

Minnesota Attorney General: Administrative Rules Proceedings

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311

Attorney General

Donald A. Kannas
Special Assistant
Attorney General

April 26, 1977

Michael B. Miller
Special Assistant
Attorney General

296-4692

Rules of the Minnesota Environmental Quality Board
MEQB 101-115

Returned herewith are the above-captioned rules. Both the Hearing Examiner (page 6, paragraph 12) and the Board (page 5, paragraph 12) note that a clarification in Rule MEQB(d)(2) is called for; this clarification was omitted.

As we discussed, I will file these rules with the Secretary of State upon resubmission with this change.

MBM:mb

Enclosure

311

Donald A. Kannas
Special Assistant
Attorney General

May 16, 1977

- Rules of the Minnesota Environmental Quality Board MEQB 101-115

ADMIN. 1000A

STATE OF MINNESOTA

DEPARTMENT Environmental Planning

Office Memorandum

TO : Mike Miller

DATE: 3 May 1977

FROM : Tom Rulland

SUBJECT: Permit Coordination Rules

Enclosed are five copies of the EQC adopted Rules as discussed between yourself and Don Kannas. These copies include the language change in MEQB 102 D.2 as recommended by the EQC.

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL QUALITY BOARD

In the Matter of the Rules of the Minnesota Environmental Quality Board Relating to Environmental Permit Coordination (MEQB 101 - MEQB 115).

ORDER 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 January 20, 1977, 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 Board, at its March 29, 1977 meeting, adopted the above-captioned and attached rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as MEQB 101 through MEQB 115 are adopted this 4th day of April, 1977, pursuant to authority vested in me by law and resolution of the Minnesota Environmental Quality Board.

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY BOARD

Peter Vanderpoel

Peter Vanderpoel, Chairman

Ex 4

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

In the Matter of the Proposed Adoption of the Rules of the Minnesota Environmental Quality Council Relating to Environmental Permit Coordination (MEQC 101 - MEQC 115)

NOTICE OF PUBLIC HEARING

Notice is hereby given that a public hearing in the above entitled matter will be held pursuant to Minn. Stat. § 15.0412 (1974) and Laws of Minnesota, Chapter 303, commencing at 9:00 a.m. in St. Paul in Conference Room A of the Capitol Square Building, 550 Cedar Street on January 20, 1977. 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. In addition, written materials may be submitted by mail to the Office of Hearing Examiners; Howard Kaibel, Hearing Examiner; Room 300; 1745 University Avenue, St. Paul, Minnesota 55104, either before the hearing or within 20 calendar days after the close of the hearing.

The proposed Rules, if adopted, would provide an optional procedure to assist a person who, in the course of satisfying the requirements of state government, before undertaking a project which contemplates the use of the state's air, land, or water resources, must obtain more than one permit; assist in identifying all such permits needed for project implementation; provide for a single hearing on appropriate permit applications; provide time frames for agency decision making; provide the reasons for agency decisions in approving or denying permit applications; and establish permit information centers in St. Paul and in Regional Development Commission offices.

Copies of the proposed Rules may be obtained from the

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

and are now available for review at the following locations:

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

Offices of Regional Development Commissions

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 (5) 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.

For further information concerning this hearing, contact the Environmental Permit Coordination Unit at (612) 296-8542.

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

BY Peter Vanderpoel

Peter Vanderpoel, Chairman

Dated this 24th day of November, 1976.

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 River 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

ECOL
Environmental Conservation Library
(ECOL)
300 Nicollet Mall
Minneapolis, MN 55401

612/ 372-6609

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

29 March 1977

MINNESOTA ENVIRONMENTAL QUALITY BOARD

"RULES FOR THE OPERATION OF ENVIRONMENTAL PERMIT COORDINATION"

MEQB 101 AUTHORITY, PURPOSE, EXEMPTIONS, DEFINITIONS

A. Authority. These Rules are prescribed by the Minnesota Environmental Quality Board under:

1. Minn. Stat., Sec. 116C.23, establishing an environmental permits coordination unit. This unit will implement the provisions of Minn. Stat., Sec. 116C.22 through 116C.34, herein titled the Environmental Coordination Procedures Act;
2. Minn. Stat., Sec. 116C.32, to adopt rules, not inconsistent with rules of procedure established by the office of hearing examiner, implementing the Environmental Coordination Procedures Act.

B. Purpose. These Rules provide an optional procedure to assist a person who, before undertaking a project which would use the state's air, land, or water resources, must obtain more than one state permit as defined by these Rules when that person voluntarily decides to use this procedure. The assistance involves: identifying all such required permits before the project is implemented; providing a singly hearing on appropriate permit applications; providing time frames for the making of agency decisions; and providing to the applicant statements of the reasons that agencies approve or deny the permit applications.

C. Exemptions. These Rules shall not apply to projects that:

1. Require permits issued under Minn. Stat., Chapter 93, pertaining to reservations, permits and leases of state owned mineral lands; Minn. Stat., Sec. 116C.51 to 116C.69, the Minnesota Power Plant Siting Act; or Minn. Stat., Sec. 116H.13, pertaining to certificates of need for large energy facilities; or

2. Are initiated for taconite tailings disposal or mining, or producing or beneficiating copper, nickel or copper-nickel.

D. Definitions. The terms specified below shall have the following meanings for the purpose of these Rules:

1. "Agency" means a state department, commission, board or other instrumentality of the state, however titled, or a local government unit or instrumentality if that local unit is acting within existing legal authority to grant or deny a permit that otherwise would be granted or denied by a state agency.
2. "Board" means the Minnesota Environmental Quality Board established pursuant to Minn. Stat., Sec. 116C.03, formerly called the Minnesota Environmental Quality Council.
3. "Coordination Unit" means the Environmental Permits Coordination Unit established pursuant to Minn. Stat., Sec. 116C.25, to assist persons using the master application process.
4. "Days": In computing any period of time prescribed or allowed in these Rules, the day the designated period of time begins shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which case the period will extend until the end of the next day that is not a Saturday, a Sunday, or a legal holiday.
5. "Environmental review process" means any procedure for review established by the Board pursuant to Minn. Stat., Sec. 116D.04, Subd. 2.
6. "Hearing examiner" means a hearing examiner regularly appointed by the chief hearing examiner as provided for in Minn. Stat., Sec. 15.052
7. "Joint hearing" means the optional hearing at which one or more agencies participate as herein described as a replacement for individual state agency hearings that may be held following each agency's separate permit review procedures.
8. "Local government unit" means a county, city, town, or special district with legal authority to issue a permit.
9. "Master application" means an application requesting the issuance of all state permits necessary for construction or operation of a project requiring more than one permit.

10. "Participating agency" means an agency with one or more permit programs under its jurisdiction that are pertinent to a project for which a completed master application has been submitted to the coordination unit and which orders a hearing to be held pursuant to these Rules.

11. "Permit" means a license, permit, certificate, certification, approval, compliance schedule, or other similar document pertaining to a regulatory or management program related to the protection, conservation, or use of or interference with, the natural resources of land, air or water, which is required to be obtained from a state agency prior to constructing or operating a project in this state. Nothing in these Rules shall relate to the granting of a proprietary interest in publicly owned property through a sale, lease, easement, use permit, license or other conveyance.

12. "Permit Information Center" means an office established to provide information to the public about the requirements of state and local government regulations concerning the use of natural resources and protection of the environment.

13. "Person" means an individual, an association, partnership, or cooperative, or a municipal, public, or private corporation, including but not limited to a state agency and a county.

14. "Project" means a new activity or an expansion of or addition to an existing activity, which is fixed in location and which requires permits from an agency(ies) prior to construction or operation, including but not limited to industrial and commercial operations and development.

15. "Regional Development Commission" means any Regional Development Commission created pursuant to Minn. Stat., Sec. 462.381 to 462.396, and the Metropolitan Council created pursuant to Minn. Stat., Chapter 473B.

MEQB 102 MASTER APPLICATION

A. Scope. A person proposing a project that might require more than one permit may, before the initial construction of the project or the initial operation of the project if construction of the project requires no permits, submit to the Coordination Unit a master application requesting the issuance of all permits necessary for construction and (or) operation of the project.

1. Other permits, in addition to those defined by these Rules, may be included in these permit coordination procedures if the applicant and state regulatory agency so agree and if such procedure is permissible under the statutes and regulations that apply to such non-included permits. A written agreement to such an arrangement shall be provided by the agency to the Coordination Unit within 30 days of receipt by the agency of the master application. If such other permit applications are included within the master application process, they shall remain with the process until final disposition of the master application and for purposes of the master application process shall be included as a permit as defined by these Rules.

2. If a permit is required for the operation of a project or if a state agency must approve the engineering design plans of a project, and if the information needed by the agency to reach a decision could not be made available through the master application process, because post-construction or operation data are required to be collected or evaluated or because the issuance of the permit depends upon a post-construction facilities inspection or performance demonstration, then that permit or approval may be processed independently from the master application process provided both the applicant and the agency agree.

B. Master Application Form. The Coordination Unit shall provide a master application form which requests information necessary for agencies to determine permit applicability. Information required shall include but not be limited to:

1. The name and address of the applicant.

2. The location of the project.

3. A description of the project, including but not limited to possible discharges of waste; use of or interference with natural resources; the time for project completion; and, if the project is to be phased, the timing of such phases.

C. Signatories. Permit forms of agencies shall be signed as required by the rules of the respective agencies. Any form, exclusive of the agencies' permit forms, submitted to the Coordination Unit shall be signed as follows:

1. In the case of a corporation, by a principal executive officer or his duly authorized representative or agent, if such representative or agent is responsible for the project for which the permit is requested.

2. In the case of a partnership, by a general partner.

3. In the case of a sole proprietorship, by the proprietor.

4. In the case of a municipal, state or other public signatory, by either a principal executive officer, ranking elected official, or other duly authorized employee.

D. Certification. The Coordination Unit shall provide certification application forms which shall be submitted respectively by all applicants as follows:

1. Certification must be obtained from the local government unit(s) in which the proposed project will be located that the project complies with all local zoning ordinances, subdivision regulations, and environmental regulations administered by the local government unit. Certification under this paragraph must be issued not more than 120 days before the submission date of the master application. The local government unit(s) shall either issue a certification or deny that certification in accord with the following procedures.

a. Within 45 days after the applicant has submitted a certification application form to the local government unit, the unit shall return the completed form to the applicant or notify the applicant in writing that the certification is denied, including the reasons for the denial.

b. No local government unit shall rescind such a certification for a master application, even though the local government may have changed its zoning ordinances, subdivision regulations, or environmental regulations. A change of zoning ordinances, subdivision regulations, or environmental regulations shall not invalidate a previously given certification for the purpose of securing a state permit under MEQB 101 to 110. After certification, the local government may change such zoning ordinances, subdivision regulations, or environmental regulations, but not so as to affect the proposed project until the procedures of MEQB 101 to 110, including any administrative or judicial reviews, are completed.

c. A local government unit denial of certification shall not be appealable under these Rules. Such denial shall not preclude the applicant from filing a permit application under any other available statute or procedure.

2. Certification must be obtained from the Board, that an environmental impact statement on the project either has been completed or is not required. Within five days after the first Board meeting following submission of a certification application form to the Board, the Board shall return the completed form or notify the applicant in writing that the proposed project is undergoing review under the environmental review process. If the project is undergoing review under the environmental review process, the Board shall return a completed form to the applicant within ten days after such process is completed. If an environmental impact statement was required on the project, a copy of the final environmental impact statement shall be attached to the Board's certification.

E. Acceptance for Processing. Upon receipt of a completed master application, including certifications requiredin MEQB 102D, the Coordination Unit shall immediately notify the applicant that the application has been accepted and is ready for processing.

1. Upon acceptance, the Coordination Unit shall immediately notify in writing each agency having a possible permit interest in the project. The notice shall be accompanied by a copy of the master application.

2. Each notified agency shall respond in writing to the Coordination Unit within 20 days of receipt by the agency of the master application, advising whether the agency will or will not require a permit for the described project. If the agency responds affirmatively, it shall include application forms and information concerning the specific permit program(s) applicable to the project as described and state whether a public hearing is required or appropriate relating to permit requirements for the project; provided, that a statement whether a public hearing is required or appropriate relating to National Pollutant Discharge Elimination System (NPDES) permit requirements for the project shall not be required at this time. If an agency affirms that a public hearing is required or appropriate, it shall provide a brief statement identifying the reasons.

3. If after all agency responses are received, only one permit is required, the master application procedure shall no longer be available to the applicant for that project. The applicant may then proceed to process the permit application using the normal procedures established by the agency requiring the permit. However, an agency(ies) shall not require an additional permit(s) of the applicant unless one of the conditions described in MEQB 102E.4 arises.

4. A notified agency that makes a timely response indicating that a permit(s) is not required, or that fails to make a timely response concerning a permit program or programs, shall not require such a permit of the applicant for the described project unless:

a. The master application provided to the agency lacked information or contained false, misleading, or deceptive information that would reasonably lead the agency to misjudge the applicability of its permit(s) to the project; or

b. Subsequent laws or rules require additional permits; or

c. Unusual circumstances prevented the agency from notifying the Coordination Unit, and the agency can establish that failure to require a permit would result in substantial harm to the public health and welfare.

5. If one of the conditions listed in MEQB 102E.4a through .c arise, the affected agency(ies) shall so notify the applicant, the Coordination Unit and the Board, and shall request a determination by the Board whether an order should be issued to require the relevant permit(s). Included with the agency's request shall be a statement justifying the need to require the additional permit(s). The Board at its first meeting held more than 15 days after being notified by the agency shall determine whether the permit(s) shall be required. If additional permit(s) are required because one of the conditions of MEQB 102E.4.a occurs necessitating a change in the notice required by MEQB 105A, the applicant shall pay the additional cost, if any, resulting from the requirement for the additional permit(s). Any other costs resulting from the conditions in MEQB 102E.4.a through .c will be borne by the agency(ies) requiring additional permits.

F. Alteration of Project. If the applicant without being required by a public agency alters the proposed project in a way that may affect the validity of the certifications required in MEQB 102D or an agency response required in MEQB 102E.2, the applicant shall immediately notify the Coordination Unit of the proposed alteration. The Coordination Unit shall then immediately notify the Board, the local government units involved, and all agencies which may have a permit interest in the proposed project. Within 15 days after notification by the Coordination Unit, the Board, the local government unit(s), and the agencies shall respond to the Coordination Unit and the applicant whether the previous certification is still valid or additional permits are required. If a new certification is needed or additional permits are required, the master application process shall be suspended. The period of suspension shall not exceed

the time periods provided in MEQB 102D.1.a, MEQB 102D.2 and MEQB 102E.2.

MEQB 103 PERMIT APPLICATIONS

Within five days after the deadline for agency responses, the Coordination Unit shall submit to the applicant all necessary application forms for the permits identified in the affirmative agency responses described in MEQB 102E.2. The applicant shall complete and return these forms to the Coordination Unit, with any required individual permit fees, within 90 days.

A. Transmittal to Agencies. Within ten days of receipt of the full set of completed forms the Coordination Unit shall send each application to the appropriate agency for its permit review in accord with the procedures of these Rules, provided, that a completed NPDES form shall be forwarded to the Minnesota Pollution Control Agency (MPCA) immediately upon receipt by the Coordination Unit.

B. Priorities. If an agency has a procedure for setting priorities in permit issuance according to the application date, the date used shall be the day the master application is received by the Coordination Unit.

