of an EIS (T. 81, 132), and the Examiner so finds for the reasons enunciated in the Statement of Need (EQC Ex. 11, p. 11).

The suggestion that the rule be reorganized with those parts specifying items to be included or excluded in the determination of EIS and project costs reconstituted as separate rules is, in the Examiner's opinion, meritorious. (Pub. Ex. 27, p. 2; T. 132) The EQC apparently agrees that such change would do no harm to the rules and would be acceptable to them. (T. 135-136) The Examiner recommends, therefore, that MEQC 44(a) (1) and MEQC 44(a)(2) be set forth as one rule, and that MEQC 44(b) (1) be set forth as a separate rule. Numbering and references would, of course, be changed accordingly. Because there would be no change

in content (except as may be recommended hereafter), such reorganization would not constitute a substantial change requiring rehearing. (Findings regarding specific subsections of MEQC 44 refer to the rule as originally proposed and organized.)

MEQC 44(a) [refers also to MEQC 44(b), 44(c) and 44(d)].

A. In each of the rules noted above, there is a time limit of ten or 20 days imposed for various actions to be taken. Unlike the time limits imposed for payment of money, these limits are reasonable and necessary for the expeditious resolution of disagreements and cause no burden on either the proposer or the EQC.

MEQC 44(a)(1)(aa).

B. Criticism of MEQC 44(a)(1)(aa) noted that fringe benefits associated with staff salaries are not appropriate for inclusion as part of the EIS estimated or actual cost because such staff "is not hired by the proposer nor are they hired solely because of the proposer." (Pub. Ex. 18, p. 2) Support for this proposed subsection was also expressed. (T. 81 and 128)

It is noteworthy that no criticism was voiced regarding inclusion of the cost of consultants hired by the responsible agency which is provided by MEQC 44(a)(1)(bb). The Examiner assumes that when such consultants are hired, their fees include fringe benefits and a factor to cover general office overhead and support staff. The fringe benefit factor is generally known or easily calculable by responsible agencies and is properly considered as an integral part of the cost of employing an individual on the staff. The Examiner finds, therefore, that the rule as proposed is reasonable and necessary.

MEQC 44(a)(1)(ee)

C. Comments regarding inclusion of a responsible agency's indirect costs in MEQC 44(a)(1)(ee) were similar but considerably stronger than the criticism raised regarding MECQ 44(a)(1)(aa). The comments generally propounded that "such costs are normal costs of agency operation and are not generated, as claimed [by the EQC in its Statement of Need], by the preparation of an EIS."

(T. 35; see also, Pub. Ex. 18, p. 2 and Pub. Ex. 27, p.2) Support of the provision was also expressed (T. 81 and 128) with the suggestion that where such operating/overhead factor is known, it be included (T. 66-71).

With the exception of the City of Bloomington (T. 67), there was no indication that responsible agencies generally have ascertained their specific overhead/operating rate. There was also no convincing presentation made that such indirect costs are generated by the process of preparing an EIS or that such costs are necessarily attributable to that process. The Examiner finds, therefore, that the proposed rule is unreasonable and should not be included in the rules finally adopted by the EQC.

MEQC 44(a)(1)(gg)

D. The only comment regarding MEQC 44(a)(1)(gg) was submitted by the Duluth Area Chamber of Commerce which "believes that the costs of public hearings should not be charged against the proposer because it is the responsibility of a governmental agency to solicit public interest through public hearings and, therefore, should be a public cost." (Pub. Ex. 18, p. 2)

The Examiner finds that the rule is reasoanble and necessary. "The EIS Rules previously adopted by the EQC require a public hearing or public meeting to be held to receive comments on on the Draft EIS. MEQC 30(d) of the EIS Rules previously adopted by the EQC requires these comments to be incorporated into the Final EIS. Thus, the public hearing or public meeting is clearly a part of the EIS preparation." (EQC Ex. 11, p. 13)

MEQC 44(a)(2)(aa).

E. Considerable concern was noted regarding MEQC 44(a)(2)(aa) about exclusion of "the costs of collecting and analyzing information and data incurred before the final determination has been made that an EIS will be prepared." (T. 17-20, 147, 150-154; Pub. Ex. 29(a), p. 4) There appeared to be no disagreement that the intent of the proposed rule was only to eliminate the cost of preliminary documents (such as an Environmental Assessment Worksheet) unless parts of the information gathered for

such preliminary documents are actually used in preparing the EIS. An EQC staff member suggested and the Examiner agrees that the rule would be clarified, although not substantially altered, by striking the phrase "was obtained for the purpose of being" as it appears in the last part of the rule and ending the rule with the phrase "is included in the EIS." (T. 150) The rule, so changed, is found to be reasonable and necessary.

MEQC 44(b)(1)(aa) - (ee)

F. The various items listed under MEQC 44(b)(1) are generally found to be reasonable and necessary to establish parameters for determining the estimated cost of a project where an agreement thereon cannot be reached. Many comments and criticisms were offered regarding these subsections, including suggestions for clarification and improvement, all of which are commended to the EQC for its consideration.

In (aa), it was suggested that the rule specify the source to be used for establishing the current market value of the land. (T. 132, 138-140) This appears to the Examiner as meriting inclusion in the rule to eliminate disputes regarding land value. It was also pointed out that this component of the total estimated project cost will probably not be a great point of contention in the overall process. (T. 139)

It was further correctly observed that "is" should be changed to "are" in the first sentence of (aa) to grammatically agree with "interests." (Pub. Ex. 22)

Regarding (bb), it was suggested that "pre-construction costs" be substituted for the language proposed by the EQC. (Pub. Ex. 20, p. 2) Although there was no discussion of this suggested alteration, the EQC's Statement of Need indicates an intent to limit such preconstruction costs to those which "can be readily and quantifiably identified." (EQC Ex. 11, p. 16) Recognizing that the purpose of this rule is to determine, as accurately as possible, the total project cost, the Examiner suggests that the proposed language be stricken and replaced with some phraseology which would allow for inclusion of all specifically identified and quantified (or quantifiable) preconstruction costs.

A representative of the Minnesota Pollution Control Agency suggested that (cc) and/or (dd) could be improved if "modified to allow specifically for the inclusion of costs for essential public service facilities, where such costs are reasonably definable and directly attributable to the proposed project." (T. 116) It was further suggested that the EQC include in the rule some of the qualifying language contained in the Statement of Need relating to the rule. (T. 133; see EQC Ex. 11, p. 16) Given the limitations contained in the suggested language of the PCA, the Examiner believes such addition would be reasonable to more fully reflect the project cost, notwithstanding the EQC's apparent reluctance to include such specific or similar language (T. 118).

MEQC 45.

14. MEQC 45 is necessary to facilitate predictability in the process of preparing and distributing an EIS by establishing time-limit guidelines, identifying the recipient of payments, specifying the consequences of failure to make payments and mandating certain actions to be taken upon final payment. The specific provisions of the rule are found to be reasonable for the reasons enunciated in the EQC's Statement of Need and Evidence (EQC Ex. 11, pp. 18-23), unless otherwise indicated below.

(Note that Finding 12.C. regarding the ten-day limit is applicable to MEQC 45(a) and all subsections thereunder. Whether 10 or 30 days, the time limit is recognized by the EQC as advisory rather than mandatory and no penalties attend to failure to meet the 10 or 30-day requirement other than a delay of the EIS process. Note also that Finding 12.B. regarding a time limit for refunds to proposers is applicable to MEQC 45(b).)

Mr. Sizer of the State Planning Agency pointed out some inconsistencies in delegation of authority in MEQC 45(e) and 45(g) as related to MEQC 29A.1. These inconsistencies concern the proper authority to extend the time period for preparation of the Draft EIS and general authority to extend time limits. The problem is significant because the Environmental Quality Council meets

only once monthly, so decisions regarding time limit extensions could be unduly delayed. The Examiner recommends that the provisions be reviewed by the EQC and revised to be internally consistent as well as consonant with the goal of facilitating expeditious completion of the EIS.

MEQC 46

15. MEQC 46 is reasonable and necessary to advise interested and affected parties about the date the rules become effective and, consequently, which projects will be governed by the rules. Considerable discussion about MEQC 46 indicated strong objections to the form of the rule which, in effect, imposed the rules on projects initiated before the rules become applicable. (Pub. Ex. 18, p. 2; Pub. Ex. 27, p. 2; T. 36-37, 82) The EQC agreed to change the rule so that it would be effective as to projects proposed after February 15, 1977. (T. 85) This is reasonable as consistent with the clear mandate in Minn. Stat. § 116D.045, subd. 1. The Examiner recommends that the rule be changed to reflect the constructive criticisms noted at pages 36-37 and 82 of the hearing transcript.

It is the opinion of the Examiner that, because of the clear legislative mandate mentioned above, MEQC 46 should also indicate that the rules may be applied retroactively to actions for which notice is given after February 15, 1977 even if the rules do not become effective until some later date than February 15 due to the administrative requirements of the rule-making process.

MEQC 42; MEQC 43(a)(1); MEQC 43(b); MEQC 44(a); MEQC 44(b); MEQC 44(c).

16. The proposed rules noted above "all contain words to the effect that an agreement between the responsible agency and the proposer cannot be 'obtained.' To be grammatically correct, 'reached; should be used rather than 'obtained'." (T. 129)

17. The record contains a number of comments by individuals who felt the proposed rules were difficult to understand because of either orga nization, syntax or ambiguity of terms. The Examiner agrees that the rules could be expressed more simply and

recommends that they be reviewed by the EQC for possible simplification.

18. All Findings of Fact which contain or may be more properly classified as Conclusions or Recommendations are adopted as such and are restated under such proper classification.

Based on the foregoing Findings of Fact, the Hearing Examiner makes the following

CONCLUSIONS

1. That due, timely and adequate legal notice of the hearing was properly served and filed by the EQC. All of the substantive and procedural requirements of statute or rule have been complied with.

2. That the EQC documented its statutory authority to promulgate the proposed rules and amendments.

3. That the EQC demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts.

Based on the foregoing Conclusions, the Hearing Examiner makes the following as his

RECOMMENDATION

The Hearing Examiner recommends that the proposed rules be modified as suggested in the Findings of Fact and that so modified, they be adopted.

Dated this 13th day of January, 1977.

MYRON S. GREENBERG
Hearing Examiner

"PROPOSED RULES FOR ASSESSING THE COST
OF PREPARING ENVIRONMENTAL IMPACT STATEMENTS"

MEQC 22 DEFINITIONS

(aa) "EIS Estimated Cost" means the total of all expenditures of the Responsible Agency and the Proposer anticipated to be necessary for the preparation and distribution of the EIS.

(bb) "EIS Assessed Cost" means that portion of the EIS estimated cost paid by the Proposer either by a cash payment to the Council or to the Local Agency or for the collection and analysis of technical data incorporated in the EIS.

(cc) "EIS Actual Cost" means the total of all allowable expenditures incurred by the Responsible Agency and the Proposer in preparing and distributing the EIS.

(dd) "Final Determination" means the final decision made by the Responsible Agency or the Council that an EIS will be prepared on an action.

(ee) "Private Person" means a human being, unincorporated association, partnership, trust, or corporation.

(ff) "Project Estimated Cost" means the total of all allowable expenditures of the Proposer anticipated to be necessary for the implementation of an action.

MEQC 27 SELECTION OF PREPARERS, PREPARATION OF EAW AND NOTICE OF EAW CONCLUSIONS

(a)(6) The Proposer of an action or a Public Agency may request the Council to designate a Responsible Agency before the final determination has been made that an EIS will be prepared on that action. The Council may designate a Responsible Agency for the purpose of identifying the information and data needed by the Responsible Agency for preparation of the EIS.

Delete Existing MEQC 41 EFFECTIVE DATE

CHAPTER FIFTEEN
ASSESSING THE COST OF PREPARING ENVIRONMENTAL IMPACT STATEMENTS

MEQC 41 ACTIONS REQUIRING AN ASSESSMENT OF THE EIS PREPARATION COST

When a private person proposes a governmental or a private action and the final determination has been made that an EIS will be prepared on that action, the Proposer shall be assessed for the reasonable costs of preparing and distributing that EIS in accord with MEQC 42-45.

MEQC 42 DETERMINING THE EIS ASSESSED COST

(a) Within 30 days after the final determination has been made that an EIS will be prepared, the Responsible Agency shall submit to the Council a written agreement signed by the Proposer and the Responsible Agency. The agreement shall include the EIS estimated cost, the EIS assessed cost, and a brief description of the tasks and the cost of each task to be performed by each party in preparing and distributing the EIS. Those items identified in MEQC 44 (a)(1) and (2) may be used as a guideline in determining the EIS estimated cost. The EIS assessed cost shall identify the Proposer's costs for the collection and analysis of technical data to be supplied to the Responsible Agency and the costs which will result in a cash payment by the Proposer to the Council if a state agency is the Responsible Agency or to a Local Agency when it is the Responsible Agency. If an agreement cannot be obtained, the Responsible Agency shall so notify the Council within 30 days after the final determination has been made that an EIS will be prepared.

(b) The EIS assessed cost shall not exceed the following amounts unless the Proposer agrees to an additional amount.

(1) There shall be no assessment for the preparation and distribution of an EIS for an action which has a project estimated cost of one million dollars or less.

(2) For an action whose project estimated cost is more than one million dollars but is ten million dollars or less, the EIS assessed cost shall not exceed .3 percent of the project estimated cost except that the project estimated cost shall not include the first one million dollars of such cost.

(3) For an action whose project estimated cost is more than ten million dollars but is 50 million dollars or less, the EIS assessed cost shall not exceed .2 percent of each dollar of such cost over ten million dollars in addition to the assessment in (2) above.

(4) For an action whose project estimated cost is more than 50 million dollars, the EIS assessed cost shall not exceed .1 percent of each dollar of such cost over 50 million dollars in addition to the assessment in (2) and (3) above.

(c) The Proposer and the Responsible Agency shall include in the EIS assessed cost the Proposer's costs for the collection and analysis of technical data which the Responsible Agency incorporates into the EIS. The amount included shall not exceed one third of the EIS assessed cost unless a greater amount is agreed to by the Responsible Agency. When practicable, the Proposer shall consult with the Responsible Agency before incurring such costs.

(d) Federal/State EIS. When a joint Federal/State EIS is prepared pursuant to MEQC 25(f)(4), and the Council designates a non-federal agency as the Responsible Agency, only those costs of the state Responsible Agency may be assessed to the Proposer. The Responsible Agency and the Proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the Council in accord with these Rules.

(e) Related Actions EIS. When specific actions are included in a Related Actions EIS, only the portion of the EIS estimated cost that is attributable to each specific action may be used in determining the EIS assessed cost for its Proposer. The Responsible Agency and each Proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the Council in accord with these Rules.

MEQC 43 REVISING THE EIS ASSESSED COST

(a) If the Proposer substantially alters the scope of the action after the final determination has been made that an EIS will be prepared and the EIS assessed cost has been determined, the Proposer shall immediately notify the Responsible Agency and the Council.

(1) If the change will likely result in a net change of greater than 5% in the EIS assessed cost, the Proposer and the Responsible Agency shall make a new determination of the EIS assessed cost. The determination shall give consideration to costs previously expended or irrevocably obligated, additional information needed to complete the EIS and the adoption of existing information to the revised action. The Responsible Agency shall submit either a revised agreement or a notice that an agreement cannot be obtained following the procedures of MEQC 42(a) except that such agreement or notice shall be provided to the Council within 20 days after the Proposer notifies the Responsible Agency and the EQC of the change of the action. If the changed action results in a revised project estimated cost of one million dollars or less, the Proposer shall not be liable for further cash payments to the Council or to the Local Agency beyond what has been expended or irrevocably obligated by the Responsible Agency at the time it was notified by the Proposer of the change in the action.

(2) If the Proposer decides not to proceed with the proposed action, the Proposer shall immediately notify the Responsible Agency and the Council. The Responsible Agency shall immediately cease expending and obligating the Proposer's funds for the preparation of the EIS.

(aa) If cash payments previously made by the Proposer exceed the Responsible Agency's expenditures or irrevocable obligations at the time of notification, the Proposer may apply to the Council or to the Local Agency for a refund of the overpayment.

(bb) If costs have been incurred or irrevocably obligated by the Responsible Agency at the time of notification exceeding the amount previously paid by the Proposer, the Responsible Agency shall notify the Proposer and the Council within 10 days after it was notified of the project's withdrawal. Such costs shall be paid by the Proposer within 10 days after the Responsible Agency notifies the Proposer and the Council.

(b) If, after the EIS assessed cost has been determined, the Responsible Agency or the Proposer uncovers a significant environmental problem that could not have been reasonably foreseen when determining the EIS assessed cost, the party making the discovery shall immediately notify the other party and the Council. If the discovery will likely result in a net change of greater than 5% in the EIS assessed cost, the Proposer and the Responsible Agency shall make a new determination of the EIS assessed cost. The Responsible Agency shall submit either a revised agreement or a notice that an agreement cannot be obtained following the procedures of MEQC 42 (a) except that such agreement or notice shall be provided to the Council within 20 days after both parties and the Council were notified.

MEQC 44 DISAGREEMENTS REGARDING THE EIS ASSESSED COST

(a) If the Proposer and the Responsible Agency disagree about the information to be included in the EIS or the EIS assessed cost, the Proposer and the Responsible Agency shall each submit a written statement to the Council identifying the information each recommends be included in the EIS, the EIS estimated cost, and the project estimated cost within 10 days after the Responsible Agency notifies the Council that an agreement could not be obtained. The statements shall include a discussion of the need to include the information in the EIS, the identification of the information and data to be provided by each party, the EIS preparation costs identified below as they pertain to the information to be included in the EIS, a brief explanation of the costs, and a discussion of alternative methods of preparing the EIS and the costs of those alternatives.

(1) In determining the EIS estimated cost or the EIS actual cost, the following items shall be included:

(aa) The costs of the Responsible Agency's staff time including direct salary and fringe benefit costs.

(bb) The cost of consultants hired by the Responsible Agency.

(cc) The Proposer's costs for the collection and analysis of technical data expended for the purpose of preparing the EIS.

(dd) Other direct costs of the Responsible Agency for the collection and analysis of information or data necessary for the preparation of the EIS. These costs shall be specifically identified.

(ee) Indirect costs of the Responsible Agency not to exceed the Responsible Agency's normal operating overhead rate.

(ff) The cost of printing and distributing the Draft EIS and the Final EIS.

(gg) The costs of any public hearings or public meetings held in conjunction with the preparation of the Final EIS.

(2) The following items shall not be included in determining the EIS estimated cost or the EIS actual cost.

(aa) The costs of collecting and analyzing information and data incurred before the final determination has been made that an EIS will be prepared unless the information and data was obtained for the purpose of being included in the EIS.

(bb) Costs incurred by a private person other than the Proposer or a public agency other than the Responsible Agency, unless the costs are incurred at the direction of the Responsible Agency for the preparation of material to be included in the EIS.

(cc) The capital costs of equipment purchased by the Responsible Agency or its consultants for the purpose of establishing a data collection program, unless the Proposer agrees to including such costs.

(b) If the Proposer and the Responsible Agency disagree about the project estimated cost, the Proposer shall submit in writing a detailed project estimated cost in addition to the requirements of section (a) above. The Responsible Agency may submit a written detailed project estimated cost in addition to the requirements of section (a) above. The statements shall be submitted to the Council within 10 days after the Responsible Agency notifies the Council that an agreement could not be obtained. The project estimated cost shall include the costs as identified

below and a brief explanation of the costs. The estimates shall be prepared according to the categories in section (1) below so as to allow a reasonable examination as to their completeness.

(1) The following items shall be included in determining the project estimated cost:

(aa) The current market value of all the land interests, owned or to be owned by the Proposer, which is included in the boundaries of the action. The boundaries shall be those defined by the action which is the subject of the EIS Preparation Notice.

(bb) Costs of architectural and engineering studies for the design or construction of the action.

(cc) Expenditures necessary to begin the physical construction or operation of the action.

(dd) Construction costs required to implement the action.

(ee) The cost of permanent fixtures.

(c) If the Proposer and the Responsible Agency disagree about a revision of the EIS assessed cost prepared following the procedures in MEQC 43, the Proposer and the Responsible Agency shall use the applicable procedures described in MEQC 44 (a) or (b) in resolving their disagreement except that all written statements shall be provided to the Council within 10 days after the Responsible Agency notifies the Council that an agreement cannot be obtained.

(d) If the Proposer and the Responsible Agency disagree about the EIS actual cost as determined by MEQC 45 (b), the Proposer and the Responsible Agency shall prepare a written statement of their EIS actual cost and an estimate of the other party's EIS actual cost. The items included in MEQC 44 (a)(1) and (2) shall be used in preparing the EIS actual cost statements. These statements shall be submitted to the Council and the other party within 20 days after the Council has accepted the Final EIS.

(e) The Council at its first meeting held more than 15 days after being notified of a disagreement shall make any determination required by sections (a) through (d) above. The Council shall consider the information provided by the Proposer and the Responsible Agency and may consider other reasonable information in making its determination. This time limit shall be waived if a hearing is held pursuant to MEQC 44 (f).

(f) If either the Proposer or the Responsible Agency so requests, the Council shall hold a hearing to facilitate it in making its determination. The hearing shall follow the procedures outlined in MEQC 28(a)(3).

(g) Nothingin sections (a) through (f) above shall prevent the Proposer from making one half of the cash payment as recommended by the Responsible Agency's proposed EIS assessed cost for the purpose of commencing the EIS process. If the Proposer makes the above cash payment, preparation of the EIS shall immediately begin. If the required cash payment is altered by the Council's determination, the remaining cash payments shall be adjusted accordingly.

MEQC 45 PAYMENT OF THE EIS ASSESSED COST

(a) The Proposer shall make all cash payments to the Council or to the Local Agency according to the following schedule:

(1) At least one-half of the Proposer's cash payment shall be paid within 10 days after the EIS-assessed cost has been submitted to the Council pursuant to MEQC 42 (a) or has been determined by the Council pursuant to MEQC 44 (e) or (f).

(2) At least three-fourths of the Proposer's cash payment shall be paid within 10 days after the Draft EIS has been submitted to the Council.

(3) The final cash payment shall be paid within 10 days after the Council has accepted the Final EIS.

(aa) The Proposer may withhold final cash payment of the EIS assessed cost until the Responsible Agency has submitted a detailed accounting of its EIS actual cost to the Proposer and the Council. If the Proposer chooses to wait, the remaining portion of the EIS assessed cost shall be paid within 10 days after the EIS actual cost statement has been submitted to the Proposer and the Council.

(bb) If the Proposer has withheld the final cash payment of the EIS assessed cost pending resolution of a disagreement over the EIS actual cost, such payment shall be made within 10 days after the Council has determined the EIS actual cost.

(b) The Proposer and the Responsible Agency shall submit to each other and to the Council a detailed accounting of the actual costs incurred by them in preparing and distributing the EIS within 10 days after the Council has accepted the Final EIS. If the cash payments made by the Proposer exceed the Responsible Agency's EIS actual cost, the Proposer may apply to the Council or to the Local Agency for a refund of the overpayment.

(c) If the Responsible Agency is a state agency, the Proposer shall make all cash payments of the EIS assessed cost to the Council which shall deposit such payments in the state's general fund.

(d) If the Responsible Agency is a Local Agency, the Proposer shall make all cash payments of the EIS assessed cost directly to the Local Agency.

(1) The Local Agency shall notify the Council in writing of receipt of each payment within 10 days following its receipt.

(e) No Responsible Agency shall commence with the preparation of an EIS until at least one-half of the Proposer's required cash payment of the EIS assessed cost has been paid. Notwithstanding other sections of these Rules, the Responsible Agency shall prepare and file the Draft EIS within 120 days of the date of this payment. This time limitation may be extended by the Council only for good cause upon written request by the Responsible Agency.

(f) Upon receipt or notice of receipt of the final payment by the Proposer, the Council shall notify each state agency having a possible governmental permit interest in the action that the final payment has been received.

(1) Other laws notwithstanding, a state agency shall not issue any governmental permits for the construction or operation of an action for which an EIS is prepared until the required cash payments of the EIS assessed cost for that action or that portion of a Related Actions EIS have been paid in full.

(g) All time periods included in MEQC 42-45 may be extended by the Council Chairman only for good cause upon written request by the Proposer or the Responsible Agency.

MEQC 46 EFFECTIVE DATE

The amendments to these Rules (MEQC 21-46) shall become effective upon filing with the Secretary of State with the exception that Rules MEQC 41-45 shall apply only to projects for which an EIS Preparation Notice has been issued after February 15, 1977. All petitions received, environmental assessments ordered or received, and EISs ordered before the effective date of the amendments shall at the request of the preparer of the document be processed and reviewed as if amended Rules MEQC 21-40 were not in effect. Projects previously reviewed or exempted by the MEQC are not subject to these Rules except for those actions included in MEQC 25(f)(1).

MEQC Rule		Exam Rec.
22	agency proposed to amend MEQC 2266 3M suggested amdt. - defn of "prop. cost"	Good OK but no spec. rec.
27	—	OK
41	Change in 1st line of rule proposed + MEQC agreed	Good
42	a) — b) change to allow proposer to pay higher ES cost * c) Argument over proposed ½ limit on credit for contr. instead of ES contr. "analysis of tech. data" - vague ——	OK OK pp 12-14 – a about stat. basis for any credit – says eliminate ½ limit – suggests subst. in 2nd sent. – Agrees
43	a) 1) a)2)aa) - sugg. lang. change on p. 10 of rept. 10 da limit on time to pay a)2)bb) - obj. to 2 wks	Agrees Agrees
44	Should be reorg as noted on p. 4 a - a) 1) aa) — * a)1) ee) - indirect costs obj. to 2 unrelated to ES proj. a) 1) gg) — a)2)aa) OK w/change on p. 14c top b) 1) aa-ee) aa) - Should specify source cited for value / also "is" to "are" bb) - change to incl. all spec. pre-const costs cc)-dd) - add cost of essential public/serv. facil. - also some qual. lang. as in S/A	Agrees OK OK Unreas. but OK OK Agrees Agrees Agrees Agrees
45	e) + g) incon. as relate to Sg A-1	Agrees + rec. change
46	Should make rules apply only to proj. after eff. date	Agrees w/one exception
42, 43a1, 43b, 44a, b, c -	should change "obtained to "reached"	Agrees
Overall -	could be simpler	Agrees

3/2/77 Meeting w/ Ted Shields re MEQC rules

1. 1/3 cost cont. limit — main obj. of T.S.

see p. 6+13 → Findings: agency merely repeats hearing test. & statement of justification + ignores FF by HE

42c - words "analysis of" (fed. data) should come out

p. 13 agency FF

① 1st sent. on p. 12 contra to p. 6 Agency Finding ↓ rules already propose cost proposer can't inflate costs

② Unless local project, agencies never have access to moneys — meaningless arg.

③ contra to #1

HE already rejected this whole line of reasoning

p. 13 end - intent was to insure that proposer resp. for reas. cost of prep. of EIS

↳ see act: 160.045 + Sub. 3 Sub. 5

see also pp. 14+16 Agency FF

— 1/3 limit discourages gathering of info prior to project proposal (which may be essential)

(or) also allows double pmt. — once to gather + once as cash assessment

also 44 a) 1) ee) - should be out but League of Munic. supports (actually only larger co's have overhead)

see Duke Riddicks' test. @ hearing

Leg. hist. shows it doesn't go to agency — taken out of bill

Ray Hoile

2/4/77 Meeting w/ Bill Dorigan

1/3 problem (1) need some limit to allow for verification costs
- also stat. g. of wb/ can give credit @ all.

ind. costs 44a, ee (2) T. 66-7, 81 overhead is ascertainable
T. 68, 128

ADMIN. 1000
3

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Attorney General/SPA

TO : Michael Miller
Special Assistant Attorney General

DATE: April 13, 1977

FROM : William E. Dorigan WED (JH)
Special Assistant Attorney General

SUBJECT: EIS Chargeback Rules

Attached, pursuant to our telephone conversation of this morning, is an Order For Adopting Rules with respect to the EIS Chargeback Rules.

Also attached is the final copy of the rules as adopted.

WED:jh

Attachments

Attorney General

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William E. Dorigan
Special Assistant
Attorney General

March 17, 1977

296-4692

Michael B. Miller
Special Assistant
Attorney General

Rules MEQC 22-47

The above-captioned rules are returned herewith for the following reasons:

1. Rule 42B repeates the enabling statute (Minn. Stat. § 116D.045, subd. 5) and should therefore be deleted.

2. Rule 47 varies the effective date set for rules in Minn. Stat. § 15.0413, subd. 1 (1976).

In addition, I suggest that the word "was" in MEQC 43B.1 be changed to "were".

When the rules enumerated above are deleted, rules MEQC 22-46 shall be filed promptly upon resubmission of the same to this office.

MBM:mb

Enclosure

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Donald A. Kannas
Special Assistant
Attorney General

April 18, 1977

- MEQC 22-47

March 29, 1977

(These Rules have been adopted by the Minnesota Environmental Quality Council. They will not be in effect until they have been approved by the Attorney General, filed with the Secretary of State and published in the State Register.)

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL
ENVIRONMENTAL IMPACT STATEMENT RULES

"RULES FOR ASSESSING THE COST
OF PREPARING ENVIRONMENTAL IMPACT STATEMENTS"

MEQC 22 DEFINITIONS

A. "EIS Estimated Cost" means the total of all expenditures of the Responsible Agency and the Proposer anticipated to be necessary for the preparation and distribution of the EIS.

B. "EIS Assessed Cost" means that portion of the EIS estimated cost paid by the Proposer in the form of a cash payment to the Council or to the Local Agency and/or for the collection and analysis of technical data incorporated in the EIS.

C. "EIS Actual Cost" means the total of all allowable expenditures incurred by the Responsible Agency and the Proposer in preparing and distributing the EIS.

D. "Final Determination" means the final decision made by the Resonsible Agency or the Council that an EIS will be prepared on an action.

E. "Private Person" means a human being, unincorporated association, partnership, trust, or corporation.

F. "Project Estimated Cost" means the total of all allowable expenditures of the Proposer anticipated to be necessary for the implementation of an action.

MEQC 27 SELECTION OF PREPARERS, PREPARATION OF EAW AND NOTICE OF EAW CONCLUSIONS

A.6. The Proposer of an action or a Public Agency may request the Council to designate a Responsible Agency before the final determination has been made that an EIS will be prepared on that action. The Council may designate a Responsible Agency for the purpose of identifying the information and data needed by the Responsible Agency for preparation of the EIS.

CHAPTER FIFTEEN
ASSESSING THE COST OF PREPARING ENVIRONMENTAL IMPACT STATEMENTS

MEQC 41 ACTIONS REQUIRING AN ASSESSMENT OF THE EIS PREPARATION COST

When a private person proposes to undertake an action, and the final determination has been made that an EIS will be prepared by a public agency on that action, the Proposer shall be assessed for the reasonable costs of preparing and distributing that EIS in accord with MEQC 42-46.

MEQC 42 DETERMINING THE EIS ASSESSED COST

A. Within 30 days after the final determination has been made that an EIS will be prepared, the Responsible Agency shall submit to the Council a written agreement signed by the Proposer and the Responsible Agency. The agreement shall include the EIS estimated cost, the EIS assessed cost, and a brief description of the tasks and the cost of each task to be performed by each party in preparing and distributing the EIS. Those items identified in MEQC 43 A_x and B_x may be used as a guideline in determining the EIS estimated cost. The EIS assessed cost shall identify the Proposer's costs for the collection and analysis of technical data to be supplied to the Responsible Agency and the costs which will result in a cash payment by the Proposer to the Council if a state agency is the Responsible Agency or to a Local Agency when it is the Responsible Agency. If an agreement cannot be reached, the Responsible Agency shall so notify the Council within 30 days after the final determination has been made that an EIS will be prepared.