MEQB 104 NPDES PERMIT REVIEW

Whenever the MPCA responds under MEQB 102E that a NPDES permit is required for a master application, within 110 days after it has received a completed NPDES application under MEQB 103A the MPCA shall complete all permit review procedures necessary to determine the necessity or appropriateness of a hearing on the NPDES requirements for the project, and shall within the 110 days notify the Coordination Unit whether a hearing is required or necessary. When conditions prevail that do not require the full 110 day processing period, the MPCA will notify the Coordination Unit as soon as possible as to whether a hearing is required.

MEQB 105 NOTICE

A. Publication. Immediately after transmittal of the completed permit applications and any required permit fees to the appropriate agency, the Coordination Unit shall publish notice at the applicant's expense once each week on the same day of the week for three consecutive weeks, in a newspaper of general circulation in each county in which the project is proposed to be constructed or operated.

B. Content. The notice shall contain:

1. A description of the proposed project.
2. The name and address of the applicant.
3. The location of the project.
4. The permits applied for and the agencies with permit jurisdiction.
5. The Coordination Unit telephone number to contact for more information about the project.
6. A statement that a copy of the master application and a copy of all permit applications for the project are available for public inspection during normal business hours in the office of the county auditor of each county in which the project is proposed to be constructed or operated, and in other locations the Coordination Unit may designate.
7. Except as provided in MEQB 104 or MEQB 105C, the time and place of the joint hearing and other contents of the order for hearing, to commence not less than 20 days or more than 45 days after publication of the last newspaper notice.
8. Additional information concerning the permit application or hearing, upon notification by an agency that such specified information is required to be provided in the notice.

C. If Joint Hearing of No Value. If agency responses to the master application unanimously affirm that a public hearing concerning the master application is not required or is not in the public interest, the newspaper notice shall not refer to a joint hearing. The notice shall state that members of the public may present relevant views and supporting material concerning specified permits in writing to the Coordination Unit within 30 days after the last notice has been published.

D. Additional Notice. Persons wishing to receive notice by mail of master applications may do so upon written request. The request shall give the name and address of the person to receive notice and the counties for which master application notice is requested. The request shall be valid for one year and may be renewed upon notice of expiration by the Coordination Unit. Upon notification by an agency, the Coordination Unit shall also mail notices to any additional persons entitled to receive notice according to the requirements of individual permit programs.

E. Confidentiality. If the applicant requests that information contained on the application or in supplement to the application be certified as confidential, the information shall not be released unless the appropriate agency responds in writing that the information is not to be certified as confidential. If the agency so responds, the Coordination Unit shall immediately notify the applicant that the agency has failed to certify the information as confidential. Within ten days after such notification, the applicant may withdraw the subject information by giving written notice to the Coordination Unit. The information shall not be subsequently released if it is withdrawn by the applicant within the ten day period.

MEQB 106 JOINT HEARING

A. Joint Hearing Procedure. When one or more agencies affirm that a hearing is required or appropriate relating to its permit requirements for the project, the agency(ies) shall issue an order for a hearing. In preparing the order for hearing, the agency(ies) shall consult with the Coordination Unit in setting the time and place for the joint hearing. The Coordination Unit shall issue a notice that a joint hearing will be held pursuant to the contested case provisions of Minn. Stat., Chapter 15, the Rules and Regulations of the Office of Hearing Examiners, and these Rules. Copies of the notice and order(s) shall be immediately forwarded to all agencies having a permit interest in the project and to the applicant by the Coordination Unit.

B. State Agency Participation. Each participating state agency shall be represented at the joint hearing by its chief administrative officer or his designee. The representative shall participate in the portion of the joint hearing pertaining to submission of information, views, and supporting materials that are relevant to the specific permit application(s) under the jurisdiction of that agency. The manner of agency participation shall be consistent with the contested case provisions of the Rules and Regulations of the Office of Hearing Examiners. The hearing examiner may, when appropriate, continue a joint hearing from time to time and place to place. The joint hearing shall be recorded in any manner suitable for transcription

pursuant to Minn. Stat., Chapter 15. The record of the joint hearing shall be made available for public inspection by the Coordination Unit.

C. Hearing Examiner Report. Upon termination of the joint hearing, the hearing examiner's report, containing recommendations on each permit, shall be forwarded to the Coordination Unit. The Coordination Unit shall forward copies of the report to the participating agencies and to the applicant.

D. Costs. Costs of the joint hearing shall be apportioned by the Coordination Unit to each participating agency. The hearing costs shall be apportioned based on the percentage of the hearing record that is pertinent to each participating agency.

E. Final Agency Decision. Within 60 days of receipt of the hearing examiner's report or notification by the Coordination Unit of its availability to those agencies not participating in the hearing, each agency shall notify the Coordination Unit of its final decision on the permit applications within its jurisdiction, provided that this date may be extended by the Chairman of the Board for reasonable cause. A request for such extension, setting forth specific reasons, shall be filed with the Coordination Unit, which shall immediately notify the Chairman of the Board and the applicant. Such extension shall be the minimum time needed by the agency to reach a final decision and shall be considered an exception to normal operating procedure. Each final decision shall set forth the reasons for the decision together with a final order denying or granting the permit, including any conditions under which the permit is issued.

MEQB 107 NON-HEARING PROCEDURE

If no joint hearing is conducted, pursuant to MEQB 105C, the Coordination Unit shall, not less than 30 days after publication of the last newspaper notice, submit a copy of all views and supporting material it has received to the agencies. The agencies shall consider such information during review of permit applications. Concurrently, therewith, the Coordination Unit shall notify each agency, in writing of the date, 60 days after agency receipt of such notice, by which final decisions on applications shall be forwarded to the Coordination Unit, provided that this date may be extended by the Chairman of the Board for reasonable cause. A request for such extension, setting forth

specific reasons, shall be filed with the Coordination Unit, which shall immediately notify the Chairman of the Board and the applicant. Such extension shall be the minimum time needed by the agency to reach a final decision and shall be considered an exception to normal operating procedure. Every final decision shall set forth the information required by MEQB 106E.

MEQB 108 AGENCY DECISIONS

Upon receipt by the Coordination Unit of all final decisions of the agencies, the Coordination Unit shall immediately incorporate them, without modification, into one document and transmit the document to the applicant either personally or by registered mail.

1. A person aggrieved by a final decision of an agency in granting or denying a permit shall seek redress directly and individually from that agency in the manner provided by Minn. Stat., Chapter 15, or any other statute authorizing either judicial or administrative review of an agency decision.

MEQB 109 WITHDRAWAL FROM THE MASTER APPLICATION PROCESS

A. Agency Withdrawal. An agency which has responded affirmatively under MEQB 102E.2 may withdraw from the process at any time if it has subsequently determined that it has no permit programs applicable to the project. The withdrawal becomes effective when the agency submits written notice of this determination to the Coordination Unit and to the applicant. The cost of a change or withdrawal of any notice required under these Rules, resulting from agency withdrawal shall be paid by the applicant if such withdrawal is due to an alteration the applicant has made in the project that is not required by a public agency or if the agency's initial affirmative determination was based on incorrect information supplied by the applicant; in all other cases, the withdrawing agency shall pay for the change or withdrawal of notice.

B. Applicant Withdrawal. If an applicant has initiated the master application process, the applicant may at any later time withdraw from further participation in the process by submitting written notification to the Coordination Unit. If such withdrawal necessitates a change or withdrawal of any notice required under these Rules, the applicant shall pay the cost, if if any, of such change or withdrawal of notice.

MEQB 110 APPLICATION

A. Agency Jurisdiction. Each agency having jurisdiction to issue or reject a permit shall retain this authority as vested in it before the effective date of these Rules. Nothing in these Rules shall lessen or reduce such authority and these Rules shall modify only the procedures followed in carrying out such authority.

1. A state agency may, in performing its responsibilities under these Rules, request or receive additional information from an applicant. A copy of that request or receipt shall be immediately forwarded to the Coordination Unit, which shall immediately notify all other agencies having permit interest in the project.

2. Fee schedules authorized by statute or rules for an application or permit shall continue to be applicable even though the application or permit is processed according to these Rules. The Coordination Unit shall not charge the applicant or participating agencies a fee for services.

B. Post-decision Proceedings. These Rules shall have no applicability to an application for a permit renewal, amendment, extension, or other similar document required subsequent to the completion of decisions and proceedings under MEQB 101 to MEQB 110, or to a replacement thereof or to a quasi-judicial or judicial proceeding held pursuant to an order of remand or similar order by a court in relation to a final decision of an agency.

C. Nothing in these Rules shall modify in any manner whatsoever the applicability or inapplicability to the lands of any agency of any land use regulation, statute, or local government zoning ordinance.

D. The Board, to the limited extent necessary to comply with procedural requirements of federal statutes relating to permit systems operated by the state, may modify the notice, timing, hearing and related procedural matters provided in these Rules.

MEQB 111 - MEQB 114 RESERVED FOR FUTURE USE

A. Applicability. Funds appropriated for grants for the establishment of regional permit information centers by Minn. Stat., Sec. 116C.34 (1976) and any future funding for such centers appropriated to the State Planning Agency shall be distributed to those public bodies authorized by laws pursuant to the recommendation of the Director of the State Planning Agency and these Rules.

B. Eligibility. A Regional Development Commission may apply for a grant from the Director of the State Planning Agency for the establishment of a regional permit information center provided that the following conditions are met:

1. The grant application is submitted before May 1 of the fiscal year for which the legislative appropriation was made.
2. The amount of the grant application does not exceed the legislative appropriation.
3. The Regional Development Commission agrees to perform the following functions for at least one year following approval of the grant application.
   a. Designate one person to act as liaison between the regional permit information center and the Environmental Permit Coordination Unit.
   b. Provide an information and referral system to assist the public in understanding and complying with the requirements of state and local government regulations concerning the use of natural resources and protection of the environment.
   c. Provide for the dissemination of printed materials concerning the requirements of state and local government regulations.
   d. Publicize the availability and location of the permit information center.
   e. Provide information to the public on the regulatory functions relating to the environment of the local government units in its region.
   f. Establish and maintain a file for applicable state resource agency permits, including pertinent rules and regulations, criteria for permit issuance and use, and compliance with relevant statute requirements.

g. Maintain information on state environmental programs.

h. Maintain a list or directory of pertinent state agency contacts in each region and in St. Paul as well as a list of local government unit contacts for its region.

C. Grants. Within 30 days after receipt of a completed grant application, the Director of the State Planning Agency shall approve the grant or notify the Regional Development Commission in writing of the reasons why the grant application was denied.

APPROVED AS TO FORM AND LEGALITY
MAY 13 1977, 19
WARREN
BY /s/ Michael B. Miller
SPECIAL ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY 13 1977 11:50 A.M.
Joan Anderson Growe
Secretary of State

Attorney General

Donald A. Kannas
Special Assistant
Attorney General

April 26, 1977

296-4692

Michael B. Miller
Special Assistant
Attorney General

Rules of the Minnesota Environmental Quality Board
MEQB 101-115

Returned herewith are the above-captioned rules. Both the Hearing Examiner (page 6, paragraph 12) and the Board (page 5, paragraph 12) note that a clarification in Rule MEQB(d)(2) is called for; this clarification was omitted.

As we discussed, I will file these rules with the Secretary of State upon resubmission with this change.

MBM:mb

Enclosure

Ex 9

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

IN THE MATTER OF the Proposed Rules of the Environmental Quality Council governing the implementation of the Environmental Coordination Procedures Act (Minn. Stat., Sect. 116C.22 to 116C.34 suppl. 1976) which establishes an optional procedure for the coordination of administrative decision making and review of projects that would require more than one state permit pertaining to the use of natural resources. Also governing the establishment of a permit information center in the Council's office in St. Paul and the administration of grants for the establishment of regional permit information centers.

NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION

DATED: September 7, 1976

NOTICE IS HEREBY GIVEN that the Environmental Quality Council has begun consideration of proposed rules governing the procedure for an optional master application process which involves coordination of administrative decision making and review of projects that would require more than one state permit pertaining to the use of natural resources. In addition the proposed rules would govern the establishment of a permit information center in the Council's office in St. Paul and the administration of grants for the establishment of regional permit information centers.

In order to adequately determine the nature and utility of such rules, the Environmental Quality Council hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed rules.

All interested or affected persons/or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

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

Oral statements of information and comment will be received during regular business hours over the telephone at (612)296-2319 and in person at the above address.

All statements of information and comment must be received within 34 days of the above date which is on or before October 11, 1976.

The proposed rules, if adopted, would:

- establish an environmental permits Coordination Unit within the Environmental Quality Council to administer the master application procedure established by the Environmental Coordination Procedures Act.
- establish the master application procedure which would identify and coordinate administrative review of permits pertaining to the use of natural resources that are needed on the proposed project.
- would set certain time limits and other responsibilities on state agencies for the identification of permits needed and for the processing of the permit applications.
- would provide for a joint hearing, if a hearing was needed, at which all agencies involved in that master application would participate.
- would provide for the submittal of written statements by the public to be considered by the agencies in their permit review process if no joint hearing is held.

- would provide for a certification of the proposed project by local units of government, that the proposed project is in compliance with all zoning ordinances, subdivision regulations and environmental regulations administered by that local governmental unit.

- would require a certification from the Environmental Quality Council that either an Environmental Impact Statement concerning the project has been completed or is not required on the project.

- would provide, upon the applicant's and the state agency's concurrence, for inclusion of other permits in the master application procedure.

- would establish a permit information center in the Environmental Quality Council's office in St. Paul which would maintain an information and referral system to assist the public in understanding and complying with the requirements of state and local governmental regulations concerning the use of natural resources and protection of the environment.

- would establish a procedure for awarding grants for the establishment of regional permit information centers.

September 7, 1976

Peter Vanderpoel

Peter Vanderpoel, Chairman
ENVIRONMENTAL QUALITY COUNCIL
Room 100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Ex 2

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

In the Matter of the Proposed Adoption of the Rules of the Minnesota Environmental Quality Council Relating to Environmental Permit Coordination (MEQC 101 - MEQC 115)

ORDER OF HEARING

To effectively implement the Minnesota Environmental Coordination Procedures 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 January 20, 1977 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 23rd day of November 1976.

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL

BY Peter Vanderpoel

Peter Vanderpoel
Chairman

Ex 3

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 12th day of October, 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. Millhone moved:

"BE IT RESOLVED:

THAT the Environmental Quality Council send the proposed Permit Coordination rules 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 and Schwartz voting aye. Mr. Ohman and Wefald not present.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 13th day of October, 1976.

Mary Sullivan

Mary Sullivan
Administrator

Subscribed and sworn to
before me this 13th
day of October, 1976.

Joanne Herbenson

Notary Public

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

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

RESCHEDULING OF PUBLIC HEARING

In the Matter of the Proposed Adoption of the Rules of the Minnesota Environmental Quality Council Relating to Environmental Permit Coordination (MEQC 101 - MEQC 115 as Adopted by the MEQC on October 12, 1976)

AFFIDAVIT OF MAILING

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

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

2) On November 29, 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, re ional development commissions, all associations and individuals who had registered their names with the Secretary of State, township clerks, counties, and cities.

Deborah Haider

Subscribed and sworn to before me this 29th day of November, 1976, at St. Paul, Minnesota

Joanne Herbenson
Notary Public

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

Ex 5

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL QUALITY COUNCIL

In the Matter of the Proposed Adoption of the Rules of the Minnesota Environmental Quality Council Relating to Environmental Permit Coordination (MEQC 101 - MEQC 115 as Adopted by the MEQC on October 12, 1976)

AFFIDAVIT OF RECEIPT

Greg Corcoran, 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 29th day of November, 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 29th day of November, 1976, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached thereto and incorporated by reference.