B. The EIS assessed cost shall not exceed the following amounts unless the Proposer agrees to an additional amount.

1. There shall be no assessment for the preparation and distribution of an EIS for an action which has a project estimated cost of one million dollars or less.

2. For an action whose project estimated cost is more than one million dollars but is ten million dollars or less, the EIS assessed cost shall not exceed .3 percent of the project estimated cost except that the project estimated cost shall not include the first one million dollars of such cost.

3. For an action whose project estimated cost is more than ten million dollars but is 50 million dollars or less, the EIS assessed cost shall not exceed .2 percent of each dollar of such cost over ten million dollars in addition to the assessment in (2) above.

4. For an action whose project estimated cost is more than 50 million dollars, the EIS assessed cost shall not exceed .1 percent of each dollar of such cost over 50 million dollars in addition to the assessment in (2) and (3) above.

C. The Proposer and the Responsible Agency shall include in the EIS assessed cost the Proposer's costs for the collection and analysis of technical data which the Responsible Agency incorporates into the EIS. The amount included shall not exceed one third of the EIS assessed cost unless a greater amount is agreed to by the Responsible Agency. When practicable, the Proposer shall consult with the Responsible Agency before incurring such costs.

D. Federal/State EIS. When a joint Federal/State EIS is prepared pursuant to MEQC 25 F.4, and the Council designates a non-federal agency as the Responsible Agency, only those costs of the state Responsible Agency may be assessed to the Proposer. The Responsible Agency and the Proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the Council in accord with these Rules.

E. Related Actions EIS. When specific actions are included in a Related Actions EIS, only the portion of the EIS estimated cost that is attributable to each specific action may be used in determining the EIS assessed cost for its Proposer. The Responsible Agency and each Proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the Council in accord with these Rules.

MEQC 43 DETERMINING THE EIS ESTIMATED COST, THE EIS ACTUAL COST AND THE PROJECT ESTIMATED COST

A. In determining the EIS estimated cost or the EIS actual cost, the following items shall be included:

1. The costs of the Responsible Agency's staff time including direct salary and fringe benefit costs.

2. The cost of consultants hired by the Responsible Agency.

3. The Proposer's costs for the collection and analysis of technical data expended for the purpose of preparing the EIS.

4. Other direct costs of the Responsible Agency for the collection and analysis of information or data necessary for the preparation of the EIS. These costs shall be specifically identified.

5. Indirect costs of the Responsible Agency not to exceed the Responsible Agency's normal operating overhead rate.

6. The cost of printing and distributing the Draft EIS and the Final EIS.

7. The costs of any public hearings or public meetings held in conjunction with the preparation of the Final EIS.

B. The following items shall not be included in determining the EIS estimated cost or the EIS actual cost:

1. The costs of collecting and analyzing information and data incurred before the final determination has been made that an EIS will be prepared unless the information and data were obtained for the purpose of being included in the EIS.

2. Costs incurred by a private person other than the Proposer or a public agency other than the Responsible Agency, unless the costs are incurred at the direction of the Responsible Agency for the preparation of material to be included in the EIS.

3. The capital costs of equipment purchased by the Responsible Agency or its consultants for the purpose of establishing a data collection program, unless the Proposer agrees to including such costs.

C. The following items shall be included in determining the project estimated cost:

1. The current market value of all the land interests, owned or to be owned by the Proposer, which are included in the boundaries of the action. The boundaries shall be those defined by the action which is the subject of the EIS Preparation Notice.

2. Costs of architectural and engineering studies for the design or construction of the action.

3. Expenditures necessary to begin the physical construction or operation of the action.

4. Construction costs required to implement the action including the costs of essential public service facilities where such costs are directly attributable to the proposed action.

5. The cost of permanent fixtures.

MEQC 44 REVISING THE EIS ASSESSED COST

A. If the Proposer substantially alters the scope of the action after the final determination has been made that an EIS will be prepared and the EIS assessed cost has been determined, the Proposer shall immediately notify the Responsible Agency and the Council.

1. If the change will likely result in a net change of greater than 5% in the EIS assessed cost, the Proposer and the Responsible Agency shall make a new determination of the EIS assessed cost. The determination shall give consideration to costs previously expended or irrevocably obligated, additional information needed to complete the EIS and the adoption of existing information to the revised action. The Responsible Agency shall submit either a revised agreement or a notice that an agreement cannot be reached following the procedures of MEQC 42 A_X except that such agreement or notice shall be provided to the Council within 20 days after the Proposer notifies the Responsible Agency and the EQC of the change of the action. If the changed action results in a revised project estimated cost of one million dollars or less, the Proposer shall not be liable for further cash payments to the Council or to the Local Agency beyond what has been expended or irrevocably obligated by the Responsible Agency at the time it was notified by the Proposer of the change in the action.

2. If the Proposer decides not to proceed with the proposed action, the Proposer shall immediately notify the Responsible Agency and the Council. The Responsible Agency shall immediately cease expending and obligating the Proposer's funds for the preparation of the EIS.

a. If cash payments previously made by the Proposer exceed the Responsible Agency's expenditures or irrevocable obligations at the time of notification, the Proposer may apply to the Council or to the Local Agency for a refund of the overpayment. The refund shall be paid as expeditiously as possible.

b. If cash payments previously made by the Proposer are less than the Responsible Agency's expenditures or irrevocable obligations at the time of notification, the Responsible Agency shall notify the Proposer and the Council within 10 days after it was notified of the project's withdrawal. Such costs shall be paid by the Proposer within 30 days after the Responsible Agency notifies the Proposer and the Council.

B. If, after the EIS assessed cost has been determined, the Responsible Agency or the Proposer uncovers a significant environmental problem that could not have been reasonably foreseen when determining the EIS assessed cost, the party making the discovery shall immediately notify the other party and the Council. If the discovery will likely result in a net change of greater than 5% in the EIS assessed cost, the Proposer and the Responsible Agency shall make a new determination of the EIS assessed cost. The Responsible Agency shall submit either a revised agreement or a notice that an agreement cannot be reached following the procedures of MEQC 42 A except that such agreement or notice shall be provided to the Council within 20 days after both parties and the Council were notified.

MEQC 45 DISAGREEMENTS REGARDING THE EIS ASSESSED COST

A. If the Proposer and the Responsible Agency disagree about the information to be included in the EIS or the EIS assessed cost, the Proposer and the Responsible Agency shall each submit a written statement to the Council identifying the information each recommends be included in the EIS, the EIS estimated cost, and the project estimated cost within 10 days after the Responsible Agency notifies the Council that an agreement could not be reached. The statements shall include a discussion of the need to include the information in the EIS, the identification of the information and data to be provided by each party, the EIS preparation costs identified in MEQC 43 A and B as they pertain to the information to be included in the EIS, a brief explanation of the costs, and a discussion of alternative methods of preparing the EIS and the costs of those alternatives.

B. If the Proposer and the Responsible Agency disagree about the project estimated cost, the Proposer shall submit in writing a detailed project estimated cost in addition to the requirements of section A above. The Responsible Agency may submit a written detailed project estimated cost in addition to the requirements of section A above. The statements shall be submitted to the Council within 10 days after the Responsible Agency notifies the Council that an agreement could not be reached. The project estimated cost shall include the costs identified in MEQC 43 C and a brief explanation of the costs. The estimates shall be prepared according to the categories in MEQC 43 so as to allow a reasonable examination as to their completeness.

C. If the Proposer and the Responsible Agency disagree about a revision of the EIS assessed cost prepared following the procedures in MEQC 44, the Proposer and the Responsible Agency shall use the applicable procedures described in MEQC 45 A or B in resolving their disagreement except that all written statements shall be provided to the Council within 10 days after the Responsible Agency notifies the Council that an agreement cannot be reached.

D. If the Proposer and the Responsible Agency disagree about the EIS actual cost as determined by MEQC 46 B, the Proposer and the Responsible Agency shall prepare a written statement of their EIS actual cost and an estimate of the other party's EIS actual cost. The items included in MEQC 43 A and B shall be used in preparing the EIS actual cost statements. These statements shall be submitted to the Council and the other party within 20 days after the Council has accepted the Final EIS.

E. The Council at its first meeting held more than 15 days after being notified of a disagreement shall make any determination required by sections A through D above. The Council shall consider the information provided by the Proposer and the Responsible Agency and may consider other reasonable information in making its determination. This time limit shall be waived if a hearing is held pursuant to MEQC 45 F.

F. If either the Proposer or the Responsible Agency so requests, the Council shall hold a hearing to facilitate it in making its determination. The hearing shall follow the procedures outlined in MEQC 28 A.3.

G. Nothing in sections A through F above shall prevent the Proposer from making one half of the cash payment as recommended by the Responsible Agency's proposed EIS assessed cost for the purpose of commencing the EIS process. If the Proposer makes the above cash payment, preparation of the EIS shall immediately begin. If the required cash payment is altered by the Council's determination, the remaining cash payments shall be adjusted accordingly.

MEQC 46 PAYMENT OF THE EIS ASSESSED COST

A. The Proposer shall make all cash payments to the Council or to the Local Agency according to the following schedule:

1. At least one-half of the Proposer's cash payment shall be paid within 30 days after the EIS assessed cost has been submitted to the Council pursuant to MEQC 42 A or has been determined by the Council pursuant to MEQC 45 E or F.

2. At least three-fourths of the Proposer's cash payment shall be paid within 30 days after the Draft EIS has been submitted to the Council.

3. The final cash payment shall be paid within 30 days after the Council has accepted the Final EIS.

a. The Proposer may withhold final cash payment of the EIS assessed cost until the Responsible Agency has submitted a detailed accounting of its EIS actual cost to the Proposer and the Council. If the Proposer chooses to wait, the remaining portion of the EIS assessed cost shall be paid within 30 days after the EIS actual cost statement has been submitted to the Proposer and the Council.

b. If the Proposer has withheld the final cash payment of the EIS assessed cost pending resolution of a disagreement over the EIS actual cost, such payment shall be made within 30 days after the Council has determined the EIS actual cost.

B. The Proposer and the Responsible Agency shall submit to each other and to the Council a detailed accounting of the actual costs incurred by them in preparing and distributing the EIS within 10 days after the Council has accepted the Final EIS. If the cash payments made by the Proposer exceed the Responsible Agency's EIS actual cost, the Proposer may apply to the Council or to the Local Agency for a refund of the overpayment. The refund shall be paid as expeditiously as possible.

C. If the Responsible Agency is a state agency, the Proposer shall make all cash payments of the EIS assessed cost to the Council which shall deposit such payments in the state's general fund.

D. If the Responsible Agency is a Local Agency, the Proposer shall make all cash payments of the EIS assessed cost directly to the Local Agency.

1. The Local Agency shall notify the Council in writing of receipt of each payment within 10 days following its receipt.

E. No Responsible Agency shall commence with the preparation of an EIS until at least one-half of the Proposer's required cash payment of the EIS assessed cost has been paid. Notwithstanding other sections of these Rules, the Responsible Agency shall prepare and file the Draft EIS within 120 days of the date of this payment. This time limitation may be extended by the Council only for good cause upon written request by the Responsible Agency.

F. Upon receipt or notice of receipt of the final payment by the Proposer, the Council shall notify each state agency having a possible governmental permit interest in the action that the final payment has been received.

1. Other laws notwithstanding, a state agency shall not issue any governmental permits for the construction or operation of an action for which an EIS is prepared until the required cash payments of the EIS assessed cost for that action or that portion of a Related Actions EIS have been paid in full.

G. Except as provided in MEQC 46 E all time periods included in MEQC 42-46 may be extended by the Council Chairman only for good cause upon written request by the Proposer or the Responsible Agency.

MEQC 47 EFFECTIVE DATE

All petitions received, environmental assessments ordered or received, and EISs ordered before the effective date of the amendments shall be processed and reviewed under the existing Rules, MEQC 21-40, unless the project proposer requests that the amended rules be followed. Projects previously reviewed or exempted by the MEQC are not subject to these Rules except for those actions included in MEQC 25 F.1.

APPROVED AS TO FORM AND LEGALITY
APR 14 1977 19
WARREN SPANNAUS, ATTORNEY GENERAL
BY /s/ Michael B. Miller
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 18 1977 - 11:15 am
Joan Anderson Growe
Secretary of State

STATE OF MINNESOTA

DEPARTMENT Attorney General/SPA

Office Memorandum

TO : Michael Miller
Special Assistant Attorney General

DATE: March 29, 1977

FROM : William E. Dorigan
Special Assistant Attorney General

PHONE: 6-2711

SUBJECT: Rules MEQC 22-47

Pursuant to our discussion on the telephone this morning, attached is a copy of the Rules For Assessing The Cost of Preparing Environmental Impact Statements as adopted by the MEQC at today's meeting.

After our telephone discussion, the MEQC resolved to retain Rule 22B as originally adopted. With respect to Rule 47, the MEQC resolved to strike the first sentence of that rule as suggested by you in your March 17, 1977 memorandum. Attached is a copy of the MEQC's resolution with respect thereto.

The second and third sentences of Rule 47 were retained by the MEQC because of the application of that language to the overall Environmental Impact Statement rules. As I pointed out to you, the chargeback rules will be incorporated into the environmental review rules.

The recently amended EIS rules became effective on February 13, 1977. The second sentence was included to avoid confusion about whether a project should be reviewed under the old rules or the amended rules. In essence, this provision allows a project proposer, where the environmental review process was initiated before the effective date of the amended rules, to make a choice as to which set of rules were to govern the review on his project.

The third sentence simply makes it clear that projects previously reviewed under the environmental review process will not be subject to another review unless the project is altered in a manner which would materially affect the previous review.

Finally, the word "was" in Rule 43B1 has been changed to "were" as per your suggestion in your March 17, 1977 memo.

Please accept the attached as a resubmission of these rules to your office from the MEQC.

WED:jh

Attachments

CERTIFICATE OF COUNCIL'S

AUTHORIZING RESOLUTION

I, Mary Sullivan, do hereby certify that I am the Administrator of the Minnesota Environmental Quality Council, a council 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 Minnesota Environmental Quality Council duly and properly called and held on the 29th day of March, 1977; that a quorum was present at said meeting; that a majority of the members of the Council voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified. Mr. Millhone moved:

WHEREAS, the Rules For Assessing the Cost of Preparing Environmental Impact Statements adopted by the Council at its February 8, 1977 meeting contained an effective date inconsistent with the requirements of Minn. Stat. Chapter 15; and

WHEREAS, the Attorney General's office in its review discovered this inconsistency and recommended that the incorrect effective date be deleted from the Rules; and

WHEREAS, the Attorney General also suggested a grammatical change in Minnesota Rules MEQC 43B.1;

THEREFORE, BE IT RESOLVED:

THAT the Council orders the first sentence of Minnesota Rules MEQC 47 referring to the effective date of the Rules be deleted from its adopted Rules; and

THAT the "was" in line 4 of Minnesota Rules MEQC 43B.1 be changed to "were."

Seconded by Ms. Brooks, the motion carried unanimously with Vanderpoel, Brooks, Harrington, Lawson, Lukermann, Magnuson, Millhone, O'Donnell, Ohman, Schwartz and Wefald voting aye, Gardebring not present.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 29th day of March, 1977.

Mary Sullivan
Mary Sullivan
Administrator

JOANNE HERBENSON
RAMSEY COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES NOV. 30, 1982

Subscribed and sworn to
before me this 29th
day of March, 1977

Joanne Herbenson
Notary Public

ADMIN 1000

STATE OF MINNESOTA

DEPARTMENT Attorney General/SPA

Office Memorandum

TO : Michael Miller
Special Assistant Attorney General

DATE: March 10, 1977

FROM : William Dorigan W.E.D.
Special Assistant Attorney General

PHONE: 6-2711

SUBJECT: MEQC Rules Concerning Assessment of Costs of EIS Preparation.

In 1975, the legislature recognized the financial burden placed on local and state Responsible Agencies for the preparation of environmental impact statements (EIS)s required under the Minnesota Environmental Policy Act (MEPA), Minn. Stat. Ch. 116D (1973). Public agencies have frequently been forced to divert funds from other programs to pay EIS preparation costs because their budgets could not anticipate such expenditures. In response, the legislature in 1976 amended the MEPA to include a provision that allows the project proposer to be assessed for the reasonable costs of preparing and distributing the EIS on his project. It also directed the Environmental Quality Council (EQC) to promulgate rules consistent with the provisions of the amendment. This statutory amendment is found at Minn. Stat. § 116C.045.

I. EQC Rules Background.

To implement the amendment, it was necessary to establish three types of cost figures:

A. EIS estimated cost. The project proposer's assessment is based on all EIS expenditures. Since Subd. 3 of the statute requires that preparation of the EIS cannot commence until one half of the assessed cost of doing the EIS has been paid, it is necessary to estimate what the total of all expenditures will be.

B. EIS assessed cost. This is the amount the proposer must actually provide. The formula in Subdivision 5 of the statute is applied to the total project cost; the result is then compared to the EIS estimated cost. The proposer is only required to provide the smaller of the two figures.

C. EIS actual cost. This is the final accounting. The assessment is based on an estimate of EIS costs; the actual EIS costs may be less, so an adjustment may be needed in the amount the proposer must provide.

In general, the rules establish a cooperative process for the Responsible Agency and the proposer to determine the EIS estimated cost and the EIS assessed cost, and to redetermine these figures when changes occur in project scope, discovery of new environmental parameters, etc. The EQC settles any disagreements between the two parties, as the statute provides. Cash payments go directly to local Responsible Agencies or to the state General Fund for state Responsible Agencies for later disbursement to the state agency. 1/

II. EIS Assessed Cost - Cash and In-kind Payments.

The statute states that the proposer must pay the EIS assessed cost. The EQC decided to permit payment of the EIS assessed cost in two ways, cash and/or in-kind submission of technical data.

Certain general background considerations must be noted with respect to the EIS process. First, the EIS process is designed to elicit environmental information that will be used by both private (the proposer) and public decision-makers in all remaining decisions on the project: final designs, inclusion of mitigative measures, permit conditions, etc. Second, the EIS process must accomodate both state and local agencies as Responsible Agencies --bodies with widely different procedures and capabilities. Third, the EIS Cost Assessment Rules must be designed to be compatible with the objectives of the EIS Program Rules. Those objectives are:

- To elicit environmental information.

- To educate proposers so they can work to minimize adverse impacts in both present and future projects.

1/ The contention had been made by MACI at the hearing that state agencies would not receive funds generated by this process, thus the agencies were not dependent upon those funds to prepare an EIS. The EQC disagreed with that position and noted that a method of channeling the funds to the agencies was being developed. Arrangements for providing the agencies with the funds have now been developed. The Governor's budget includes a line item appropriation of $4,000,000 to the State Planning Agency to be provided to state agencies preparing EISs. As a proposer makes a cash payment to the general fund, a like amount will be disbursed from the SPA fund to the preparing agency. Although the agency will not directly receive the proposer's cash payment, the agency is dependent upon the proposer making the payment and will receive funds for preparing the EIS in a timely manner.

- To be timely. Delay is very costly to the project proposer.

- To be flexible, since there are so many widely varied Responsible Agencies involved, different amounts of work needed, etc.

The reasons for permitting in-kind submission of data are as follows:

A. The statute does not specify how the proposer is to be assessed, dollars or technical data; it says that the EQC Rules are to set the guidelines for this. (Since there is no specific provision for the credit, the agency believes its use should be carefully overseen.) Further, the total assessment required of the proposer is still the same--part of it simply has a different form.

B. The credit furthers the objectives of the EIS program rules:

1. Participation by the proposer and cooperation between agency and proposer is encouraged, starting with the original agreement on who provides what and continuing with the determination of what data is acceptable for use in the EIS.

a. There are two specific advantages. First, the proposer learns the correct procedures for data collection and analysis, mitigative measures, etc. so that he can minimize adverse impacts in this and future projects. Second, the proposer can also work with local citizens, thereby developing a better rapport between the proposer and the citizens who will have to live with the project. The proposer also can work with agencies and develop a better understanding of the functions of those agencies.

b. Further, such cooperation has occured on most EISs in the past, and it has worked well. Testimony showed that proposers and agencies felt that cooperation, especially early cooperation, was beneficial.

2. The EIS work can be done more efficiently and completed earlier, to the advantage of both parties.

   a. The work can be done faster if there are more agencies and personnel to do the work. Obviously, the less staff time spent gathering technical data, the more time that will be available for the Responsible Agency to work on other aspects of the EIS.

   b. The Responsible Agency may not have staff to do certain parts of the EIS and it may take a long time for them to make the administrative arrangements (hiring consultants, reassigning personnel, waiting for programs to "free up" some staff) to obtain that information. This is true for both the local Responsible Agencies, many of which have little background in technical matters, and the state Responsible Agency.

   c. The proposer knows the project best and can often do things faster. A certain amount of data may have already been gathered by the proposer.

C. Since the proposer has a stake in the project, it is only fair that he be included.

D. Particularly it was noted that, during the Rules' drafting, proposers clearly indicated that they would not do data collection and make other environmental considerations unless their data and input would be recognized. This is contrary to EIS program objectives.

E. No one disagreed with the idea. Although the extent of the credit was argued, all participants at the hearing agreed with the concept of a credit.

III. The "1/3 ceiling" to the credit /off-set/ in-kind payment.

The EQC felt that there should be a "1/3 ceiling" to this payment for the reasons explained below, unless the Responsible Agency agrees to a higher ceiling. This means that

at least 1/3 of the EIS assessed cost can be "paid" in data used in the EIS. For example, suppose that the EIS estimated cost for a project is $30,000. If the proposer chooses, up to $10,000 of that figure can be submitted in data; the cash payment would then be the remainder. If the proposer chooses and the Responsible Agency agrees, more than $10,000 can be offset by the submission of data.

The selection of the "1/3 ceiling" is based on the following:

A. The credit /off-set/ in-kind payment is not specifically provided for in the statute, so its use must be overseen carefully.

B. Elimination of the low ceiling could well result in the Responsible Agency receiving little or no money, which is clearly contrary to law and creates the same predicament the statute was designed to rectify.

C. Setting this limit will ensure that funds needed for verification and other costs for EIS preparation are available. It is apparent that data will have to be verified before it can be used.

D. Setting a limit will give more flexibility to the Responsible Agency--the intended benefitor.

E. The 1/3 ceiling is fair because it protects the Responsible Agency and it can be lifted by the Responsible Agency. If either party feels aggrieved, the dispute can be submitted to the EQC for resolution.

The 1/3 figure satisfies the above factors and represented a middle position between the parties who assisted in the Rules drafting. No other intermediate figure was suggested as being more appropriate during the hearing.

The MACI proposal to eliminate the ceiling entirely and the Dayton-Hudson proposal to substitute a formula are not tenable, as discussed below.

IV. Suggested Alternatives to the 1/3 Ceiling.

A. MACI suggested that there be no limit at all to the amount of the EIS assessed cost that can be offset by the submission of data by the proposer. This is unacceptable for the following reasons:

1. The Responsible Agency is required to prepare the EIS; the responsibility for the final product cannot be delegated to the project proposer. The Responsible Agency must have the resources to do what it feels is an acceptable job. Eliminating the ceiling could well result in the Responsible Agency not receiving the relief intended by the statute.

Says it's proposer controls project if he's control

(?) 2. Important factors already mentioned above would not be promoted, particularly the educational benefits of the two parties working together.

3. The statute directs the Responsible Agency to determine the costs to be assessed (in accordance with EQC Rules), indicating the responsibility and authority of the Responsible Agency. The MACI proposal puts the proposer in that position because he decides how much of his assessment will be spent in data acquisition. Since the Rules don't let the Responsible Agency increase the EIS assessed cost later if it spends more on the EIS than originally agreed to, it is important to keep the Responsible Agency heavily involved in the early decisions.

4. The MACI proposal does not deal with the need to eliminate the possibility that the proposer will inflate the dollar value of his work. The 1/3 ceiling in the Rules will provide the oversight needed to check this. It would be administratively difficult to verify the proposer's figures under this proposal.

5. It does not provide a guide to the Responsible Agency and the proposer in deciding how to allocate the EIS assessed cost between cash and data; it must be made explicit that not all information from the proposer may be acceptable.

B. Dayton-Hudson Corporation suggested that the 1/3 ceiling be eliminated and replaced with a formula based on the EIS estimated cost; the apparent reasoning was to have equal sharing of

the burden. The formula is as follows:[2/]

$$\frac{\text{proposer's credit}}{\text{EIS assessed cost}} = \frac{\text{proposer's data acquisition dollars}}{\text{EIS estimated cost}}$$

This suggestion does offer some monetary relief to the Responsible Agency, but it has all of the disadvantages of the MACI suggestion. Further, when the project proposer has done little data acquisition, he will receive less "offset" than under the 1/3 ceiling method.

V. Other.

It has been suggested that the EIS estimated cost should be for that EIS work remaining after the proposer's existing data is considered. This is impossible:

A. The proposer may still be gathering data. To wait until it is collected so that it could be reviewed would delay the EIS. (The statute says that EIS preparation cannot begin until one-half of the assessment is paid.)

2/ Case A: Suppose the EIS estimated cost is $20,000, the EIS assessed cost is $10,000 and the proposer has already spent $5,000 on data acquisition. The proposer's credit is $2,500. This is less than the $3,333 the proposer would have gotten under the 1/3 credit proposed.

$$\frac{\$2,500}{10,000} = \frac{5,000}{20,000}$$

Case B: Suppose the EIS estimated cost is $20,000, the EIS assessed cost is $10,000, and the proposer has already spent $15,000 on data acquisition. The proposer's credit is $7,500. In this case, the proposer receives more than a 1/3 credit; however, he does not receive the full credit for his data acquisition moneys. More credit is possible under the proposed 1/3 credit, since the 1/3 ceiling can be lifted at the Responsible Agency's discretion.

$$\$\ \frac{7,500}{10,000} = \frac{15,000}{20,000}$$

B. The advantages of cooperation and coordination mentioned above would be lost.

VI. Indirect Costs.

The amendment directs the EQC to determine, by Rule, the appropriate costs of EIS preparation and distribution. The EQC feels that indirect costs are legitimate costs of EIS preparation and that the use of a normal operating overhead rate will save a great deal of effort. The reasons are as follows:

A. Indirect costs are necessary for the EIS. They are necessary support services for any activity. They include pencils, papers, administrative supervision, office space, telephones, etc. If there were no EIS, these support services would not be needed or would not have to be reassigned from previously authorized programs.

B. The use of the normal operating overhead rate is reasonable:

1. It is often extremely difficult to estimate these costs (473 pieces of paper, 27 pencils, etc.). Most agencies have recognized this and developed a standard figure which is applied to all program activities. This standard figure makes it easy to ascertain these costs.

2. To avoid discriminating against Responsible Agencies who have not developed a standard figure, these items must be tabulated and itemized. Unfortunately, this can be time-consuming, but it is necessary for reasons of equity.

3. Consultants would use such a standard figure and figure these costs for any contract. It is not logical to prevent the Responsible Agency from using it also. Indeed, a similar logic was used by the Hearing Examiner in recommending whether fringe benefits should be included in the EIS estimated cost.

4. Many agencies -- both state and local-- already have a method for determining such a figure. For those agencies who do not have a developed figure, they do have the option of specifing them under "other direct costs".

WED:jh

STATE OF MINNESOTA

COUNTY OF RAMSEY

ENVIRONMENTAL QUALITY COUNCIL

In the Matter of the Proposed Rules of the MEQC for Assessing the Cost of Preparing Environmental Impact Statements.

STATEMENT OF COMPLIANCE

I, Special Assistant Attorney General Donald A. Kannas do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed.

Dated: 17 Feb 77

D A Kannas

DONALD A. KANNAS
Special Assistant Attorney General

Subscribed and sworn to before me this 17th day of February, 1977.

Joanne Herbenson

Notary Public

JOANNE HERBENSON
RAMSEY COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES NOV. 30, 1982

MINNESOTA ASSOCIATION
OF
COMMERCE AND INDUSTRY

MACI
200 HANOVER BUILDING
480 CEDAR STREET
SAINT PAUL, MINNESOTA 55101
(612) 227-9591

November 18, 1976

Mr. Myron Greenberg
Office of Hearing Examiners
Room 300
1745 University Avenue
Saint Paul, Minnesota 55104

Re: EIS Cost Assessment
Hearing

Dear Mr. Greenberg:

During the public hearing on November 17, there was considerable discussion regarding legislative intent, particularly as it relates to whether the entire cost of the EIS process should be paid by the project proposer, and whether state agencies should have immediate access to assessed funds.

Enclosed are pages from the Senate Journal tracing the entire history of the act. Subdivisions 3 and 5 relate directly to the referenced subjects. I believe you will find that the legislature specifically altered the original language which would have allowed state agencies to have direct access to the funds. Also, the development of an assessment formula which excludes the first $1 million of the cost of a project and which sets a sliding scale should firmly establish the fact that it was not the intent of the act that all or even most of the cost to state or local agencies should be borne by the project proposer.

If you desire further information in this regard, please let me know.

Sincerely,

James T. Shields
Director of Environmental Affairs

JTS:sm

Enclosures: Senate Journal pages 4642-43, 5060-61, 5183-84 and 5499-5502

obligation bonds of the district without the consent of the governing bodies of the municipalities included in the district; excluding the bonds from the net debt of the district; and excluding taxes levied for the payment of the bonds from certain levy limitations.

Edward A. Burdick, Chief Clerk, House of Representatives

Returned March 18, 1976

REPORTS OF COMMITTEES

Mr. Coleman moved that the Committee Reports at the Desk be now adopted, with the exception of S. F. No. 2483. The motion prevailed.

Mr. Moe from the Committee on Natural Resources and Agriculture, to which was referred

S. F. No. 2483: A bill for an act relating to environment; revising the environmental policy act; amending Minnesota Statutes 1974, Sections 116D.04, Subdivisions 3 and 8, and by adding subdivisions; and 116D.07.

Reports the same back with the recommendation that the bill be amended as follows:

Strike everything after the enacting clause and insert:

"Section 1. Minnesota Statutes 1974, Chapter 116D, is amended by adding a section to read:

[116D.045] [COST OF PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS.] *Subdivision 1. The Minnesota environmental quality board shall by rule adopt procedures to assess the proposer of an action, when the proposer is a private person, for reasonable costs of preparing and distributing an environmental impact statement required pursuant to Minnesota Statutes, Section 116D.04. These costs shall be determined by the responsible agency pursuant to the rules promulgated by the board in accordance with subdivision 5.*

Subd. 2. In the event of a disagreement between the proposer of the action and the responsible agency over the cost of an environmental impact statement, the responsible agency shall consult with the board, which may modify the cost or determine that the cost assessed by the responsible agency is reasonable.

Subd. 3. The proposer shall pay the assessed cost to the board. All money received pursuant to this subdivision shall be deposited in the general fund. So much money as is necessary is annually appropriated from the general fund to the board to pay expenses incurred in the preparation and distribution of environmental impact statements in accordance with the provisions of Minnesota Statutes, Section 116D.04, and in the event such expenses are less than the assessment paid, to refund the excess to the proposer of the action. This annual appropriation shall not exceed the assessments to be paid during each period.

Subd. 4. No agency or governmental subdivision shall commence with the preparation of an environmental impact statement until at least one-half of the assessed cost of the environmental impact statement is paid pursuant to subdivision 3. No state agency may issue any permits for the construction or operation of a project for which an environmental impact statement is prepared until the assessed cost for the environmental impact statement has been paid in full.

Subd. 5. For projects proposed by a private person with a total value of more than one million dollars, as determined by the board, the assessed cost for preparation and distribution of the environmental impact statement shall not exceed 3 per cent of the total project cost less one million dollars. The exemption of projects proposed by a private person with a total value of less than one million dollars shall not apply when a local government is designated the responsible agency.

Sec. 2. *This act is effective the day following final enactment, except that section 1, subdivision 4, is not effective until the board has promulgated the rules specified in section 1, subdivision 1."*

Further amend the title as follows:

Page 1, line 2, strike "revising the" and insert "providing for the assessment of the cost of preparing an environmental impact statement; appropriating money; amending Minnesota Statutes 1974, Chapter 116D, by adding a section."