Greg Corcoran

Subscribed and sworn to before me this 29th day of Novemer, 1976.

Joanne Henderson
Notary Public

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

Ex 6

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of the Rules of the Minnesota Environmental Quality Council Relating to Environmental Permit Coordination (MEQC 101 - MEQC 115 as Adopted by the MEQC on October 12, 1976)

CERTIFICATE

I hereby certify that the attached 502 labels & one name sheet constitute the complete list of persons, associations, and other interested groups who as of 11:15 o'clock A.M., this 29th day of November, 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 Cecil Dion

"PROPOSED RULES FOR THE OPERATION OF
ENVIRONMENTAL PERMIT COORDINATION"

MEQC 101 AUTHORITY, PURPOSE, EXEMPTIONS, DEFINITIONS

A. Authority. These Rules are prescribed by the Minnesota Environmental Quality Council under:

1. Minn. Stat., Sec. 116C.23, establishing an environmental permits coordination unit. This unit will implement the provisions of Minn. Stat., Sec. 116C.22 through 116C.34, herein titled the Environmental Coordination Procedures Act;
2. Minn. Stat., Sec. 116C.32, to adopt rules, not inconsistent with rules of procedure established by the office of hearing examiner, implementing the Environmental Coordination Procedures Act.

B. Purpose. These Rules provide a procedure to assist a person who, before undertaking a project which would use the state's air, land, or water resources, must obtain more than one state permit as defined by these Rules when that person voluntarily decides to use this procedure. The assistance involves: identifying all such required permits before the project is implemented; providing a single hearing on appropriate permit applications; providing time frames for the making of agency decisions; and providing to the applicant statements of the reasons that agencies approve or deny the permit applications.

C. Exemptions. These Rules shall not apply to projects that:

1. Require permits issued under Minn. Stat., Chapter 93, pertaining to reservations, permits and leases of state owned mineral lands; Minn. Stat., Sec. 116C.51 to 116C.69, the Minnesota Power Plant Siting Act; or Minn. Stat., Sec. 116H.13, pertaining to certificates of need for large energy facilities; or
2. Are initiated for taconite tailings disposal or mining, or producing or beneficiating copper, nickel or copper-nickel.

D. Definitions. The terms specified below shall have the following meanings for the purpose of these Rules:

1. "Agency" means a state department, commission, board or other instrumentality of the state, however titled, or a local government unit or instrumentality if that local unit is acting within existing legal authority to grant or deny a permit that otherwise would be granted or denied by a state agency.
2. "Coordination Unit" means the Environmental Permits Coordination Unit established pursuant to Minn. Stat., Sec. 116C.25, to assist persons using the master application process.
3. "Council" means that agency established pursuant to Minn. Stat., Sec. 116C.03, to coordinate interaction among the state agencies concerning solutions to the state's environmental problems.
4. "Days": In computing any period of time prescribed or allowed in these Rules, the day the designated period of time begins shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which case the period will extend until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is 15 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded.
5. "Environmental review process" means any procedure for review established by the Council pursuant to Minn. Stat., Sec. 116D.04, Subd. 2.
6. "Hearing examiner" means a hearing examiner regularly appointed or assigned by contract as provided for in Minn. Stat., Sec. 15.052.
7. "Joint hearing" means the optional hearing at which one or more agencies participate as herein described as a replacement for individual state agency hearings that may be held following each agency's separate permit review procedures.
8. "Local government unit" means a county, city, town, or special district with legal authority to issue a permit.
9. "Master application" means an application requesting the issuance of all state permits necessary for construction or operation of a project requiring more than one permit.
10. "Participating agency" means an agency with one or more permit programs under its jurisdiction that are pertinent to a project for which a completed master application has been submitted to the coordination unit and which orders a hearing to be held pursuant to these Rules.

11. "Permit" means a license, permit, certificate, certification, approval, compliance schedule, or other similar document pertaining to a regulatory or management program related to the protection, conservation, or use of or interference with, the natural resources of land, air or water, which is required to be obtained from a state agency prior to constructing or operating a project in this state. Nothing in these Rules shall relate to the granting of a proprietary interest in publicly owned property through a sale, lease, easement, use permit, license or other conveyance.

12. "Permit Information Center" means an office established to provide information to the public about the requirements of state and local government regulations concerning the use of natural resources and protection of the environment.

13. "Person" means an individual, an association, partnership, or cooperative, or a municipal, public, or private corporation, including but not limited to a state agency and a county.

14. "Project" means a new activity or an expansion of or addition to an existing activity, which is fixed in location and which requires permits from an agency(ies) prior to construction or operation, including but not limited to industrial and commercial operations and development.

15. "Regional Development Commission" means any Regional Development Commission created pursuant to Minn. Stat., Sec. 462.381 to 462.396, and the Metropolitan Council created pursuant to Minn. Stat., Chapter 473B.

MEQC 102 MASTER APPLICATION

A. Scope. A person proposing a project that might require more than one permit may, before the initial construction of the project or the initial operation of the project if construction of the project requires no permits, submit to the Coordination Unit a master application requesting the issuance of all permits necessary for construction and (or) operation of the project.

1. Other permits, in addition to those defined by these Rules, may be included in these permit coordination procedures if the applicant and state regulatory agency so agree and if such procedure is permissible under the statutes and regulations that apply to such non-included permits. A written agreement to such an arrangement shall be provided by the agency to the Coordination Unit within 30 days of receipt by the agency of the master application. If such other permit applications are included within the master application process, they shall remain with the process until final disposition of the master application and for purposes of the master application process shall be included as a permit as defined by these Rules.

2. If a permit is required for the operation of a project or if a state agency must approve the engineering design plans of a project, and if sufficient information needed by the agency to reach a decision would be unavailable through the master application process, then that permit or approval may be processed independently from the master application process provided both the applicant and the agency agree.

B. Master Application Form. The Coordination Unit shall provide a master application form which requests information necessary for agencies to determine permit applicability. Information required shall include but not be limited to:

1. The name and address of the applicant.
2. The location of the project.
3. A description of the project, including but not limited to possible discharges of waste; use of or interference with natural resources; the time for project completion; and, if the project is to be phased, the timing of such phases.

C. Signatories. Permit forms of agencies shall be signed as required by the rules of the respective agencies. Any form, exclusive of the agencies' permit forms, submitted to the Coordination Unit shall be signed as follows:

1. In the case of a corporation, by a principal executive officer or his duly authorized representative or agent, if such representative or agent is responsible for the project for which the permit is requested.
2. In the case of a partnership, by a general partner.
3. In the case of a sole proprietorship, by the proprietor.

4. In the case of a municipal, state or other public signatory, by either a principal executive officer, ranking elected official, or other duly authorized employee.

D. Certification. The Coordination Unit shall provide certification application forms which shall be submitted respectively by all applicants as follows:

1. Certification must be obtained from the local government unit(s) in which the proposed project will be located that the project complies with all local zoning ordinances, subdivision regulations, and environmental regulations administered by the local government unit. Certification under this paragraph must be issued not more than 120 days before the submission date of the master application. The local government unit(s) shall either issue a certification or deny that certification in accord with the following procedures.

   a. Within 45 days after the applicant has submitted a certification application form to the local government unit, the unit shall return the completed from to the applicant or notify the applicant in writing that the certification is denied, including the reasons for the denial.

   b. No local government unit shall rescind such a certification for a master application, even though the local government may have changed its zoning ordinances, subdivision regulations, or environmental regulations. A change of zoning ordinances, subdivision regulations, or environmental regulations shall not invalidate a previously given certification for the purpose of securing a state permit under MEQC 101 to 110. After certification, the local government may change such zoning ordinances, subdivision regulations, or environmental regulations, but not so as to affect the proposed project until the procedures of MEQC 101 to 110, including any administrative or judicial reviews, are completed.

   c. A local government unit denial of certification shall not be appealable under these Rules. Such denial shall not preclude the applicant from filing a permit application under any other available statute or procedure.

2. Certification must be obtained from the Council, that an environmental impact statement on the project either has been completed or is not required. Within five days after the first Council meeting following submission of a certification application form to the Council, the

Council shall return the completed form or notify the applicant in writing that the proposed project is undergoing review under the environmental review process. If the project is undergoing review under the environmental review process, the Council shall return a completed form to the applicant within ten days after such process is completed. If an environmental impact statement was required on the project, a copy of the completed environmental impact statement shall be attached to the Council's certification.

E. Acceptance for Processing. Upon receipt of a completed master application, including certifications required in MEQC 102D, the Coordination Unit shall immediately notify the applicant that the application has been accepted and is ready for processing.

1. Upon acceptance, the Coordination Unit shall immediately notify in writing each agency having a possible permit interest in the project. The notice shall be accompanied by a copy of the master application.
2. Each notified agency shall respond in writing to the Coordination Unit within 20 days of receipt by the agency of the master application, advising whether the agency will or will not require a permit for the described project. If the agency responds affirmatively, it shall include application forms and information concerning the specific permit program(s) applicable to the project as described, and state whether a public hearing is required or appropriate relating to permit requirements for the project; provided, that a statement whether a public hearing is required or appropriate relating to National Pollutant Discharge Elimination System (NPDES) permit requirements for the project shall not be required at this time. If an agency affirms that a public hearing is required or appropriate, it shall provide a brief statement identifying the reasons.
3. If after all agency responses are received, only one permit is required, the master application procedure shall no longer be available to the applicant for that project. The applicant may then proceed to process the permit application using the normal procedures established by the agency requiring the permit. However, an agency(ies) shall not require an additional permit(s) of the applicant unless one of the conditions described in MEQC 102E.4 arises.
4. A notified agency that makes a timely response indicating that a permit(s) is not required, or that fails to make a timely response concerning a permit program or programs, shall not require such a permit of the applicant for the described project unless:

a. The master application provided to the agency contained false, misleading, or deceptive information, or lacked information, that would reasonably lead the agency to misjudge the applicability of its permit(s) to the project; or

b. Subsequent laws or rules require additional permits; or

c. Unusual circumstances prevented the agency from notifying the Coordination Unit, and the agency can establish that failure to require a permit would result in substantial harm to the public health and welfare.

5. If one of the conditions listed in MEQC 102E.4.a through .c arise, the affected agency(ies) shall so notify the applicant, the Coordination Unit and the Council, and shall request a determination by the Council whether an order should be issued to require the relevant permit(s). Included with the agency's request shall be a statement justifying the need to require the additional permit(s). The Council at its first meeting held more than 15 days after being notified by the agency shall determine whether the permit(s) shall be required. If additional permit(s) are required because one of the conditions of MEQC 102E.4.a occurs necessitating a change in the notice required by MEQC 105A, or a change in the joint hearing procedures under MEQC 106A, or the holding of an additional hearing, the applicant shall pay the additional cost, if any, resulting from the requirement for the additional permit(s). If additional permit(s) are required because the conditions of MEQC 102E.4.b or .c occur, the agency requiring the additional permit(s) shall pay the additional cost, if any, resulting from the requirement for the additional permit(s).

F. Alteration of Project. If the applicant without being required by a public agency alters the proposed project in a way that may affect the validity of the certifications required in MEQC 102D or an agency response required in MEQC 102E .2, the applicant shall immediatley notify the Coordination Unit of the proposed alteration. The Coordination Unit shall then immediately notify the Council, the local government units involved, and all agencies which may have a permit interest in the proposed project. Within ten days after notification by the Coordination Unit, the Council, the local government unit(s), and the agencies shall respond to the Coordination Unit and the applicant whether the previous certification is still valid or additional permits are required. If a new certification is needed or additional permits are required, the

master application process shall be suspended. The period of suspension shall not exceed the time periods provided in MEQC 102D.1.a, MEQC 102D.2 and MEQC 102E.2. If the joint hearing required in MEQC 105 has been held prior to notification of the proposed alteration of the project, the applicant shall be responsible for the costs of any additional hearing that may be required.

MEQC 103 PERMIT APPLICATIONS

Within five days after the deadline for agency responses, the Coordination Unit shall submit to the applicant all necessary application forms for the permits identified in the affirmative agency responses described in MEQC 102E.2. The applicant shall complete and return these forms to the Coordination Unit, with any required individual permit fees, within 90 days.

A. Transmittal to Agencies. Within ten days of receipt of the full set of completed forms the Coordination Unit shall send each application to the appropriate agency for its permit review in accord with the procedures of these Rules, provided, that a completed NPDES form shall be forwarded to the Minnesota Pollution Control Agency (MPCA) immediately upon receipt by the Coordination Unit.

B. Priorities. If an agency has a procedure for setting priorities in permit issuance according to the application date, the date used shall be the day the master application is received by the Coordination Unit.

MEQC 104 NPDES PERMIT REVIEW

Whenever the MPCA responds under MEQC 102E that a NPDES permit is required for a master application, within 110 days after it has received a completed NPDES application under MEQC 103A the MPCA shall complete all permit review procedures necessary to determine the necessity or appropriateness of a hearing on the NPDES requirements for the project, and shall within the 110 days notify the Coordination Unit whether a hearing is required or necessary.

MEQC 105 NOTICE

A. Publication. Immediately after transmittal of the completed permit applications and any required permit fees to the appropriate agency, the Coordination Unit shall publish notice, at the applicant's expense once each week on the same day of the week for three consecutive weeks, in a newspaper of general circulation in each county in which the project is proposed to be constructed or operated.

B. Content. The notice shall contain:

1. A description of the proposed project.
2. The name and address of the applicant.
3. The location of the project.
4. The permits applied for and the agencies with permit jurisdiction.
5. The Coordination Unit telephone number to contact for more information about the project.
6. A statement that a copy of the master application and a copy of all permit applications for the project are available for public inspection during normal business hours in the office of the county auditor of each county in which the project is proposed to be constructed or operated, and in other locations the Coordination Unit may designate.
7. Except as provided in MEQC 104 or MEQC 105C, the time and place of the joint hearing, to commence not less than 20 days or more than 45 days after publication of the last newspaper notice.
8. Additional information concerning the permit application or hearing, upon notification by an agency that such specified information is required to be provided in the notice.

C. If Joint Hearing of No Value. If agency responses to the master application unanimously affirm that a public hearing concerning the master application is not required or is not in the public interest, the newspaper notice shall not refer to a joint hearing. The notice shall state that members of the public may present relevant views and supporting material concerning specified permits in writing to the Coordination Unit within 30 days after the last notice has been published.

D. Additional Notice. Persons wishing to receive notice by mail of master applications may do so upon written request. The request shall give the name and address of the person to receive notice and the counties for which master application notice is requested. The request shall be valid for one year and may be renewed upon notice of expiration by the Coordination Unit. Upon notification by an agency, the Coordination Unit shall also mail notices to any additional persons entitled to receive notice according to the requirements of individual permit programs.

E. Confidentiality

If the applicant requests that information contained on the application or in supplement to the application be certified as confidential, the information shall not be released unless the appropriate agency responds in writing that the information is not to be certified as confidential. If the agency so responds, the Coordination Unit shall immediately notify the applicant that the agency has failed to certify the information as confidential. Within ten days after such notification, the applicant may withdraw the subject information by giving written notice to the Coordination Unit. The information shall not be subsequently released if it is withdrawn by the applicant within the ten day period.