Page 1, strike lines 3 through 5

And when so amended the bill do pass and be re-referred to the Committee on Finance. Pursuant to joint rule 20 the bill and report were referred to the Committee on Rules and Administration.

Mr. Perpich, A. J. from the Committee on Taxes and Tax Laws, to which was referred

S. F. No. 2298: A bill for an act relating to motor vehicles; motor vehicle excise tax on vehicles purchased for resale; use of motor vehicles bearing motor vehicle dealer plates; amending Minnesota Statutes 1974, Sections 168.27, Subdivision 5; 297B.01, Subdivision 6; and Chapter 297B, by adding a section.

Reports the same back with the recommendation that the bill do pass. Report adopted.

Mr. Perpich, A. J. from the Committee on Taxes and Tax Laws, to which was referred

S. F. No. 2453: A bill for an act relating to taxation; changing the means of calculation and adjustment of levy limits in certain counties; amending Minnesota Statutes, 1975 Supplement, Section 275.51, Subdivision 3c.

Reports the same back with the recommendation that the bill be amended as follows:

SPECIAL ORDER

H. F. No. 2492: A bill for an act relating to environmental protection; limiting the sale and use of organic compounds known as polychlorinated biphenyls; permitting exemptions; requiring labels; defining terms; providing penalties.

Mr. Borden moved to amend the amendment placed on H. F. No. 2492 by the Committee on Natural Resources and Agriculture, adopted by the Senate March 17, 1976, as follows:

Journal page 4433 after Subdivision 5, add new Sections 3 and 4 as follows:

"Sec. 3. Minnesota Statutes 1974, Chapter 116D, is amended by adding a section to read:

[116D.045] [COST OF PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS.] *Subdivision 1. The board shall, no later than January 1, 1977, by rule adopt procedures to assess the proposer of a specific action, when the proposer is a private person, for reasonable costs of preparing and distributing an environmental impact statement on that action required pursuant to section 116D.04. Such costs shall be determined by the responsible agency pursuant to the rules promulgated by the board in accordance with subdivision 5.*

Subd. 2. In the event of a disagreement between the proposer of the action and the responsible agency over the cost of an environmental impact statement, the responsible agency shall consult with the board, which may modify the cost or determine that the cost assessed by the responsible agency is reasonable.

Subd. 3. The proposer shall pay the assessed cost to the board. All money received pursuant to this subdivision shall be deposited in the general fund.

Subd. 4. No agency or governmental subdivision shall commence with the preparation of an environmental impact statement until at least one-half of the assessed cost of the environmental impact statement is paid pursuant to subdivision 3. Other laws notwithstanding, no state agency may issue any permits for the construction or operation of a project for which an environmental impact statement is prepared until the accessed cost for the environmental impact statement has been paid in full.

Subd. 5. For actions proposed by a private person, the assessed cost for preparation and distribution of the environmental impact statement shall not exceed .3 percent times that part of the total project cost in excess of one million dollars. The exemption of the first one million dollars in project cost shall not apply when a local government is designated the responsible agency.

Sec. 4. *Sections 3 and 4 are effective the day following final enactment, except that section 3, subdivision 4, is effective February 15, 1977.*"

Underline all new language in the bill

Further amend the title as follows:

Journal page 4432, line 4 after "penalties" and before the period insert the following: "; providing for the assessment of the cost of preparing an environmental impact statement; appropriating money; amending Minnesota Statutes 1974, Chapter 116D, by adding a section."

Mr. Purfeerst moved to amend the Borden amendment to H. F. No. 2492, as follows:

Sec. 3, Subd. 5, strike the entire subdivision and insert the following:

"Subd. 5. For actions proposed by a private person there shall be no assessment for preparation and distribution of an environmental impact statement for an action which has a total value less than one million dollars. For actions which are greater than one million dollars but less than ten million dollars, the assessment to the proposer as determined by the agency shall not exceed .3 percent of the total value except that the total value shall not include the first one million dollars of value. For actions the value of which exceed ten million dollars but are less than 50 million dollars, an additional charge may be made to the proposer by the agency which will not exceed .2 percent of each one million dollars of value over ten million dollars. For actions which are greater than 50 million dollars in total value, an additional charge may be made to the proposer by the agency which will not exceed .1 percent of each one million dollars of value over 50 million dollars. In no event shall the charge to the proposer by the agency exceed $250,000."

The question being taken on the adoption of the amendment,

And the roll being called, there were yeas 16 and nays 33, as follows:

Those who voted in the affirmative were:

Bernhagen	Hanson, R.	Knutson	Olson, J. L.	Renneke
Frederick	Josefson	Larson	Patton	Schrom
Hansen, Baldy	Kleinbaum	Laufenburger	Purfeerst	Solon
Hansen, Mel				

Those who voted in the negative were:

Arnold	Coleman	Keefe, J.	North	Stokowski
Blatz	Conzemius	Keefe, S.	Olhoft	Stumpf
Borden	Davies	Kowalczyk	Perpich, A. J.	Tennessen
Brataas	Doty	McCutcheon	Perpich, G.	Wegener
Brown	Gearty	Merriam	Pillsbury	Willet
Chenoweth	Humphrey	Milton	Schmitz	
Chmielewski	Jensen	Nelson	Spear	

The motion did not prevail. So the amendment was not adopted.

Mr. Frederick moved to amend the Borden amendment to H. F. No. 2492 as follows:

Page 4433, after Subdivision 5, insert:

"Sec. 3. [362.512] [PURPOSE.] The purpose of sections 3 to 10, is to insure that the impact of the enforcement of environmental standards on working men and women is determined before standards are implemented.

The motion prevailed. So the amendment was adopted.

Mr. Dunn moved to amend H. F. No. 25 as follows:

Page 1, line 9, strike "of the home"

Page 1, line 10, strike "building industry for the geographic area" and insert "provided in a building code established by the political subdivision"

The motion prevailed. So the amendment was adopted.

H. F. No. 25 was read the third time, as amended, and placed on its final passage.

The question being taken on the passage of the bill, as amended,

And the roll being called, there were yeas 25 and nays 36, as follows:

Those who voted in the affirmative were:

Borden	Doty	Keefe, J.	McCutcheon	Perpich, G.
Brown	Gearty	Kleinbaum	Merriam	Schaaf
Chenoweth	Hansen, Mel	Kowalczyk	Milton	Solon
Coleman	Hughes	Laufenburger	Olhoft	Stokowski
Davies	Humphrey	Lewis	Perpich, A. J.	Stumpf

Those who voted in the negative were:

Anderson	Chmielewski	Larson	Patton	Tennessen
Arnold	Conzemius	Moe	Pillsbury	Ueland
Ashbach	Frederick	Nelson	Purfeerst	Wegener
Bang	Hansen, Baldy	Ogdahl	Renneke	Willet
Berg	Hanson, R.	Olson, A. G.	Schmitz	
Bernhagen	Josefson	Olson, H. D.	Schrom	
Blatz	Kirchner	Olson, J. L.	Sillers	
Brataas	Knutson	O'Neill	Stassen	

So the bill failed to pass.

SPECIAL ORDER

H. F. No. 2492: A bill for an act relating to environmental protection; limiting the sale and use of organic compounds known as polychlorinated biphenyls; permitting exemptions; requiring labels; defining terms; providing penalties.

Mr. Purfeerst moved to amend H. F. No. 2492, as amended by the Borden amendment, adopted by the Senate March 25, 1976, as follows:

Page 5060 of the Daily Journal, strike subdivision 5 and insert:

"Subd. 5. For actions proposed by a private person there shall be no assessment for preparation and distribution of an environmental impact statement for an action which has a total value less than one million dollars. For actions which are greater than one million dollars but less than ten million dollars, the assessment to the proposer as determined by the agency shall not exceed .3 percent of the total value except that the total value shall not include the first one million dollars of value. For actions the value of which exceed ten million dollars but are less than 50 million dollars,

an additional charge may be made to the proposer by the agency which will not exceed .2 percent of each one million dollars of value over ten million dollars. For actions which are greater than 50 million dollars in total value, an additional charge may be made to the proposer by the agency which will not exceed .1 percent of each one million dollars of value over 50 million dollars. The proposer shall pay the assessed cost to the board when a state agency is designated the responsible agency. All money received by the board pursuant to this subdivision shall be deposited in the general fund. The proposer shall pay the assessed cost to the designated lead agency when such agency is a local unit of government."

The motion prevailed. So the amendment to the amendment was adopted.

Mr. Milton moved to amend the amendment placed on H. F. No. 2492 by the Committee on Natural Resources and Agriculture, adopted by the Senate March 17, 1976, as follows:

Page 4433 of the Daily Journal, subdivision 2, at the end of the subdivision insert *"Wastepaper, pulp, or other paper products or materials purchased for use within this state in the manufacture of recycled paper products are exempt from the requirements of this section."*

The motion prevailed. So the amendment to the amendment was adopted.

H. F. No. 2492 was read the third time, as amended, and placed on its final passage.

The question being taken on the passage of the bill, as amended,

And the roll being called, there were yeas 44 and nays 15, as follows:

Those who voted in the affirmative were:

Anderson	Coleman	Kirchner	Nelson	Purfeerst
Arnold	Conzemius	Kleinbaum	North	Schmitz
Ashbach	Davies	Kowalczyk	Ogdahl	Sillers
Bang	Doty	Laufenburger	Olhoft	Solon
Blatz	Gearty	Lewis	Olson, A. G.	Stassen
Borden	Hansen, Mel	McCutcheon	Olson, H. D.	Stokowski
Brataas	Hughes	Merriam	O'Neill	Wegener
Chenoweth	Humphrey	Milton	Perpich, A. J.	Willet
Chmielewski	Keefe, J.	Moe	Perpich, G.	

Those who voted in the negative were:

Berg	Frederick	Josefson	Olson, J. L.	Renneke
Bernhagen	Hansen, Baldy	Knutson	Patton	Schrom
Dunn	Hanson, R.	Larson	Pillsbury	Ueland

So the bill, as amended, passed and its title was agreed to.

SPECIAL ORDER

H. F. No. 1078: A bill for an act relating to real estate; requiring certain real estate developers to comply with trust account requirements; amending Minnesota Statutes, 1975 Supplement, Section 82.18.

Was read the third time and placed on its final passage.

Mr. Tennessen moved that the foregoing recommendations and Conference Committee Report on H. F. No. 2204 be now adopted, and that the bill be repassed as amended by the Conference Committee. The motion prevailed. So the recommendations and Conference Committee Report were adopted.

H. F. No. 2204: A bill for an act relating to collection and dissemination of data; providing definitions; requiring a public document on data collection; authorizing audits of data collection practices and policies; providing for emergency classification in certain situations; amending Minnesota Statutes 1974, Chapter 15, by adding a section; and Minnesota Statutes, 1975 Supplement, Sections 15.162, Subdivisions 2a, 5, 5a and 8, and by adding a subdivision; 15.163, Subdivisions 1 and 2.

Was read the third time, as amended by the Conference Committee, and placed on its repassage.

The question being taken on the repassage of the bill, as amended by the Conference Committee,

And the roll being called, there were yeas 50 and nays 0, as follows:

Those who voted in the affirmative were:

Anderson	Frederick	Knutson	Olhoft	Schrom
Arnold	Gearty	Kowalczyk	Olson, H. D.	Sillers
Bang	Hansen, Baldy	Laufenburger	Olson, J. L.	Solon
Berg	Hansen, Mel	Lewis	O'Neill	Stassen
Bernhagen	Hanson, R.	McCutcheon	Patton	Stokowski
Brataas	Hughes	Merriam	Perpich, A. J.	Stumpf
Brown	Humphrey	Milton	Pillsbury	Tennessen
Conzemius	Keefe, J.	Moe	Renneke	Ueland
Doty	Keefe, S.	Nelson	Schaaf	Wegener
Dunn	Kirchner	Ogdahl	Schmitz	Willet

So the bill, as amended by the Conference Committee, was repassed and its title was agreed to.

MESSAGES FROM THE HOUSE—CONTINUED

Mr. President:

I have the honor to announce that the House has adopted the recommendation and report of the Conference Committee on House File No. 2492, and repassed said bill in accordance with the report of the Committee, so adopted.

H. F. No. 2492: A bill for an act relating to environmental protection; limiting the sale and use of organic compounds known as polychlorinated biphenyls; permitting exemptions; requiring labels; defining terms; providing penalties.

House File No. 2492 is herewith transmitted to the Senate.

Edward A. Burdick, Chief Clerk, House of Representatives

Transmitted April 2, 1976

CONFERENCE COMMITTEE REPORT ON H. F. NO. 2492

A bill for an act relating to environmental protection; limiting the

sale and use of organic compounds known as polychlorinated biphenyls; permitting exemptions; requiring labels; defining terms; providing penalties.

April 2, 1976

The Honorable Martin O. Sabo
Speaker of the House of Representatives

The Honorable Alec G. Olson
President of the Senate

We, the undersigned conferees for H. F. No. 2492 report that we have agreed upon the items in dispute and recommend as follows:

That the senate recede from its amendments and that H. F. No. 2492 be amended as follows:

Strike everything after the enacting clause and insert:

"Section 1. [DEFINITIONS.] *Subdivision 1. For the purposes of this section the following terms shall have the meanings given;*

Subd. 2. "Agency" means the Minnesota pollution control agency.

Subd. 3. "Director" means the director of the pollution control agency.

Subd. 4. "PCB" means the class of organic compounds known as polychlorinated biphenyls and includes any of several compounds produced by replacing one or more hydrogen atoms on the biphenyl molecule with chlorine. PCB does not include chlorinated biphenyl compounds that have functional groups attached other than chlorine.

Subd. 5. "Person" has the meaning specified in Minnesota Statutes, Section 115.01, Subdivision 10.

Sec. 2. [PROHIBITED USE OF PCB.] *Subdivision 1.* [CERTIFICATE OF EXEMPTION.] *Beginning January 1, 1978, no person shall use, possess, sell, purchase or manufacture PCB or any product containing PCB unless the use, possession, sale, purchase or manufacture of PCB or products containing PCB is exempted by the agency. If the agency finds after there is opportunity for a public hearing on an application presented by any person, that no substitutes or feasible alternatives are reasonably available for PCB or a product containing PCB or class of products containing PCB, it shall grant a certificate of exemption which shall clearly set out the permitted use, possession, sale or purchase of PCB or a PCB product containing PCB. If the agency grants a certificate of exemption, it shall be valid for all subsequent uses of PCB or products containing PCB if the subsequent uses are consistent with the terms and conditions of the certificate of exemption. In granting certificates of exemption the agency shall at all times consider the public health and safety threatened by the use of PCB. In the consideration of certificates of exemption for the use or replacement of existing electrical transformers and capacitors the agency shall review, but not be limited to, considerations of the safety of proven alternatives, replacement costs and rules controlling the final disposal of PCB.*

Subd. 2. [EXCLUSION.] *In no event shall the certificate of exemption requirement or the labeling requirement of this section apply to any individual person who purchases or otherwise acquires a product containing PCB intended for consumer use in the home, provided that the use has previously been exempted by the agency and that the use is consistent with the terms and conditions of the certificate of exemption. Wastepaper, pulp, or other wood fiber materials purchased for use within this state in the manufacture of recycled paper products are exempt from the requirements of this section.*

Subd. 3. [LABELS REQUIRED.] *Beginning July 1, 1977, no person in this state shall add PCB in the manufacture of any new item, product or material, nor shall any person in this state sell any new item, product or material to which PCB has been added unless the PCB or products containing PCB are conspicuously labeled to disclose the presence of PCB and the concentrations of PCB.*

Subd. 4. [RULES.] *The agency shall promulgate rules by January 1, 1977, governing the granting of certificates of exemption and the requirements of labels specified in subdivision 3. The rules governing the requirement of labels specified in subdivision 3 may require other information relating to the public health and environmental effects of PCB and shall apply to persons holding certificates of exemption.*

Subd. 5. [PENALTIES.] *Violations of this act shall be subject to the provisions of Minnesota Statutes, Section 115.071.*

Sec. 3. Minnesota Statutes 1974, Chapter 116D, is amended by adding a section to read:

[116D.045] [COST OF PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS.] *Subdivision 1. The board shall, no later than January 1, 1977, by rule adopt procedures to assess the proposer of a specific action, when the proposer is a private person, for reasonable costs of preparing and distributing an environmental impact statement on that action required pursuant to section 116D.04. Such costs shall be determined by the responsible agency pursuant to the rules promulgated by the board in accordance with subdivision 5 and shall be assessed for projects for which an environmental impact statement preparation notice has been issued after February 15, 1977.*

Subd. 2. In the event of a disagreement between the proposer of the action and the responsible agency over the cost of an environmental impact statement, the responsible agency shall consult with the board, which may modify the cost or determine that the cost assessed by the responsible agency is reasonable.

Subd. 3. The proposer shall pay the assessed cost to the board. All money received pursuant to this subdivision shall be deposited in the general fund.

Subd. 4. No agency or governmental subdivision shall commence with the preparation of an environmental impact statement until at least one half of the assessed cost of the environmental impact

statement is paid pursuant to subdivision 3. Other laws notwithstanding, no state agency may issue any permits for the construction or operation of a project for which an environmental impact statement is prepared until the assessed cost for the environmental impact statement has been paid in full.

Subd. 5. For actions proposed by a private person there shall be no assessment for preparation and distribution of an environmental impact statement for an action which has a total value less than one million dollars. For actions which are greater than one million dollars but less than ten million dollars, the assessment to the proposer as determined by the agency shall not exceed .3 percent of the total value except that the total value shall not include the first one million dollars of value. For actions the value of which exceed ten million dollars but are less than 50 million dollars, an additional charge may be made to the proposer by the agency which will not exceed .2 percent of each one million dollars of value over ten million dollars. For actions which are greater than 50 million dollars in total value, an additional charge may be made to the proposer by the agency which will not exceed .1 percent of each one million dollars of value over 50 million dollars. The proposer shall pay the assessed cost to the board when a state agency is designated the responsible agency. All money received by the board pursuant to this subdivision shall be deposited in the general fund. The proposer shall pay the assessed cost to the designated lead agency when such agency is a local unit of government.

Sec. 4. *This act is effective the day following final enactment."*

Further, amend the title by striking it in its entirety and inserting:

"A bill for an act relating to environmental protection; limiting the sale and use of organic compounds known as polychlorinated biphenyls; permitting exemptions; requiring labels; providing penalties; providing for the assessment of the cost of preparing an environmental impact statement; amending Minnesota Statutes 1974, Chapter 116D, by adding a section."

We request adoption of this report and repassage of the bill.

House Conferees: (Signed) Willard M. Munger, Bruce F. Vento, Arne H. Carlson.

Senate Conferees: (Signed) George R. Conzemius, Winston W. Borden.

Mr. Conzemius moved that the foregoing recommendations and Conference Committee Report on H. F. No. 2492 be now adopted, and that the bill be repassed as amended by the Conference Committee. The motion prevailed. So the recommendations and Conference Committee Report were adopted.

H. F. No. 2492 was then progressed.

MOTIONS AND RESOLUTIONS—CONTINUED

S. F. No. 2025 and the Conference Committee Report thereon were reported to the Senate.

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

COUNTY OF RAMSEY

RECEIVED
SEP 17 1976
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Rules of the MEQC for Assessing the Cost of Preparing Environmental Impact Statements.

ORDER FOR HEARING

To effectively implement the Minnesota Environmental Policy Act, the Minnesota Environmental Quality Council (MEQC) deems it necessary to consider adoption of the proposed Rules captioned above, pursuant to the authority granted it in Laws of Minnesota 1976, chapter 344, Section 3.

NOW THEREFORE, IT IS ORDERED that a public hearing on the proposed Rules be held commencing in St. Paul in Conference Room A of the Capitol Square Building at 9:00 a.m. on November 17th and continuing until all interested persons, representatives and organizations have had an opportunity to be heard by submitting oral or written data, statements, comments or arguments or by presenting witnesses.

IT IS FURTHER ORDERED, that notice of said hearing be given to all persons and associations who have registered their name with the Secretary of State for that purpose and that notice of said hearing shall be published in the State Register.

Dated this 16th day of September 1976.

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

BY Peter Vanderpoel

Peter Vanderpoel
Chairman

RECEIVED
SEP 17 1976
OFFICE OF HEARING EXAMINERS

CERTIFICATE OF COUNCIL'S

AUTHORIZING RESOLUTION

I, Mary Sullivan, do hereby certify that I am the Administrator of the Minnesota Environmental Quality Council, a Council 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 Minnesota Environmental Quality Council duly and properly called and held on the 14th day of September, 1976; that a quorum was present at said meeting; that a majority of the members of the Council voted for the resolution; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified. Mr. Gove moved:

"BE IT RESOLVED:

THAT the Environmental Quality Council send the proposed section of rules that pertain to assessing the cost of Environmental Impact Statement preparation to public hearings; and

THAT the Chairman set a time and place for hearings in accordance with the law; and

THAT the Chairman is authorized to arrange for a hearing officer."

Seconded by Mr. Herbst, the motion carried unanimously with Vanderpoel, Gove, Herbst, Kozak, Lawson, Lukermann, Magnuson, Marzitelli, Millhone, Ohman, Schwartz and Wefald voting aye.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 15th day of September 1976.

Mary Sullivan

Mary Sullivan
Administrator

Subscribed and sworn to before me this 15th day of Sept., 1976.

Joanne Herbenson

Notary Public

JOANNE HERBENSON
RAMSEY COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES NOV. 30, 1982

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

COUNTY OF RAMSEY

RECEIVED
SEP 17 1976
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Rules of the MEQC for Assessing the Cost of Preparing Environmental Impact Statements.

NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes, § 15.0412 and Laws of Minnesota 1976, ch. 344, § 3 in the above-entitled matter commencing in St. Paul in Conference Room A of the Capitol Square Building at 9:00 a.m. on November 17th. The hearing will be continued to such time and place as the Hearing Officer may designate until all representatives of associations or other interested groups or persons have had an opportunity to participate and be heard concerning adoption of the proposed Rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted to the Office of Hearing Examiners; Myron Greenberg, Hearing Examiner; Room 300; 1745 University Avenue; St. Paul, Minnesota 55104, without appearing at the hearing and will be accepted for a period of 20 calendar days following the close of the hearing.

The purpose of these Rules is generally as follows: Provide a method that is both predictable and accountable, which will allow local units of government and state agencies to assess a private person the reasonable costs of preparing and distributing an Environmental Impact Statement; provide a mechanism by which the assessed cost of preparing an Environmental Impact Statement can be determined either by the parties or by the MEQC in the situation where the private person and the Responsible Agency are not in agreement; and to provide a predictable process for the making of all required assessments and refunds.

Copies of the proposed Rules are now available for review at the following locations:

Minnesota Environmental Quality Council
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Minnesota Environmental Quality Council's Designated Distribution Points (see attached listing)

Offices of Regional Development Commissions

Office of County Auditor - all Minnesota counties

Office of City Clerk - Cities over 10,000 population according to the 1970 Census

Notice is also given that under Minn. Stat. § 10A.01, subdivision 11 (1974) any individual engaged for pay or other consideration for the purpose of representing persons or associations attempting to influence administrative action, such as the promulgation of these Rules, must register with the State Ethics Commission as a lobbyist within five days of the commencement of such activity by the individual. The State Ethics Commission is located at 410 State Office Building, St. Paul, Minnesota 55155.

Dated: September 16, 1976

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

BY Peter Vanderpoel

Peter Vanderpoel
Chairman

ENVIRONMENTAL QUALITY COUNCIL DISTRIBUTION LIST--REGIONAL LIBRARIES

Region 1
Polk County-Crookston Library
120 North Ash St.
Crookston, MN 56716
218/ 281-4522

Region 2
Bemidji Public Library
Sixth & Beltrami
Bemidji, MN 56601
218/ 751-3963

Region 3
Duluth Public Library
101 West Second
Duluth, MN 55802
218/ 722-5803

Region 4
Fergus Falls Public Library
125 North Union
Fergus Falls, MN 56537
218/ 739-9387

Region 5
Kitchigami Regional Library
Pine River, MN 56474
218/ 587-2171

Region 6E
Crow Wing Regional Library
410 West Fifth
Willmar, MN 56201
Att: Burt Sundberg
612/ 235-3162

Region 6W
Chippewa County Library
224 South First Street
Montevideo, MN 56265
612/ 269-6501

Region 7E
East Central Regional Library
240 Third Ave. S.W.
Cambridge, MN 55008
612/ 689-1901

Region 7W
Great River Regional Library
124 South Fifth Ave.
St. Cloud, MN 56301
612/ 251-7282

Region 8
Marshall-Lyon County Library
301 West Lyon St.
Marshall, MN 56258
507/ 532-2849

Region 9
Minnesota Valley Regional Library
120 South Broad St.
Mankato, MN 56001
507/ 387-3431

Region 10
Rochester Public Library
Broadway at First St. S.E.
Rochester, MN 55901
507/ 288-9070

Region 11
St. Paul Public Library
90 West Fourth St.
St. Paul, MN 55102
Att: Ralph Huebscher
612/ 224-3383

ECOL
Environmental Conservation Library
(ECOL)
300 Nicollet Mall
Minneapolis, MN 55401
Att: Nancy Johnson
612/ 372-6609

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

In the Matter of the Proposed Rules of the MEQC for Assessing the Cost of Preparing Environmental Impact Statements.

AFFIDAVIT OF RECEIPT

RECEIVED
OCT 22 1976
OFFICE OF HEARING EXAMINERS

Patrick Carey, first being duly sworn on oath, deposes and says that:

1) He is an employee of the State Planning Agency of the State of Minnesota.

2) On the 7th day of October, 1976, he 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 persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) On the 7th day of October, 1976, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Subscribed and sworn to before me this ___ day of October, 1976.

JOANNE HENDERSON
RAMSEY COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES NOV. 30, 1982

Notary Public

STATE OF MINNESOTA

COUNTY OF RAMSEY

RECEIVED
OCT 22 1976
OFFICE OF HEARING EXAMINERS

In the Matter of the Proposed Rules of the MEQC for Assessing the Cost of Preparing Environmental Impact Statements.

CERTIFICATE

I hereby certify that the attached 508 labels & one sheet sheet constitute the complete list of persons, associations, and other interested groups who as of 3:15 o'clock P.M., this 7th day of October, 1976, have requested pursuant to M.S. 1971, Section 15.0412, Subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State

Joan Anderson Growe

By Ceil Dieni

STATE OF MINNESOTA

COUNTY OF RAMSEY

ENVIRONMENTAL QUALITY COUNCIL

In the Matter of the Proposed Rules of the MEQC for Assessing the Cost of Preparing Environmental Impact Statements.

AFFIDAVIT OF MAILING

I, Deborah Haider, first being duly sworn on oath, deposes and says that:

1. I am an employee of the State Planning Agency.

2. On October 8, 1976 I served the attached Notice of Public Hearing upon each of the Environmental Quality Council members, the Citizens Advisory Committee, the Technical Representative Committee, regional libraries, regional development commissions, all associations and individuals who had registered their names with the Secretary of State, township clerks, counties, and cities.

Deborah Haider
Deborah Haider

Subscribed and sworn to before me this 8th day of October, 1976 at St. Paul, Minnesota

Joanne Herbenson
NOTARY PUBLIC

JOANNE HERBENSON
RAMSEY COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES NOV. 30, 1982

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

COUNTY OF RAMSEY

In the Matter of the Proposed Rules of the MEQC for Assessing the Cost of Preparing Environmental Impact Statements.

NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes, § 15.0412 and Laws of Minnesota 1976, ch. 344, § 3 in the above-entitled matter commencing in St. Paul in Conference Room A of the Capitol Square Building at 9:00 a.m. on November 17th. The hearing will be continued to such time and place as the Hearing Officer may designate until all representatives of associations or other interested groups or persons have had an opportunity to participate and be heard concerning adoption of the proposed Rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted to the Office of Hearing Examiners; Myron Greenberg, Hearing Examiner; Room 300; 1745 University Avenue; St. Paul, Minnesota 55104, without appearing at the hearing and will be accepted for a period of 20 calendar days following the close of the hearing.

The purpose of these Rules is generally as follows: Provide a method that is both predictable and accountable, which will allow local units of government and state agencies to assess a private person the reasonable costs of preparing and distributing an Environmental Impact Statement; provide a mechanism by which the assessed cost of preparing an Environmental Impact Statement can be determined either by the parties or by the MEQC in the situation where the private person and the Responsible Agency are not in agreement; and to provide a predictable process for the making of all required assessments and refunds.

Copies of the proposed Rules are now available for review at the following locations:

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100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Minnesota Environmental Quality Council's Designated Distribution Points (see attached listing)

Offices of Regional Development Commissions

Office of County Auditor - all Minnesota counties

Office of City Clerk - Cities over 10,000 population according to the 1970 Census

RECEIVED
OCT 22 1976
OFFICE OF HEARING EXAMINERS

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

In the Matter of the Proposed Rules of the Minnesota Environmental Quality Council for Assessing the Costs of Preparing the Environmental Impact Statement.

STATEMENT OF NEED AND EVIDENCE

INTRODUCTION

The Minnesota Environmental Policy Act of 1973 (MEPA) requires the preparation of an Environmental Impact Statement (EIS) before certain types of projects are allowed to proceed. Subdivision 1 of Minn. Stat., Sec. 116D.04 (1973) identifies when an EIS must be prepared, who will be responsible for its preparation, and what factors must be given consideration in its preparation. Although under certain circumstances MEPA provides that a "person" may be responsible for preparation of an EIS, it has been the experience of the Environmental Quality Council (EQC) that this responsibility is usually borne by a public agency. During the past three years, acceptance of this responsibility has often placed a financial burden on state and local agencies. Public agencies have frequently been forced to divert funds from other programs to pay the EIS preparation costs because their budgets had not anticipated such expenditures.

The Legislature recognized this problem and amended MEPA in 1976 to include a provision that allows public agencies to assess the cost of preparing and distributing the EIS to the project proposer. This amendment is cited as Minn. Stat., Sec. 116D.045 (1976). In passing this amendment, the Legislature acknowledged that the costs of environmental planning should be considered a "cost of doing business" in Minnesota and should be borne by the proposer of the project. However, by mandating that only reasonable costs of preparing EISs be assessed to a project proposer and by placing limits on the total cost the agencies can assess, the Legislature also recognized that public agencies have a responsibility to the private sector.

To implement the amendment, the Legislature directed the EQC to promulgate Rules consistent with the provisions of the amendment. The following Rules have been drafted with assistance from the EQC's Technical Committee and representatives of the following concerns: Dayton Hudson Properties; Northern States Power; Minnesota Association of Commerce and Industry; Dayton, Herman and Graham, Attorneys at Law; and James Coleman, Environmental Consultant. The EQC accepted the proposed Rules at its September 14, 1976 meeting and ordered the Rules be sent to hearing consistent with Minn. Stat. Chapter 15.

These proposed Rules will be an addition to the Rules governing the EIS process adopted by the EQC as amendments to the EIS Rules adopted by the EQC in 1974. Rules MEQC 22 and 27 will be incorporated into the adopted Rules and MEQC 41-46 will be added to those Rules.

It is the purpose of these Rules to interpret the MEPA amendment consistent with the legislative intent of the amendment. In doing so, every attempt has been made to create a mechanism that is predictable to all affected parties, encourages close cooperation between the proposer of a project and the public agency responsible for preparation of the EIS, encourages sound environmental planning by the proposer of a project, and takes into consideration the many different situations that might arise during the EIS process.

While reviewing these Rules, it must be kept in mind that they apply not only to state agencies but to local government units as well. In fact, the local units may be most affected by these Rules. Local units generally do not have funding sources other than their operating budgets and these budgets are normally quite limited compared to those of state agencies or large private concerns. Of the 38 EISs ordered by the EQC to date, 14 of these were prepared or are being prepared by local government units. In at least one case, the Sherwood Forest Campground in Aitkin County, the local unit would have been unable to prepare the EIS had not the project proposer offered to assume the cost.

RULE JUSTIFICATION

The format used in preparing this Statement of Need and Evidence is as follows: each rule is stated first, followed by an explanation of the intent of the rule, the need for the proposed rule, and the reasonableness of the rule.

MEQC 22 DEFINITIONS

(aa) "EIS Estimated Cost" means the total of all expenditures of the Responsible Agency and the proposer anticipated to be necessary for the preparation and distribution of the EIS.

... Subdivision 4 of Minn. Stat., Sec. 116D.045 (1976) requires the project proposer to pay at least one-half of the EIS cost before EIS preparation can begin. Thus, it is necessary to have identified before the EIS process begins all the preparation costs that may be incurred during the process, regardless of who will be incurring them. Since it is impossible to determine the actual costs until the EIS has been completed, it is necessary to estimate the predictable anticipated costs.

(bb) "EIS Assessed Cost" means that portion of the EIS estimated cost paid by the proposer either by a cash payment to the Council or to the Local Agency or for the collection and analysis of technical data incorporated in the EIS.

... The EIS assessed cost will be the basis for determining the proposer's obligations as required by the Statute. Subdivision 5 of Minn. Stat., Sec. 116D.045 (1976) places a limit on the amount that can be assessed to the project proposer; this limit is based on the cost of the project. However, the estimated cost of preparing and distributing the EIS can be more or less than this amount. It seems logical that the proposer should not pay more than that actually needed for the EIS. Establishing an EIS assessed cost (based upon an EIS estimated cost) at the beginning of the process will help ensure that only reasonable costs are assessed to the proposer. This definition recognizes that the total amount of the EIS costs may include two types of costs to the project proposer: a cash payment to the Responsible Agency and the costs of information supplied by the proposer; this is discussed in later sections.

(cc) "EIS Actual Cost" means the total of all allowable expenditures incurred by the Responsible Agency and the proposer in preparing and distributing the EIS.

... The proposer is required to make payments on the basis of the EIS assessed cost; however, the costs that are estimated before the process begins may be more or less than those actually incurred. This definition is needed so that when the process is completed, the proposer is aware of the costs actually expended and adjustments to the EIS assessed cost can be made.

(dd) "Final Determination" means the final decision made by the Responsible Agency or the Council that an EIS will be prepared on an action.

... The purpose of this definition is to identify when the time clock begins for preparation of an EIS. Subdivision 1 of Minn. Stat., Sec. 116D.045 (1976) permits the assessment of costs only when an EIS is required on a project. The determination that an EIS will be required is normally made when an EIS preparation notice is issued. However, MEQC 28 of the EIS Rules previously adopted by the EQC provides a mechanism whereby the decision of the

Responsible Agency to prepare or not to prepare an EIS can be appealed to the EQC. Pending EQC resolution of the appeal, a final decision to prepare an EIS cannot be made. This definition is needed to cover both possible situations - when the EIS preparation notice is the final decision and also when the EQC decides after an appeal that an EIS is needed.

(ee) "Private Person" means a human being, unincorporated association, partnership, trust, or corporation.

... Minn. Stat. Sec. 116D.045, subd. 1 (1976) provides that only when the proposer of an action is a private person will the costs of preparing an EIS be assessed to the proposer. This definition is needed to identify who is a private person for the purpose of these Rules and is written to include all non-public entities. The inclusion of these entities is consistent with the definition of "person" in MEQC 22(r) of the EIS Rules previously adopted by the EQC; that definition includes all of the above plus "public agency."

(ff) "Project Estimated Cost" means the total of all allowable expenditures of the proposer anticipated to be necessary for the implementation of an action.

... It is necessary to determine the cost of the project because the statutory limits to the EIS assessed cost are based on the project cost. The project cost must be estimated because the actual cost will not be known until long after the EIS process is completed.

MEQC 27 SELECTION OF PREPARERS, PREPARATION OF EAW AND NOTICE OF EAW CONCLUSIONS

(a)(6) The proposer of an action or a Public Agency may request the Council to designate a Responsible Agency before the final determination has been made that an EIS will be prepared on that action. The Council may designate a Responsible Agency for the purpose of identifying the information and data needed by the Responsible Agency for preparation of the EIS.

... Sometimes it can be reasonably anticipated early in the planning of a project that an EIS will be prepared for that project. This section does not provide that an EIS will in fact be ordered; it merely identifies the agency responsible for its preparation if and when one is ordered. If that determination can be made before any time clocks begin running, it will be to the advantage of both the proposer and the Responsible Agency to begin working together early in planning for the actual preparation of the EIS. This section provides for a longer lead time in determining which party will be responsible for preparing information for the EIS. Such early cooperation should shorten the time needed to reach an agreement on the EIS assessed cost and could result in a shorter time required for preparing the EIS.

Delete Existing MEQC 41 EFFECTIVE DATE

... Because the Rules governing the cost of preparing EISs are being included as a part of the EIS Rules previously adopted by the EQC, it is necessary to delete this section of those Rules and replace it with a section which includes the effective date of these new Rules. MEQC 46 replaces this section and for the convenience of the user of these Rules is also the last section of these Rules.

CHAPTER FIFTEEN
ASSESSING THE COST OF PREPARING ENVIRONMENTAL IMPACT STATEMENTS

MEQC 41 ACTIONS REQUIRING AN ASSESSMENT OF THE EIS PREPARATION COST

When a private person proposes a governmental or a private action and the final determination has been made that an EIS will be prepared on that action, the proposer shall be assessed for the reasonable costs of preparing and distributing that EIS in accord with MEQC 42-45.

... This section is needed to identify which proposers of projects requiring EISs will be assessed and to indicate that only the reasonable costs of preparing and distributing the EIS may be assessed. Subdivision 1 of Minn. Stat., Sec. 116D.045 (1976) specifies that only a private person may be assessed such costs and that only costs related to the EIS may be assessed. This section clearly indicates that costs incurred for preparation of preliminary environmental review documents such as an Environmental Assessment Worksheet (EAW) cannot be assessed and that public agencies who are project proposers cannot be assessed. The purpose of this section is to bring these Rules into compliance with the intent of the Legislature.

MEQC 42 DETERMINING THE EIS ASSESSED COST

(a) Within 30 days after the final determination has been made that an EIS will be prepared, the Responsible Agency shall submit to the Council a written agreement signed by the proposer and the Responsible Agency. The agreement shall include the EIS estimated cost, the EIS assessed cost, and a brief description of the tasks and the cost of each task to be performed by each party in preparing and distributing the EIS. Those items identified in MEQC 44 (a)(1) and (2) may be used as a guideline in determining the EIS estimated cost. The EIS assessed cost shall identify the proposer's costs for the collection and analysis of technical data to be supplied to the Responsible Agency and the costs which will result in a cash payment by the proposer to the Council if a state agency is the Responsible Agency. If an agreement cannot be obtained, the Responsible Agency shall so notify the Council within 30 days after the final determination has been made than an EIS will be prepared.

... The principle reason for the promulgation of these Rules is to establish a mechanism whereby the costs of preparing an EIS can be assessed to the proposer. The purpose of this section is to identify the procedure to be followed in determining the amount to be charged and to identify which party will assume the responsibility for preparation of the various elements of the EIS.

Although subdivision 1 of Minn. Stat., Sec. 116D.045 (1976) directs the Responsible Agency to determine the costs to be assessed, the EQC believes that this determination should not be made in a vacuum. There are several reasons why it is appropriate to include the proposer at this stage. First, he is buying a product and should be aware of what he is buying. Second, he may have already done a substantial amount of work needed in the EIS and the Responsible Agency should be aware of that work. Third, it may be advantageous to both parties to have the proposer accept responsibility for preparation of various parts of the EIS; the proposer should have the opportunity at the EIS planning stage to offer such assistance. Fourth, preparation of an EIS is an educational process and the proposer should have the opportunity to be involved for the benefit of future projects he may propose. Indeed. this will serve to encourage environmental planning by developers, a goal highly valued by the EQC. The cooperation between the proposer and the Responsible Agency was recommended and endorsed by members of the group who assisted in preparing these proposed Rules.

The cooperative process described in this section will be the

mechanism whereby most of the EIS assessed costs are determined. However, situations may arise when the EQC must be called in to settle a disagreement between the parties (as provided in the statute). This section provides for that eventuality.

The information requested by this section is needed for two major reasons: to clearly indicate the obligations of each party so that later disagreements can be avoided and to advise the EQC of the basis of the agreement. The EQC is charged with administering these Rules; it must fully understand how the Rules are being used to prepare any reports requested by the Legislature and to evaluate the Rules for possible needed revisions. There is one further reason for requesting these particular items of information. Specifying the items for discussion should limit the number of peripheral topics discussed and shorten the amount of time needed for the two parties to determine whether an agreement can be reached. When no agreement can be reached, this required dialogue should make it easier for each party to indicate the basis of its disagreement. This, of course, would help provide the EQC with the detailed information it would need to resolve the dispute.

Thirty days have been provided as the maximum amount of time for the two parties to determine whether a negotiated agreement is possible. A time limit must be imposed in order to achieve one of the major goals of these Rules - predictability. A longer time period could lead to needless delay of EIS preparation by one party choosing to drag its feet. In some situations, the full 30 days would not be necessary, particularly if the Responsible Agency has been specified early according to MEQC 27(a)(6).

No provision has been made for third party intervention in the EIS assessed cost determination. The cost by itself should be of no concern to a third party. However, the cost may be in dispute if someone were to question whether sufficient funds were being expended to generate an adequate Final EIS; the EIS Rules already adopted by the EQC do permit a third party to comment on the adequacy of the Final EIS as well as to make comments at the public hearing on the draft EIS. It will always be in the best interest of the proposer and the Responsible Agency to provide sufficient funding for preparation of an adequate Final EIS. Otherwise, the entire process would be open to delay at a later date, because an inadequate Final EIS would be returned to the Responsible Agency for revision. Further, the EQC, as representative of the State's interest and as administrator of MEPA, requires adequate environmental review of projects. It represents all third parties in the EIS process and would be alert to possible problems when the cost estimate is submitted.

Subdivision 2 of Minn. Stat., Sec. 116D.045 (1976) provides that the EQC shall resolve any disagreement over the EIS assessed cost. The mechanism to resolve these disagreements, should they occur, will be discussed in Section MEQC 44.

(b) The EIS assessed cost shall not exceed the following amounts unless the proposer agrees to an additional amount.

(1) There shall be no assessment for the preparation and distribution of an EIS for an action which has a project estimated cost of one million dollars or less.

(2) For an action whose project estimated cost is more than one million dollars but is ten million dollars or less, the EIS assessed cost shall not exceed .3 percent of the project estimated cost except that the project estimated cost shall not include the first one million dollars of such cost.

(3) For an action whose project estimated cost is more than ten million dollars but is 50 million dollars or less, the EIS assessed cost shall not exceed .2 percent of each dollar of such cost over ten million dollars in addition to the assessment in (2) above.

(4) For an action whose project estimated cost is more than 50 million dollars, the EIS assessed cost shall not exceed .1 percent of each dollar of such cost over 50 million dollars in addition to the assessment in (2) and (3) above.

... The need for this section is clearly established by Minn. Stat., Sec. 116D.045, subd. 5 (1976), which establishes the maximum amount the proposer of a project must be assessed for the EIS and bases this amount on the value of the proposed project. The need to use the estimated cost of the project rather than the value of the project will be discussed in section MEQC 44(b)(1).

- Although the Statute does not address the possibility that the project proposer may choose to pay an amount greater than that required, it only makes sense to allow the proposer that option. The situation might well arise where it would be to the advantage of the proposer to pay an additional amount when that amount would enable the Responsible Agency to complete the EIS in a shorter time period than would otherwise be possible. The early completion would allow the proposer to realize a return on his investment at an earlier date. Since the proposer's investment in a project would be far greater than the cost of the EIS, the increased payment would be fairly small by comparison and could well result in a substantial financial savings to the proposer. If this provision for additional payment is not included, the proposer would be precluded from exercising this option even if he could demonstrate that it would be to his benefit.

  This provision would not permit the Responsible Agency to make unreasonable demands on the proposer. The choice of making additional payments is solely the option of the proposer. Even if the Responsible Agency were to demand a larger assessment than that provided by Statute, a mechanism is provided in MEQC 44(a) whereby the proposer can appeal that demand to the EQC.

(c) The proposer and the Responsible Agency shall include in the EIS assessed cost the proposer's costs for the collection and analysis of technical data which the Responsible Agency incorporates into the EIS. The amount included shall not exceed one third of the EIS assessed cost unless a greater amount is agreed to by the Responsible Agency. When practicable, the proposer shall consult with the Responsible Agency before incurring such costs.

... In a number of situations the proposer may offer assistance to the Responsible Agency in preparing information for the EIS or has already completed work on certain EIS elements. This section has been included to make clear than when the proposer takes this option, he will receive credit for the work done and that his cash payments to the Responsible Agency for the EIS costs will be reduced accordingly. As mentioned previously, the EQC is attempting to encourage sound environmental planning by project proposers. This section represents another indication by the EQC that such planning is encouraged.

The reasons for the two restrictions in this section are, first, to eliminate the possibility that the proposer will inflate the cost of work he has done or is doing; second, to ensure that the Responsible Agency will receive funds needed to verify the work of the proposer and to undertake the remainder of the work; and, third, to ensure that only information actually incorporated into the EIS can be used for the credit. The Responsible Agency is charged with preparing the EIS and thus must be provided with sufficient flexibility to ensure that the EIS is adequately prepared. This section does not prevent the proposer from doing all or most of the EIS work; in fact, in a large number of cases the Responsible Agency may well agree to allow the proposer to assume major responsibility for the EIS preparation. In any case, this section ensures that adequate funding will be available to the Responsible Agency to complete the EIS by not allowing the proposer to take credit for work which is not necessary or is beyond the scope of the EIS.

The "one-third" restriction should not prove to be a burden to the proposer. This section specifically permits the Responsible Agency to decide to have the proposer do the major portion of the EIS work. Past history of the EIS program indicates that, in a majority of cases, when this option was available, the Responsible Agency was more than willing to do this. This section does indicate that the proposer must concentrate his efforts on the EIS if he is to get credit for work done, particularly for any beyond the "one-third" figure.

The last provision is included to encourage the two parties to work together. Although it is not mandatory, the proposer should work with the Responsible Agency to avoid doing needless work and having to come to the EQC if the Responsible Agency should refuse to accept his work. If the Council becomes involved because of a disagreement, the time required for preparation of the EIS will be extended to no-one's benefit.

(d) Federal/State EIS. When a joint Federal/State EIS is prepared pursuant to MEQC 25(f)(4), and the Council designates a non-federal agency as the Responsible Agency, only those costs of the state Responsible Agency may be assessed to the proposer. The Responsible Agency and the proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the Council in accord with these Rules.

... Minn. Stat., Sec. 116D.045, subd. 1 (1976) applies only to those projects that require an EIS ordered pursuant to Minn. Stat., Sec. 116D.04 (1973), the Minnesota EIS Program. No authority is granted for the assessment of EISs ordered under a federal EIS program. Likewise, there is no authority for a federal agency to assess the costs of an EIS ordered pursuant to MEPA. Since Minn. Stat., Sec. 116D.045 (1976) refers only to state and local agencies; thus, it can be reasonably inferred that federal agencies are not included under this Statute.

The EIS Rules previously adopted by the EQC provide a mechanism, in MEQC 25(f)(4), whereby a federal agency and a state Responsible Agency can cooperate in the preparation of an EIS when one is required by both the state and federal programs. Since the federal program is excluded from these Rules, it is reasonable that the project proposer be assessed only for that portion of the EIS actually prepared by the state Responsible Agency. This section is plainly needed to clarify the procedure to be followed if a joint Federal/State EIS is prepared that is subject to these Rules.

The procedure to be followed in determining the EIS assessed cost is the same as that for a state-only EIS. It has been justified in MEQC 42(a).

(e) Related Actions EIS. When specific actions are included in a Related Actions EIS, only the portion of the EIS estimated cost that is attributable to each specific action may be used in determining the EIS cost for its proposer. The Responsible Agency and each proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the Council in accord with these Rules.

... This section is needed to clarify who is responsible for the EIS preparation costs when an EIS is prepared on a series of individual projects, pursuant to MEQC 25(e)(1) of the EIS Rules already adopted by the EQC. It would be unreasonable to require a project proposer to pay the costs of preparing an EIS for another proposer's project. Although it will not always be easy to determine specifically which costs are incurred for each project, the Responsible Agency and each proposer must make a determination as to equitable charges. If an agreement cannot be reached, the proposers and the Responsible Agency have the option of requesting the EQC to make a proper determination.

This section would not apply to a comprehensive plan prepared as a Related Actions EIS unless that plan included specific identifiable projects which individually or as a group would require an EIS. This is reasonable, due to the difficulties of assessing costs to unidentified projects.

The procedure to be followed in determining the EIS assessed cost for each project is the same as the one for a single action EIS and has been justified in MEQC 42(a).

MEQC 43 REVISING THE EIS ASSESSED COST

(a) If the proposer substantially alters the scope of the action after the final determination has been made that an EIS will be prepared and the EIS assessed cost has been determined, the proposer shall immediately notify the Responsible Agency and the Council.

... This section is needed for the situations where a proposer either decreases or increases the size of the proposed project, resulting in a different level of effort needed for the preparation of the EIS. In order to ensure an adequate Final EIS, all affected parties must be notified of the project change as soon as possible to allow them to adjust their work efforts. To prevent unnecessary paperwork and delay, the change must be of a magnitude that would effect the level of effort of the EIS preparation. By including the word "substantially", this section excludes minor project changes, for it is recognized that almost all projects undergo some change during the planning process.

The burden of notifying the Responsible Agency and the EQC must be placed on the proposer, because he would be most aware of any project changes. Further, if a substantial change is not noted, the EIS proceeds to completion, and the change may have dramatically altered the findings of the EIS, the possibility is quite great that the Final EIS would be declared inadequate. An inadequate EIS would place an additional burden on the proposer because the project would be delayed until an adequate EIS could be prepared.

(1) If the change will likely result in a net change of greater than 5% in the EIS assessed cost, the proposer and the Responsible Agency shall make a new determination of the EIS assessed cost. The determination shall give consideration to costs previously expended or irrevocably obligated and additional information needed to complete the EIS and the adoption of existing information to the revised action. The Responsible Agency shall submit either a revised agreement or a notice that an agreement cannot be obtained following the procedures of MEQC 42(a) except that such an agreement or notice shall be provided to the Council within 20 days after the proposer notifies the Responsible Agency and the EQC of the change of the action. If the changed action results in a revised project estimated cost of one million dollars or less, the proposer shall not be liable for further cash payments to the Council or to the Local Agency beyond what has been expanded or irrevocably obligated by the Responsible Agency at the time it was notified by the proposer of the change in the action.

... This section is clearly needed to identify: (a) the procedure to be followed if the proposer alters his project after EIS preparation has begun; and (b) the magnitude of change necessary before the parties must consider revising the previously determined EIS assessed cost. Most projects will undergo minor changes at some time during their planning. This section will eliminate having to revise the EIS assessed cost because of these minor changes unless they have a large impact on the EIS preparation cost. The reason for establishing a 5% threshold is that a change this size or greater may have an adverse impact on local government budgets. If, for example, a local unit is the Responsible Agency and the EIS assessed cost cash payment is $20,000, a change of a $1,000 or more may prove to be substantial to a local unit of government which may have an operating budget of only $50,000. Many public agencies, both local and state, would be unable to absorb even that small amount.

This section includes the provision that EIS work done prior to the change must be considered to prevent the Responsible Agency from claiming that it must start all over and to ensure that work already done is not ignored. In most cases, the revised EIS work program would entail only fairly minor changes in and additions to the work already completed.

The procedure to be followed in revising the EIS assessed cost is the same as that for making the initial determination, except that the time period is shortened. Because the revision will concern only one or two aspects of the EIS and most of the previously determined work program will be unchanged, less time should be needed to make the revision. In the majority of cases, the full 20 days will not be needed; however, sufficient time must be allowed for those cases where major changes in the work program are required.

The last provision is included to specify that if the project scope is decreased to the extent that the project would not have been included had it been the original proposal, the project is no longer subject to these Rules. The $1,000,000 figure was established by subdivision 5 of Minn. Stat., Sec. 116D.045 (1976) as being the minimum size of the project subject to these Rules. However, because the Responsible Agency started EIS preparation in good faith under the assumption that the project was subject to these Rules, the proposer must be responsible for those costs incurred up to the time the project scope was decreased. This section clarifies that the proposer will pay for costs incurred or obligated, but will not be responsible for any further costs of EIS preparation.

(2) If the proposer decides not to proceed with the proposed action, the proposer shall immediately notify the Responsible Agency and the Council. The Responsible Agency shall immediately cease expending and obligating the proposer's funds for the preparation of the EIS.

... The decision to terminate a proposed project is solely up to the proposer of that project, so he should bear the burden of notifying the Responsible Agency and the EQC of this decision It would be to the proposer's advantage to make that notice as early as possible to stop the Responsible Agency from incurring additional costs for which he would be responsible. Once the proposer notifies the Responsible Agency that the project is terminated, it is logical that he should not be responsible for any further costs; thus, the agency should cease spending and obligating his funds. This section does not preclude the agency from continuing preparation of the EIS, but it must recognize that it will do so at its own expense.

(aa) If cash payments previously made by the proposer exceed the Responsible Agency's expenditures or irrevocable obligations at the time of notification, the proposer may apply to the Council or to the Local Agency for a refund of the overpayment.

... This section is needed to indicate that the proposer will be liable only for costs incurred by the Responsible Agency up to the time the Agency was notified that the project was terminated. If the payments made by the proposer exceed the cost for the work done at the time the project was terminated, it is only sensible that he should be reimbursed for funds not expended. It also seems reasonable that, in making any payment, one should only have to pay for what one receives. In this case, the proposer is "getting" a partial EIS and should not have to pay for a complete EIS. This section makes clear that the proposer is entitled to a refund and indicates to whom he has to apply.

(bb) If costs have been incurred or irrevocably obligated by the Responsible Agency at the time of notification exceeding the amount previously paid by the proposer, the Responsible Agency shall notify the proposer and the Council within ten days

after it was notified of the project's withdrawal. Such costs shall be paid by the proposer within ten days after the Responsible Agency notifies the proposer and the Council.

... The reason for this section is the same as for the previous section. The Responsible Agency begins preparation on the assumption that the EIS process will be completed. In undertaking the EIS, the agency makes commitments and expends funds. It is only reasonable to expect that the proposer should be held to honor those commitments when they cannot be reasonably terminated. Again, the proposer should pay for what he receives. However, in this situation he has received more than he has paid for.

The ten day time limits are needed to ensure timeliness. The Responsible Agency should inform the proposer as soon as possible of the proposer's further obligations so that the proposer can arrange to close out his books on that project. The ten day time requirement should not be onerous to the Responsible Agency because it should be maintaining a detailed accounting of its expenditures. The full ten day period may be needed, however, to negotiate the cancellation of obligations which have been committed but not yet carried out. The Responsible Agency should make every attempt to reduce the amount of the obligations. If the proposer believes a good faith effort has not been made, he may require a determination by the EQC pursuant to MEQC 44(d).

A similarly restrictive time limit in which to fulfill obligations under these Rules must be placed on the proposer. When a project is terminated, the proposer no longer has a "stake" in the completion of the EIS, so it is important to place a time limit on him to complete his obligation. This is particularly important when the Responsible Agency is a local government unit, for budget reasons discussed earlier.

(b) If, after the EIS assessed cost has been determined the Responsible Agency or the proposer uncovers a significant environmental problem that could not have been reasonably foreseen when determining the EIS assessed cost, the party making the discovery shall immediately notify the other party and the Council. If the discovery will likely result in a net change of greater than 5% in the EIS assessed cost, the proposer and the Responsible Agency shall make a new determination of the EIS assessed cost. The Responsible Agency shall submit either a revised agreement or a notice that an agreement cannot be obtained following the procedures of MEQC 42(a) except that such agreement or notice shall be provided to the Council within 20 days after both parties and the Council were notified.

... When the EIS content is planned, it is not always possible to anticipate all the elements that need to be addressed. Often new environmental problems are discovered after EIS preparation has already begun. An excellent example of this situation is the Reserve Mining case; the presence and significance of asbestos fibers were not identified until discussions of the project were well underway, yet the fibers proved to be a significant environmental problem. This section is included to provide the process whereby the EIS assessed cost can be revised when such a discovery occurs after the EIS preparation has begun. It is absolutely necessary to include such a Rule to eliminate the possibility that, after all the EIS work was done, the EIS must be declared inadequate because the work plan could not be altered. Since both the proposer and the Responsible Agency may be working on the EIS, each party should be allowed to begin this process as it uncovers new problems. The benefit to both parties is apparent. The proposer would be delayed from implementing his project until the EIS is found adequate and the Responsible Agency would have to assume the costs of revising the EIS if it is declared inadequate by the Council.

The reasons discussed in MEQC 43 (a)(1) also pertain to this 5% restriction and this procedure for revising the EIS assessed cost (including the 20-day limitation).

MEQC 44 DISAGREEMENTS REGARDING THE EIS ASSESSED COST

(a) If the proposer and the Responsible Agency disagree about the information to be included in the EIS or the EIS assessed cost, the proposer and the Responsible Agency shall each submit a written statement to the Council identifying the information each recommends be included in the EIS, the EIS estimated cost, and the project estimated cost within ten days after the Responsible Agency notifies the Council that an agreement could not be obtained. The statements shall include a discussion of the need to include the information in the EIS, the identification of the information and data to be provided by each party, the EIS preparation costs identified below as they pertain to the information to be included in the EIS, a brief explanation of the costs, and a discussion of alternative methods of preparing the EIS and the costs of those alternatives.

... Although in most situations the proposer and the Responsible Agency will be able to make the EIS assessed cost determination according to the procedures contained in MEQC 42(a), a situation may arise in which a negotiated agreement cannot be reached. If this should occur, the Legislature provided in Minn. Stat., Sec. 116D.045, subd. 2 (1976) that the Council shall resolve the disagreement. This Rule is included to provide the required disagreement resolution mechanism.

If the parties have been unable to reach an agreement, it must be assumed that they have different positions. These differences must be resolved by the Council. The Council may decide that one party's position is more appropriate or it may determine that yet another position is preferable. To make this determination, the EQC must have the basic information being used. It would be unreasonable and highly duplicative to expect the Council itself to generate the information.

The identified information is extremely important. Minn. Stat., Sec. 116D.045, subd. 2 (1976) provides that the Council may modify the cost figure in the event of a disagreement between the parties. To do an adequate job, the Council must have sufficient information to make a judgment within the guidelines of these Rules. To resolve a dispute and thereby fulfill its statutory obligations properly, the Council must also look at reasonable alternative methods for preparing an EIS and be aware of the consequences of such alternatives. Alternative methods of preparing the EIS include the use of consultants, the proposer doing the work, the Responsible Agency doing the work, or others that may be appropriate to each case.

The ten day limitation is not unreasonable because the parties have already had up to 30 days (and in many cases more time) to generate the information required for the determination and to establish the points of disagreement. The parties should be able to compile the information and forward it to the EQC within ten days.

(1) In determining the EIS estimated cost or the EIS actual cost, the following items shall be included:

... Although the Legislature did not identify which specific EIS preparation costs should be assessed to a project proposer, it did give guidance to this matter. Subdivision 1 of Minn. Stat., Sec. 116D.045 (1976), states the proposer can be assessed "... for reasonable costs of preparing and distributing an environmental impact statement". For the purpose of administering these Rules, the EQC feels it necessary that public agencies and the proposer be given guidance in determining what is "reasonable". This section is definitely needed to enable each party to have a clear understanding of the specific costs that may be included in determining the EIS estimated cost and the EIS actual cost. The EQC has taken the position that a cost is "reasonable" only

if it pertains specifically to the EIS and only if it is required for the EIS.

The items included in this section are needed to develop both the EIS estimated cost and the EIS actual cost. Identifiable components are needed to arrive at the total figures logically. Also, this format will aid Council review of the dispute.

(aa) The costs of the Responsible Agency's staff time including direct salary and fringe benefit costs.

... This section is needed to make both parties aware that these costs are reasonable preparation costs that can be assessed to the project proposer. A major cost of preparing an EIS is payment for the amount of inhouse staff time spent on the EIS. That payment must include the cost of salaries and the cost of benefits paid to staff beyond their basic salaries. Benefit costs include a variety of items which must be paid to retain staff in a competitive market situation. They should be viewed as a direct cost of doing business.

One can question whether an agency should charge the cost of staff time, since the staff is already hired and new staff would probably not be employed to prepare the EIS. However, it should be apparent that the staff would be performing other assignments if they were not required to prepare an EIS. Other staff would have to be reassigned or hired to perform these neglected duties or the duties would remain undone. In either case, there is an easily identifiable cost to the agency which should be included in the cost of the EIS.

(bb) The cost of consultants hired by the Responsible Agency.

... In a number of situations, a Responsible Agency may not have the staff or the expertise needed to prepare an adequate EIS and would have to employ expert consultants to do parts or all of the EIS. This may be the typical situation for a small local government unit which has only one or two full time staff members. This section is necessary as a recognition of that situation and as an indication that the use of consultants is a reasonable cost of EIS preparation. It is logical to include this cost because the agency must accept responsibility for preparing the EIS; to deny its assistance during the actual preparation would be unreasonable.

(cc) The proposer's cost for the collection and analysis of technical data expended for the purpose of preparing the EIS.

... In a number of situations the proposer may wish to assist the Responsible Agency in preparing the EIS or he may have already prepared information that can be utilized in the EIS. When a proposer chooses this option, it is sensible that the cost of his work be included in determining the total EIS cost. Although the portion of the EIS assessed cost for which the proposer will receive credit is limited by MEQC 42(a), it is necessary to identify his total cost when preparing the EIS estimated cost. The EIS estimated cost forms the basis for determining the EIS assessed cost. This section is needed to clarify that the proposer's costs are a legitimate cost to be included in determining the EIS cost.

(dd) Other direct costs of the Responsible Agency for the collection and analysis of information or data necessary for the preparation of the EIS. These costs shall be specifically identified.

... There are a number of costs the Responsible Agency would not incur if it were not responsible for preparing the EIS. These must be included in determining the EIS cost. This section is intended to identify those costs, which include costs of

materials needed for monitoring programs, travel, data processing and other items necessary to obtain information for the preparation of the EIS. To provide a safeguard against an agency doing more work than is necessary to prepare an adequate EIS, the section requires the agency to provide a detailed statement of each cost. This requirement is not unreasonable, because the agency must identify these costs individually anyway in order to develop the total cost estimate.

(ee) Indirect costs of the Responsible Agency not to exceed the Responsible Agency's normal operating overhead rate.

... Every operation has costs that must be incurred so the concern can do business but are very difficult to attribute to any one activity. Program administration, office rental and office supplies are examples of this type of cost. The typical accounting procedure is to prorate these costs over all activities. Because the preparation of an EIS will generate these costs, like any other activity, these costs should be included in the EIS cost.

Estimating these costs will not be a difficult task, because most agencies have a standard percentage figure applicable to all such projects. Agencies without such a figure will have to justify the figure used. If the proposer disagrees with the figure, he may request the EQC to resolve the difference following the procedures established in MEQC 44.

(ff) The cost of printing and distributing the Draft EIS and the Final EIS.

... This section is needed to indicate that the costs of printing and distributing the EIS are reasonably included in the EIS cost. These costs are readily identifiable as necessary to prepare and distribute the EIS and must be included in determining the total EIS cost.

(gg) The costs of any public hearings or public meetings held in conjunction with the preparation of the Final EIS.