MEQC 106 JOINT HEARING

A. Joint Hearing Procedure. When one or more agencies affirm that a hearing is required or appropriate relating to its permit requirements for the project, the agency(ies) shall issue an order for a hearing. In preparing the order for hearing, the agency(ies) shall consult with the Coordination Unit in setting the time and place for the joint hearing. The Coordination Unit shall issue a notice that a joint hearing will be held pursuant to the contested case provisions of Minn. Stat., Chapter 15, the Rules and Regulations of the Office of Hearing Examiners, and these Rules. Copies of the notice and order(s) shall be immediately forwarded to all agencies having a permit interest in the project and to the applicant by the Coordination Unit.

B. State Agency Participation. Each participating state agency shall be represented at the joint hearing by its chief administrative officer or his designee. The representative shall participate in the portion of the joint hearing pertaining to submission of information, views, and supporting materials that are relevant to the specific permit application(s) under the jurisdiction of that agency. The manner of agency participation shall be consistent with the contested case provisions of the Rules and Regulations of the Office of Hearing Examiners. The hearing examiner may, when appropriate, continue a joint hearing from time to time and place to place. The joint hearing shall be recorded in any manner suitable for transcription pursuant to Minn. Stat., Chapter 15. The record of the joint hearing shall be made available for public inspection by the Coordination Unit.

C. Hearing Examiner Report. Upon termination of the joint hearing, the hearing examiner's report, containing recommendations on each permit, shall be forwarded to the Coordination Unit. The Coordination Unit shall forward copies of the report to the participating agencies and to the applicant.

D. Costs. Costs of the joint hearing shall be apportioned by the Coordination Unit to each participating agency. The hearing costs shall be apportioned based on the percentage of the hearing record that is pertinent to each participating agency.

E. Final Agency Decision. Within 60 days of receipt of the hearing examiner's report or notification by the Coordination Unit of its availability to those agencies not participating in the hearing, each agency shall notify the Coordination Unit of its final decision on the permit applications within its jurisdiction, provided that this date may be extended by the Chairman of the Council for reasonable cause. A request for such extension, setting forth specific reasons, shall be filed with the Coordination Unit, which shall immediately notify the Chairman of the Council and the applicant. Such extension shall be the minimum time needed by the agency to reach a final decision and shall be considered an exception to normal operating procedure. Each final decision shall set forth the reasons for the decision together with a final order denying or granting the permit, including any conditions under which the permit is issued. Each final decision of the participating agencies shall be consistent with the requirements of the Rules and Regulations of the Office of Hearing Examiners.

MEQC 107 NON-HEARING PROCEDURE

If no joint hearing is conducted, pursuant to MEQC 105C, the Coordination Unit shall, not less than 30 days after publication of the last newspaper notice, submit a copy of all views and supporting material it has received to the agencies. The agencies shall consider such information during review of permit applications. Concurrently, therewith, the Coordination Unit shall notify each agency, in writing of the date, 60 days after agency receipt of such notice, by which final decisions on applications shall be forwarded to the Coordination Unit, provided that this date may be extended by the Chairman of the Council for reasonable cause. A request for such extension, setting forth specific reasons, shall be filed with the Coordination Unit, which shall

immediately notify the Chairman of the Council and the applicant. Such extension shall be the minimum time needed by the agency to reach a final decision and shall be considered an exception to normal operating procedure. Every final decision shall set forth the information required by MEQC 106E.

MEQC 108 AGENCY DECISIONS

Upon receipt by the Coordination Unit of all final decisions of the agencies, the Coordination Unit shall immediately incorporate them, without modification, into one document and transmit the document to the applicant either personally or by registered mail.

1. A person aggrieved by a final decision of an agency in granting or denying a permit shall seek redress directly and individually from that agency in the manner provided by Minn. Stat., Chapter 15, or any other statute authorizing either judicial or administrative review of an agency decision.

MEQC 109 WITHDRAWAL FROM THE MASTER APPLICATION PROCESS

A. Agency Withdrawal. If an agency responds that it has one or more permit programs applicable to a project, it may at any time withdraw from further participation in procedures hereunder concerning such project by submitting written notification to the Coordination Unit and the applicant that the agency has subsequently determined that it has no permit programs under its jurisdiction that are applicable to the project. If such withdrawal necessitates a change or withdrawal of any notice required under these Rules, said agency shall pay the cost, if any, of such change or withdrawal of notice unless the agency's withdrawal resulted from an alteration in the project made by the applicant that was not required by a public agency or if the agency's initial determination that a permit was required was made on the basis of incorrect information supplied by the applicant in which case the applicant shall pay the cost, if any, of such change or withdrawal of notice.

B. Applicant Withdrawal. If an applicant has initiated the master application process, the applicant may at any later time withdraw from further participation in the process by submitting written notification to the Coordination Unit. If such withdrawal necessitates a change or withdrawal of any notice required under these Rules, the applicant shall pay the cost, if any, of such change or withdrawal of notice.

MEQC 110 APPLICATION

A. Agency Jurisdiction. Each agency having jurisdiction to issue or reject a permit shall retain this authority as vested in it before the effective date of these Rules. Nothing in these Rules shall lessen or reduce such authority and these Rules shall modify only the procedures followed in carrying out such authority.

1. A state agency may, in performing its responsibilities under these Rules, request or receive additional information from an applicant. A copy of that request or receipt shall be immediately forwarded to the Coordination Unit, which shall immediately notify all other agencies having a permit interest in the project.

2. Fee schedules authorized by statute or rules for an application or permit shall continue to be applicable even though the application or permit is processed according to these Rules. The Coordination Unit shall not charge the applicant or participating agencies a fee for services.

B. Post-decision Proceedings. These Rules shall have no applicability to an application for a permit renewal, amendment, extension, or other similar document required subsequent to the completion of decisions and proceedings under MEQC 101 to MEQC 110, or to a replacement thereof or to a quasi-judicial or judicial proceeding held pursuant to an order of remand or similar order by a court in relation to a final decision of an agency.

C. Nothing in these Rules shall modify in any manner whatsoever the appliability or inapplicability to the lands of any agency of any land use regulation, statute, or local government zoning ordinance.

D. The Council, to the limited extent necessary to comply with procedural requirements of federal statutes relating to permit systems operated by the state, may modify the notice, timing, hearing and related procedural matters provided in these Rules.

MEQC 111 - MEQC 114 RESERVED FOR FUTURE USE

MEQC 115 PERMIT INFORMATION CENTERS GRANT PROGRAM

A. Applicability. Funds appropriated for grants for the establishment of regional permit information centers by Minn. Stat., Sec. 116C.34 (1976) and any future funding for such centers appropriated to the State Planning Agency shall be distributed to those public bodies authorized by laws pursuant to the recommendation of the Director of the State Planning Agency and these Rules:

B. Eligibility. A Regional Development Commission may apply for a grant from the Director of the State Planning Agency for the establishment of a regional permit information center provided that the following conditions are met:

1. The grant application is submitted before May 1 of the fiscal year for which the legislative appropriation was made.
2. The amount of the grant application does not exceed the legislative appropriation.
3. The Regional Development Commission agrees to perform the following functions for at least one year following approval of the grant application.
   a. Designate one person to act as liaison between the regional permit information center and the Environmental Permit Coordination Unit.
   b. Provide an information and referral system to assist the public in understanding and complying with the requirements of state and local government regulations concerning the use of natural resources and protection of the environment.
   c. Provide for the dissemination of printed materials concerning the requirements of state and local government regulations.
   d. Publicize the availability and location of the permit information center.
   e. Provide information to the public on the regulatory functions relating to the environment of the local government units in its region.
   f. Establish and maintain a file for applicable state resource agency permits, including pertinent rules and regulations, criteria for permit issuance and use, and compliance with relevant statute requirements.
   g. Maintain information on state environmental programs.
   h. Maintain a list or directory of pertinent state agency contacts in each region and in St. Paul as well as a list of local government unit contacts for its region.

C. Grants. Within 30 days after receipt of a completed grant application, the Director of the State Planning Agency shall approve the grant or notify the Regional Development Commission in writing the reasons why the grant application was denied.

Ex 11

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY COUNCIL
CAPITOL SQUARE BUILDING
550 CEDAR STREET
ST. PAUL, 55101

December 23, 1976

In the Matter of the Proposed Adoption of the Rules of the Minnesota Environmental Quality Council Relating to Environmental Permit Coordination (MEQC 101 - MEQC 115)

STATEMENT OF NEED AND EVIDENCE

INTRODUCTION

The Minnesota Environmental Coordination Procedures Act of 1976 (ECPA) establishes an optional, consolidated application and hearing procedure for certain environmental permits. The Act also authorizes the creation of an environmental permits coordination unit within the Environmental Quality Council (EQC). Finally, the Act appropriates money for the purpose of establishing permit information centers. The intent of the Legislature in passing the ECPA was to provide a permit procedure, available at the discretion of an applicant, for satisfying the requirements of state government prior to the implementation of any proposal contemplating the use of the state's air, land and water resources. The purpose is to provide a mechanism which would assist project proposers by coordinating administrative and decision-making procedures pertinent to permit issuance.

Another major function of ECPA is to establish an efficient and consolidated method for the dissemination of information pertinent to the use of state natural resources. It has become increasingly important in matters related to environmental decision-making to have the public well informed about those state and local regulatory requirements which must be satisfied prior to undertaking a project.

The Legislature recognized that a problem existed for project proposers who were subjected to a complex and often random procedure for procuring development permits from state agencies. It became apparent that the amount of time and expenditures involved in applying for regulatory permits was having a negative economic impact upon private developers in the state. In performing their respective administrative functions, state agencies were often duplicating efforts when projects required permits from several agencies. Of particular concern to the Legislature was the fact that public hearings, if deemed necessary by individual agencies, were scheduled separately rather than at one time. This type of procedure has proven costly to the state and to respective project proposers.

To implement the Act, the Legislature directed the EQC to promulgate Rules consistent with the provisions established in Minn. Stat., Sec. 116C.22 through 116C.34. The following Rules have been drafted with assistance from the EQC's Technical Committee and representatives from the private sector.

It is the purpose of these Rules to interpret ECPA consistent with the legislative intent of the Act. Every attempt has been made to create a mechanism that is predictable to all affected parties and encourages close cooperation between the proposer of a project and the state agencies with regulatory and administrative jurisdiction over that project. Further, these Rules encourage a non-duplicative, streamlined process to accommodate permit application requirements within a reasonable amount of time while considering the variety of circumstances that might occur during the process.

While reviewing these Rules, it must be remembered that they provide an optional procedure for processing permit applications. Proposed projects which vary in scope, magnitude and purpose will differ in terms of required state agency permits. Therefore, the process established by these Rules will not apply universally to all developments.

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 101 AUTHORITY, PURPOSE, EXEMPTIONS, DEFINITIONS

A. Authority. These Rules are prescribed by the Minnesota Environmental Quality Council under:

1. Minn. Stat., Sec. 116C.23, establishing an environmental permits coordination unit. This unit will implement the provisions of Minn. Stat., Sec. 116C.22 through 116C.34, herein titled the Environmental Coordination Procedures Act;

2. Minn. Stat., Sec. 116C.32, to adopt rules, not inconsistent with rules of procedure established by the office of hearing examiner, implementing the Environmental Coordination Procedures Act.

... This rule is proposed by the agency in response to Minn. Stat., Sec. 116C.23 which directs the Council to adopt rules implementing the Minnesota Environmental Coordination Procedures Act. These rules are needed to assist the Council in implementing the intent of the Act in an organized manner by defining the legislative mandates in terms of performance criteria. This specific rule identifies the sections of the Act which give to the Council the authority to promulgate rules creating an environmental permits coordination unit and establishing the process by which the unit will operate.

B. Purpose. These Rules provide a procedure to assist a person who, before undertaking a project which would use the state's air, land, or water resources, must obtain more than one state permit as defined by these Rules when that person voluntarily decides to use this procedure. The assistance involves: identifying all such required permits before the project is implemented; providing a single hearing on appropriate permit applications; providing time frames for the making of agency decisions; and providing to the applicant statements of the reasons that agencies approve or deny the permit applications.

... In order for potential users of these rules to readily understand the intended benefits of a consolidated permit application process, it is necessary for the agency to provide a rule outlining those benefits in an early section of the rules. This rule provides a summary of the purposes of the Act and the basic types of assistance offered by the process.

An optional method of procuring state agency permits is provided as a service to project proposers in accord with Minn. Stat., Sec. 116C.23. In addition, assistance is offered to the general public seeking information about state regulations and requirements involving the use of the state's air, land and water resources. To allow for projects which would not benefit from this procedure, the Legislature specifically intended that the use of this process be at the option of the project proposer.

The other kinds of assistance offered are needed to provide an efficient procedure for procuring permits while adhering to administrative procedures relative to such actions. A single hearing for permit applications involving more than one agency is reasonable because it conserves time and money for both the proposer and the agencies. The establishment of time frames for agency decision making will provide a predictable amount of time needed to process permit applications and schedule necessary hearings, thus allowing project proposers to plan development schedules or phase project plans in a reasonable manner. The provision that agency denial or approval be substantiated allows project proposers to ascertain how such a decision was formulated and to possibly correct defeciencies in their proposals. Performance standards and criteria which establish the basis for agency decision making must be substantiated.

C. Exemptions. These Rules shall not apply to projects that:

1. Require permits issued under Minn. Stat., Chapter 93, pertaining to reservations, permits and leases of state owned mineral lands; Minn. Stat., Sec. 116C.51 to 116C.69, the Minnesota Power Plant Siting Act; or Minn. Stat., Sec. 116H.13, pertaining to certificates of need for large energy facilities; or

2. Are initiated for taconite tailings disposal or mining, producing or beneficiating copper, nickel or copper-nickel.

... Minn. Stat., Sec. 116C.24, subd. 7 specifically exempts the types of projects cited in this rule. To fully comply with the intent of the Legislature, it is necessary to include in the proposed rules a section identifying the types of projects to which these rules do not apply.

D. Definitions. The terms specified below shall have the following meanings for the purpose of these Rules:

1. "Agency" means a state department, commission, board or other instrumentality of the state, however titled, or a local government unit or instrumentality if that local unit is acting within existing legal authority to grant or deny a permit that otherwise would be granted or denied by a state agency.

... This definition is needed to identify the regulatory agencies subject to the procedures of these rules. The term "agency" is defined in accord with the definition provided in Minn. Stat., Sec. 116C.24, subd. 8. The inclusion of the various types of government agencies is reasonable to ensure that all agencies having regulatory power to grant or deny natural resource permits are included as potential parties to the consolidated permit procedure.

2. "Coordination Unit" means the Environmental Permits Coordination Unit established pursuant to Minn. Stat., Sec. 116C.25, to assist persons using the master application process.

... Minn. Stat., Sec. 116C.25 provides that "the Council shall establish an environmental permits coordination unit to implement and administer the provisions of" the Environmental Coordination Procedures Act. This definition is needed to establish a common term for referencing that unit and to identify the major purpose the unit will serve.

3. "Council" means that agency established pursuant to Minn. Stat., Sec. 116C.03, to coordinate interaction among the state agencies concerning solutions to the state's environmental problems.

... The Legislature has assigned to the Minnesota Environmental Quality Council the responsibility for implementing the Environmental Coordination Procedures Act. The Act goes on to provide a definition of the "Council" in section 116C.24, subd. 2 for the purpose of identifying the "Council" in a more abbreviated form. This definition is needed so that it is clearly understood that the implementing agency is the Minnesota Environmental Quality Council which was created by Minn. Stat., Sec. 116C.03.

4. "Days": In computing any period of time prescribed or allowed in these Rules, the day the designated period of time begins shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which case the period will extend until the end of the next day that is not a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is 15 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded.