... The purpose of this section is to indicate that the costs of such hearings or meetings will be considered a cost of preparing the EIS. The EIS Rules previously adopted by the EQC require a public hearing or public meeting to be held to receive comments on the Draft EIS. MEQC 30(d) of the EIS Rules previously adopted by the EQC requires these comments to be incorporated into the Final EIS. Thus, the public hearing or public meeting is clearly a part of the EIS preparation.

(2) The following items shall not be included in determining the EIS estimated cost or the EIS actual cost.

... This section is included to identify those costs that are not considered reasonable costs of preparing and distributing the EIS and should, therefore, be excluded from the EIS cost. The costs listed in this section are not directly related to the preparation or distribution of the EIS, so responsibility for payment cannot rest with the project proposer.

(aa) The costs of collecting and analyzing information and data incurred before the final determination has been made that an EIS will be prepared unless the information and data was obtained for the purpose of being included in the EIS.

... Subdivision 1 of Minn. Stat., Sec. 116D.045 (1976) is clear in its intent that only the costs of preparing the EIS should be assessed to the project proposer. The EIS Rules previously adopted by the EQC generally require preparation

of an Environmental Assessment Worksheet to aid in the determination of whether an EIS should be prepared. The Environmental Assessment Worksheet or other preliminary documents are not part of the EIS. Therefore, expenditures for these documents are not reasonable costs and should not be the responsibility of the project proposer. This section is necessary to eliminate questions as to whether costs of preparing these documents are assessable under these Rules.

However, in a number of cases, during project planning the proposer may have assembled information that can be included in an EIS, should one be ordered. If this situation arises, the proposer should be able to obtain credit for that work related to the EIS. Thus, the provision is made to allow these costs. By providing for an early determination of the Responsible Agency in MEQC 27(a)(6) of these Rules, the EQC is actually encouraging the early preparation of EIS information. Both the proposer and the Responsible Agency would benefit if a portion of the EIS work were undertaken early. The proposer would benefit by the reduced time needed for EIS preparation and the agency would benefit by having its workload reduced.

(bb) Costs incurred by a private person other than the proposer or a public agency other than the Responsible Agency, unless the costs are incurred at the direction of the Responsible Agency for the preparation of material to be included in the EIS.

... This section is needed because it eliminates incidental costs of third parties from the EIS estimated cost. These incidental costs could include the time and materials needed by public agencies or private persons to review and comment on the Draft EIS (including "checking" of the Responsible Agency's data). These costs are not directly related to the preparation and distribution of the EIS, and should not be included. This section does not eliminate the possibility that the Responsible Agency may reach an agreement with a third party to perform work; however, payment for that work is the responsibility of the Responsible Agency and must be identified as a cost of the Responsible Agency in its agreement with the proposer prepared under MEQC 42(a).

(cc) The capital costs of equipment purchased by the Responsible Agency or its consultants for the purpose of establishing a data collection program, unless the proposer agrees to including such costs.

... Equipment purchased to establish a monitoring program can usually be used for a number of different projects. Thus, the cost of such equipment should not be assigned to a specific project, but should be treated as an indirect cost to be prorated under MEQC 44 (a)(1)(ee). This section is necessary to clearly establish that the total cost of equipment which will be used for many different assignments is not to be charged to one proposer. However, if the proposer believes that the purchase of such equipment will benefit his project by reducing the time required to complete the EIS, he has, and should be permitted, the option of allowing the agency to assess him part or all of the costs of such equipment. This provision permits that option, in accord with the discussion concerning the benefits accruing from shortened EIS preparation time in MEQC 42(b).

(b) If the proposer and the Responsible Agency disagree about the project estimated cost, the proposer shall submit in writing a detailed project estimated cost in addition to the requirements of section (a) above. The Responsible Agency may submit a written detailed project estimated cost in addition to the requirements of section (a) above. The statements shall be submitted to the Council within ten days after the Responsible Agency notifies the Council that an agreement could not be obtained. The project estimated cost shall include the costs as identified below and a brief explanation of the costs. The estimates shall be prepared according to the categories in section (1) below so as to allow a reasonable examination as to their completeness.

... It is apparent that the proposer and the Responsible Agency may disagree on several points concerning the amount to be assessed the project proposer. This particular section is needed to clarify the procedure to be followed when the disagreement concerns the EIS assessed cost because the amount requested by the Responsible Agency would exceed the amount the proposer feels is required by the Statute and these Rules. Subdivision 5 of Minn. Stat., Sec. 116D.045 (1976) defines the cost to be assessed as dependent upon the value of the proposed project. There must be a mechanism to determine the correct value of the project so that this disagreement can be settled. The purpose of this section is to identify that mechanism.

The proposer is the only party who really knows what the project will probably cost, so it is very sensible to require him to submit the project cost estimate. However, because the Responsible Agency is proposing a specific assessment, the agency presumably has its own estimate of the project cost. (Indeed, as agencies gain experience under these Rules, they will accumulate general knowledge on how much certain types of projects cost.) Therefore, it is not unreasonable to expect the Responsible Agency to be able to make its own determination as to the project cost.

This information is needed because the EQC is directed to resolve disagreements. The Council must have as much pertinent information as possible in order to make the proper determination, including an explanation as to why certain costs should be included and estimated amount of those costs. Both parties would assist the EQC to the extent practicable, by providing this information.

The ten day time restriction is reasonable because both parties will have had 30 days in which to discuss an agreement and should have all the information at hand. All that is required is that they forward the appropriate information to the EQC. Ten days should be sufficient to organize this information.

(1) The following items shall be included in determining the project estimated cost.

... This section is needed to identify which costs are to be included in the project cost, because the project cost is the factor that determines the total of the EIS assessed cost required by the Statute and these Rules.

Minn. Stat., Sec. 116D.045, subd. 5 (1976) requires the EIS assessed cost to be based on the value of the project. However, such a determination is often difficult to make. Often the value of the project cannot be determined until after the project has been completed. Rather than make a "crystal ball" estimate as to the total value of the project, the EQC has choosen in most instances to use current costs that are readily and concretely identifiable and yet are as close to the value as possible.

(aa) The current market value of all the land interests owned or to be owned by the proposer, which is included in the boundaries of the action. The boundaries shall be those defined by the action which is the subject of the EIS Preparation Notice.

... This section is needed to clearly indicate that the land on which the proposed project will be constructed is a relevant cost of developing the facility and thus must be included in determining the cost of the project. The rationale for using land value

rather than land cost is simply that one item to which a value can be assigned is the land on which the project will be built; indeed, land values can be easily determined at any point in time, including prior to preparation of the EIS. Land value is also not accurately reflected by land costs, due to rapidly increasing land costs. If the land had been acquired a number of years ago, its purchase price would not reflect the current value of that land. For many projects, the land component is the major cost of constructing the facility.

The last provision of this section is needed to clarify that only the land needed for that project will be used in determining the project cost. A number of situations have occurred during the EIS program history where a proposer has held substantial land interests beyond the boundaries of the project. These should not be included in making the project cost determination.

(bb) Costs of architectural and engineering studies for the design or construction of the action.

... To adequately develop a project, it is necessary to prepare plans which guide the construction of the facility. This section is included to indicate that the costs of preparing such plans are definitely a cost of constructing the facility and must be included in determining the total project cost. The difference between these costs and other preconstruction costs, such as planning, is that these costs can be readily and quantifiably identified. It is often impossible to quantify planning costs; for example, inclusion of planning costs would mean making determinations of how much time the board of directors spent on the project and what that was worth.

(cc) Expenditures necessary to begin the physical construction or operation of the action.

... In addition to the preparation of construction plans, it is almost always necessary to incur costs in preparing the land for actual physical construction. These costs should definitely be considered in determining the project estimated cost because without them the construction of the facility could not proceed. These costs would include necessary site preparation costs and those costs of utility extensions when the costs of utility extensions are incurred directly by the proposer. It is unreasonable to include the utility extension costs of a third party (such as a public agency) because it is difficult, if not impossible, to identify these costs at a single point in time. When a public agency incurs such costs, its payments are spread over an extended period of time and the final amount may not be known until long after the project has been operational. It is also extremely difficult to allocate those costs among the various benefactors of the services provided by utility extensions.

(dd) Construction costs required to implement the action.

... This section is necessary to include the actual facility construction costs in the project estimated cost. It is obvious that these costs contribute to the total cost and must be included in making the total cost determination.

(ee) The cost of permanent fixtures.

... The inclusion of these costs is necessary because the items become a part of the total project and influence its value. The items included here are those that will stay with the facility regardless of ownership of the facility. This section is also included to make clear that only the costs of equipment attached to the facility are included, not the cost of items which are consumed as part of its operation.

(c) If the proposer and the Responsible Agency disagree about a revision of the EIS assessed cost prepared following the procedures in MEQC 43, the proposer and the Responsible Agency shall use the applicable procedures described in MEQC 44 (a) or (b) in resolving their disagreement except that all written statements shall be provided to the Council within ten days after the Responsible Agency notifies the Council that an agreement cannot be obtained.

... This section is needed to handle situations when the proposer and the Responsible Agency disagree about a revision of the EIS assessed cost. Indeed, when the EIS assessed cost must be revised, there is the possibility, as there is in the initial determination, that the parties will disagree. This section provides a procedure to be followed when such a disagreement arises. The procedure is the same as that proposed for resolving a disagreement over the initial deetermination of the EIS assessed cost. There is no demonstrated need to create additional processes when the basic process is adequate to handle a variety of situations. Again, the ten day time limit should not unduly burden either party because the information will be under discussion for several days prior to the notice.

(d) If the proposer and the Responsible Agency disagree about the EIS actual cost as determined by MEQC 45(b), the proposer and the Responsible Agency shall prepare a written statement of their EIS actual cost and an estimate of the other party's EIS actual cost. The items included in MEQC 44 (a)(1) and (2) shall be used in preparing the EIS actual cost statements. These statements shall be submitted to the Council and the other party within 20 days after the Council has accepted the Final EIS.

... It is possible that one party may believe that the other party did not carry out its obligations or expend the amount of money stated in the EIS assessed cost agreement. Thus, this section is needed to provide a mechanism whereby the one party can have EQC resolve these differences. For example, the proposer may have an indication that the Responsible Agency did not have to spend as much money as was originally agreed or vice versa.

This section allows the proposer to make sure that the costs actually expended by the Responsible Agency were necessary for EIS preparation and that he is not being assessed excessively. Similarly, the Responsible Agency can make sure that the amount of work done by the proposer is indeed as it should be. This section will also help ensure candor on the part of both parties during the original negotiations concerning the EIS assessed cost.

(e) The Council at its first meeting held more than 15 days after being notified of a disagreement shall make any determination required by sections (a) through (d) above. The Council shall consider the information provided by the proposer and the Responsible Agency and may consider other reasonable information in making its determination. This time limit shall be waived if a hearing is held pursuant to MEQC 44(f).

... As mentioned previously, subdivision 2 of Minn. Stat., Sec. 116D.045 (1976) requires the Council to resolve any disagreement between the proposer and the Responsible Agency. Thus, this section is needed to establish the procedure to be followed when the Council is asked to resolve such a disagreement. Because of the potential complexities of any disagreement, the Council will need a certain amount of time in which to analyze the information and establish the proper figures. Fifteen days appears to be the minimum time required.

Since the Council generally meets monthly, it is necessary to coordinate the time limit accordingly. The Council cannot find itself in the position of having to make a complicated determination without adequate time for preparation; this could happen if the Council were notified of a disagreement only a few days before its monthly meeting. This section sould prevent that situation.

Setting this time limit also ensures the parties that a timely response to the disagreement will be made by the EQC. This time limitation must be extendable if a public hearing is held, because it will not always be possible to hold a hearing and make a decision within the allotted time.

(f) If either the proposer or the Responsible Agency so requests, the Council shall hold a hearing to facilitate it in making its determination. The hearing shall follow the procedures outlined in MEQC 28(a)(3).

... Chapter 15 of the Minnesota Statutes requires that a contested case hearing be held when a party that may be aggrieved by a decision of a public agency requests such a hearing to be held. This section is thus needed to provide for that situation and to assure all parties that this option is available to them. The procedures outlined in MEQC 28(a)(3) are the same as those provided by law.

(g) Nothing in sections (a) through (f) above shall prevent the proposer from making one half of the cash payment as recommended by the Responsible Agency's proposed EIS assessed cost for the purpose of commencing the EIS process. If the proposer makes the above cash payment, preparation of the EIS shall immediately begin. If the required cash payment is altered by the Council's determination, the remaining cash payments shall be adjusted accordingly.

... This section is extremely important and must be included to eliminate time delays which could result if the EQC is called upon to resolve a disagreement. Minn. Stat., Sec. 116D.045 (1976) specifies that EIS preparation cannot begin until at least one-half of the assessed cost is paid. This section provides a mechanism whereby the EIS preparation can begin even if the proposer disagrees with the EIS assessed cost proposed by the Responsible Agency. However, in order to get the EIS process underway, the proposer must abide by the Responsible Agency's determination of the EIS assessed cost until EQC resolution of the disagreement. (The use of the Responsible Agency's cost is based upon subdivision 1 of Minn. Stat., Sec. 116D.045 (1976), which requires the Responsible Agency to determine the EIS assessed cost.) If the proposer agrees to make a payment based upon that cost, the Responsible Agency should not have any problem in commencing the EIS preparation. By making this payment, the proposer does not have to agree that the payment is correct and would not jeopardize his position that the Responsible Agency's proposed EIS assessed cost is incorrect.

Because the Responsible Agency's proposed EIS assessed cost may be altered, it is necessary to provide a mechanism which allows future payments made by the proposer to be adjusted, should the EQC make a determination that the proposed EIS assessed cost of the Responsible Agency is not proper.

MEQC 45 PAYMENT OF THE EIS ASSESSED COST

(a) The proposer shall make all cash payments to the Council or to the Local Agency according to the following schedule:

... To achieve a predictable process, it is necessary to establish time periods for as many stages of the process as possible. The following time periods take into consideration the mandate of the Legislature in Minn. Stat., Sec. 116D.045 (1976), the ability of the proposer and the Responsible Agency to comply, and the recognition that certain situations may require specific language in these Rules.

(1) At least one-half of the proposer's cash payment shall be paid within ten days after the EIS assessed cost has been submitted to the Council pursuant to MEQC 42(a) or has been determined by the Council pursuant to MEQC 44 (e) or (f).

... Subdivision 4 of Minn. Stat., Sec. 116D.045 (1976) requires the proposer to pay one-half of the EIS assessed cost before preparation of the EIS can begin. As discussed earlier, for the purpose of these Rules the EIS assessed cost includes two parts: the cash payment and the costs incurred by the proposer for the preparation of information. This section requires payment of one-half of the cash payment portion only before EIS preparation can commence; since costs of the information preparation may not be incurred until after EIS preparation has begun. This payment is needed to enable the Responsible Agency to begin making commitments needed to begin EIS preparation.

The time requirement included on this section is necessary to assure the Responsible Agency that the payment will be made in a timely fashion (enabling it to meet necessary commitments) and to assure the proposer that EIS preparation will begin without undue delay. This requirement should not create a hardship for the proposer; by the time the payment is due, he should have had ample opportunity to arrange the necessary financing. Even if the proposer disputes the need for the EIS and chooses not to prepare for its financing before the final determination on the need for the EIS is made, he would have the 30 days of negotiation time to arrange financing. Even though the exact amount of the cash payment would not be known until the end of the negotiation, in most cases the proposer would receive a good indication of the approximate amount during the negotiation.

(2) At least three-fourths of the proposer's cash payment shall be paid within ten days after the Draft EIS has been submitted to the Council.

... Requirement of this payment is necessary to assist local government units who are financially unable to carry the costs of preparing and distributing an EIS. Most local units do not have sufficient flexibility to cover expenditures for activities not already included in their budgets. Preparation of an EIS would be an infrequent occurence for most local units and very few, if any, would include an EIS preparation item in their budgets. For an EIS costing $20,000, the payment required by this section would be $5,000, a substantial amount when compared to the budgets of some local units. Requirement of this payment is reasonable when one considers that by the time a Draft EIS is filed, the majority of the costs for preparing the EIS have been incurred; if a local government unit were forced to absorb those costs until a later time, it is very possible that an undue hardship would be created for the local government unit and its other activities. This limited time period should ensure that local government units receive the needed monies in a timely fashion.

The ten day time requirement should not place any burden on the proposer; he should be able to arrange the necessary financing by the time a Draft EIS is filed. He knows about this payment and the amount of the payment when the EIS assessed cost is determined - generally 120 days before the payment is due. Many times he will be aware of the amount even before that.

(3) The final cash payment shall be paid within ten days after the Council has accepted the Final EIS.

... The purpose of this section is to ensure that the final payment required of the proposer is made within a reasonable time. Although the proposer has ten days to make the payment, it will be to his advantage to make this payment as soon as possible. Minn. Stat., Sec. 116D.045, subd. 4 (1976) clearly states that no state permits can be issued until the assessed cost of preparing and distributing the EIS has been paid in full. As in the previous section, this time period should not place any hardship on the proposer. He will know about the payment and its amount at the end of the negotiation period-some four to six months earlier.

Once again, it must be remembered that a local government unit may be in financial difficulties because of the unanticipated expenditures and must recover these amounts as soon as possible.

(aa) The proposer may withhold final cash payment of the EIS assessed cost until the Responsible Agency has submitted a detailed accounting of its EIS actual cost to the proposer and the Council. If the proposer chooses to wait, the remaining portion of the EIS assessed cost shall be paid within ten days after the EIS actual cost statement has been submitted to the proposer and the Council.

... The proposer will be receiving a detailed accounting of the EIS actual cost from the Responsible Agency after the EIS is accepted by the EQC. The accounting may indicate that his obligations are less than originally anticipated because the EIS actual cost is less than the EIS estimated cost; his payments of the EIS assessed cost were based upon the EIS estimated cost. To avoid having to apply for a refund, he may prefer to withhold the final payment. This section is provided for the proposer's convenience; it is necessary to permit him this option. However, it must be remembered that no state permits can be issued until the final payment has been made

The time period is reasonable for the reasons stated in earlier sections. The proposer has had ample opportunity to arrange financing by the time this payment is due. Even though his financing was arranged on the basis of the earlier negotiated EIS assessed cost, it would in all cases be sufficient to cover the final EIS payment. Under these Rules, his responsibility for payment of the EIS actual cost cannot exceed the amount of the EIS assessed cost. If the EIS actual cost is larger than the EIS assessed cost, the difference is the responsibility of the Responsible Agency and cannot be assessed to the proposer.

where is this provision?

(bb) If the proposer has withheld the final cash payment of the assessed cost pending resolution of a disagreement over the EIS actual cost, such payment shall be made within ten days after the Council has determined the EIS actual cost.

... If the proposer withholds the final payment until the Responsible Agency's detailed accounting is supplied to him, and if he then disagrees with the agency's cost statement, he has the option of withholding the final payment until after the EQC resolves the disagreement. This section is necessary to make clear that the proposer is not required to make the final payment until the issue of the EIS actual cost has been finally resolved by the EQC; again, this would permit him an option to avoid having to apply for a refund. This section would apply only when the EIS actual cost is less than the EIS assessed cost or when the proposer believes that the Responsible Agency included costs which should not have been included or that the amounts charged should be less.

The purpose and reasons for including the ten day time limit are the same as those given in the previous sections.

(b) The proposer and the Responsible Agency shall submit to each other and to the Council a detailed accounting of the actual costs incurred by them in preparing and distributing the EIS within ten days after the Council has accepted the Final EIS. If the cash payments made by the proposer exceed the Responsible Agency's EIS actual cost, the proposer may apply to the Council or to the Local Agency for a refund of the overpayment.

... The purpose of this section is to provide each party with the information it needs to determine whether the original agreement or determination was followed. It is logical to assume that the proposer will want to know whether he may have paid more than necessary and that the agency wants to know if the proposer adhered to the negotiated agreement.

The time periods are designed to eliminate any delays in completing the process and to enable any disagreement to be brought to the EQC in a timely fashion. There should be no hardship placed on either party by having to comply with the time requirement, for both should be keeping a running account of expenditures; cost figures should be available within a very short period of time.

The last provision of this section describes the procedure to be followed if the total payments made by the proposer exceed the cash outlay of the Responsible Agency. Although the Legislature did not specifically provide for this occurence, the situation could arise because the payments made by the proposer were made on the basis of estimates which could vary from what was actually expended. No hardship on either party is anticipated The proposer should not pay more than the amount actually needed.

(c) If the Responsible Agency is a state agency, the proposer shall make all cash payments of the EIS assessed cost to the Council which shall deposit such payments in the state's general fund.

... The need for this section is dictated by Minn. Stat., Sec. 116D.045, subds. 3 and 5 (1976). Subdivision 3 clearly states that all money received by the EQC shall be deposited in the general fund. Subdivision 5 goes on to say that when a state agency is the Responsible Agency, the proposer shall pay all monies directly to the EQC. It is plainly the intent of the Statute that no funds generated by this process shall be paid directly to a state agency.

(d) If the Responsible Agency is a Local Agency, the proposer shall make all cash payments of the EIS assessed cost directly to the Local Agency.

... Although subdivisions 3 and 5 of Minn. Stat., Sec. 116D.045 (1976) appear to be in contradiction, the Legislature by spelling out in subdivision 5 who is to receive payments has clearly indicated its preference that a local government unit receive the payment directly. This section is needed to clearly indicate that a difference exists in the methods of making EIS preparation cost payments when a local agency is the Responsible Agency.

(1) The Local Agency shall notify the Council in writing of receipt of each payment within ten days following its receipt.

... When a local government unit is the Responsible Agency, other local and state agencies may have permit authority over the project. This section recognizes that there must be a mechanism whereby those other agencies will be notified when the final cash payment has been made by the proposer. Subdivision 4 of Minn. Stat., Sec. 116D.045 (1976) prohibits state agencies from issuing permits for the construction or operation of a project until the EIS assessed cost has been paid in full. The most reasonable approach to notifying these agencies is for the EQC to accept this responsibility rather than placing the burden on the local government unit. The EQC, because of its coordinating role among state agencies as assigned by Minn. Stat., Sec. 116C.04 (1973), is more likely to be aware of which state agencies have permit authority over a project.

In addition to the final payment, the EQC must be notified of all other payments made by the proposer. The need for this provision should be evident. The EQC has the responsibility for administering these Rules and may find it necessary to settle disagreements between the Responsible Agency and the proposer. Thus, the EQC must be kept advised of the various transactions between the two parties.

To facilitate the permitting process, the agencies must be informed as soon as possible after the final payment is made. Ten days should be ample time for the local government unit to make sure the payment is correct and then notify the EQC. Immediate notification of the other payments is needed so that the EQC can effectively monitor the beginning of the EIS preparation and the progress of the preparation.

(e) No Responsible Agency shall commence with the preparation of an EIS until at least one-half of the proposer's required cash payment of the EIS assessed cost has been paid. Notwithstanding other sections of these Rules, the Responsible Agency shall prepare and file the Draft EIS within 120 days of the date of this payment. This time limitation may be extended by the Council only for good cause upon written request by the Responsible Agency.

... This section is included in the Rules because subdivision 4 of Minn. Stat., Sec. 116D.045 (1976) requires that EIS preparation shall not begin until at least one-half of the EIS assessed cost has been paid. For the purpose of these Rules, the EIS assessed cost has been divided into two parts (as explained by the definition of the EIS assessed cost). This section mandates that one-half of the cash payment portion of the EIS assessed cost be paid before EIS preparation can begin. The payment is needed to ensure that the Responsible Agency will have adequate financial resources to begin the EIS preparation. This cash payment will be especially important to local units choosing to use consultants in preparing the EIS. Without this payment, many local units would be unable to initiate EIS preparation. There is no burden placed on the proposer as this section does not require that one-half of the payments for work done by the proposer be made at this time, only that one-half of the cash payment be made.

MEQC 29(a)(1) of the EIS Rules previously adopted by the EQC requires that a Draft EIS be prepared and filed within 120 days after the EIS Preparation Notice has been issued. Because the time required for negotiation of the EIS assessed cost may significantly cut into this 120 days, it is only reasonable to begin the 120 day time clock after the negotiation has taken place and payment has been made; this would avoid the paperwork of having to request time extensions in each case. It is logical to assume that Draft EISs requiring preparation payments by the proposer will take the same amount of time to be produced as a Draft EIS which does not. The option of extending this period is consistent with the option provided by the EIS Rules previously adopted.

(f) Upon receipt or notice of receipt of the final payment by the proposer, the Council shall notify each state agency having a possible governmental permit interest in the action that the final payment has been received.

... By proposing this section, the EQC accepts the responsibility of coordinating environmental activities assigned to it by Minn. Stat., Sec. 116C.04 (1973). This section relieves other agencies of the burden of identifying which state agencies have a permit interest in a project. The EQC has the responsibility of administering these Rules and the Rules governing the EIS process. Because of this involvement, the EQC is in the best position to know the status of the EIS and payments made by the proposer.

(1) Other laws notwithstanding, a state agency shall not issue any governmental permits for the construction or operation of an action for which an EIS is prepared until the required cash payments of the EIS assessed cost for that action or that portion of a Related Actions EIS have been paid in full.

... Minn. Stat., Sec. 116D.045, subd. 4 (1976) dictates the need for this section. It is clearly the intent of subdivision 4 that, even though the EIS has been completed, the proposed project cannot proceed until the proposer has met his financial responsibilities. It must be noted that this section applies only to state permits and does not address the issuance of local permits. (Even if that is that case, it is highly unlikely that a project will be allowed to proceed until all payments are made.) Every project for which an EIS was prepared under the auspices of MEPA during the past three years has required a state permit.

When a series of projects are included in a Related Actions EIS, it is not reasonable to penalize a proposer who complies with these Rules if one of the other project proposers does not comply. The provision to allow permits to be issued on a Related Actions EIS project is necessary to make clear that a project proposer will not be penalized because another party has not paid his portion of the EIS assessed cost.

(g) All time periods included in MEQC 42-45 may be extended by the Council Chairman only for good cause upon written request by the proposer or the Responsible Agency.

... This section is included at this point in the Rules as an alternative to providing similar provisions whenever a time requirement is placed on a proposer or a Responsible Agency. The time periods included in these Rules are structured to create a predictable process which can be followed in the majority of situations. The time periods are designed to be restrictive to prevent either party from imposing unwarranted delays in the process. However, this section is needed to provide for the unusual circumstances that may occur when the specified time period would place an undue burden on either party. It is possible that either the Responsible Agency or the proposer may need additional time to generate information necessary to reach agreement on EIS preparation responsibilities, the proposer may need additional time to arrange financing for the payment of preparation costs, or either party may need additional time to compile financial information in the event of a disagreement between the parties. It must be noted that time extensions will be looked upon as the exception and not as normal operating procedure.

The decision to grant time extensions must be left up to the Chairman. The full EQC meets only on a monthly basis and, if each decision required EQC action, potential delays of up to 30 days could result. Since most time extensions would be for periods of less than 30 days, requiring EQC action would defeat the purpose of the restrictive time periods and could impose burdens on one party.

MEQC 46 EFFECTIVE DATE

The amendments to these Rules (MEQC 21-46) shall become effective upon filing with the Secretary of State with the exception that Rules MEQC 41-45 shall apply only to projects for which an EIS Preparation Notice has been issued after February 15, 1977. All petitions received, environmental assessments ordered or received, and EISs ordered before the effective date of the amendments shall at the request of the preparer of the document be processed and reviewed as if amended Rules MEQC 21-40 were not in effect. Projects previously reviewed or exempted by the MEQC are not subject to these Rules except for those actions included in MEQC 25(f)(1).

... The purpose of this section is to identify the dates when these Rules become effective and to delineate the procedures. This section replaces MEQC 41 of the EIS Rules previously adopted by the EQC and is changed only to incorporate the effective date of the additional Rules governing the cost of preparing EISs. Minn. Stat., Sec. 116D.045, subd. 1 (1976) provides that the cost of preparing EISs will only be assessed to those projects for which an EIS Preparation Notice has been issued after February 15, 1977.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS
ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

February 10, 1977

Mr. Thomas Rulland, Manager
Environmental Management Programs
State Planning Agency
101 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Re: Our File No.: EQC-77-005-MG

Dear Mr. Rulland:

Enclosed with this letter you will find, pursuant to Minn. Reg. HE 108, an order of the Chief Hearing Examiner wherein it is found that the final rules as proposed to be adopted by the Environmental Quality Council, relating to assessing the cost of preparing Environmental Impact Statements, are not substantially different from the rules as originally proposed.

Yours very truly,

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

DRH:sh
Enc.
cc: Peter Vanderpoel

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE ENVIRONMENTAL QUALITY COUNCIL OF THE
STATE PLANNING AGENCY

IN THE MATTER OF THE PROPOSED)
RULES OF THE MEQC FOR ASSESSING)
THE COST OF PREPARING ENVIRON-)
MENTAL IMPACT STATEMENTS.)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on November 17, 1976, before Myron S. Greenberg, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. §15.0412, Subd. 3, was issued to the Environmental Quality Council on January 13, 1977; and

WHEREAS, the Environmental Quality Council has now determined to adopt rules pursuant to Minn. Stat. §15.0412, Subd. 4; and

WHEREAS, the Environmental Quality Council has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §15.052, Subd. 4, and Rule HE 107; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing and that the Environmental Quality Council has met all requirements of Minn. Stat. §15.0412, Subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Environmental Quality Council has the responsibility of submitting the complete hearing record and the rules as adopted by the Council to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. §15.0412, Subd. 4.

Dated this 10th day
of February, 1977.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

Before The

ENVIRONMENTAL QUALITY COUNCIL

In the Matter of the Proposed Rules of the MEQC for Assessing the Cost of Preparing Environmental Impact Statements.	))))	STAFF PROPOSED FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for hearing before Hearing Examiner Myron S. Greenberg of the Minnesota Office of Hearing Examiners on November 17, 1976 at 9:00 a.m. in Conference Room A, Capitol Square Building, St. Paul, Minnesota.

William E. Dorigan, Special Assistant Attorney General, appeared as counsel for the Environmental Quality Council (hereinafter "EQC"). Tom Rulland, Manager of Environmental Management Programs for the EQC, Nancy Onkka, Environmental Planner, and Charles Kenow, Environmental Planner, testified on behalf of the EQC. The hearing continued until all interested groups or persons had an opportunity to be heard concerning the adoption of the proposed rules.

The matter under consideration before the EQC is the adoption of rules by the EQC for charging project proposers for the cost incurred by public agencies in preparing and distributing Environmental Impact Statements (EIS)s on such projects.

The Minnesota Environmental Policy Act of 1973 (MEPA) requires the preparation of an EIS before certain types of projects are allowed to proceed. Subdivision 1 of Minn. Stat. § 116D.04 (1974) identifies when an EIS must be prepared, who will be responsible for its preparation, and what factors must be given consideration in its preparation. Although under certain circumstances MEPA provides that a "person" may be responsible for preparation of an EIS, it has been the experience of the EQC that this responsibility is usually borne by a public agency. During the past three years, acceptance of this responsibility has often placed a financial burden on state and local agencies. Public agencies have frequently been forced to divert

funds from other programs to pay the EIS preparation costs because their budgets had not anticipated such expenditures.

The Legislature recognized this problem and amended MEPA in 1976 to include a provision that allows public agencies to assess the cost of preparing and distributing the EIS to the project proposer. This amendment is cited as Minn. Stat. § 116D.045 (1976). In passing this amendment, the Legislature acknowledged that the costs of environmental planning should be considered a "cost of doing business" in Minnesota and should be borne by the proposer of the project. However, by mandating that only reasonable costs of preparing EISs be assessed to a project proposer and by placing limits on the total cost the agencies can assess, the Legislature also recognized that public agencies have a responsibility to the private sector.