... One of the principle benefits of the Act is to provide predictability to potential users of the master application process. To achieve this predicability, a number of rules impose time constraints on the proposer, the regulatory agencies and the Council. To avoid confusion over the time allotted for complying with those rules, it is necessary to clarify which days are included in the time period. The definition, as written, is consistent with the definition of "days" for other EQC programs to avoid confusion by the Council over which days are included.

5. "Environmental review process" means any procedure for review established by the Council pursuant to Minn. Stat., Sec. 116D.04, subd. 2.

... This term identifies the process involved in the Council's certification procedures with respect to projects under its jurisdiction as determined by the Council's Environmental Impact Statement rules. The term, as used for the purpose of these rules, refers to the situation in which either an Environmental Assessment Worksheet or an Environmental Impact Statement is being prepared on a proposed project. The definition is needed to provide an abbreviated term when referring to those processes. This term is attaining common usuage when referring to a project undergoing preparation of an environmental document pursuant to Minn. Stat., Sec. 116D.04, subd. 2.

6. "Hearing examiner" means a hearing examiner regularly appointed or assigned by contract as provided for in Minn. Stat., Sec. 15.052.

... The Act in section 116C.28, subd. 1 directs the Council to hold any hearings under these procedures pursuant to the contested case provision of Minn. Stat., Chapter 15. This definition is needed to indicate that when the services of a hearing examiner are used, the examiner will be provided by the State Office of Hearing Examiners, thus ensuring that the hearings will be held in accord with the legislative intent.

7. "Joint hearing" means the optional hearing at which one or more agencies participate as herein described as a replacement for individual state agency hearings that may be held following each agency's separate permit review procedures.

... This definition is provided to allow the reader to clearly understand that the hearing procedure established in these rules is a replacement for procedures that might otherwise be applied by participating agencies. The term indicates that a hearing in which one or more agencies participate is a consolidated effort, despite separate agency review of proposed project permit requirements. This definition is necessary so that interested persons and users of the process have a common understanding of the procedures.

8. "Local government unit" means a county, city, town, or special district with legal authority to issue a permit.

... To ensure the reader is able to identify the level of government indicated by this term, a specific delineation of those units is needed. In this manner, the term readily identifies those types of government units meant by the word "local".

9. "Master application" means an application requesting the issuance of all state permits necessary for construction or operation of a project requiring more than one permit.

... Minn. Stat., Sec. 116C.26, subd. 1 cites the procedure to be used in reference to this definition. The term specifically identifies the form used by the Coordination Unit for purposes of requesting information about particular projects. This definition is needed in order to establish conformity in the use of terms in the text of the rules.

10. "Participating agency" means an agency with one or more permit programs under its jurisdiction that are pertinent to a project for which a completed master application has been submitted to the coordination unit and which orders a hearing to be held pursuant to these Rules.

... This definition expands the term "agency" to identify which agencies are subject to the hearing procedures contained in these rules. To determine which agencies must assume the costs of a hearing and must reach their permit decisions based on the hearing record, it is necessary to distinguish between those agencies involved in the hearing procedures and those agencies which are not involved.

11. "Permit" means a license, permit, certificate, certification, approval, compliance schedule, or other similar document pertaining to a regulatory or management program related to the protection, conservation, or use of or interference with, the natural resources of land, air or water, which is required to be obtained from a state agency prior to constructing or operating a project in this state. Nothing in these Rules shall relate to the granting of a proprietary interest in publicly owned property through a sale, lease, easement, use permit, license or other conveyance.

... This definition is provided in accord with Minn. Stat., Sec. 116C.24, subd. 5 to identify the types of documents subject to the permit coordination process. It is necessary to specify those items encompassed by the definition and those items which do not relate to enable the reader to clearly understand the portions of the text where the term is used.

12. "Permit Information Center" means an office established to provide information to the public about the requirements of state and local government regulations concerning the use of natural resources and protection of the environment.

... Subd. 1 of Minn. Stat., Sec. 116C.34 provides criteria for the establishment of permit information centers. This definition consolidates those criteria and provides a workable term to describe the action of the Environmental Procedures Coordination Act for purposes of consistency when the term is used in the text of these rules.

13. "Person" means an individual, an association, partnership, or cooperative, or a municipal, public, or private corporation, including but not limited to a state agency and a county.

... Minn. Stat., Sec. 116C.24, subd. 6 provides this definition. In order to expand the scope of the generic term, this definition includes other terms which can be identified in relation to the enabling legislation. For purposes of clarity and standardization, this definition is necessary.

14. "Project" means a new activity or an expansion of or addition to an existing activity, which is fixed in location and which requires permits from an agency(ies) prior to construction or operation, including but not limited to industrial and commerical operations and development.

... This definition, taken from Minn. Stat., Sec. 116C.24, subd. 7, identifies the types of activities for which this process may be used, and, by virtue of omission, identifies the types of projects for which the coordinated permit procedures are unavailable. The term is defined to provide for a standardized interpretation of the term when it appears in the text of these rules.

15. "Regional Development Commission" means any Regional Development Commission created pursuant to Minn. Stat., Sec. 462.381 to 462.396, and the Metropolitan Council created pursuant to Minn. Stat., Chapter 473B.

... This definition is needed to identify what constitutes a regional development commission for the purpose of these rules. Although the term has obtained a common meaning through the state, it is necessary to clearly identify the meaning of the term to eliminate confusion as to which organizations are eligible for the permit information center grant monies under the existing appropriation language.

MEQC 102 MASTER APPLICATION

A. Scope. A person proposing a project that might require more than one permit may, before the initial construction of the project or the initial operation of the project if construction of the project requires no permits, submit to the Coordination Unit a master application requesting the issuance of all permits necessary for construction and (or) operation of the project.

... Minn. Stat., Sec. 116C.26, subd. 1 identifies who may choose to use the master application process and under what conditions the process is available. This rule paraphrases the beginning sentence of that subdivision and is needed to indicate that only proposed projects requiring more than one natural resource

permit are eligible to use the process. The rule is written in a permissive tone as it is the clear intent of the Legislature that the process be available only to those project proposers wishing to make use of it.

Common sense dictates that the project proposer is the only reasonable entity to initiate the process; the proposer is the only one in a position to identify the proposed project and having access to the information needed by the regulatory agencies to determine the applicability of their permit programs. In order for the permit process to be truly coordinated, it is necessary to require that the master application be submitted to the Coordination Unit which is assigned the responsibility of notifying the regulatory agencies.

1. Other permits, in addition to those defined by these Rules, may be included in these permit coordination procedures if the applicant and state regulatory agency so agree and if such procedure is permissible under the statutes and regulations that apply to such non-included permits. A written agreement to such an arrangement shall be provided by the agency to the Coordination Unit within 30 days of receipt by the agency of the master application. If such other permit applications are included within the master application process, they shall remain with the process until final disposition of the master application and for purposes of the master application process shall be included as a permit as defined by these Rules.

... Although the Act refers only to natural resource type permits as eligible for inclusion in the coordination process, it is reasonable to include other permits to increase the efficiency of the coordination process. This rule is needed to provide, at the option of both the applicant and the regulatory agency, a mechanism to include such extraneous permits in the process. If the Coordination Unit is to fulfill its function as the coordinating body, it must be apprised of the inclusion of these permits; thus, there is the need to have a written agreement submitted to the unit by the agency. Minn. Stat., Sec. 116C.26, subd. 2 requires an agency to respond if it has a permit interest in the proposed project within 20 days after receipt of the master application. However, because an agreement must be reached between the two parties to include extraneous permits, it is necessary to allow an extra ten days to determine if both parties wish to include such permits with the master application. If the two parties select this option and if the overall objective of predictability is to be maintained, the rule must contain the provision that those permits be included in the process until the final disposition of the master application.

2. If a permit is required for the operation of a project or if a state agency must approve the engineering design plans of a project, and if sufficient information needed by the agency to reach a decision would be unavailable through the master application process, then that permit or approval may be processed independently from the master application process provided both the applicant and the agency agree.

... Certain operational permits are not issued by regulatory agencies until the proposed project has been completed and is functional. To avoid delaying the entire master application process or to prohibit its use by the applicant, this rule is needed to provide that certain permits may be processed independently of the master application. To reduce the possibility of misuse of this rule, it specifically identifies which types of permits or approvals may be processed separately and also requires that both parties be in agreement that separate processing is in the best interest.

B. Master Application Form. The Coordination Unit shall provide a master application form which requests information necessary for agencies to determine permit applicability. Information required shall include but not be limited to:

1. The name and address of the applicant.

2. The location of the project.

3. A description of the project, including but not limited to possible discharges of waste; use of or interference with natural resources; the time for project completion; and, if the project is to be phased, the timing of such phases.

... To provide a coordinated and consistent process, it is necessary that a single form be available for the submission of information needed by the regulatory agencies to determine permit applicability. The Legislature recognized this need and in Minn. Stat., Sec. 116C.26, subd. 1 directed the Coordination Unit to provide a form to applicants indicating the kinds of

information needed. The information required by this rule and by the Legislature must be provided by the applicant as the applicant is most likely to have the best access to the information.

This rule contains an outline of the information required to be furnished by the applicant. Development of the complete form is best accomplished through discussions with state agencies and potential users of the procedure. It is inappropriate to include the complete form in these rules, since doing so would preclude revising the form without going through the lengthy and costly hearing process. At the time these rules become effective a form will be available; however, it is anticipated that after gaining experience, the Coordination Unit will update and revise the form to accommodate the users of the master application process and the state agencies.

C. Signatories. Permit forms of agencies shall be signed as required by the rules of the respective agencies. Any form, exclusive of the agencies' permit forms, submitted to the Coordination Unit shall be signed as follows:

1. In the case of a corporation, by a principal executive officer or his duly authorized representative or agent, if such representative or agent is responsible for the project for which the permit is requested.

2. In the case of a partnership, by a general partner.

3. In the case of a sole proprietorship, by the proprietor.

4. In the case of a municipal, state or other public signatory, by either a principal executive officer, ranking elected official, or other duly authorized employee.

... This rule is needed to clarify which signatures are required for the master application and agency permit forms. It is reasonable that only authorized agents should be permitted to represent project proposers. This rule is necessary to protect agencies and permit applicants and to identify a principal contact person for the project.

D. Certification. The Coordination Unit shall provide certification application forms which shall be submitted respectively by all applicants as follows:

... Minn. Stat., Sec. 116C.26, subd. 1 requires that before an applicant submits a master application, the project must be certified to be in compliance with local regulations and that any environmental review procedures required by the EQC have been completed. To eliminate potential confusion regarding the information required in a certification, the Coordination Unit will prepare a standardized form in which will be available to all applicants.

1. Certification must be obtained from the local government unit(s) in which the proposed project will be located that the project complies with all local zoning ordinances, subdivision regulations, and environmental regulations administered by the local government unit. Certification under this paragraph must be issued not more than 120 days before the submission date of the master application. The local government unit(s) shall either issue a certification or deny that certification in accord with the following procedures.

... This rule is derived from the mandates of Minn. Stat., Sec. 116C.31, subd. 1 which require a local government to certify that the proposed project is in compliance with all local regulations, not more than 120 days prior to the submittal of a master application by the project proposer. The need for this rule is clearly established in the Act. The rule also indicates that a local unit of government has the option of either certifying or denying certification of a proposed project. In addition, this rule and the ones to follow provide the procedures to be followed by the local unit in reaching its certification decision. If such provisions were not included in these rules, the local units would be required to comply with the procedures without any guidance. If that guidance were not available, there could potentially be numerous, inconsistent ways of certifying a project resulting in a great deal of confusion.

a. Within 45 days after the applicant has submitted a certification application form to the local government unit, the unit shall return the completed form to the applicant or notify the applicant in writing that the certification is denied, including the reasons for the denial.

... To achieve the objective of predictability of this process, it is necessary to require that certification decisions be made in a timely manner. This rule is needed to identify the time period allowed the local unit in reaching its certification decision. Because most local governing bodies meet at least one a month, 45 days should provide them ample opportunity to review their regulations and determine whether the proposed project is in compliance with them. If the local unit determines the proposed project is not in compliance with the local regulations, it is appropriate to require that the unit inform the proposer where the nonconformance exists. This rule, as do others, requires that the reasons for the decisions of public agencies be justifiable and open to public scrutiny, a concept implicit throughout the Environmental Coordination Procedures Act.

b. No local government unit shall rescind such a certification for a master application, even though the local government may have changed its zoning ordinances, subdivision regulations, or environmental regulations. A change of zoning ordinances, subdivision regulations, or environmental regulations shall not invalidate a previously given certification for the purpose of securing a state permit under MEQC 101 to 110. After certification, the local government may change such zoning ordinances, subdivision regulations, or environmental regulations, but not so as to affect the proposed project until the procedures of MEQC 101 to 110, including any administrative or judicial reviews, are completed.

... Minn. Stat., Sec. 116C.31, subd. 1 provides that in the event of a change or modification of local government regulatory ordinances during the time that a project is involved in the master application process, certification cannot be repealed. In this manner, the project proposer is not unfairly caused to requalify for certification after once attaining that status. It is in the best interest of the applicant that this provision be included to prevent economic hardship and time loss in the event of a change in local government regulatory and administrative procedures or a shift in local policies.

This rule does not prohibit a change in local regulations after a project is certified but it does require that such change shall not invalidate the previously granted certification. This rule does not preclude a future action on the project by the local unit such as a denial of local permit applications.

c. A local government unit denial of certification shall not be appealable under these Rules. Such denial shall not preclude the applicant from filing a permit application under any other available statute or procedure.

... This provision was included in the Act (Minn. Stat., Sec. 116C.31, subd. 2) and in these rules to provide the project proposer who is denied local certification an optional means of obtaining the required permits. The intent of this rule is to allow a proposer who has had local certification denied, the option of continuing to seek the required state permits using the state regulatory agency's normal procedures. The rule is needed to demonstrate that obtaining local certification is a "one-shot" deal but that optional procedures do exist. In essence this rule states that the master application process is not available to a project proposer denied local certification, but the proposer will still be allowed to obtain the necessary state approvals.

2. Certification must be obtained from the Council, that an environmental impact statement on the project either has been completed or is not required. Within five days after the first Council meeting following submission of a certification application form to the Council, the Council shall return the completed form or notify the applicant in writing that the proposed project is undergoing review under the environmental review process. If the project is undergoing review under the environmental review process, the Council shall return a completed form to the applicant within ten days after such process is completed. If an environmental impact statement was required on the project, a copy of the completed environmental impact statement shall be attached to the Council's certification.

... In addition to the certification of compliance by the local government units, a project proposer must also seek and obtain certification from the EQC that environmental review of the project has been completed. This rule is needed to clearly indicate that the EQC must be advised of a proposed project before any state natural resource permits are issued. It should be noted this rule does not give the EQC the option of denying a certification but only ensures that the project will be reviewed if a review is deemed necessary. Although the provision of the Act requiring this certification (Minn. Stat., Sec. 116C.26, subd. 1) does not impose time restrictions on the Council, it is necessary that such time constraints be imposed to ensure that a predictable and reliable decision making process is achieved. The time period provided in this rule places a burden on the Council to react and notify the applicant in a timely manner consistent with the intent of these rules.

Although subdivision 1 states that an environmental impact statement prepared on the project should accompany the local certification, this responsibility is more appropriately assigned to the EQC. Because all EISs must be processed through the EQC and because in certain cases the local unit may not be responsible for preparation of the EIS, it makes sense to give this responsibility to the EQC. The Council in proposing this provision is prepared to accept this responsibility.

E. Acceptance for Processing. Upon receipt of a completed master application, including certifications required in MEQC 102D, the Coordination Unit shall immediately notify the applicant that the application has been accepted and is ready for processing.

... This rule is needed to clearly indicate to the applicant that he has complied with the rules governing the master application process and that the process is proceeding in a timely fashion.

1. Upon acceptance, the Coordination Unit shall immediately notify in writing each agency having a possible permit interest in the project. The notice shall be accompanied by a copy of the master application.

... Subd. 2 of Minn. Stat., Sec. 116C.26 requires the Coordination Unit to notify interested regulatory agencies immediately after receipt of a master application. This rule requires that the unit shall indeed notify the agencies and also requires the unit to forward a copy of the application, thus enabling the agencies to readily determine whether they have a permit interest in the proposed project.

2. Each notified agency shall respond in writing to the Coordination Unit within 20 days of receipt by the agency of the master application, advising whether the agency will or will not require a permit for the described project. If the agency responds affirmatively, it shall include application forms and information concerning the specific permit program(s) applicable to the project as described and state whether a public hearing is required or appropriate relating to permit requirements for the project; provided, that a statement whether a public hearing is required or appropriate relating to National Pollutant Discharge Elimination System (NPDES) permit requirements for the project shall not be required at this time. If an agency affirms that a public hearing is required or appropriate, it shall provide a brief statement identifying the reasons.

... The procedures to be followed by a regulatory agency in responding to a master application are identified in Minn. Stat., Sec. 116C.26, subd. 2 and reiterated in this rule. To achieve a predictable process and justify an agency's response, it is necessary to impose on the responding agency the conditions included in this rule. Including such restrictions is necessary to fulfill the intent of the Legislature in creating a process which is predictable to all parties and provides reasons for an agency's actions.

The requirement for processing an NPDES permit is a variation from the usual procedure in order to accommodate federal procedural requirements. Minn. Stat., Sec. 116C.33, subd. 2 provides that the master application procedure can be modified to accommodate federal requirements which are inconsistent with the requirements of the Act. In processing NPDES permits time must be allowed for public comment on a proposed project prior to an agency determination on the appropriateness of a hearing. The reasons for a public hearing should be identified by an agency in fairness to the project proposer.

3. If after all agency responses are received, only one permit is required, the master application procedure shall no longer be available to the applicant for that project. The applicant may then proceed to process the permit application using the normal procedures established by the agency requiring the permit. However, an agency(ies) shall not require an additional permit(s) of the applicant unless one of the conditions described in MEQC 102E.4 arises.

... This rule is needed to indicate the procedures to be followed if agency responses to the master application indicate that only one natural resource permit is required. It is clearly the intent of the Legislature, as demonstrated in Minn. Stat., Sec. 116C.26, subd. 1, that the master application procedure should be available only to those proposed projects which require more than one natural resource permit. This rule requires the applicant to process his permit request directly with the regulatory agency following the agency's normal procedure. In most cases this would be in the best interest of the applicant because the time required for processing a single permit application would be

less than that required for the master application process to be completed. However, because the proposer had initiated the master application in good faith but was prevented from pursuing the process because of requirements beyond his control, he should be allowed to remain under the influences of the philosophy of the Act. Thus, an agency should not be allowed to demand additional permits but should be required to abide by its original determination, made while the master application procedure was still in effect.

4. A notified agency that makes a timely response indicating that a permit(s) is not required, or that fails to make a timely response concerning a permit program or programs, shall not require such a permit of the applicant for the described project unless:

   a. The master application provided to the agency contained false, misleading, or deceptive information, or lacked information, that would reasonably lead the agency to misjudge the applicability of its permit(s) to the project; or

   b. Subsequent laws or rules require additional permits; or

   c. Unusual circumstances prevented the agency from notifying the Coordination Unit, and the agency can establish that failure to require a permit would result in substantial harm to the public health and welfare.

... This rule is proposed by the Council in accord with the requirements of Minn. Stat., Sec. 116C.26, subd. 3 which prohibits an agency from requiring a permit after it has previously determined that a permit was not required for the project unless certain conditions arise. Implicit throughout the Act is the objective of creating a predictable process. This rule demonstrates that concept by ensuring that the project proposer learns quickly which permits must be obtained after the master application has been submitted. However, the Legislature did recognize that certain conditions could arise where an agency would not have a reasonable opportunity to determine the need for a permit; thus, the Act allows that additional permits could be required if certain circumstances did occur. This rule is needed to specifically identify those circumstances for the benefit of both the agencies and the project proposers.

5. If one of the conditions listed in MEQC 102E.4.a through .c arise, the affected agency(ies) shall so notify the applicant, the Coordination Unit and the Council, and shall request a determination by the Council whether an order should be issued to require the relevant permit(s). Included with the agency's request shall be a statement justifying the need to require the additional permit(s). The Council at its first meeting held more than 15 days after being notified by the agency shall determine whether the permit(s) shall be required. If additional permit(s) are required because one of the conditions of MEQC 102E.4.a occurs necessitating a change in the notice requiredby MEQC 105A, or a change in the joint hearing procedures under MEQC 106A, or the holding of an additional hearing, the applicant shall pay the additional cost, if any, resulting from the requirement for the additional permit(s). If additional permit(s) are required because the conditions of MEQC 102E.4.b or .c occur, the agency requiring the additional permit(s) shall pay the additional cost, if any, resulting from the requirement for the additional permit(s).

... This rule is needed so that all affected parties are apprised of the mechanism for requiring additional permits should one of the conditions of MEQC 102E.4 occur. Although Minn. Stat., Sec. 116C.26, subd. 3 identifies the conditions which could result in the requiring of additional permits, it does not clearly indicate who should be assigned the responsibility for determining when such a permit should be required. However, in order to maintain the spirit of the Act regarding predictability and openness of the process, the Council and the state agencies have agreed that the determination, when needed, should be made by the Council. By assigning this responsibility to the Council, the project proposer is assured that this type of decision will be made in a forum open to public input. The Council holds regular monthly meetings open to all interested individuals, whereas, if an agency were to make the determination and open the decision making process to the public, the agency would probably have to schedule a public meeting or hearing which would be both time consuming and costly to the agency involved. This rule is also needed to establish the time frame in which the Council will make its decision.

Because of the potential complexities resulting if one of the conditions should arise, the Council will need a certain amount of time to analyze the information supplied by the agency and reach its decision. Since the Council meets monthly, it is necessary to coordinate the time limi 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. Setting this time limit also ensures the parties that a timely response will be made by the EQC.

If an additional permit is required, there is the possibility that additional costs may also be incurred. This rule is needed to identify which party would be responsible for assuming those costs. It is reasonable that any resulting costs should be borne by the party most closely associated with the action leading to the requirement of the additional permit. The responsibility for condition a. occurring is clearly that of the project proposer whereas the responsibility for conditions b. and c. are more closely associated with the activities of the regulatory agencies.

F. Alteration of Project. If the applicant without being required by a public agency alters the proposed project in a way that may affect the validity of the certifications required in MEQC 102D or an agency response required in MEQC 102E.2, the applicant shall immediately notify the Coordination Unit of the proposed alteration. The Coordination Unit shall then immediately notify the Council, the local government units involved, and all agencies which may have a permit interest in the proposed project. Within ten days after notification by the Coordination Unit, the Council, the local government unit(s), and the agencies shall respond to the Coordination Unit and the applicant whether the previous certification is still valid or additional permits are required. If a new certification is needed or additional permits are required, the master application process shall be suspended. The period of suspension shall not exceed the time periods provided in MEQC 102D.1.a, MEQC 102D.2 and MEQC 102E.2. If the joint hearing required in MEQC 105 has been held prior to notification of the proposed alteration of the project, the applicant shall be responsible for the costs of any additional hearing that may be required.

... Although the Legislature did not provide for the occurrence of this situation, this rule is necessary to provide the mechanism for handling it should the situation arise. It should be noted this rule applies only to those projects which are changed by the proposer on his own volition. If a project is altered at the request or recommendation of a public agency this rule does not apply, but the master application procedure would continue in its normal manner. The basic intent of this rule is to require the applicant to repeat only those steps of the master application process affected by the project change. Because it is recognized that almost all projects undergo change at some time in their planning, it would be unreasonable to require all project changes to be reviewed by the Council and the regulatory agencies.

Because the alteration of the project is in the hands of the proposer, it is necessary to require the proposer to initiate the review procedure by submitting a notification to the Coordination Unit. The Coordination Unit is the proper entity to receive such notification as it has been assigned by the Legislature the responsibility of coordinating all activities of the master application process.

The procedure to be followed in reviewing the project change is similar to that for making the initial determination except that the review period is shortened. Because the project has been previously reviewed in detail and the change will likely concern only a few aspects of the project, less time should be needed to review the project. Ten days should be sufficient for the public agencies to review the changes and make a determination regarding validity of the previously given responses. If one of the master application steps need be repeated, this rule specifies that the process will be temporarily suspended until that step has been completed. The time periods allowed for completing the revision are the same as those provided for in the normal master application procedure.

If additional costs are incurred because a step has to be repeated, it is reasonable to require the party causing the additional costs to assume those costs. The last provision in this rule provides that the applicant, as the initiator of the change, assume those costs.

MEQC 103 PERMIT APPLICATIONS

Within five days after the deadline for agency responses, the Coordination Unit shall submit to the applicant all necessary application forms for the permits identified in the affirmative agency responses described in MEQC 102E.2. The applicant shall complete and return these forms to the Coordination Unit, with any required individual permit fees, within 90 days.

... As previously mentioned, a principle objective of this procedure is to increase the predictability of permitting decisions. This rule is proposed to specify the time allowed for the processing of agency responses and for the completion of the permit forms by the applicant. Because the forwarding of forms by the Coordination Unit will merely involve "paper shuffling", five days will be adequate for the Coordination Unit to accomplish this task. To ensure timely progress a restriction must be placed on the applicant to complete and return the forms. If this were left open ended and the applicant were to take an inordinate amount of time in responding, it could conceivably affect the previous responses of the agencies because of changing agency policies or permit programs.

Although the Environmental Coordination Procedures Act is directed at modifying the procedures used by agencies in granting or denying permit applications, it is not intended to affect the fees currently being assessed to the applicant. To reduce the time needed for administrative processing of the application, this rule provides that each individual permit application be accompanied by the fee required for that permit. It will greatly ease the processing of the permit forms if "separate checks" are included for each permit fee.

A. Transmittal to Agencies. Within ten days of receipt of the full set of completed forms the Coordination Unit shall send each application to the appropriate agency for its permit review in accord with the procedures of these Rules, provided, that a completed NPDES form shall be forwarded to the Minnesota Pollution Control Agency (MPCA) immediately upon receipt by the Coordination Unit.

... This rule is needed to ensure the applicant that the processing of his permit applications will be carried out in a timely manner. A period of ten days is needed by the Coordination Unit to review the permit forms to make sure that each form is completed and accompanied by any required permit fee. In the majority of cases, the full ten days will not be needed but if a project involves a large number of permit applications or if there are questions about the completeness of the forms, the full ten days may be needed. This rule also provides that an NPDES application be submitted to the MPCA as soon as it is received. This adjustment to the normal procedures is definitely needed to reduce potential delays in the processing of all the permit applications. The need for this speeded-up process, involving NPDES permits, results from the time required for the processing of those applications dictated by federal requirements as demonstrated in the agency's justification for rule MEQC 104.

B. Priorities. If an agency has a procedure for setting priorities in permit issuance according to the application date, the date used shall be the day the master application is received by the Coordination Unit.

... Minn. Stat., Sec. 116C.26, subd. 6 provides the basis for this rule. In order to further reduce the delay for the issuance of permits, the agencies are required to use the date the master application is received by the Coordination Unit in determining the order for acting on the permit. The intent of this rule and the Act subdivision is to require the agency to act on the permit in a timely manner.

MEQC 104 NPDES PERMIT REVIEW

Whenever the MPCA responds under MEQC 102E that a NPDES permit is required for a master application, within 110 days after it has received a completed NDPES application under MEQC 103A the MPCA shall complete all permit review procedures necessary to determine the necessity or appropriateness of a hearing on the NPDES requirements for the project, and shall within the 110 days notify the Coordination Unit whether a hearing is required or necessary.

... Minn. Stat., Sec. 116C.33, subd. 2 provides that the Council may modify the normal master application procedures to accommodate the requirements of federal statutes. Requirements for the processing of NPDES permits are dictated by federal statutes which require a longer time period for reaching certain decisions than is allowed by the Environmental Coordination Procedures Act.

Because federal requirements require a public notice before the decision can be made on the need for a public hearing, it would be impossible to make that determination within the 20 days allowed by the Act. The 110 day time period allows the MPCA to complete its public notice requirement and to determine the need for a public hearing.

MEQC 105 NOTICE

A. Publication. Immediately after transmittal of the completed permit applications and any required permit fees to the appropriate agency, the Coordination Unit shall publish notice, at the applicant's expense once each week on the same day of the week for three consecutive weeks, in a newspaper of general circulation in each county in which the project is proposed to be constructed or operated.

... This rule is proposed by the agency to ensure that the public and affected citizens are provided with an opportunity to become aware of the proposed project. A major purpose of the legislatively enacted master application procedure is to provide to the public an opportunity to obtain information regarding proposed projects which may affect them. Minn. Stat., Sec. 116C.27, subd. 1 requires that this provision be included as in integral part of the master application procedure.

If the potentially affected public is to be informed of the pending project, it is only reasonable the notice be published in a newspaper to which they have ready access. The requirement for the applicant to bear the cost of a newspaper notice is proposed at the directive of the Legislature, which included such a provision in Minn. Stat., Sec. 116C.27, subd. 1.

B. Content. The notice shall contain:

1. A description of the proposed project.
2. The name and address of the applicant.
3. The location of the project.
4. The permits applied for and the agencies with permit jurisdiction.
5. The Coordination Unit telephone number to contact for more information about the project.
6. A statement that a copy of the master application and a copy of all permit applications for the project are available for public inspection during normal business hours in the office of the county auditor of each county in which the project is proposed to be constructed or operated, and in other locations the Coordination Unit may designate.
7. Except as provided in MEQC 104 or MEQC 105C, the time and place of the joint hearing, to commence not less than 20 days or more than 45 days after publication of the last newspaper notice.
8. Additional information concerning the permit application or hearing, upon notification by an agency that such specified information is required to be provided in the notice.

... In order for the newspaper notice to fulfill its intended use, it is necessary that it contain information which will enable interested citizens to gain a basic understanding of the proposed project. In addition to requiring the notice, Minn. Stat., Sec. 116C.27, subd. 1 also identifies the type of information which should be contained in the notice. This rule is needed to illustrate what information is required to be published.

The listed items are all necessary if it is to be expected that the reader will be able to comprehend the proposed project. With the inclusion of the items listed in this proposed rule, the public will be informed as to the nature of the project, whom to contact for further information concerning the project, when and where they will be provided an opportunity to comment, and which state natural resource permits are required to implement the proposed project.

C. If Joint Hearing of No Value. If agency responses to the master application unanimously affirm that a public hearing concerning the master application is not required or is not in the public interest, the newspaper notice shall not refer to a joint hearing. The notice shall state that members of the public may present relevant views and supporting material concerning specified permits in writing to the Coordination Unit within 30 days after the last notice has been published.

... This rule is drafted in accord with Minn. Stat., Sec. 116C.27, subd. 2. In the event that all the permitting agencies confirm that a joint hearing would be of no value, the master application public notice would reflect this finding. The public would still be permitted to present relevant views and information regarding the project within the 20 day period following publication of the last notice. This is necessary to allow public participation in the process, even when formal hearing is scheduled.