To implement the amendment, the Legislature directed the EQC to promulgate Rules consistent with the provisions of the amendment. These Rules have been drafted with assistance from the EQC's Technical Committee and representatives of the following concerns: Dayton Hudson Properties; Northern States Power; Minnesota Association of Commerce and Industry; Dayton, Herman and Graham, Attorneys at Law; and James Coleman, Environmental Consultant. The EQC accepted the proposed Rules at its September 14, 1976 meeting and ordered the Rules be sent to hearing consistent with Minn. Stat. Chapter 15. As mentioned, the hearing was held on November 17, 1976 before a Hearing Examiner of the Minnesota Office of Hearing Examiners.

These Rules will be an addition to the Rules governing the EIS process adopted by the EQC as amendments to the EIS Rules promulgated by the EQC in 1974. Rules MEQC 22 and 27 will be incorporated into the adopted Rules and MEQC 41-46 will be added to those Rules.

It is the purpose of these Rules to interpret the MEPA amendment consistent with the legislative intent of the amendment. In doing so, every attempt has been made to create a mechanism that is predictable to all affected parties, encourages close cooperation between the proposer of a project and the public agency responsible for preparation of the EIS, encourages sound environmental planning by the proposer of a project, and

takes into consideration the many different situations that might arise during the EIS process.

While reviewing these Rules, it must be kept in mind that they apply not only to state agencies but to local government units as well. In fact, the local units may be most affected by these Rules. Local units generally do not have funding sources other than their operating budgets and these budgets are normally quite limited compared to those of state agencies or large private concerns. Of the 38 EISs ordered by the EQC to date, 14 of these were prepared or are being prepared by local government units. In at least one case, the Sherwood Forest Campground in Aitkin County, the local unit would have been unable to prepare the EIS had not the project proposer offered to assume the cost.

The EQC, upon all testimony, records, files, evidence, arguments of counsel and written comments, hereby makes the following:

General Findings Of Fact

1. On September 17, 1976, the EQC filed, in proper form and duly executed, the following documents with the Chief Hearing Examiner, pursuant to Minn. Reg. HE 102:

(a) A copy of the proposed rules;

(b) A proposed Order for Hearing;

(c) A proposed Notice of Hearing;

(d) A statement of the number of persons expected to attend the hearing and the estimated length of the hearing; and

(e) A Certificate of the EQC's Authorizing Resolution for the hearing.

2. The Notice of Hearing was published in the State Register on October 4, 1976.

3. On October 8, 1976, the EQC mailed the Notice of Hearing to all persons and entities who had registered their names with the Secretary of State for the purpose of receiving such notice, and other interested persons known to the EQC.

4. On October 22, 1976, the EQC filed with the Office of Hearing Examiners the following documents:

(a) The Order for Hearing;

(b) The Notice of Hearing as mailed;

(c) The Affidavit of Receipt of the Secretary of State's List;

(d) The Affidavit of Mailing;

(e) The Statement of Need and Evidence (combined)

(f) The Affidavit of Mailing of a notice pursuant to Minn. Stat. § 15.0424, subd. 6, a copy of the Notice and material received pursuant to the Notice; and

(g) The names of EQC personnel who will represent the EQC.

5. The statutory authority to promulgate the rules is found at Minn. Stat. § 116D.045, subd. 1 (1976).

6. The record was closed after allowing 20 days for submission of written comments at the end of the day on December 7, 1976.

7. All other substantive and procedural requirements of statutes or regulations have been complied with.

8. MEQC 22(aa)

This addition to the "Definitions" portion of the EIS regulations establishes a definition of "EIS Estimated Cost".

Subdivision 4 of Minn. Stat., § 116D.045 (1976) requires the project proposer to pay at least one-half of the EIS cost before EIS preparation can begin. Thus, it is necessary to have identified before the EIS process begins all the preparation costs that may be incurred during the process, regardless of who will be incurring them. Since it is impossible to determine the actual costs until the EIS has been completed, it is necessary to estimate the predictable anticipated costs.

9. MEQC 22(bb)

This addition to the "Definitions" portion of the EIS regulations establishes a definition of "EIS Assessed Cost".

The EIS assessed cost will be the basis for determining the proposer's obligations as required by the Statute. Subdivision 5 of Minn. Stat., § 116D.045 (1976) places a limit on the amount that can be assessed to the project proposer; this limit is based on the cost of the project. However, the estimated cost of preparing and distributing the EIS can be more or less than this amount. It seems logical that the proposer should not pay more than that actually needed for the EIS. Establishing an EIS assessed cost (based

upon an EIS estimated cost) at the beginning of the process will help ensure that only reasonable costs are assessed to the proposer. This definition recognizes that the total amount of the EIS costs may include two types of costs to the project proposer: a cash payment to the Responsible Agency and the costs of information supplied by the proposer; this is discussed in later sections.

10. MEQC 22(cc)

This addition to the "Definitions" portion of the EIS regulations establishes a definition of "EIS Actual Cost".

The proposer is required to make payments on the basis of the EIS assessed cost; however, the costs that are estimated before the process begins may be more or less than those actually incurred. This definition is needed so when the process is completed, the proposer is aware of the costs actually expended and adjustments to the EIS assessed cost can be made.

11. MEQC 22(dd)

This addition to the "Definitions" portion of the EIS regulations establishes a definition of "Final Determination".

The purpose of this definition is to identify when the time clock begins for preparation of an EIS. Subdivision 1 of Minn. Stat., §§ 116D.045 (1976) permits the assessment of costs only when an EIS is required on a project. The determination that an EIS will be required is normally made when an EIS preparation notice is issued. However, MEQC 28 of the EIS Rules previously adopted by the EQC provides a mechanism whereby the decision of the Responsible Agency to prepare or not to prepare an EIS can be appealed to the EQC. Pending EQC resolution of the appeal, a final decision to prepare an EIS cannot be made. This definition is needed to cover both possible situations - when the EIS preparation notice is the final decision and also when the EQC decides after an appeal that an EIS is needed.

12. MEQC 22(ee)

This addition to the "Definitions" portion of the EIS regulations establishes a definition of "Private Person".

Minn. Stat., §§ 116D.045, subd. 1 (1976) provides that only when the proposer of an action is a private person will the costs of preparing an EIS be assessed to the proposer. This definition is needed to identify who is a private person for the purpose of these Rules and is written to include all non-public entities. The inclusion of these entities is consistent with the definition of "person" in MEQC 22(r) of the EIS Rules previously adopted by the EQC; that definition includes all of the above plus "public agency".

13. MEQC 22(ff)

This addition to the "Definitions" portion of the EIS regulations establishes a definition of "Project Estimated Cost".

It is necessary to determine the cost of the project because the statutory limits to the EIS assessed cost are based on the project cost. The project cost must be estimated because the actual cost will not be known until long after the EIS process is completed.

14. No testimony or evidence of significance was offered in opposition to these definitions. The EQC finds that the defintions contained in MEQC 22(aa) to (ff) are a reasonable and necessary method for implementing the statutory amendment.

15. Additional comments regarding proposed MEQC 22 were offered by the 3M Company (Exhibit 28). These comments suggest the addition of a definition for the term "proposer cost" to clarify what is perceived by 3M as some ambiguity in the rules' determination of what project proposers must pay for and what they would be allowed to take credit for under proposed MEQC 42(c) and 44(a)(1)(cc). This suggestion was not discussed at the hearing.

The EQC finds that the proposed definition of "proposer cost" suggested in Exhibit 28 will not clarify or streamline the Rules. First, the existing lanugage in the proposed Rules always specifies what these costs are - for example, "for collection and analysis of technical data which the Responsible Agency incorporates into the EIS" (MEQC 42c). Second, the Rules provide that these costs can be for information gathered solely for the EIS or information that will also serve other purpose(s). The

proposed definition would eliminate the latter option, thereby eliminating credit for information used for more than one purpose. This could result in information that must be gathered twice - an inefficient use of time and resources, as the Statement of Need and Evidence indicates.

16. MEQC 27

This rule provides for designation of a Responsible Agency in advance of the final determination of the need for an EIS.

Sometimes it can be reasonably anticipated early in the planning of a project that an EIS will be prepared for that project. This section does not provide that an EIS will in fact be ordered; it merely identifies the agency responsible for its preparation if and when one is ordered. If that determination can be made before any time clocks begin running, it will be to the advantage of both the proposer and the Responsible Agency to begin working together early in planning for the actual preparation of the EIS. This section provides for a longer lead time in determining which party will be responsible for preparing information for the EIS. Such early cooperation should shorten the time needed to reach an agreement on the EIS assessed cost and could result in a shorter time required for preparing the EIS.

The EQC finds that the rule as proposed does not allow a third party to request such early determination of the responsible agency because such provision would result in the EQC having to make a "predetermination" that there "probably will be an EIS" required before all the facts of the proposed action are known.

No testimony or evidence of significance was offered in opposition to this rule. The EQC finds MEQC 27 a reasonable and necessary method for implementing the statutory amendment.

17. Existing MEQC 41

Existing rule MEQC 41, dealing with the effective date of the rules, is deleted and replaced by proposed MEQC 46. Placement of the provision dealing with the effective date of the rules at the end of the rules is reasonable for clarity and organization purposes.

18. MEQC 41

This rule identifies which proposers of projects requiring EISs will be assessed and indicates that only the reasonable costs of preparing and distributing the EIS may be assessed. Subdivision 1 of Minn. Stat., § 116D.045 (1976) specifies that only a private person may be assessed such costs and that only costs related to the EIS may be assessed. This section clearly indicates that costs incurred for preparation of preliminary environmental review documents such as an Environmental Assessment Worksheet (EAW) cannot be assessed and that public agencies who are project proposers cannot be assessed. The purpose of this section is to bring these Rules into compliance with the intent of the Legislature.

Substantial discussion at the hearing of this rule resulted in the suggestion that the first line of the rule be changed to read, "When a private person proposes to undertake an action, and the final determination has been made that an EIS will be prepared by a public agency on that action . . . ." (Pub. Ex. 13, pp. 1 and 2; Pub. Ex. 18, p. 1; Pub. Ex. 27, P. 2; T. 29-30; T. 57-66; T. 71-72; and T.75-76.) Such suggested language change was accepted by the EQC staff. The EQC finds that this suggested language clarifies the rule without substantially changing it and serves to implement the statute.

19. MEQC 42

MEQC 42 contains the "meat" of the proposed rules for assessing the cost of preparing EIS's. There was little opposition to the main concepts behind the rule, namely, early cooperation by and between proposers and responsible agencies and predictability of expenses to be incurred in preparing an EIS. Most of the comments also relate to subsections (a) and (b). Other comments are also noted below.

20. MEQC 42(a)

The principle reason for the promulgation of these Rules is to establish a mechanism whereby the costs of preparing an EIS can be assessed to the proposer. The purpose of this section is to identify the procedure to be

followed in determining the amount to be charged and to identify which party will assume the responsibility for preparation of the various elements of the EIS.

Although subdivision 1 of Minn. Stat., § 116D.045 (1976) directs the Responsible Agency to determine the costs to be assessed, the EQC believes that this determination should not be made in a vacuum. There are several reasons why it is appropriate to include the proposer at this stage. First, he is buying a product and should be aware of what he is buying. Second, he may have already done a substantial amount of work needed in the EIS and the Responsible Agency should be aware of that work. Third, it may be advantageous to both parties to have the proposer accept responsibility for preparation of various parts of the EIS; the proposer should have the opportunity at the EIS planning stage to offer such assistance. Fourth, preparation of an EIS is an educational process and the proposer should have the opportunity to be involved for the benefit of future projects he may propose. Indeed, this will serve to encourage environmental planning by developers, a goal highly valued by the EQC. The cooperation between the proposer and the Responsible Agency was recommended and endorsed by members of the group who assisted in preparing these proposed Rules.

The coooperative process described in this section will be the mechanism whereby most of the EIS assessed costs are determined. However, situations may arise when the EQC must be called in to settle a disagreement between the parties (as provided in the statute). This section provides for that eventuality.

The information requested by this section is needed for two major reasons: to clearly indicate the obligations of each party so that later disagreements can be avoided and to advise the EQC of the basis of the agreement. The EQC is charged with administering these Rules; it must fully understand how the Rules are being used to prepare any reports requested by the Legislature and to evaluate the Rules for possible needed revisions. There is one further reason for requesting these particular items of information. Specifying the items for discussion should limit the number of peripheral

topics discussed and shorten the amount of time needed for the two parties to determine whether an agreement can be reached. When no agreement can be reached, this required dialogue should make it easier for each party to indicate the basis of its disagreement. This, of course, would help provide the EQC with the detailed information it would need to resolve the dispute.

Thirty days have been provided as the maximum amount of time for the two parties to determine whether a negotiated agreement is possible. A time limit must be imposed in order to achieve one of the major goals of these Rules - predictability. A longer time period could lead to needless delay of EIS preparation by one party choosing to drag its feet. In some situations, the full 30 days would not be necessary, particularly if the Responsible Agency has been specified early according to MEQC 27(a)(6).

No provision has been made for third party intervention in the EIS assessed cost determination. The cost by itself should be of no concern to a third party. However, the cost may be in dispute if someone were to question whether sufficient funds were being expended to generate an adequate Final EIS; the EIS Rules already adopted by the EQC do permit a third party to comment on the adequacy of the Final EIS as well as to make comments at the public hearing on the draft EIS. It will always be in the best interest of the proposer and the Responsible Agency to provide sufficient funding for preparation of an adequate Final EIS. Otherwise, the entire process would be open to delay at a later date, because an inadequate Final EIS would be returned to the Responsible Agency for revision. Further, the EQC, as representative of the State's interest and as administrator of MEPA, requires adequate environmental review of projects. It represents all third parties in the EIS process and would be alert to possible problems when the cost estimate is submitted.

Subdivision 2 of Minn. Stat. § 116D.045 (1976) provides that the EQC shall resolve any disagreement over the EIS assessed cost. The mechanism to resolve these disagreements, should they occur, will be discussed in Section MEQC 44.

Support for MEQC 42(a) stressed that "using a cooperative approach to establish the EIS assessed cost is highly beneficial" for the responsible agency and the developer (as well as, presumably, the public and the environment). (T. 126). The only opposition to 42(a) indicated that written agreements between proposers and municipalities might be unnecessary where distribution of cost is determined by ordinance. (Pub. Ex. 21, p. 1). On balance, the EQC finds that the provision is reasonable and necessary for the purposes and reasons stated.

21. MEQC 42(b).

This rule establishes the maximum costs which can be assessed. The need for this section is clearly established by Minn. Stat. § 116D.045, subd. 5 (1976), which establishes the maximum amount the proposer of a project must be assessed for the EIS and bases this amount on the value of the proposed project. The need to use the estimated cost of the project rather than the value of the project will be discussed in section MEQC 44(b)(1).

Although the statute does not address the possibility that the project proposer may choose to pay an amount greater than that required, it only makes sense to allow the proposer that option. The situation might well arise where it would be to the advantage of the proposer to pay an additional amount when that amount would enable the Responsible Agency to complete the EIS in a shorter time period than would otherwise be possible. The early completion would allow the proposer to realize a return on his investment at an earlier date. Since the proposer's investment in a project would be far greater than the cost of the EIS, the increased payment would be fairly small by comparison and could well result in a substantial financial savings to the proposer. If this provision for additional payment is not included, the proposer would be precluded from exercising this option even if he could demonstrate that it would be to his benefit.

This provision would not permit the Responsible Agency to make unreasonable demands on the proposer. The choice of making additional payments is

solely the option of the proposer. Even if the Responsible Agency were to demand a larger assessment than that provided by Statute , a mechanism is provided in MEQC 44(a) whereby the proposer can appeal that demand to the EQC.

Criticism of MEQC 42(b) (Pub. Exh. 21, pp. 1-2) appears to be inappropriate because that rule is essentially a restatement of the statutory provisions of Minn. Stat. § 116D.045, subd. 5 (1976), with the additional provision that a proposer may voluntarily agree to accept as the EIS assessed cost an amount greater than the maximum set by law and restated in the rule. As noted by the State Planning Agency, "This will be particularly valuable when a small local agency is the responsible agency." (T. 127).

Allowing the proposer to agree to a higher EIS assessed cost is in keeping with the spirit of the law. The statutory limits set for EIS assessed costs are for the proposer's benefit. If a proposer wishes to waive that limitation, he is free to do so.

Other criticisms regarding the establishment of maximum costs and the content of EISs (Pub. Ex. 21, p. 2) are irrelevant to these rules and are more properly directed to the State's legislative bodies. (See also, Pub. Ex. 29(a), p. 4). The EQC finds this rule to be a reasonable and necessary method for implementing the statutory amendment.

22. MEQC 42(c)

MEQC 42(c) provides a "credit" to the proposer of up to one-third of its assessed cost for the collection and analysis of technical data which ultimately is incorporated into the EIS.

In a number of situations the proposer may offer assistance to the Responsible Agency in preparing information for the EIS or has already completed work on certain EIS elements. This section has been included to make clear that when the proposer takes this option, he will receive credit for the work done and that his cash payments to the Responsible Agency for the EIS costs will be reduced accordingly. As mentioned previously, the EQC is attempting to encourage sound environmental planning by project proposers. This section represents another indication by the EQC that such planning is encouraged.

The reasons for the two restrictions in this section are, first, to eliminate the possibility that the proposer will inflate the cost of work he has done or is doing; second, to ensure that the Responsible Agency will receive funds needed to verify the work of the proposer and to undertake the reminder of the work; and, third, to ensure that only information actually incorporated into the EIS can be used for the credit. The Responsible Agency is charged with preparing the EIS and thus must be provided with sufficient flexiblity to ensure that the EIS is adequately prepared. This section does not prevent the proposer from doing more of the EIS work; in fact, in a large number of cases the Responsible Agency may well agree to allow the proposer to assume major responsibility for the EIS preparation. In any case, this section ensures that adequate funding will be available to the Responsible Agency to complete the EIS by not allowing the proposer to take credit for work which is not necessary or is beyond the scope of the EIS.

The "one-third" restriction should not prove to be a burden to the proposer. This section specifically permits the Responsible Agency to decide to have the proposer to the major portion of the EIS work. Past history of the EIS program indicates that, in a majority of cases, when this option was available, the Responsible Agency was more than willing to do this. This section does indicate that the proposer must concentrate his efforts on the EIS if he is to get credit for work done, particularly for any beyond the "one-third" figure.

The last provision is included to encourage the two parties to work together. Although it is not mandatory, the proposer should work with the and intended to facilitate and expedite a cooperative effort by proposer and responsible agency in the EIS preparation process. Proposed MEQC 42(a) and 42(b) go to great lengths to provide for easy and early identification of responsibilities, costs and potential or real problems in cooperation. Other parts of the proposed rules provide for resolution of such problems as may arise.

In response to the comments in opposition, the Council finds that it is important to note that the intent of the statute is to ensure that

Responsible Agencies receive sufficient moneys for EIS preparation. Elimination of the one-third credit ceiling could well result in their not receiving sufficient moneys. The existing agency language also protects the project proposer, for that one-third credit ceiling can be raised if the information supplied by the proposer is acceptable to the Responsible Agency (T. 23-25, 83, 127 Statement of Need and Evidence, Exhibits 24 and 29).

The enabling statute provides other necessary guidance for this provision. First, subdivision 1 of the statute directs the Responsible Agency to determine the costs to be assessed; this indicates the authority and responsibility of the Responsible Agency. Under the elimination of the one-third ceiling and the language suggested in Exhibit 20, the project proposer is in that position because he determines how much data should be collected and how costly it will be. Since by these Rules the Responsible Agency generally cannot increase the EIS assessed cost later if it spends more on the EIS than originally agreed to, it is important to keep the Responsible Agency extensively involved in the original agreement. Second, the statute does not specifically provide for the credit mechanism. This means that the credit provision must be carefully overseen to ensure that the intent of the statute is met. Elimination of the one-third ceiling and the suggested language do not provide the stringent oversight required. The existing language, where the Responsible Agency must approve any amount higher than the one-third figure, does provide this oversight. (Statement of Need and Evidence, T. 23-25, 127, 83 and 98; Exhibits 24 and 29).

The one-third credit provision will prove valuable primarily in those instances when agreement cannot be reached immediately on apportionment Responsible Agency to avoid doing needless work and having to come to the EQC if the Responsible Agency should refuse to accept his work. If the Council becomes involved because of a disagreement, the time required for preparation of the EIS will be extended to no-one's benefit.

The most extensive discussion regarding the proposed rules dealt with MEQC 42(c). Within that subsection, the second sentence (allowing up to one-third of the EIS assessed cost to be offset by credit given for material

supplied by the proposer and used in the EIS) received the most attention. Basically, three positions were taken in oral and written comments regarding such credit: (1) the one-third limit should be eliminated and unlimited credit given for the proposer's material used in the EIS; (2) there should be no credit given; and (3) the one-third limit should be left as proposed.

Arguments favoring elimination of any stated limit on credit to be given for material provided by the proposer and used in the EIS or its preparation stressed that such unlimited credit would encourage early environmental study and planning by project developers. (See Pub. Ex. 18, p. 1; Pub. Ex. 25; Pub. Ex. 26; Pub. Ex. 27; Pub. Ex. 28, pp. 3-4; T. 17-19 with EQC response at Pub. Ex. 29(a), p. 4; T. 30-31, 44, 48-49, 56-57). Limiting such credit, on the other hand, would create a "disincentive" because the expenses incurred by the proposer (a) might not be recognized by the responsible agency, or (b) might exceed the one-third limit but be included in the assessed cost nonetheless and billed to the proposer, thereby resulting in a double payment by the proposer for work which he did or contracted to have done. Many comments noted that it is to the advantage of the responsible agency to have the proposer do as much work as possible, but stated that work would only be done if credit for it was assured. (Pub. Ex. 27).

Proponents of removing the second sentence of MEQC 42(c) also criticized the one-third credit limit as arbitrary. (Id.; see also Pub. Ex. 24, pp. 1-2; T. 77-80, 88, 106-107)

The 3M Company suggested, in Exhibit 20, that the one-third ceiling be replaced by a credit formula based on the relation of the proposers costs for data collection and analysis to the EIS estimated cost.

An argument was propounded for not allowing any credit at all. This argument is based on the proposition that the underlying legislation does not provide a basis to allow offsets against amounts assessed to the proposer. For the reasons discussed herein, the Council finds that the one-third credit is a reasonable and necessary tool to be utilized where applicable.

The EQC recognizes that the proposed rules, in general, are designed

of the EIS assessed cost between submission of data and cash payment. It will clearly specify to the Responsible Agency and the proposer that all material offered by the proposer need not be credited by the Responsible Agency, thereby making the ground rules explicit and offering guidance to the parties (Statement of Need and Evidence). The existing language is also more flexible, since it is discretionary - an advantage in a system like the EIS process that must handle many situations.

The Statement of Need and Evidence points out the need to eliminate the possibility that the project proposer will inflate the cost of work he has done or is doing. The one third credit ceiling was designed to ensure the verification of these costs. The elimination of the one-third credit ceiling and the suggested language do not provide the opportunity for checking the proposer's figures and the oversight required. Since, in both cases, the amounts spent by the proposer form the basis for the credit allowed, the impracticality of these approaches is apparent.

An additional comment relating specifically to proposed MEQC 42(c) pointed out that the phrase "analysis of technical data" is ambiguous and may cause problems by having the proposer evaluate material which is to be included in the EIS, a function of the responsible agency. (Pub. Ex. 24, p. 2). The EQC agrees that the phrase is not defined separately, but finds that the functions and costs can be determined and specified under MEQC 42(a), and that the existing language is reasonable and necessary.

23. MEQC 42(d)

This rule designated those costs that can be assessed when a joint federal/state EIS is prepared. Minn. Stat. § 116D.045, subd. 1 (1976) applies only to those projects that require an EIS ordered pursuant to Minn. Stat. § 116D.04 (1974), the Minnesota EIS Program. No authority is granted for the assessment of EISs ordered under a federal EIS program. Likewise, there is no authority for a federal agency to assess the costs of an EIS ordered pursuant to MEPA. Since Minn. Stat. §§ 116D.045 (1976) refers only to state and local agencies; thus, it can be reasonable inferred that federal agencies are not included under this statute.

The EIS Rules previously adopted by the EQC provide a mechanism, in MEQC 25(f)(4), whereby a federal agency and a state Responsible Agency can cooperate in the preparation of an EIS when one is required by both the state and federal programs. Since the federal program is excluded from these Rules, it is reasonable that the project proposer be assessed only for that portion of the EIS actually prepared by the state Responsible Agency. This section is plainly needed to clarify the procedure to be followed if a joint federal/state EIS is prepared that is subject to these Rules.

The procedure to be followed in determining the EIS assessed cost is the same as that for a state-only EIS. It has been justified in MEQC 42(a).

24. MEQC 42(e).

MEQC 42(e) determines responsibility for EIS preparation costs when an EIS is prepared on a series of individual projects, pursuant to MEQC 25(e)(1) of the EIS rules already adopted by the MEQC. It would be unreasonable to require a project proposer to pay the costs of preparing an EIS for another proposer's project. Although it will not always be easy to determine specifically which costs are incurred for each project, the Responsible Agency and each proposer must make a determination as to equitable charges. If an agreement cannot be reached, the proposers and the Responsible Agency have the option of requesting the EQC to make a proper determination.

This section would not apply to a comprehensive plan prepared as a Related Actions EIS unless that plan included specific identifiable projects which individually or as a group would require an EIS. This is reasonable, due to the difficulties of assessing costs to unidentified projects.

The procedure to be followed in determining the EIS assessed cost for each project is the same as the one for a single action EIS and has been justified in MEQC 42(a).

25. MEQC 43.

MEQC 43 is necessary to indicate what circumstances require revision of the EIS cost. The rule is reasonable in that it protects both the proposer and the responsible agency from inadequate funding and unnecessary delays

caused by substantial changes and/or discovery of previously unidentified significant environmental problems in the proposed action. The "safety valve" provisions of MEQC 43 were supported by the EQC and the public at the hearing and in written comments. (EQC Ex. 11, pp. 8-10; T. 80-81). Specific comments regarding parts of the rule are noted below.

26. MEQC 43(a).

This section deals with situations where a proposer either decreases or increases the size of the proposed project, resulting in a different level of effort needed for the preparation of the EIS. In order to ensure an adequate Final EIS, all affected parties must be notified of the project change as soon as possible to allow them to adjust their work efforts. To prevent unnecessary paperwork and delay, the change must be of a magnitude that would effect the level of effort of the EIS preparation. By including the word "substantially", this section excludes minor project changes, for it is recognized that almost all projects undergo some change during the planning process.

The burden of notifying the Responsible Agency and the EQC must be placed on the proposer, because he would be most aware of any project changes. Further, if a substantial change is not noted, the EIS proceeds to completion, and the change may have dramatically altered the findings of the EIS, the possibility is quite great that the Final EIS would be declared inadequate. An inadequate EIS would place an additional burden on the proposer because the project would be delayed until an adequate EIS could be prepared.

27. MEQC 43(a)(1).

This section is clearly needed to identify: (a) the procedure to be followed if the proposer alters his project after EIS preparation has begun; and (b) the magnitude of change necessary before the parties must consider revising the previously determined EIS assessed cost. Most projects will undergo minor changes at some time during their planning. This section will eliminate having to revise the EIS assessed cost because of these minor

changes unless they have a large impact on the EIS preparation cost. The reason for establishing a 5% threshhold is that a change this size or greater may have an adverse impact on local government budgets. If, for example, a local unit is the Responsible Agency and the EIS assessed cost cash payment is $20,000, a change of $1,000 or more may prove to be substantial to a local unit of government which may have an operating budget of only $50,000. Many public agencies, both local and state, would be unable to absorb even that small amount.

This section includes the provision that EIS work done prior to the change must be considered to prevent the Responsible Agency from claiming that it must start all over and to ensure that work already done is not ignored. In most cases, the revised EIS work program would entail only fairly minor changes in and additions to the work already completed.

The procedure to be followed in revising the EIS assessed cost is the same as that for making the intital determination, except that the time period is shortened. Because the revision will concern only one or two aspects of the EIS and most of the previously determined work program will be unchanged, less time should be needed to make the revision. In the majority of cases, the full 20 days will not be needed; however, sufficient time must be allowed for those cases where major changes in the work program are required.

The last provision is included to specify that if the project scope is decreased to the extent that the project would not have been included had it been the original proposal, the project is no longer subject to these Rules. The $1,000,000 figure was established by subdivision 5 of Minn. Stat. § 116D.045 (1976) as being the minimum size of the project

subject to these Rules. However, because the Responsible Agency started EIS preparation in good faith under the assumption that the project was subject to these Rules, the proposer must be responsible for those costs incurred up to the time the project scope was decreased. This section clarifies that the proposer will pay for costs incurred or obligated, but will not be responsible for any further costs of EIS preparation.

Exhibit 20 suggested that the term "estimated" be substituted for "assessed" as it appears in the first sentence of MEQC 43(a)(1), "to make the provisions for revising the costs consistent with the provisions for arriving at them in the first place. The first step is to revise the estimated cost and then to reach agreement about revisions in the assessed cost." The EQC finds that this suggestion is unnecessary and that the existing language is reasonable and necessary. MEQC 43(a)(1) discusses procedures for revising the EIS assessed cost if the proposer substantially alters the scope of the project. It is recognized that, to obtain the EIS assessed cost, one must first figure the EIS estimated cost. However, substitution of "estimated" for "assessed", as suggested in Exhibit 20, means that a new determination is made only of the EIS estimated cost. This is contrary to the intent of the Rule and the workability of the Rules.

28. MEQC 43(a)(2).

This rule is concerned with situations where the proposer decides to terminate the project.

The decision to terminate a proposed project is solely up to the proposer of that project, so he should bear the burden of notifying the Responsible Agency and the EQC of this decision. It would be to the proposer's advantage to make that notice as early as possible to stop the Responsible Agency from incurring additional costs for which he would be responsible. Once the proposer notifies the Responsible Agency that the project is terminated, it is logical that he should not be responsible for any further costs; thus, the agency should cease spending and obligating his funds. This section does not preclude the agency from continuing preparation of the EIS, but it must recognize that it will do so at its own expense.

29. MEQC 43(a)(2)(aa).

This section is needed to indicate that the proposer will be liable only for costs incurred by the Responsible Agency up to the time the Agency was notified that the project was terminated. If the payments made by the proposer exceed the cost for the work done at the time the project was terminated, it is only sensible that he should be reimbursed for funds not expended. It also seems reasonable that, in making any payment, one should only have to pay for what one receives. In this case, the proposer is "getting" a partial EIS and should not have to pay for a complete EIS. This section makes clear that the proposer is entitled to a refund and indicates to whom he has to apply.

As pointed out in Exhibit 28, the rule does not, however, set a time limit for repayment of the excess remission nor does it make such refund mandatory. The EQC finds the following language necessary to make the intent explicit: "The refund shall be paid as expeditiously as possible."

Exhibit 28 also suggests that a 30 day time limit be set for repayment and a 0.05% interest provision for late repayments be added. The EQC finds that there is insufficient testimony on the record to go further than the above suggested language. There was no showing why an interest payment is necessary to speed the repayment when none is required to speed the initial payments. There was no consideration of the possible difficulties that may be experienced by local Responsible Agencies and the legislature in meeting the 30 day time period. The time period for proposers' payments was lengthened from 10 days to 30 days in recognition of normal business practices, as testified to in Exhibits 13, 18, 27 and 28. There may well be similar "normal administrative practices" set up by ordinance, rule or law that would prevent repayment within the suggested time period.

A similar provision exists in MEQC 45(b). For similar reasons, addition of the above language is found necessary in MEQC 45(b).

30. MEQC 43 (a) (2) (bb)

This section deals with the case where the Responsible Agency has already incurred costs exceeding the amount previously paid by the proposer at the time of notification. The reason for this section is the same as for the previous section. The Responsible Agency begins preparation on the assumption that the EIS process will be completed. In undertaking the EIS, the agency makes commitments and expends funds. It is only reasonable to expect that the proposer should be held to honor those commitments when they cannot be reasonably terminated. Again, the proposer should pay for what he receives. However, in this situation he has received more than he has paid for.