D. Additional Notice. Persons wishing to receive notice by mail of master applications may do so upon written request. The request shall give the name and address of the person to receive notice and the counties for which master application notice is requested. The request shall be valid for one year and may be renewed upon notice of expiration by the Coordination Unit. Upon notification by an agency, the Coordination Unit shall also mail notices to any additional persons entitled to receive notice according to the requirements of individual permit programs.

... This rule establishes a procedure which allows individuals to receive notice of master applications by mail. It is reasonable to assume that interested parties desiring to be listed as recipients of such notice would find the information important. This procedure also provides for participating agencies to request that the Coordination Unit mail notice to persons entitled to receive such notices under their individual permit programs.

E. Confidentiality

If the applicantrequests that information contained on the application or in supplement to the application be certified as confidential, the information shall not be released unless the appropriate agency responds in writing that the information is not to be certified as confidential. If the agency so responds, the Coordination Unit shall immediately notify the applicant that the agency has failed to certify the information as confidential. Within ten days after such notification, the applicant may withdraw the subject information by giving written notice to the Coordination Unit. The information shall not be subsequently released if it is withdrawn by the applicant within the ten day period.

... This rule is needed to protect the privacy of information the applicant may not wish to have made public. In a competitive marketplace project proposers often generate information which if released to the general public would cause them to lose their competitive advantage. This rule requires that such information will not be released if the applicant takes positive action. To protect against misuse of this provision, it is necessary that the agency most familiar with the type of information at issue be assigned the responsibility of determining whether it should be withheld from public perusal. Even if an agency fails to concur with the project proposer, the opportunity exists for the proposer to withdraw the information. It must be recognized that at this time the information would have already been reviewed by a number of parties and thus available to the public. However, the rule provides a check on the information being released by allowing for supplements to be submitted along with the master application. Conceivably those supplements could contain information desired to be kept confidential by the proposer.

If an agency responds negatively to a requested confidential certification, the proposer must act in a timely fashion to prevent that information from being released. A ten day time period should provide ample time to the proposer to notify the Coordination Unit if he still believes it is in his best interest to keep the information from public review.

MEQC 106 JOINT HEARING

A. Joint Hearing Procedure. When one or more agencies affirm that a hearing is required or appropriate relating to its permit requirements for the project, the agency(ies) shall issue an order for a hearing. In preparing the order for hearing, the agency(ies) shall consult with the Coordination Unit in setting the time and place for the joint hearing. The Coordination Unit shall issue a notice that a joint hearing will be held pursuant to the contested case provisions of Minn. Stat., Chapter 15, the Rules and Regulations of the Office of Hearing Examiners, and these Rules. Copies of the notice and order(s) shall be immediately forwarded to all agencies having a permit interest in the project and to the applicant by the Coordination Unit.

... Minn. Stat., Sec. 116C.28, subd. 1 provides a means for a consolidated hearing process on permits involved in the master application procedure thereby substantially reducing the time and expense of state agencies and the proposer. If this procedure did not exist, there could easily be a number of individual permit hearings required for each project. To enable this consolidated hearing to be coordinated among all permitting agencies, it is necessary that the Coordination Unit be involved in setting the time and place for the hearing.

In order for all affected parties to be fully aware of these developments, it is necessary to assign to the Coordination Unit the responsibility to notify them of the pending hearing. Because of its role in the entire process, the Coordination Unit is in the best position to ensure that the proper parties are notified; thus it is reasonable to give them this responsibility.

B. State Agency Participation. Each participating state agency shall be represented at the joint hearing by its chief administrative officer or his designee. The representative shall participate in the portion of the joint hearing pertaining to submission of information, views, and supporting materials that are relevant to the specific permit application(s) under the jurisdiction of that agency. The manner of agency participation shall be consistent with the contested case provisions of the Rules and Regulations of the Office of Hearing Examiners. The hearing examiner may, when appropriate, continue a joint hearing from time to time and place to place. The joint hearing shall be recorded in any manner suitable for transcription pursuant to Minn. Stat., Chapter 15. The record of the joint hearing shall be made available for public inspection by the Coordination Unit.

... Minn. Stat., Sec. 116C.28, subd. 2 identifies which state agencie shall participate in the joint hearing and the manner by which the hearing will be managed. This rule, as proposed, is consistent with the directives of that subdivision.

The rule establishes the procedure used by participating agencies to insure their adequate representation at joint hearings. To ensure attendance it is reasonable to allow an authorized administrative officer to designate another person if the officer would be unable to attend the hearing. Further, it is anticipated that any designee from a participating agency would be cognizant of the pertinent issues, information, views and supporting materials concerning specific permit applications under the jurisdiction of that agency. The rules indicate that participation by pertinent agencies must be in accord with the Rules and Regulations of the Office of Hearing Examiners. A transcipt of the hearing will be made available by the Coordination Unit to allow for public inspection, thereby maximizing public awareness and participation.

C. Hearing Examiner Report. Upon termination of the joint hearing, the hearing examiner's report, containing recommendations on each permit, shall be forwarded to the Coordination Unit. The Coordination Unit shall forward copies of the report to the participating agencies and to the applicant.

... This rule is needed to develop a mechanism for distributing the hearing examiner's findings and recommendations. To fulfill its role as the coordinating element of the master application process, it is reasonable to assign to the Coordination Unit the responsibility of ensuring that all affected parties receive a copy of the report.

D. Costs. Costs of the joint hearing shall be apportioned by the Coordination Unit to each participating agency. The hearing costs shall be apportioned based on the percentage of the hearing record that is pertinent to each participating agency.

... As mentioned earlier, the joint hearing process is a replacement for separate hearings that would have been held by individual agencies. Because those agencies would have been holding hearings and paying for them before the master application process was instituted, it is only reasonable to expect them to pay for the part of the joint hearing that involves their permit application. The rule is needed to identify who is responsible for the joint hearing costs and to establish the mechanism for distributing those costs. Since the Coordination Unit was established to coordinate the entire process and is in the best position to be aware of all the issues involved in a master application, it is reasonable to assign them the responsibility of determining the proportionate shares of the hearing cost. In the majority of cases one or more of the permit applications because of more complicated issues involved, will consume a disapportionate amount of the hearing time. Rather than arbitarily splitting the hearing costs among those agencies having a permit involved in the hearing, it is only equitable to have those agencies consuming the most time at the hearing pay a proportionately larger share of the costs.

E. Final Agency Decision. Within 60 days of receipt of the hearing examiner's report or notification by the Coordination Unit of its availability to those agencies not participating in the hearing, each agency shall notify the Coordination Unit of its final decision on the permit applications within its jurisdiction, provided that this date may be extended by the Chairman of the Council for reasonable cause. A request for such extension, setting forth specific reasons, shall be filed with the Coordination Unit, which shall immediately notify the Chairman of the Council and the applicant. Such extension shall be the minimum time needed by the agency to reach a final decision and shall be considered an exception to normal operating procedure. Each final decision shall set forth the reasons for the decision together with a final order denying or granting the permit, including any conditions under which the permit is issued. Each final decision of the participating agencies shall be consistent with the requirements of the Rules and Regulations of the Office of Hearing Examiners.

... This rule sets forth a procedure for agencies to render final decisions, establishes deadlines for reaching those decisions, and delineates the manner in which those decisions should be set forth. Minn. Stat., Sec. 116.28, subd. 3 provides the basis for this rule by dictating the time allowed for agencies to reach their decision and the manner in which those decisions will be made. Extension of the time period is allowed by this subdivision; however, if the entire process is to maintain predictability, it must be recognized that a decision granting such an extension will not be automatic but will be based on the particular permit involved, the findings of the hearing examiner and the scale of the information still needed by the agency to reach the appropriate decision.

This rule is reasonable in that it allows agencies adequate time to render a decision and outlines a procedure for requesting additional time. Since agencies have reasons for granting or denying a permit request, it is reasonable to require that they state their reasons for the benefit of the project proposer and interested citizens. Thus, a final decision can serve as an educational and informational tool to the general public and developers, given that the decision contains a rationale for action on a permit and the conditions under which the permit is issued.

The last provision of this rule is needed to clearly demonstrate to those agencies participating in the joint hearing that their decisions must be reached on the basis of evidence presented in the hearing. This provision does not imply that the agency's decision must be the same as recommended by the hearing examiner but that the decision be consistent with the material contained in the hearing record.

MEQC 107 NON-HEARING PROCEDURE

If no joint hearing is conducted, pursuant to MEQC 105C, the Coordination Unit shall, not less than 30 days after publication of the last newspaper notice, submit a copy of all views and supporting material it has received to the agencies. The agencies shall consider such information during review of permit applications. Concurrently, therewith, the Coordination Unit shall notify each agency, in writing of the date, 60 days after agency receipt of such notice, by which final decisions on applications shall be forwarded to the Coordination Unit, provided that this date may be extended by the Chairman of the Council for reasonable cause. A request for such extension, setting forth specific reasons, shall be filed with the Coordination Unit, which shall immediately notify the Chairman of the Council and the applicant. Such extension shall be the minimum time needed by the agency to reach a final decision and shall be considered an exception to normal operating procedure. Every final decision shall set forth the information required by MEQC 106E.

... This rule is needed to clearly spell out the intentions of Minn. Stat. Sec. 116C.28, subd. 4. The justification for this rule is similar to that for MEQC 106E except that the information from which the agency reaches its decision comes from a different source. Because in this case the public would not have the opportunity to present its views at a public hearing, this procedure is needed to ensure that their comments will reach and be considered by the permitting agencies. The intent of the Legislature in subd. 4 is clearly to allow the public an opportunity for input to agency permit decisions regardless of whether a public hearing is held on the permit applications.

MEQC 108 AGENCY DECISIONS

Upon receipt by the Coordination Unit of all final decisions of the agencies, the Coordination Unit shall immediately incorporate them, without modification, into one document and transmit the document to the applicant either personally or be registered mail.

.... Minn. Stat., Sec. 116C.28, subd. 5 and this rule indicate the manner in which agency decisions will be transmitted to the permit applicant. This procedure is necessary as it allows the Coordination Unit to gather the final decisions from all agencies that participated in the master application process and transmit them to the applicant. It precludes the Coordination Unit from sending a partial list of the final decisions to the applicant. The provision for transmitting documents to the applicant either personally or by registered mail is necessary to assure the Coordination Unit that the applicant has received the docume.

1. A person aggrieved by a final decision of an agency in granting or denying a permit shall seek redress directly and individually from that agency in the manner provided by Minn. Stat., Chapter 15, or any other statute authorizing either judicial or administrative review of an agency decision.

... The intent of this section is to provide a procedure for the applicant and/or concerned citizens to appeal agency permit decisions by stating whom the aggrieved person should address and the appropriate procedure for seeking redress.

This rule is needed to assure the applicant and concerned citizens that a mechanism for appeal does exist but that when such an appeal is necessary, the Coordination Unit will not be involved. The rule is proposed at the direction of Minn. Stat., Sec. 116C.30, subd. 1.

MEQC 109 WITHDRAWAL FROM THE MASTER APPLICATION PROCESS

A. Agency Withdrawal. If an agency responds that it has one or more permit programs applicable to a project, it may at any time withdraw from further participation in procedures hereunder concerning such project by submitting written notification to the Coordination Unit and the applicant that the agency has subsequently determined that it has no permit programs under its jurisdiction that are applicable to the project. If such withdrawal necessitates a change or withdrawal of any notice required under these Rules, said agency shall pay the cost, if any, of such change or withdrawal of notice unless the agency's withdrawal resulted from an alteration in the project made by the applicant that was not required by a public agency or if the agency's initial determination that a permit was required was made on the basis of incorrect information supplied by the applicant in which case the applicant shall pay the cost, if any, of such change or withdrawal of notice.

... The purpose of this section is to provide an official mechanism for agencies to reassess their participatory role in the master application process. In some cases, an application may imply to the agency that a certain permit would be required. This procedure does not bind agencies to previous determinations but allows the agencies to reconsider whether a permit is required. This rule is reasonable in that it permits flexibility and provides a method for agencies to withdraw from the process in the event that permit applicability were not appropriate.

Minn. Stat., Sec. 116C.29 provides that this procedure be incorporated in these rules, and this rule also provides the guidance for determining who will be responsible for assuming the costs of a change in newspaper notice if a change is require The only reasonable means of assigning such costs is to require the party responsible for the incurring of the costs to bear them. This rule provides that the party at fault shall pay the costs.

B. Applicant Withdrawal. If an applicant has initiated the master application process, the applicant may at any later time withdraw from further participation in the process by submitting written notification to the Coordination Unit. If such withdrawal necessitates a change or withdrawal of any notice required under these Rules, the applicant shall pay the cost, if any, of such change or withdrawal of notice.

... Although no provision in the Act allows for withdrawal from the process, by the applicant, this rule is proposed to provide an official mechanism for the applicant to withdraw from the master application process.

An applicant may encounter some change in plan which will make it unnecessary to utilize the master application process. This procedure does not bind applicants to previous proposals.

This rule is reasonable in that it permits flexiblity and provides a method by which the applicant can withdraw from the process in the event that his proposal has been altered since the filing of the master application. The applicant is responsible for any cost resulting from the withdrawal, since the applicant originally indicated that the master application process was necessary.

MEQC 110 APPLICATION

A. Agency Jurisdiction. Each agency having jurisdiction to issue or reject a permit shall retain this authority as vested in it before the effective date of these Rules. Nothing in these Rules shall lessen or reduce such authority and these Rules shall modify only the procedures followed in carrying out such authority.

... Minn. Stat., Sec. 116C.30, subd. 2 and this rule establish that agencies will maintain their permitting authority, as vested in them by their previous authority.

Presently, applicants apply and receive permits directly from the agencies. The necessity of this rule is to assure applicants that the authority to grant or deny a permit still remains with the agencies, even though the applicant's channels for submitting permit applications will be different. It was not the intent of the Legislature to change, in any manner, the ultimate authority of an agency to decide on the propriety of any permit.

1. A state agency may, in performing its responsibilities under these Rules, request or receive additional information from an applicant. A copy of that request or receipt shall be immediately forwarded to the Coordination Unit, which shall immediately notify all other agencies having a permit interest in the project.

... The intent of this section is to provide a mechanism through which agencies can acquire additional information from the applicant and to establish procedures for centrally disseminating such information to the other permitting agencies.

The rule allows agencies to obtain other materials that may play a vital role in the evaluation of the permit application. It also allows the other agencies to consider the requested materials.

If an applicant does not submit all information relevant to a project, then a permitting agency's decision may not reflect the total scope of the project. This rule is reasonable as it provides the basis for agencies to make valid decisions. The rule is proposed at the direction of Minn. Stat.,

2. Fee schedules authorized by statute or rules for an application or permit shall continue to be applicable even though the application or permit is processed according to these Rules. The Coordination Unit shall not charge the applicant or participating agencies a fee for services.

... Minn. Stat., Sec. 116C.30, subd. 4 and this rule provides that any existing or future permit fees shall be applicable even though the individual permit is processed as a part of the master application process. The Legislature clearly did not intend to alter any fee process by the passage of the Act, nor did it intend that the Coordination Unit would profit from administering the process. A separate appropriation to the State Planning Agency covers the operational costs of the Coordination Unit thus making any service charges unnecessary. There is no provision in these rules whereby any of the unit's operating costs are passed on to either the applicant or an agency. The only costs assigned by these rules to either party are the costs of a newspaper notice, as required in Minn. Stat., Sec. 116C.27, subd. 1, and the costs of the joint hearing. As previously mentioned, under the existing permitting process hearing costs are borne by the agencies, so, in effect, there is no change in responsibility for bearing those costs.