The time limits are needed to ensure timeliness. The Responsible Agency should inform the proposer as soon as possible of the proposer's further obligations so that the proposer can arrange to close out his books on that project. The time requirement should not be onerous to the Responsible Agency because it should be maintaining a detailed accounting of its expenditures. The period may be needed, however, to negotiate the cancellation of obligations which have been committed but not yet carried out. The Responsible Agency should make every attempt to reduce the amount of the obligations. If the proposer believes a good faith effort has not been made, he may require a determination by the EQC pursuant to MEQC 44 (d).

A similarly restrictive time limit in which to fulfill obligations under these Rules must be placed on the proposer. When a project is terminated, the proposer no longer has a "stake" in the completion of the EIS, so it is important to place a time limit on him to complete his obligation. This is particularly important when the Responsible Agency is a local government unit, for budget reasons discussed earlier.

The above-noted rules received much attention because of the ten-day requirement imposed on proposers for payment of funds to the responsible agency. The EQC noted, "The ten days in the rules are a guideline . . . to ensure a timely process. . . but if a proposer blatantly neglects to meet his financial responsibilities, then it would be up to an action in the courts to resolve that. The idea of the time period is to make a predictable process and one which can be carried out in a timely fashion. . . ." (T. 142; see also, EQC Ex. 11, p. 10) Support for this provision was expressed by the State Planning Agency. (T. 128)

[illegible] the difficulties [illegible] a proposer's administrative procedures for

making payments of the magnitude contemplated by the proposed rules; (2) even though there is no penalty for failure to pay within ten days, MEQC. 45 (e) and 45 (f) serve as incentive for prompt payment by restricting activities in preparation of the EIS and permit issuance until proper payment has been made; and (3) a 30-day payment period is one in which most private enterprises are accustomed to operate. (Pub. Ex. 18, pp. 1-2; Pub. Ex. 27, pp. 1-2; Pub. Ex. 28, pp. 2-3; T. 20, 33-36 and 142)

The EQC finds that the ten-day period is indeed excessively restrictive and unreasonable. The more reasonable "guideline" is to provide for payment within 30 days as is the normal business practice. Such provision would not preclude earlier payment by the proposer and would suffice as a "guideline" for remittance deadlines.

Specifically related to MEQC 43 (a) (2) (bb), it was suggested that the first sentence be changed to read :

> If cash payments previously made by the proposer are less than the Responsible Agency's expenditures or irrevocable obligations at the time of notification, the Responsible Agency shall . . . " (Pub. Ex. 20, p.2)

The EQC finds that such suggested change would not be substantial and would make this provision consistent with MEQC 43 (a) (2) (aa).

31. MEQC 43 (b)

This section treats problems that arise when the proposer uncovers a significant environmental problem after the EIS assessed cost has been determined. When the EIS content is planned, it is not always possible to anticipate all the elements that need to be addressed. Often new environmental problems are discovered after EIS preparation has already begun. An excellent example of this situation is the Reserve Mining case; the presence and significance of asbestos fibers were not identified until discussions of the project were well underway, yet the fibers proved to be a significant environmental problem. This section is included to provide the process whereby the EIS assessed cost can be revised when such a discovery occurs after the EIS preparation has begun. It is absolutely necessary to include such a Rule to eliminate the possibility that, after all the EIS work was done, the EIS must be declared inadequate because the work plan could not be altered. Since both the proposer and the Responsible Agency may be working on the EIS, each party should be allowed to begin this process as it uncovers new problems. The benefit to both parties is apparent. The proposer would be delayed from implementing his project until the EIS is found adequate and the Responsible Agency would have to assume the costs of revising the EIS if it is declared inadequate by the Council.

The reasons discussed in MEQC 43 (a) (1) also pertain to this 5%

restriction and this procedure for revising the EIS assessed cost (including the 20-day limitation).

32. MEQC 44(a).

MEQC 44(a) relates to disagreements regarding the EIS assessed cost.

Although in most situations the proposer and the Responsible Agency will be able to make the EIS assessed cost determination according to the procedures contained in MEQC 42(a), a situation may arise in which a negotiated agreement cannot be reached. If this should occur, the Legislature provided in Minn. Stat., § 116D.045, subd. 2 (1976), that the Council shall resolve the disagreement. This Rule is included to provide the required disagreement resolution mechanism.

If the parties have been unable to reach an agreement, it must be assumed that they have different positions. These differences must be resolved by the Council. The Council may decide that one party's position is more appropriate or it may determine that yet another position is preferable. To make this determination, the EQC must have the basic information being used. It would be unreasonable and highly duplicative to expect the Council itself to generate the information.

The identified information is extremely important. Minn. Stat. § 116D.045, subd. 2 (1976) provides that the Council may modify the cost figure in the event of a disagreement between the parties. To do an adequate job, the Council must have sufficient information to make a judgment within the guidelines of these Rules. To resolve a dispute and thereby fulfill its statutory obligations properly, the Council must also look at reasonable alternative methods for preparing an EIS and be aware of the consequences of such alternatives. Alternative methods of preparing the EIS include the use of consultants, the proposer doing the work, the Responsible Agency doing the work, or others that may be appropriate to each case.

The ten day limitation is not unreasonable because the parties have already had up to 30 days (and in many cases more time) to generate the information required for the determination and to establish the points of disagreement. The parties should be able to compile the information and forward it to the EQC within ten days.

There was general agreement at the hearing that MEQC 44(a) provides a necessary, reasonable and expeditious method for resolving disagreements or inability to reach agreement about the cost or content of an EIS (T. 81, 132), and the EQC so finds for the reasons stated herein.

33. MEQC 44(a)(1).

This section discribes what items shall be included in determining the EIS estimated or actual cost. Although the Legislature did not idenfity which specific EIS preparation costs should be assessed to a project proposer, it did give guidance to this matter. Subdivision 1 of Minn. Stat. § 116D.045 (1976), states the proposer can be assessed ". . . for reasonable costs of preparing and distributing an environmental impact statement." For the purpose of administering these Rules, the EQC feels it necessary that public agencies and the proposer be given guidance in determining what is "reasonable." This section is definitely needed to enable each party to have a clear understanding of the specific costs that may be included in determining the EIS estimated cost and the EIS actual cost. The EQC has taken the position that a cost in "reasonable" only if it pertains specifically to the EIS and only if it is required for the EIS.

The items included in this section are needed to develop both the EIS estimated cost and the EIS actual cost. Identifiable components are needed to arrive at the total figures logically. Also, this format will aid Council review of the dispute.

34. MEQC 44(a)(1)(aa).

This section includes Responsible Agency staff time, salary, and fringe benefits in the determination of EIS estimated or actual cost. This section is needed to make both parties aware that these costs are reasonable preparation costs that can be assessed to the project proposer. A major cost of preparing an EIS is payment for the amount of inhouse staff time spent on the EIS. That payment must include the cost of salaries and the cost of benefits paid to staff beyond their basic salaries. Benefit costs include a variety of items which must be paid to retain staff in a competitive market situation. They should be viewed as a direct cost of doing business.

Onecan question whether an agency should charge the cost of staff time, since the staff is already hired and new staff would probably not be employed to prepare the EIS. However, it should be apparent that the staff would be performing other assignments if they were not required to prepare an

EIS. Other staff would have to be reassigned or hired to perform these neglected duties or the duties would remain undone. In either case, there is an easily identifiable cost to the agency which should be included in the cost of the EIS.

Criticism of MEQC 44(a)(1)(aa) noted that fringe benefits associated with staff salaries are not appropriate for inclusion as part of the EIS estimated or actual cost because such staff "is not hired by the proposer nor are they hired solely because of the proposer." (Pub. Ex. 18, p. 2). Support for this proposed subsection was also expressed. (T. 81 and 128).

It is noteworthy that no criticism was voiced regarding inclusion of the cost of consultants hired by the responsible agency which is provided by MEQC 44(a)(1)(bb). The EQC assumes that when such consultants are hired, their fees include fringe benefits and a factor to cover general office overhead and support staff. The fringe benefit factor is generally known or easily calculable by responsible agencies and is properly considered as an integral part of the cost of employing an individual on the staff. The EQC finds, therefore, that the rule as proposed is reasonable and necessary.

35. MEQC 44(a)(1)(bb).

This section includes the costs of consultants in the above cost determination. In a number of situations, a Responsible Agency may not have the staff or the expertise needed to prepare an adequate EIS and would have to employ expert consultants to do parts or all of the EIS. This may be the typical situation for a small local government unit which has only one or two full time staff members. This section is necessary as a recognition of that situation and as an indication that the use of consultants is a reasonable cost of EIS preparation. It is logical to include this cost because the agency must accept responsibility for preparing the EIS; to deny it assistance during the actual preparation would be unreasonable.

36. MEQC 44(a)(1)(cc).

Proposers' costs for the collection and analysis of technical data expended for the purpose of preparing the EIS are included in the above cost determinations.

In a number of situations, the proposer may wish to assist the Responsible Agency in preparing the EIS or he may have already prepared information that can be utilized in the EIS. When a proposer chooses this option, it is sensible that the cost of his work be included in determining the total EIS cost. Although the portion of the EIS assessed cost for which the proposer will receive credit is limited by MEQC 42(a), it is necessary to identify his total cost when preparing the EIS estimated cost. The EIS estimated cost forms the basis for determining the EIS assessed cost. This section is needed to clarify that the proposer's costs are a legitimate cost to be included in determining the EIS cost.

37. MEQC 44(a)(1)(dd).

This section includes other Responsible Agency direct costs. There are a number of costs the Responsible Agency would not incur if it were not responsible for preparing the EIS. These must be included in determining the EIS cost. This section is intended to identify those costs, which include costs of materials needed for monitoring programs, travel, data processing and other items necessary to obtain information for the preparation of the EIS. To provide a safeguard against an agency doing more work than is necessary to prepare an adequate EIS, the section requires the agency to provide a detailed statement of each cost. This requirement is not unreasonable, because the agency must identify these costs individually anyway in order to develop the total cost estimate.

38. MEQC 44(a)(1)(ee)

This section includes the indirect costs of the Responsible Agency not to exceed its normal operating overhead rate.

Every operation has costs that must be incurred so the concern can do business but are very difficult to attribute to any one activity. Program administration, office rental and office spplies are examples of this type of cost. The typical accounting procedure is to prorate these costs over all activities. Because the preparation of an EIS will generate these costs, like any other activity, these costs should be included in the EIS cost.

Estimating these costs will not be a difficult task, because most agencies have a standard percentage figure applicable to all such projects. Agencies without such a figure will have to justify the figure used. If the proposer disagrees with the figure, he may request the EQC to resolve the difference following the procedures established in MEQC 44.

Comments regarding inclusion of a responsible agency's indirect costs in MEQC 44(a)(1)(ee) were similar but considerably stronger than the criticism raised regarding MEQC 44(a)(1)(aa). The comments generally propounded that "Such costs are normal costs of agency operation and are not generated, as claimed [by the EQC in its Statement of Need], by the preparation of an EIS." (T. 35; see also, Pub. Ex. 18, p.2 and Pub. Ex. 27, p. 2) General support of the provision was also expressed (T. 66-71, 81 and 128).

The EQC finds that inclusion of costs figuring in EIS preparation costs is reasonable and necessary. Office rental, administration and office supplies are all examples of these costs, which are indeed necessary for EIS preparation; without offices and office supplies, EIS preparation would be difficult (Statement of Need and Evidence, T. 68). These costs would be included in any consultant's contract, so it seems inconsistant to deny its use here (T. 128); the Finding on MEQC 44(a)(1)(dd) was decided on similar grounds. Further, the record indicates that testimony from the State Planning Agency ((T. 128), the League of Minnesota Municipalities (T. 67), and others (T. 68, 81) show the existence of normal operating levels for most Responsible Agencies. The Rules provide that Responsible Agencies <u>without</u> normal operating overhead rates must justify any figures used.

39. MEQC 44(a)(1)(ff)

This section is needed to indicate that the costs of printing and distributing the EIS are reasonably included in the EIS cost. These costs are readily identifiable as necessary to prepare and distribute the EIS and must be included in determining the total EIS cost.

40. MEQC 44(a)(1)(gg)

Costs of public hearings or meetings held in conjunction with the preparation of the final EIS are included.

The purpose of this section is to indicate that the costs of such hearings or meetings will be considered a cost of preparing the EIS. The EIS Rules previously adopted by the EQC require a public hearing or public meeting to be held to receive comments on the Draft EIS. MEQC 30(d) of the EIS Rules previously adopted by the EQC requires these comments to be incoroporated into the Final EIS. Thus, the public hearing or public meeting is clearly a part of the EIS preparation.

The only comment regarding MEQC 44(a)(1)(gg) was submitted by the Duluth Area Chamber of Commerce which "believes that the costs of public hearings should not be charged against the proposer because it is the responsibility of a governmental agency to solicit public interest through public hearings and, therefore, should be a public cost." (Pub. Ex. 18, p. 2)

41. MEQC 44(a)(2)

MEQC 44(a)(aa)-(cc) excludes certain items from the above costs determination. These costs are not directly related to the preparation or distribution of the EIS and, thus, responsibility for payment can't rest with the proposer.

42. MEQC 44(a)(2)(aa)

This excludes the costs of collecting and analyzing information and data incurred before the final determination has been made that an EIS will be prepared unless the information and data was obtained for the purpose of being included in the EIS.

Subdivision 1 of Minn. Stat., § 116D.045 (1976) is clear in its intent that only the costs of preparing the EIS should be assessed to the project proposer. The EIS Rules previously adopted by the EQC generally require preparation of an Environmental Assessment Worksheet to aid in the determination of whether an EIS should be prepared. The documents are not part of the EIS. Therefore, expenditures for these documents are not reasonable costs and should not be the responsibility of the project proposer. This section is necessary to eliminate questions as to whether costs of preparing these documents are assessable under these Rules.

However, in a number of cases, during project planning the proposer may have assembled information that can be included in an EIS, should one be ordered. If this situation arises, the proposer should be able to obtain credit for that work related to the EIS. Thus, the provision is made to allow these costs. By providing for an early determination of the Responsible Agency in MEQC 27(a)(6) of these Rules, the EQC is actually encouraging the early preparation of EIS information. Both the proposer and the Responsible Agency would benefit if a portion of the EIS work were undertaken early. The proposer would benefit by the reduced time needed for EIS preparation and the agency would benefit by having its workload reduced.

Considerable concern was noted regarding MEQC 44(a)(2)(aa) about exclusion of "the costs of collecting and analyzing information and data incurred before the final determination has been made that an EIS will be prepared." (T. 17-20, 147, 150-154; Pub. Ex. 29(a), p. 4) There appeared to be no disagreement that the intent of the proposed rule was only to eliminate the cost of preliminary documents (such as an Environmental Assessment Worksheet) unless parts of the information gathered for such preliminary documents are actually used in preparing the EIS. It was suggested that the rule would be clarified, although not substantially altered, by striking the phrase "was obtained for the purpose of being" as it appears in the last part of the rule and ending the rule with the phrase "is included in the EIS." (T. 150).

The EQC finds, however, that the existing language is reasonable and necessary. The estimated EIS cost is determined prior to EIS preparation when no one knows for a certainty what will be included in the EIS. One is only sure about what is being (or has been) done in anticipation of the EIS (T. 152). The Rules permit multiple use of information, so information intended for use in an Environmental Report can also be intended for use in an Environmental Impact Statement (T. 153).

43. MEQC 44(a)(2)(bb)

This section excludes costs incurred by a private person other than the proposer or a public agency other than the Responsible Agency, unless the costs are incurred at the direction of the Responsible Agency for the preparation of material to be included in the EIS.

This section is needed because it eliminates incidental costs of third parties from the EIS estimated cost. These incidental costs could include the time and materials needed by public agencies or private persons to review and comment on the Draft EIS (including "checking" of the Responsible Agency's data). These costs are not directly related to the preparation and distribution of the EIS, and should not be included. This section does not eliminate the possibility that the Responsible Agency may reach an agreement with a third party to perform work; however, payment for that work is the responsibility of the Responsible Agency and must be identified as a cost of the Responsible Agency in its agreement with the proposer prepared under MEQC 42(a).

44. MEQC 44(a)(2)(cc)

Excluded under this section are the capital costs of equipment purchased by the Responsible Agency or its consultants for the purpose of establishing a data collection program, unless the proposer agrees to including such costs.

Equipment purchased to establish a monitoring program can usually be used for a number of different projects. Thus, the cost of such equipment should not be assigned to a specific project, but should be treated as an indirect cost to be prorated under MEQC 44(a)(1)(ee). This section is necessary to clearly establish that the total cost of equipment which will be used for many different assignments is not to be charged to one proposer. However, if the proposer believes that the purchase of such equipment will benefit his project by reducing the time required to complete the EIS, he has, and should be permitted, the option of allowing the agency to assess him part or all of the costs of such equipment. This provision permits that option, in accord with the discussion concerning the benefit accruing from shortened EIS preparation time in MEQC 42(b).

45. MEQC 44(b)

This section deals with the problems that arise when agreement cannot be reached on the project estimated cost.

It is apparent that the proposer and the Responsible Agency may disagree on several points concerning the amount to be assessed the project proposer. This particular section is needed to clarify the procedure to be followed when the disagreement concerns the EIS assessed cost because the amount requested by the Responsible Agency would exceed the amount the proposer feels is required by the Statute and these Rules. Subdivision 5 of Minn. Stat., Sec. 116D.045

(1976) defines the cost to be assessed as dependent upon the value of the proposed project. There must be a mechanism to determine the correct value of the project so that this diaagreement can be settled. The purpose of this section is to identify that mechanism.

The proposer is the only party who really knows what the project will probably cost, so it is very sensible to require him to submit the project cost estimate. However, because the Responsible Agency is proposing a specific assessment, the agency presumably has its own estimate of the project cost. (Indeed, as agencies gain experience under these Rules, they will accumulate general knowledge on how much certain types of projects cost.) Therefore, it is not unreasonable to expect the Responsible Agency to be able to make its own determination as to the project cost.

This information is needed because the EQC is directed to resolve disagreements. The Council must have as much pertinent information as possible in order to make the proper determination, including an explanation as to why certain costs should be included and estimated amount of those costs. Both parties would assist the EQC to the extent practicable, by providing this information.

The ten day time restriction is reasonable because both parties will have had 30 days in which to discuss an agreement and should have all the information at hand. All that is required is that they forward the appropriate information to the EQC. Ten days should be sufficient to organize this information.

46. MEQC 44 (b) (1)

This section details those items which shall be included in determining the project estimated cost.

This section is needed to identify those costs because the project cost is the factor that determines the total of the EIS assessed cost required by the Statute and these Rules.

Minn. Stat., § 116D.045, subd. 5 (1976) required the EIS assessed cost to be based on the value of the project. However, such a determination is often difficult to make. Often the value of the project cannot be determined until after the project has been completed. Rather than make a "crystal ball" estimate as to the total value of the project, the EQC has

chosen in most instances to use current costs that are readily and concretely identifiable and yet are as close to the value as possible.

47. MEQC 44 (b) (1) (aa)

> Included in the project estimated cost is "the current market value of all the land interests owned or to be owned by the proposer, which is included in the boundaries of the action. The boundaries shall be those defined by the action which is the subject of the EIS Preparation Notice".

This section is needed to clearly indicate that the land on which the proposed project will be constructed is a relevant cost of developing the facility and thus must be included in determining the cost of the project. The rationale for using land value rather than land cost is simply that one item to which a value can be assigned is the land on which the project will be built; indeed, land values can be easily determined at any point in time, including prior to preparation of the EIS. Land value is also not accurately reflected by land costs, due to rapidly increasing land costs. If the land had been acquired a number of years ago, its purchase price would not reflect the current value of that land. For many projects, the land component is the major cost of constructing the facility.

The last provision of this section is needed to clarify that only the land needed for that project will be used in determining the project cost. A number of situations have occurred during the EIS program history where a proposer has held substantial land interests beyond the boundaries of the project. These should not be included in making the project cost determination.

48. MEQC 44 (b) (1) (bb)

Costs of architectural and engineering studies shall be included. To adequately develop a project, it is necessary to prepare plans which guide the construction of the facility. This section is included to indicate that the costs of preparing such plans are definitely a cost of constructing the facility and must be included in determining the total project cost. The difference between these costs and other preconstruction costs, such as planning, is that these costs can be readily and quantifiably identified. It is often impossible to quantify planning costs; for example, inclusion of planning costs would mean making determinations of how much time the board of directors spent on the project and what that was worth.

49. MEQC 44 (b) (1) (cc)

Expenditures necessary to begin the physical construction or operation if the action shall be included. In addition to the preparation of construction plans, it is almost always necessary to incur costs in preparing the land for actual physical construction. These costs should definitely be considered in determining the project estimated costs because without them the construction of the facility could not proceed. These costs would include necessary site preparation costs and costs of utility extensions

50. MEQC 44 (b) (1) (dd)

Construction costs required to implement the action shall be included. This section is necessary to include the actual facility construction costs in the project estimated cost. It is obvious that these costs contribute to the total cost and must be included in making the total cost determination.

51. MEQC 44 (b) (1) (ee)

The cost of permanent fixtures shall be included. The inclusion of these costs is necessary because the items become a part of the total project and influence its value. The items included here are those that will stay with the facility regardless of ownership of the facility. This section is also included to make clear that only the costs of equipment attached to the facility are included, not the costs of items which are consumed as part of its operation.

The various items listed under MEQC 44 (b) (1) are found to be reasonable and necessary to establish parameters for determining the estimated cost of a project where an agreement thereon cannot be reached. Many comments and criticisms were offered regarding these subsections, including suggestions for clarification and improvement; the following two are found by the EQC to be necessary.

1. It was correctly observed that "is" should be changed to "are" in the first sentence of (aa)to grammatically agree with "interests." (Pub. Tr. 22)

2. A representative of the Minnesota Pollution Control Agency suggested that (cc) and/or (dd) could be improved if modified to allow specifically

for the inclusion of costs for essential public service facilities, where such costs are reasonably definable and directly attributable to the proposed project. (T. 116) There were also further suggestions that the EQC include in the rule some of the qualifying language contained in the Statement of Need relating to the rule. (T. 133; see EQC Ex. 11, p. 16) Given the limitations contained in the suggested language of the PCA, the EQC believes such addition would be reasonable to more fully reflect the project cost.

51. MEQC 44 (b) (1) (ee) continued

Two other suggested clarifications are found unnecessary:

1. Regarding 44 (b) (1) (aa), it was suggested that the rule specify the source to be used for establishing the current market value of the land (T. 132, 138-140). The EQC finds that this addition is unnecessary since land value will probably be a small component of the total estimated project cost. Given the very small percentage of the project cost that can be assessed, any differences between different sources would be minimal. (T. 139, 140). Any conflicts that do occur can be referred to the Council for resolution.

2. Regarding 44 (b) (1) (bb), it was suggested that "preconstruction costs" be substituted for the language proposed by the EQC. (Exhibit 20, p. 2). The EQC finds that this suggestion is unnecessary. There was no support for this in the record, other than one suggestion that "Preconstuction costs" be substituted for the existing language (Exhibit 20). The existing language specifies those costs that are most easily identified and quantified and also most typical-architectural and engineering studies, as explained in the Statement of Need and Evidence. Acceptance of the suggestion would make this provision less clear.

52. MEQC 44(c).

This section deals with the situation where there is disagreement about a revision of the EIS assessed cost pursuant to MEQC 43.

This section is needed to handle situations when the proposer and the Responsible Agency disagree about a revision of the EIS assessed cost. Indeed, when the EIS assessed cost must be revised, there is the possibility, as there is in the initial determination, that the parties will disagree. This section

provides a procedure to be followed when such a disagreement arises. The procedure is the same as that proposed for resolving a disagreement over the initial determination of the EIS assessed cost. There is no demonstrated need to create additional processes when the basic process is adequate to handle a variety of situations. Again, the ten day time limit should not unduly burden either party because the information will be under discussion for several days prior to the notice.

53. MEQC 44(d).

This section deals with the situation where there is disagreement about the EIS actual cost.

It is possible that one party may believe that the other party did not carry out its obligations or expend the amount of money stated in the EIS assessed cost agreement. Thus, this section is needed to provide a mechanism whereby the one party can have the EQC resolve these differences. For example, the proposer may have an indication that the Responsible Agency did not have to spend as much money as was originally agreed or vice versa.

This section allows the proposer to make sure that the costs actually expended by the Responsible Agency were necessary for EIS preparation and that he is not being assessed excessively. Similarly, the Responsible Agency can make sure that the amount of work done by the proposer is indeed as it should be. This section will also help ensure candor on the part of both parties during the original negotiations concerning the EIS assessed cost.

54. MEQC 44(e).

In this section, the EQC is given a time period within which to resolve those situations discussed in 44(a) - (d).

As mentioned previously, subdivision 2 of Minn. Stat. § 116D.045 (1976) requires the Council to resolve any disagreement between the proposer and the Responsible Agency. Thus, this section is needed to establish the procedure to be followed when the Council is asked to resolve such a disagreement. Because of the potential complexities of any disagreement, the Council will need a certain amount of time in which to analyze the information and establish the proper figures. Fifteen days appears to be the minimum time required.

Since the Council generally meets monthly, it is necessary to coordinate the time limit accordingly. The Council cannot find itself in the position of having to make a complicated determination without adequate time for preparation; this could happen if the Council were notified of a disagreement only a few days before its monthly meeting. This section should prevent that situation.

Setting this time limit also ensures the parties that a timely response to the disagreement will be made by the EQC. This time limitation must be extendable if a public hearing is held, because it will not always be possible to hold a hearing and make a decision within the allotted time.

55. MEQC 44(f).

This section establishes the availability of a hearing to resolve the above-discussed situations.

Chapter 15 of the Minnesota Statutes requires that a contested case hearing be held when a party that may be aggrieved by a decision of a public agency requests such a hearing to be held. This section is thus needed to provide for that situation and to assure all parties that this option is available to them. The procedures outlined in MEQC 28(a)(3) are the same as those provided by law.

56. MEQC 44(g).

This section establishes a method whereby the proposer can, by making a one-half cash payment, set the EIS process underway despite disagreement as to assessed cost.

This section is extremely important and must be included to eliminate time delays which could result if the EQC is called upon to resolve a disagreement. Minn. Stat. § 116D.045 (1976) specifies that EIS preparation cannot begin until at least one-half of the assessed cost is paid. This section provides a mechanism whereby the EIS preparation can begin even if the proposer disagrees with the EIS assessed cost proposed by the Responsible Agency. However, in order to get the EIS process underway, the proposer must abide by the Responsible Agency's determination of the EIS assessed cost

until EQC resolution of the disagreement. (The use of the Responsible Agency's cost is based upon subdivision 1 of Minn. Stat. § 116D.045 (1976), which requires the Responsible Agency to determine the EIS assessed cost). If the proposer agrees to make a payment based upon that cost, the Responsible Agency should not have any problem in commencing the EIS preparation. By making this payment, the proposer does not have to agree that the payment is correct and would not jeopardize his position that the Responsible Agency's proposed EIS assessed cost in incorrect.

Because the Responsible Agency's proposed EIS assessed cost may be altered, it is necessary to provide a mechanism which allows future payments made by the proposer to be adjusted, should the EQC make a determination that the proposed EIS assessed cost of the Responsible Agency is not proper.

57. In each of rules MEQC 44(a)-(d), there is a time limit of ten or 20 days imposed for various actions to be taken. Unlike the time limits imposed for payment of money, these limits are reasonable and necessary for the expeditious resolution of disagreements and cause no burden on either the proposer or the EQC.

58. The suggestion was made that rule 44 be reorganized with those parts specifying items to be included or excluded in the determination of EIS and project costs reconstituted as separate rules. The EQC finds this suggestion meritorious. (Pub. Ex. 27, p. 2; T. 132). The EQC staff agreed in the hearing that such change would do no harm to the rules and would be acceptable to them. (T. 135-136). The EQC finds, therefore, that MEQC 44(a)(1) and MEQC 44(a)(2) should be set forth as one rule, and that MEQC 44(b)(1) should be set forth as a separate rule. Numbering and references would, of course, be changed accordingly. Such reorganization would not constitute a substantial change requiring rehearing.

59. MEQC 45(a).

MEQC 45 concerns payment of the EIS assessed cost to the EQC or local agency. To achieve a predictable process, it is necessary to establish time periods for as many stages of the process as possible. The following time periods take into consideration the mandate of the Legislature in

Minn. Stat. § 116D.045 (1976), the ability of the proposer and the Responsible Agency to comply, and the recognition that certain situations may require specific language in these Rules.

MEQC 45(a) requires cash payments to be made by proposers within ten days [MEQC 45(a)(1), 45(a)(2), 45(a)(3), 45(a)(3)(aa) and 45(a)(3)(bb)]. For the reasons cited in MEQC 43 (a)(2)(bb), the EQC finds that a 30 day period is more reasonable.

60. MEQC 45(a)(1).

Subdivision 4 of Minn. Stat. § 116D.045 (1976) requires the proposer to pay one-half of the EIS assessed cost before preparation of the EIS can begin. As discussed earlier, for the purpose of these Rules, the EIS assessed cost includes two parts: the cash payment and the costs incurred by the proposer for the preparation of information. This section requires payment of one-half of the cash payment portion only before EIS preparation can commence, since costs of the information preparation may not be incurred until after EIS preparation has begun. This payment is needed to enable the Responsible Agency to begin making commitments needed to begin EIS preparation.

The time requirement included on this section is necessary to assure the Responsible Agency that the payment will be made in a timely fashion (enabling it to meet necessary commitments) and to assure the proposer that EIS preparation will begin without undue delay. This requirement should not create a hardship for the proposer; by the time the payment is due, he should have had ample opportunity to arrange the necessary financing. Even if the proposer disputes the need for the EIS and chooses not to prepare for its financing before the final determination on the need for the EIS is made, he would have the 30 days of negotiation time to arrange financing. Even though the exact amount of the cash payment would not be known until the end of the negotiation, in most cases, the proposer would receive a good indication of the approximate amount during the negotiation.

61. MEQC 45(a)(2).

This section requires that at least three-fourths of the cash payment be paid after the draft EIS is submitted to the EQC. Requirement of this payment is necessary to assist local government units who are financially unable to carry the costs of preparing and distributing an EIS. Most local units do not have sufficient flexibility to cover expenditures for activities not already included in their budgets. Preparation of an EIS would be an infrequent occurence for most local units and very few, if any, would

include an EIS preparation item in their budgets. For an EIS costing $20,000, the payment required by this section would be $5,000, a substantial amount when compared to the budgets of some local units. Requirement of this payment is reasonable when one considers that by the time a Draft EIS is filed, the majority of the costs for preparing the EIS have been incurred; if a local government unit were forced to absorb those costs until a later time, it is very possible that an undue hardship would be created for the local government unit and its other activities. This limited time period should ensure that local government units receive the needed monies in a timely fashion.

The thirty day time requirement should not place any burden on the proposer; he should be able to arrange the necessary financing by the time a Draft EIS is filed. He knows about this payment and the amount of the payment when the EIS assessed cost is determined - generally 120 days before the payment is due. Many times he will be aware of the amount even before that.

62. MEQC 45(a)(3).

This section requires that a final cash payment be made within thirty days after the EQC has adopted the Final EIS. The purpose of this section is to ensure that the final payment required of the proposer is made within a reasonable time. Although the proposer has thirty days to make the payment, it will be to his advantage to make this payment as soon as possible. Minn. Stat. §§ 116D.045, subd. 4 (1976) clearly states that no state permits can be issued until the assessed cost of preparing and distributing the EIS has been paid in full. As in the previous section, this time period should not place any hardship on the proposer. He will know about the payment and its amount at the end of the negotiation period - some four to six months earlier.

Once again, it must be remembered that a local government unit may be in financial difficulties because of the unanticipated expenditures and must recover these amounts as soon as possible.

63. MEQC 45(a)(3)(aa)

MEQC 45(a)(3)(aa) allows the proposer to withhold final cash payment until the Responsible Agency has submitted a detailed accounting of the EIS actual cost.

The accounting may indicate that his obligations are less than originally anticipated because the EIS actual cost is less than the EIS estimated cost--his payments of the EIS assessed cost were based upon the EIS estimated cost. To avoid having to apply for a refund, he may prefer to withhold the final payment. This section is provided for the proposer's convenience; it is necessary to permit him this option. However, it must be remembered that no state permits can be issued until the final payment has been made.

The time period is reasonable for the reasons stated in earlier sections. The proposer has had ample opportunity to arrange financing by the time this payment is due. Even though his financing was arranged on the basis of the earlier negotiated EIS assessed cost, it would in all cases be sufficient to cover the final EIS payment. Under these Rules, his responsibility for payment of the EIS actual cost cannot exceed the amount of the EIS assessed cost. If the EIS actual cost is larger than the EIS assessed cost, the difference is the responsibility of the Responsible Agency and cannot be assessed to the proposer.

64. MEQC 45(a)(3)(bb)

If the proposer withholds the final payment until the Responsible Agency's detailed accounting is supplied to him, and if he then disagrees with the agency's cost statement, he has the option of withholding the final payment until after the EQC resolves the disagreement. This section is necessary to make clear that the proposer is not required to make the final payment until the issue of the EIS actual cost has been finally resolved by the EQC; again, this would apply only when the EIS actual cost is less than the EIS assessed cost or when the proposer believes that the Responsible Agency included costs which should not have been included or that the amounts charged should be less.

The purpose and reasons for including the time limit are the same as those given in the previous section.

65. MEQC 45(b)

MEQC 45(b) provides for the submission of a detailed accounting of actual costs. The purpose of this section is to provide each party with the information it needs to determine whether the original agreement or determination was followed. It is logical to assume that the proposer will want to know whether he may have paid more than necessary and that the agency wants to know if the proposer adhered to the negotiated agreement.

The time periods are designed to eliminate any delays in completing the process and to enable any disagreement to be brought to the EQC in a timely fashion. There should be no hardship placed on either party by having to comply with the time requirement, for both should be keeping a running account of expenditures; cost figures should be available within a very short period of time.

The last provision of this section describes the procedure to be followed if the total payments made by the proposer exceed the cash outlay of the Responsible Agency. Although the Legislature did not specifically provide for this occurence, the situation could arise because the payments made by the proposer were made on the basis of estimates which could vary from what was actually expended. No hardship on either party is anticipated. The proposer should not pay more than the amount actually needed.

66. MEQC 45(c)

This section provides that if the Responsible Agency is a state agency, the proposer shall make all cash payments of the EIS assessed cost to the EQC which shall deposit such payments in the state's general fund. (see Finding 29)

The need for this section is dictated by Minn. Stat., § 116D.045, subds. 3 and 5 (1976). Subdivision 3 clearly states that all money received by the EQC shall be deposited in the general fund. Subdivision 5 goes on to say that when a state agency is the Responsible Agency, the proposer shall pay all monies directly to the EQC. It is plainly the intent of the Statute that no funds generated by this process shall be paid directly to a state agency.

67. MEQC 45(d)

This section states that if the Responsible Agency is a Local Agency, the proposer shall make all cash payments of the EIS assessed cost directly to the Local Agency.

Although subdivisions 3 and 5 of Minn. Stat., § 116D.045 (1976) appear to be in contradiction, the Legislature by spelling out in subdivision 5 who is to receive payments has clearly indicated its preference that a local government unit receive the payment directly. This section is needed to clearly indicate that a difference exists in the methods of making EIS preparation cost payments when a local agency is the Responsible Agency.

68. MEQC 45(d)(1)

MEQC 45(d)(1) provides that the Local Agency shall notify the EQC in writing of receipt of each payment.

When a local government unit is the Responsible Agency, other local and state agencies may have permit authority over the project. This section recognizes that there must be a mechanism whereby those other agencies will be notified when the final cash payment has been made by the proposer. Subdivision 4 of Minn. Stat., §§. 116D.045 (1976) prohibits state agencies from issuing permits for the construction or operation of a project until the EIS assessed cost has been paid in full. The most reasonable approach to notifying these agencies is for the EQC to accept this responsibility rater than placing the burden on the local government unit. The EQC, because of its coordinating role among state agencies as assigned by Minn. Stat., §§ 116C.04 (1973), is more likely to be aware of which state agencies have permit authority over a project.

In addition to the final payment, the EQC must be notified of all other payments made by the proposer. The need for this provision should be evident. The EQC has the responsibility for administering these Rules and may find it necessary to settle disagreements between the Responsible Agency and the proposer. Thus, the EQC must be kept advised of the various transactions between the two parties.

To facilitate the permitting process, the agencies must be informed as soon as possible after the final payment is made. Ten days should be ample time for the local government unit to make sure the payment is correct and then notify the EQC. Immediate notification of the other payments is needed so that the EQC can effectively monitor the beginning of the EIS preparation and the progress of the preparation.

69. MEQC 45(e)

MEQC 45(e) provides that no Responsible Agency shall commence with the preparation of an EIS until at least one-half of the proposer's required cash payment of the EIS assessed cost has been paid. Notwithstanding other sections of these Rules, the Responsible Agency shall prepare and file the Draft EIS within 120 days of the date of this payment. This time limitation may be extended by the Council only for good cause upon written request by the Responsible Agency.

This section is included in the Rules because subdivision 4 of Minn. Stat., § 116D.045 (1976) requires that EIS preparation shall not begin until at least one-half of the EIS assessed cost has been paid. For the purpose of these Rules, the EIS assessed cost has been divided into two parts (as explained by

the definition ... cost). This section mandates that one-half of the cash payment portion of the EIS assessed cost be paid before EIS preparation can begin. The payment is needed to ensure that the Responsible Agency will have adequate financial resources to begin the EIS preparation. This cash payment will be especially important to local units choosing to use consultants in preparing the EIS. Without this payment, many local units would be unable to initiate EIS preparation. There is no burden placed on the proposer as this section does not require that one-half of the payments for work done by the proposer be made at this time, only that one-half of the cash payment be made.

MEQC 29(a)(1) of the EIS Rules previously adopted by the EQC requires that a Draft EIS be prepared and filed within 120 days after the EIS Preparation Notice has been issued. Because the time required for negotiation of the EIS assessed cost may significantly cut into this 120 days, it is only reasonable to begin the 120 day time clock after the negotiation has taken place and payment has been made; this would avoid the paperwork of having to request time extensions in each case. It is logical to assume that Draft EISs requiring preparation payments by the proposer will take the same amount of time to be produced as a Draft EIS which does not. The option of extending this period is consistent with the option provided by the EIS Rules previously adopted.

70. MEQC 45(f)

This section requires that upon receipt or notice of receipt of the final payment by the proposer, the Council shall notify each state agency having a possible governmental permit interest in the action that the final payment has been received.

By proposing this section, the EQC accepts the responsibility of coordinating environmental activities assigned to it by Minn. Stat., § 116C.04 (1973). This section relieves other agencies of the burden of identifying which state agencies have a permit interest in a project. The EQC has the responsibility of administering these Rules and the Rules governing the EIS process. Because of this involvement, the EQC is in the best position to know the status of the EIS and payments made by the proposer.

71. MEQC 45(f)(1)

This section precludes the issuance of governmental permits until the required cash payments have been made.

Minn. Stat., § 116D.04, subd. 4 (1976) dictates the need for this section. It is clearly the intent of subdivision 4 that, even though the EIS has been completed, the proposed project cannot proceed until the proposer has met his financial responsibilities. It must be noted that this section applies only to state permits and does not address the issuance of local permits. (Even if that is the case, it is highly unlikely that a project will be allowed to proceed until all payments are made.) Every project for which an EIS was prepared under the auspices of MEPA during the past three years has required a state permit.

When a series of projects are included in a Related Actions EIS, it is not reasonable to penalize a proposer who complies with these Rules if one of the other project proposers does not comply. The provision to allow permits to be issued on a Related Actions EIS project is necessary to make clear that a project proposer will not be penalized because another party has not paid his portion of the EIS assessed cost.

72. MEQC 45(g)

This section provides that all time periods included in MEQC 42-45 may be extended by the Council Chairman only for good cause upon written request by the proposer or the Responsible Agency.

This section is included at this point of the Rules as an alternative to providing similar provisions whenever a time requirement is placed on a proposer or a Responsible Agency. The time periods included in these Rules are structured to create a predictable process which can be followed in the majority of situations. The time periods are designed to be restrictive to prevent either party from imposing unwarranted delays in the proces. However, this section is needed to provide for the unusual circumstances that may occur when the specified time period would place an undue burden on either party. It is possible that either the Responsible Agency or the proposer may need additional time to generate information necessary to reach agreement on EIS preparation responsibilities, the proposer may need additional time to arrange financing for the payment of preparation costs, or either party may need additional time to compile financial information in the event of a disagreement between the parties. It must be noted that time extensions will be looked upon as the exception and not as normal operating procedure.

The decision to grant time extensions must be left up to the Chairman. The full EQC meets only on a monthly basis and, if each decision required EQC action, potential delays of up to 30 days could result. Since most time extensions would be for periods of less than 30 days, requiring EQC action would defeat the purpose of the restrictive time periods and could impose burdens on one party.

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Before the

ENVIRONMENTAL QUALITY COUNCIL

In the Matter of the Proposed Rules of the MEQC for Assessing the Cost of Preparing Environmental Impact Statements.

STAFF PROPOSED FINDINGS OF FACT AND CONCLUSIONS

ERRATA SHEET - EIS COST ASSESSMENT RULES

1. Add to finding 9 on page 5 the following sentence: "The State Planning Agency's suggestion for clarification of this definition (Exhibit 22) appears to be in line with the intent of that definition and is necessary to improve the clarity of that rule."

2. Sections of finding 22 have been switched accidently. lines 26 - 32 on page 14 and lines 1 - 31 on page 15 should be placed after line 24 on page 13.

3. The reference to the 3M Company on line 23 of page 15 should be the Dayton-Hudson Corporation.

4. The last two lines on page 22 did not reproduce clearly. They should read "Opposition to the ten-day provision stressed that (1) it is unreasonable due to the difficulties inherent in a proposer's administrative procedures for"

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

COUNTY OF RAMSEY

In the Matter of the Rules of the Minnesota Environmental Quality Council for assessing the costs of Preparing Environmental Impact Statements.

FINDINGS OF FACT

The above-entitled matter came on for hearing before a hearing officer appointed by the Chief Hearing Examiner of the State Board of Hearing Examiners in Conference Room A of the Capitol Square Building at 9:00 a.m. on November 17, 1976, pursuant to the Notice of Hearing after proper notice required by Minn. Stat. § 15.0412 (1974) 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 and criteria, the Minnesota Environmental Quality Council, at its February 8, 1977 meeting, adopted by resolution, the attached Findings of Fact.

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

Peter Vanderpoel

Peter Vanderpoel, Chairman

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

In the Matter of the Rules of the Minnesota Environmental Quality Council for assessing the cost of Preparing Environmental Impact Statements.

ORDER FOR ADOPTING RULES

The above-entitled matter came on for hearing before a hearing officer appointed by the Chief Hearing Examiner of the State Board of Hearing Examiners in Conference Room A of the Capitol Square Building at 9:00 a.m. on November 17, 1976, pursuant to the Notice of Hearing after proper notice required by Minn. Stat. § 15.0412 (1974) 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 and criteria, and having confirmed the need for the above-captioned rules, the Minnesota Environmental Quality Council, at its February 8, 1977 meeting, adopted the above-captioned and attached rules.

NOW THEREFORE, IT IS ORDERED that these rules identified as MEQC 22 through MEQC 47 are adopted this ____ day of _____, 1977, pursuant to authority vested in me by law and resolution of the Minnesota Environmental Quality Council.

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

Peter Vanderpoel

Peter Vanderpoel, Chairman

February 9, 1977

(These rules have been adopted by the Minnesota Environmental Quality Council, will not be in effect until they have been approved by the Attorney General and filed with the Secretary of State.)

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL
ENVIRONMENTAL IMPACT STATEMENT RULES

"RULES FOR ASSESSING THE COST
OF PREPARING ENVIRONMENTAL IMPACT STATEMENTS"

MEQC 22 DEFINITIONS

A]. "EIS Estimated Cost" means the total of all expenditures of the Responsible Agency and the Proposer anticipated to be necessary for the preparation and distribution of the EIS.

B]. "EIS Assessed Cost" means that portion of the EIS estimated cost paid by the Proposer in the form of a cash payment to the Council or to the Local Agency and/or for the collection and analysis of technical data incorporated in the EIS.

C]. "EIS Actual Cost" means the total of all allowable expenditures incurred by the Responsible Agency and the Proposer in preparing and distributing the EIS.

D]. "Final Determination" means the final decision made by the Resonsible Agency or the Council that an EIS will be prepared on an action.

E]. "Private Person" means a human being, unincorporated association, partnership, trust, or corporation.

F]. "Project Estimated Cost" means the total of all allowable expenditures of the Proposer anticipated to be necessary for the implementation of an action.

MEQC 27 SELECTION OF PREPARERS, PREPARATION OF EAW AND NOTICE OF EAW CONCLUSIONS

A.6. The Proposer of an action or a Public Agency may request the Council to designate a Responsible Agency before the final determination has been made that an EIS will be prepared on that action. The Council may designate a Responsible Agency for the purpose of identifying the information and data needed by the Responsible Agency for preparation of the EIS.

CHAPTER FIFTEEN
ASSESSING THE COST OF PREPARING ENVIRONMENTAL IMPACT STATEMENTS

MEQC 41 ACTIONS REQUIRING AN ASSESSMENT OF THE EIS PREPARATION COST

When a private person proposes to undertake an action, and the final determination has been made that an EIS will be prepared by a public agency on that action, the Proposer shall be assessed for the reasonable costs of preparing and distributing that EIS in accord with MEQC 42-46.

MEQC 42 DETERMINING THE EIS ASSESSED COST

A. Within 30 days after the final determination has been made that an EIS will be prepared, the Responsible Agency shall submit to the Council a written agreement signed by the Proposer and the Responsible Agency. The agreement shall include the EIS estimated cost, the EIS assessed cost, and a brief description of the tasks and the cost of each task to be performed by each party in preparing and distributing the EIS. Those items identified in MEQC 43 A_x and B_x may be used as a guideline in determining the EIS estimated cost. The EIS assessed cost shall identify the Proposer's costs for the collection and analysis of technical data to be supplied to the Responsible Agency and the costs which will result in a cash payment by the Proposer to the Council if a state agency is the Responsible Agency or to a Local Agency when it is the Responsible Agency. If an agreement cannot be reached, the Responsible Agency shall so notify the Council within 30 days after the final determination has been made that an EIS will be prepared.

B. The EIS assessed cost shall not exceed the following amounts unless the Proposer agrees to an additional amount.

1. There shall be no assessment for the preparation and distribution of an EIS for an action which has a project estimated cost of one million dollars or less.

2. For an action whose project estimated cost is more than one million dollars but is ten million dollars or less, the EIS assessed cost shall not exceed .3 percent of the project estimated cost except that the project estimated cost shall not include the first one million dollars of such cost.

3. For an action whose project estimated cost is more than ten million dollars but is 50 million dollars or less, the EIS assessed cost shall not exceed .2 percent of each dollar of such cost over ten million dollars in addition to the assessment in (2) above.

4. For an action whose project estimated cost is more than 50 million dollars, the EIS assessed cost shall not exceed .1 percent of each dollar of such cost over 50 million dollars in addition to the assessment in (2) and (3) above.

C. The Proposer and the Responsible Agency shall include in the EIS assessed cost the Proposer's costs for the collection and analysis of technical data which the Responsible Agency incorporates into the EIS. The amount included shall not exceed one third of the EIS assessed cost unless a greater amount is agreed to by the Responsible Agency. When practicable, the Proposer shall consult with the Responsible Agency before incurring such costs.

D. Federal/State EIS. When a joint Federal/State EIS is prepared pursuant to MEQC 25 F.4, and the Council designates a non-federal agency as the Responsible Agency, only those costs of the state Responsible Agency may be assessed to the Proposer. The Responsible Agency and the Proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the Council in accord with these Rules.

E. Related Actions EIS. When specific actions are included in a Related Actions EIS, only the portion of the EIS estimated cost that is attributable to each specific action may be used in determining the EIS assessed cost for its Proposer. The Responsible Agency and the Proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the Council in accord with these Rules.

ESTIMATED COST

A. In determining the EIS estimated cost or the EIS actual cost, the following items shall be included:

1. The costs of the Responsible Agency's staff time including direct salary and fringe benefit costs.

2. The cost of consultants hired by the Responsible Agency.

3. The Proposer's costs for the collection and analysis of technical data expended for the purpose of preparing the EIS.

4. Other direct costs of the Responsible Agency for the collection and analysis of information or data necessary for the preparation of the EIS. These costs shall be specifically identified.

5. Indirect costs of the Responsible Agency not to exceed the Responsible Agency's normal operating overhead rate.

6. The cost of printing and distributing the Draft EIS and the Final EIS.

7. The costs of any public hearings or public meetings held in conjunction with the preparation of the Final EIS.

B. The following items shall not be included in determining the EIS estimated cost or the EIS actual cost:

1. The costs of collecting and analyzing information and data incurred before the final determination has been made that an EIS will be prepared unless the information and data was obtained for the purpose of being included in the EIS.

2. Costs incurred by a private person other than the Proposer or a public agency other than the Responsible Agency, unless the costs are incurred at the direction of the Responsible Agency for the preparation of material to be included in the EIS.

3. The capital costs of equipment purchased by the Responsible Agency or its consultants for the purpose of establishing a data collection program, unless the Proposer agrees to including such costs.

C. The following items shall be included in determining the project estimated cost:

1. The current market value of all the land interests, owned or to be owned by the Proposer, which are included in the boundaries of the action. The boundaries shall be those defined by the action which is the subject of the EIS Preparation Notice.

2. Costs of architectural and engineering studies for the design or construction of the action.

3. Expenditures necessary to begin the physical construction or operation of the action.

4. Construction costs required to implement the action including the costs of essential public service facilities where such costs are directly attributable to the proposed action.

5. The cost of [illegible] fixtures.

REVISING THE EIS ASSESSED COST

A. If the Proposer substantially alters the scope of the action after the final determination has been made that an EIS will be prepared and the EIS assessed cost has been determined, the Proposer shall immediately notify the Responsible Agency and the Council.

1. If the change will likely result in a net change of greater than 5% in the EIS assessed cost, the Proposer and the Responsible Agency shall make a new determination of the EIS assessed cost. The determination shall give consideration to costs previously expended or irrevocably obligated, additional information needed to complete the EIS and the adoption of existing information to the revised action. The Responsible Agency shall submit either a revised agreement or a notice that an agreement cannot be reached following the procedures of MEQC 42 A_X except that such agreement or notice shall be provided to the Council within 20 days after the Proposer notifies the Responsible Agency and the EQC of the change of the action. If the changed action results in a revised project estimated cost of one million dollars or less, the Proposer shall not be liable for further cash payments to the Council or to the Local Agency beyond what has been expended or irrevocably obligated by the Responsible Agency at the time it was notified by the Proposer of the change in the action.

2. If the Proposer decides not to proceed with the proposed action, the Proposer shall immediately notify the Responsible Agency and the Council. The Responsible Agency shall immediately cease expending and obligating the Proposer's funds for the preparation of the EIS.

a. If cash payments previously made by the Proposer exceed the Responsible Agency's expenditures or irrevocable obligations at the time of notification, the Proposer may apply to the Council or to the Local Agency for a refund of the overpayment. The refund shall be paid as expeditiously as possible.

b. If cash payments previously made by the Proposer are less than the Responsible Agency's expenditures or irrevocable obligations at the time of notification, the Responsible Agency shall notify the Proposer and the Council within 10 days after it was notified of the project's withdrawal. Such costs shall be paid by the Proposer within 30 days after the Responsible Agency notifies the Proposer and the Council.

B. If, after the EIS assessed cost has been determined, the Responsible Agency or the Proposer uncovers a significant environmental problem that could not have been reasonably foreseen when determining the EIS assessed cost, the party making the discovery shall immediately notify the other party and the Council. If the discovery will likely result in a net change of greater than 5% in the EIS assessed cost, the Proposer and the Responsible Agency shall make a new determination of the EIS assessed cost. The Responsible Agency shall submit either a revised agreement or a notice that an agreement cannot be reached following the procedures of MEQC 42 A except that such agreement or notice shall be provided to the Council within 20 days after both parties and the Council were notified.

MEQC 45 DISAGREEMENTS REGARDING THE EIS ASSESSED COST

A. If the Proposer and the Responsible Agency disagree about the information to be included in the EIS or the EIS assessed cost, the Proposer and the Responsible Agency shall each submit a written statement to the Council identifying the information each recommends be included in the EIS, the EIS estimated cost, and the project estimated cost within 10 days after the Responsible Agency notifies the Council that an agreement could not be reached. The statements shall include a discussion of the need to include the information in the EIS, the identification of the information and data to be provided by each party, the EIS preparation costs identified in MEQC 43 A and B as they pertain to the information to be included in the EIS, a brief explanation of the costs, and a discussion of alternative methods of preparing the EIS and the costs of those alternatives.

B. If the Proposer and the Responsible Agency disagree about the project estimated cost, the Proposer shall submit in writing a detailed project estimated cost in addition to the requirements of section A above. The Responsible Agency may submit a written detailed project estimated cost in addition to the requirements of section A above. The statements shall be submitted to the Council within 10 days after the Responsible Agency notifies the Council that an agreement could not be reached. The project estimated cost shall include the costs identified in MEQC 43 C and a brief explanation of the costs. The estimates shall be prepared according to the categories in MEQC 43 so as to allow a reasonable examination as to their completeness.

C. If the Proposer and the Responsible Agency disagree about a revision of the EIS assessed cost prepared following the procedures in MEQC 44, the Proposer and the Responsible Agency shall use the applicable procedures described in MEQC 45 A or B in resolving their disagreement except that all written statements shall be provided to the Council within 10 days after the Responsible Agency notifies the Council that an agreement cannot be reached.

D. If the Proposer and the Responsible Agency disagree about the EIS actual cost as determined by MEQC 46 B, the Proposer and the Responsible Agency shall prepare a written statement of their EIS actual cost and an estimate of the other party's EIS actual cost. The items included in MEQC 43 A and B shall be used in preparing the EIS actual cost statements. These statements shall be submitted to the Council and the other party within 20 days after the Council has accepted the Final EIS.

E. The Council at its first meeting held more than 15 days after being notified of a disagreement shall make any determination required by sections A through D above. The Council shall consider the information provided by the Proposer and the Responsible Agency and may consider other reasonable information in making its determination. This time limit shall be waived if a hearing is held pursuant to MEQC 45 F.

F. If either the Proposer or the Responsible Agency so requests, the Council shall hold a hearing to facilitate it in making its determination. The hearing shall follow the procedures outlined in MEQC 28 A.3.

G. Nothing in sections A through F above shall prevent the Proposer from making one half of the cash payment as recommended by the Responsible Agency's proposed EIS assessed cost for the purpose of commencing the EIS process. If the Proposer makes the above cash payment and if the required cash payment is altered by the Council's determination, the remaining cash payments shall be adjusted accordingly.

PAYMENT OF THE EIS ASSESSED COST

A. The Proposer shall make all cash payments to the Council or to the Local Agency according to the following schedule:

1. At least one-half of the Proposer's cash payment shall be paid within 30 days after the EIS assessed cost has been submitted to the Council pursuant to MEQC 42 A or has been determined by the Council pursuant to MEQC 45 E or F.

2. At least three-fourths of the Proposer's cash payment shall be paid within 30 days after the Draft EIS has been submitted to the Council.

3. The final cash payment shall be paid within 30 days after the Council has accepted the Final EIS.

   a. The Proposer may withhold final cash payment of the EIS assessed cost until the Responsible Agency has submitted a detailed accounting of its EIS actual cost to the Proposer and the Council. If the Proposer chooses to wait, the remaining portion of the EIS assessed cost shall be paid within 30 days after the EIS actual cost statement has been submitted to the Proposer and the Council.

   b. If the Proposer has withheld the final cash payment of the EIS assessed cost pending resolution of a disagreement over the EIS actual cost, such payment shall be made within 30 days after the Council has determined the EIS actual cost.

B. The Proposer and the Responsible Agency shall submit to each other and to the Council a detailed accounting of the actual costs incurred by them in preparing and distributing the EIS within 10 days after the Council has accepted the Final EIS. If the cash payments made by the Proposer exceed the Responsible Agency's EIS actual cost, the Proposer may apply to the Council or to the Local Agency for a refund of the overpayment. The refund shall be paid as expeditiously as possible.

C. If the Responsible Agency is a state agency, the Proposer shall make all cash payments of the EIS assessed cost to the Council which shall deposit such payments in the state's general fund.

D. If the Responsible Agency is a Local Agency, the Proposer shall make all cash payments of the EIS assessed cost directly to the Local Agency.

1. The Local Agency shall notify the Council in writing of receipt of each payment within 10 days following its receipt.

E. No Responsible Agency shall commence with the preparation of an EIS until at least one-half of the Proposer's required cash payment of the EIS assessed cost has been paid. Notwithstanding other sections of these Rules, the Responsible Agency shall prepare and file the Draft EIS within 120 days of the date of this payment. This time limitation may be extended by the Council only for good cause upon written request by the Responsible Agency.

F. Upon receipt or notice of receipt of the final payment by the Proposer, the Council shall notify each state agency having a possible governmental permit interest in the action that the final payment has been received.

1. Other laws notwithstanding, a state agency shall not issue any governmental permits for the construction or operation of an action for which an EIS is prepared until the required cash payment of the EIS assessed cost for the action or that portion of a Related Actions EIS have been paid in full.

G. Except as provided in MEQC 46 E all time periods included in MEQC 42-46 may be extended by the Council Chairman only for good cause upon written request by the Proposer or the Responsible Agency.

MEQC 43 DISAGREEMENTS REGARDING THE EIS ASSESSED COST

A. If the Proposer and the Responsible Agency disagree about the information to be included in the EIS or the EIS assessed cost, the Proposer and the Responsible Agency shall each submit a written statement to the Council identifying the information each recommends be included in the EIS, the EIS estimated cost, and the project estimated cost within 10 days after the Responsible Agency notifies the Council that an agreement could not be reached. The statements shall include a discussion of the need to include the information in the EIS, the identification of the information and data to be provided by each party, the EIS preparation costs identified in MEQC 43 A and B as they pertain to the information to be included in the EIS, a brief explanation of the costs, and a discussion of alternative methods of preparing the EIS and the costs of those alternatives.

B. If the Proposer and the Responsible Agency disagree about the project estimated cost, the Proposer shall submit in writing a detailed project estimated cost in addition to the requirements of section A above. The Responsible Agency may submit a written detailed project estimated cost in addition to the requirements of section A above. The statements shall be submitted to the Council within 10 days after the Responsible Agency notifies the Council that an agreement could not be reached. The project estimated cost shall include the costs identified in MEQC 43 C and a brief explanation of the costs. The estimates shall be prepared according to the categories in MEQC 43 so as to allow a reasonable examination as to their completeness.

C. If the Proposer and the Responsible Agency disagree about a revision of the EIS assessed cost prepared following the procedures in MEQC 44, the Proposer and the Responsible Agency shall use the applicable procedures described in MEQC 45 A or B in resolving their disagreement except that all written statements shall be provided to the Council within 10 days after the Responsible Agency notifies the Council that an agreement cannot be reached.

D. If the Proposer and the Responsible Agency disagree about the EIS actual cost as determined by MEQC 46 B, the Proposer and the Responsible Agency shall prepare a written statement of their EIS actual cost and an estimate of the other party's EIS actual cost. The items included in MEQC 43 A and B shall be used in preparing the EIS actual cost statements. These statements shall be submitted to the Council and the other party within 20 days after the Council has accepted the Final EIS.

E. The Council at its first meeting held more than 15 days after being notified of a disagreement shall make any determination required by sections A through D above. The Council shall consider the information provided by the Proposer and the Responsible Agency and may consider other reasonable information in making its determination. This time limit shall be waived if a hearing is held pursuant to MEQC 45 F.

F. If either the Proposer or the Responsible Agency so requests, the Council shall hold a hearing to facilitate it in making its determination. The hearing shall follow the procedures outlined in MEQC 28 A.3.

G. Nothing in sections A through F above shall prevent the Proposer from making one half of the cash payment as recommended by the Responsible Agency's proposed EIS assessed cost for the purpose of commencing the EIS process. If the Proposer makes the above cash payment, [illegible] If the required cash payment is altered by the Council's determination, the remaining cash payments shall be adjusted accordingly.

PAYMENT OF THE EIS ASSESSED COST

A. The Proposer shall make all cash payments to the Council or to the Local Agency according to the following schedule:

1. At least one-half of the Proposer's cash payment shall be paid within 30 days after the EIS assessed cost has been submitted to the Council pursuant to MEQC 42 A or has been determined by the Council pursuant to MEQC 45 E or F.

2. At least three-fourths of the Proposer's cash payment shall be paid within 30 days after the Draft EIS has been submitted to the Council.

3. The final cash payment shall be paid within 30 days after the Council has accepted the Final EIS.

   a. The Proposer may withhold final cash payment of the EIS assessed cost until the Responsible Agency has submitted a detailed accounting of its EIS actual cost to the Proposer and the Council. If the Proposer chooses to wait, the remaining portion of the EIS assessed cost shall be paid within 30 days after the EIS actual cost statement has been submitted to the Proposer and the Council.

   b. If the Proposer has withheld the final cash payment of the EIS assessed cost pending resolution of a disagreement over the EIS actual cost, such payment shall be made within 30 days after the Council has determined the EIS actual cost.

B. The Proposer and the Responsible Agency shall submit to each other and to the Council a detailed accounting of the actual costs incurred by them in preparing and distributing the EIS within 10 days after the Council has accepted the Final EIS. If the cash payments made by the Proposer exceed the Responsible Agency's EIS actual cost, the Proposer may apply to the Council or to the Local Agency for a refund of the overpayment. The refund shall be paid as expeditiously as possible.

C. If the Responsible Agency is a state agency, the Proposer shall make all cash payments of the EIS assessed cost to the Council which shall deposit such payments in the state's general fund.

D. If the Responsible Agency is a Local Agency, the Proposer shall make all cash payments of the EIS assessed cost directly to the Local Agency.

1. The Local Agency shall notify the Council in writing of receipt of each payment within 10 days following its receipt.

E. No Responsible Agency shall commence with the preparation of an EIS until at least one-half of the Proposer's required cash payment of the EIS assessed cost has been paid. Notwithstanding other sections of these Rules, the Responsible Agency shall prepare and file the Draft EIS within 120 days of the date of this payment. This time limitation may be extended by the Council only for good cause upon written request by the Responsible Agency.

F. Upon receipt or notice of receipt of the final payment by the Proposer, the Council shall notify each state agency having a possible governmental permit interest in the action that the final payment has been received.

1. Other laws notwithstanding, a state agency shall not issue any governmental permits for the construction or operation of an action for which an EIS is prepared until the required cash payment of the EIS assessed for the action or that portion of a Related Actions EIS have been paid in full.

G. Except as provided in MEQC 46 E all time periods included in MEQC 42-46 may be extended by the Council Chairman only for good cause upon written request by the Proposer or the Responsible Agency.

MEQC 47 EFFECTIVE DATE

The amendments to these Rules (MEQC 21-47) shall become effective upon filing with the Secretary of State with the exception that Rules MEQC 41-46 shall apply only to projects for which an EIS Preparation Notice has been issued after February 15, 1977. All petitions received, environmental assessments ordered or received, and EIS ordered before the effective date of the amendments shall be processed and reviewed under the existing Rules, MEQC 21-40, unless the project proposer requests that the amended rules be followed. Projects previously reviewed or exempted by the MEQC are not subject to these Rules except for those actions included in MEQC 25 F.1.