B. Post-decision Proceedings. These Rules shall have no applicability to an application for a permit renewal, amendment, extension, or other similar document required subsequent to the completion of decisions and proceedings under MEQC 101 to MEQC 110, or to a replacement thereof or to a quasi-judicial or judicial proceeding held pursuant to an order of remand or similar order by a court in relation to a final decision of an agency.

... Minn. Stat., Sec. 116C.30, subd. 5 and this rule further clarify which permit applications may be processed under the master application procedure. These rules are intended to apply only to original permits as defined by the Act, and not to resubmissions nor to proceedings in the courts after a permit decision has been made.

C. Nothing in these Rules shall modify in any manner whatsoever the applicability or inapplicability to the lands of any agency of any land use regulation, statute, or local government zoning ordinance.

... This rule is drafted in accord with Minn. Stat., Sec. 116C.30, subd. 6. The intent of this subdivision is clearly that the Act relates only to the procedure involved in the granting or denying of natural resource permits and does not alter the need for a permit. If an approval for the use of the state's air, land or water resources was needed prior to the enactment of this legislation, that same approval is still needed after the permit coordination procedures are in effect.

D. The Council, to the limited extent necessary to comply with procedural requirements of federal statutes relating to permit systems operated by the state, may modify the notice, timing, hearing and related procedural matters provided in these Rules.

... Because there are a number of federal permits, such as NPDES permits, for which the responsibility for processing has been assigned to a state agency it is necessary to provide flexibility in these rules to accommodate the federal requirements associated with that reassignment. Minn. Stat., Sec. 116C.33, subd. 2 provides that the master application procedures can be modified as the need arises to take into account such requirements. It should be noted that this accommodation will occur only to the extent necessary and every attempt will be made by the Council to ensure that the overall process proceeds in a timely and predictable manner.

MEQC 111 - MEQC 114 RESERVED FOR FUTURE USE

... Because MEQC 115 relates to a specific appropriation which may not be repeated by the Legislature and to a subject matter somewhat separate from the master application process, these sections were left blank to separate the two procedures. If it is appropriate to amend the master application process using additional sections in these rules, it will not be necessary to mix the two procedures as would be the case if the permit information grant rules were immediately following the master application rules. Needless to say, any additional sections proposed by the EQC will not be incorporated into the rules without going through the state's hearing process.

MEQC 115 PERMIT INFORMATION CENTERS GRANT PROGRAM

Even though the permit information center grant appropriation was made to the director of the State Planning Agency, it is appropriate that the rules of the MEQC address themselves to the grant process. The Legislature has created a number of ties between the operations of the EQC and the State Planning Agency. In addition to assigning State Planning Agency the responsibility of providing staff to the EQC, the Legislature has traditionally provided that all EQC appropriations be processed through the State Planning Agency. The ECPA appropriations are in line with this traditional approach; thus, it is reasonable to include in MEQC rules directives which provide to the director of the State Planning Agency a process for distributing the information center grants.

A. Applicability. Funds appropriated for grants for the establishment of regional permit information centers by Minn. Stat., Sec. 116C.34 (1976) and any future funding for such centers appropriated to the State Planning Agency shall be distributed to those public bodies authorized by laws pursuant to the recommendation of the Director of the State Planning Agency and these Rules:

... Minn. Stat., Chapter 303, Sections 13 through 16 (1976) provides for the creation of regional permit information centers at the option of each regional development commission. Section 16 also includes a provision which enables the director of the State Planning Agency to make grants for the establishment of regional centers. The need for this rule is to delineate the decision process to be used in determining how the grants will be made.

Although sections 13 through 16 refer only to regional development commissions, excluding the Metropolitan Council, as potential recipients of the grants, and provide an appropriation only for the establishment of such centers, this rule is written with the flexibility to allow for future enactments of the legislature. If the legislature, at some future time, expands the potential recipients beyond the regional development commissions or allows for "maintenance" funding of the centers, the rule will be available as the mechanism for making any required funding decisions. Because the appropriation was made to the director of the State Planning Agency, it is proper that the director should be the one who makes the recommendation as to the distribution of the funds.

B. Eligibility. A Regional Development Commission may apply for a grant from the Director of the State Planning Agency for the establishment of a regional permit information center provided that the following conditions are met:

... By specifically identifying that the appropriation for the establishment of regional permit information centers be distributed as grants, the legislature clearly intended that the grant recipients be required to perform several functions to be eligible to receive the grants. If the Legislature had intended that the appropriation be distributed without any "strings attached", they could have directed that the appropriation go directly to the recipients bypassing the director of the State Planning Agency, or they could have have included appropriation language allowing the regional development commissions the flexibility to establish their own standards for the regional centers. In doing neither, the Legislature clearly intended that the director of the State Planning Agency set standards applicable to all grant recipients.

It is not anticipated that any burden will be placed on the regional development commissions by having to meet these conditions primarily because a large number of the commissions are currently providing similar services to the citizens of their regions.

1. The grant application is submitted before May 1 of the fiscal year for which the legislative appropriation was made.

... To ensure that grant applications will be processed through the state's administrative system before the close of the state's fiscal year (June 30), it is necessary to establish a cut-off date by which all applications must be submitted to the director of the State Planning Agency. It is normal procedure for the Legislature to make an appropriation for a fiscal year; if the appropriation is not committed by the end of that year, any funds remaining from the appropriation revert to the general fund and are unavailable for distribution. Because of the multitude of approvals needed and the paperwork required for processing a grant application, it is necessary to allow at least two months between the last day applications can be submitted and the close of the fiscal year. It should be noted that this rule does not preclude an earlier submission of a grant application; in fact, every effort will be made to encourage submission as close to the beginning of the fiscal year as possible.

2. The amount of the grant application does not exceed the legislative appropriation.

... This rule is needed to ensure that any legislative mandate regarding the amount of the grant available to any one recipient will not be exceeded. The current appropriation establishes a maximum of $5,000 to each applicant; however, if the Legislature should provide future appropriations for regional permit information centers, this rule, as written, will be interpreted in accord with the legislative appropriation language.

3. The Regional Development Commission agrees to perform the following functions for at least one year following approval of the grant application.

... The rationale for requiring regional development commissions to meet certain standards was demonstrated in the agency's statement for rule MEQC 115 B. Requiring the grant recipients to meet those standards for one year is necessary to ensure that the grant monies be used in a manner consistent with the intent the Legislature had in providing the funds. A one year time requirement is reasonable in that it allows the grant recipient ample time to establish a regional permit information center, to determine the usefulness of the center, and to decide whether to continue its operation. In addition to the grant recipient, the Legislature will also be provided an opportunity to evaluate the usefulness of the centers and determine whether future funding is appropriate.

a. Designate one person to act as liaison between the regional permit information center and the Environmental Permit Coordination Unit.

... To better coordinate the activities of the St. Paul permit information center and the regional centers, it is necessary for the regional centers to designate one individual to serve as a contact between the two operations. If a number of individuals were to fill this capacity for each regional center, confusion over the availability of information could result. The regional contact person will serve an important function especially in regard to the interchange of information between the two operations. This rule does not require that the regional center must necessarily appoint only one operator of the center but that it identify one individual to serve as liaison with the St. Paul center.

b. Provide an information and referral system to assist the public in understanding and complying with the requirements of state and local government regulations concerning the use of natural resources and protection of the environment.

... Minn. Stat., Chapter 303, Section 13, subd. 1 identifies the principle purpose for establishing a permit information center. Although Section 13 only states the purpose of the information center in St. Paul, it is reasonable to interpret the rationale for the St. Paul center as applying to the regional centers as well. This rule extends the purpose of the St. Paul center to the regional centers and provides the basic requirement for the function of permit information centers. and the reason for creating them.

The major reason for creating a permit information center is to help the public cope with the many government requirements and regulations concerning the use of the state's natural resources. In order to comply with the philosophy of this legislative provision, it is reasonable to require that all permit information centers provide this service to citizens of Minnesota. As mentioned previously, this rule should not place an additional burden on the regional development commissions as many of them are currently performing similar services for the citizens and local government units in their regions.

In this rule and in the ones to follow, the reference to local government requirements and regulations refers only to those local units within the boundaries of each regional development commission It would be unreasonable to expect a regional development commission and the St. Paul center to maintain first hand knowledge of local regulations in other parts of the state.

c. Provide for the dissemination of printed materials concerning the requirements of state and local government regulations.

... To fully comply with the legislative intent and to better serve the users of the permit information centers, the centers should distribute informational material in response to requests when such information is available. This rule is necessary to clearly indicate that centers should go beyond merely giving out verbal replies but should also provide written information when available if requested by the center users. The rule as written does not require the centers to generate such materials but only that they distribute them. The requirement for the dissemination of printed materials is also dictated by Minn. Stat., Sec. 116C.34, subd. 1.

d. Publicize the availability and location of the permit information center.

... For a center to meet the needs of its users, it only makes sense that the public be made aware of the center's existence. It would be extremely unreasonable and a waste of state funds if a center were created but its potential users were not aware of its availability. This rule does not dictate the form or manner by which a regional center should be publicized but merely states that the center will inform the public of its availability and location.

e. Provide information to the public on the regulatory functions relating to the environment of the local government units in its region.

... As mentioned previously, Minn. Stat., Sec. 116C.34, subd. 1 identifies the purpose of a regional permit information center and includes the requirement that information regarding local government unit regulations be available to the public through the centers. A regional center will be required to provide information about the local units in its region for the reasons given in the agency's statement in MEQC 115 B.3.b.

f. Establish and maintain a file for applicable state resource agency permits, including pertinent rules and regulations, criteria for permit issuance and use, and compliance with relevant statute requirements.

... For the public to fully comprehend the requirements of state agencies and to enable them to comply with the various state regulations, it is necessary for the regional centers to maintain an up-to-date file system on the requirements and regulations. This rule is needed to clearly indicate that maintenance of such a system will be required as an integral part of a regional center if it is to be eligible for grant funds. Although the rule does not indicate who is responsible for generating the information, it is anticipated that such generation will be the responsibility of the St. Paul center. This responsibility is not specified in the rule to allow the regional center the flexibility of generating its own information if it so desires. If the rule specifically identified the St. Paul center as the source, the regional center could be prohibited from generating any additional information.

g. Maintain information on state environmental programs.

... A major reason for the creation of the permit information centers is to provide the public with better access to information regarding management of the state's natural resources. By requiring the centers to maintain information on various environmental, but not necessarily regulatory, programs, citizens interested in pursuing or using such a program could have ready access to information on that program. One example of such a program is in establishing a game refuge. A private person may be interested in establishing a refuge on land he owns; to determine what must be done and to get advice on how best to establish the refuge, the person would be able to contact the regional center for that information and would not be required to contact the DNR offices in St. Paul.

h. Maintain a list or directory of pertinent state agency contacts in each region and in St. Paul as well as a list of local government unit contacts for its region.

... Although every attempt will be made by the centers to provide requesting individuals with sufficient information for them to understand and comply with government regulations, at times the individual may desire more specific information than is available or technical guidance. When this situation occurs, the regional center must be able to direct that individual to the proper agency or technical expert. This rule is needed to ensure that the regional centers will maintain a current listing of such contacts in order to best serve the requesting individual. If this requirement were not included, the individual would not be any better off than before the creation of the information centers. If the centers are to provide the full range of services anticipated by the legislature, it is indeed reasonable to expect them to maintain a listing of knowledgeable resource people to whom they can direct their clients. So as not to place an unreasonable burden on the regional centers, the St. Paul center will assist them in maintaining a list of state agency contacts.

C. Grants. Within 30 days after receipt of a completed grant application, the Director of the State Planning Agency shall approve the grant or notify the Regional Development Commission in writing the reasons why the grant application was denied.

... In order to make a predictable process for processing the grant applications, a time period for approving or denying the applications should be imposed on the director of the State Planning Agency. Thirty days is a reasonable amount of time for the director to review the application for compliance with these rules and the legislative appropriation language and to reach a decision. If the director decides to deny the grant application, he should be required to inform the applicant of the reasons for the denial in order that the applicant can modify this application to meet the requirements. This rule does not place any burden on the grant recipients or the information center users; it is needed to indicate when the director must act on a grant application and what steps he must follow if he determines the application should be denied.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE ENVIRONMENTAL QUALITY BOARD

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA ENVIRONMENTAL QUALITY BOARD RELATING TO ENVIRONMENTAL PERMIT COORDINATION (MEQC 101 - MEQC 115)

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on January 20, 1977, before Howard L. Kaibel, Jr., 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. §15.052, Subd. 3, was issued to the Environmental Quality Board on February 28, 1977; and

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

WHEREAS, the Environmental Quality Board 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 Board has met all requirements of Minn. Stat. §15.0412, Subd. 4.

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

Dated this 1st day of April, 1977.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

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; and that a majority of the members of the Council voted for the resolution.

Mr. Millhone moved:

WHEREAS, on November 23, 1976, the Minnesota Environmental Quality Council (EQC) ordered to public hearing the Rules for Operation of Environmental Permit Coordination; and

WHEREAS, a public hearing was held on January 20, 1977, and the record remained open for 20 days thereafter for receipt of written comments on the proposed Rules;

THEREFORE, BE IT RESOLVED:

THAT the EQC adopt the findings of fact and conclusions of the Permit Coordination staff on the above Rules; and

THAT the EQC direct its staff to follow all necessary administrative procedures so that these Rules can become effective in a timely fashion.

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

IN WITNESS WHEREOF, I have hereunto subscribed my name this 4th day of April, 1977.

Mary Sullivan

Mary Sullivan
Administrator

Subscribed and sworn to before me
this 4th day of April, 1977.

Joanne Herbenson

Notary Public

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

STATE OF MINNESOTA

COUNTY OF RAMSEY

ENVIRONMENTAL QUALITY BOARD

In the Matter of the Rules of the Minnesota Environmental Quality Board Relating to Environmental Permit Coordination (MEQB 101 - MEQB 115).

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 January 20, 1977, 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 Board, at its March 29, 1977 meeting, adopted by resolution the attached Findings of Fact.

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY BOARD

Peter Vanderpoel

Peter Vanderpoel, Chairman

STATE OF MINNESOTA

FOR THE ENVIRONMENTAL QUALITY BOARD

In the Matter of the Proposed Adoption of Rules of the Minnesota Environmental Quality Board relating to Environmental Permit Coordination (MEQC 101 - MEQC 115)	)))))	STAFF PROPOSED FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for hearing before Hearing Examiner Howard L. Kaibel, Jr. of the Minnesota Office of Hearing Examiners on January 20, 1977 at 9:00 a.m. in Conference Room A of the Capitol Square Building, 550 Cedar Street, Saint Paul, Minnesota.

Donald C. Kannas, Special Assistant Attorney General, 550 Cedar Street, Saint Paul, Minnesota 55101, appeared as counsel for the Environmental Quality Board (hereinafter "EQB"). 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 EQB is the adoption of rules by the EQB for the processing of permit applications required for a project which contemplates the use of the state's air, land or water resources; and for the distribution of funds appropriated to the State Planning Agency for the establishment of regional permit information centers.

Based upon all the records and proceedings herein, the EQB hereby makes the following:

FINDINGS OF FACT

1. On October 19, 1976, the EQB filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On December 8, 1976, a Notice of Hearing and a copy of the proposed rules were published in the State Register.

3. On November 29, 1976, the EQB 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.

4. On December 28, 1976, the EQB 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 Secretary of State's Certificate and list;
(f) The Statement of Need;
(g) 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,
(h) The names of EQB staff who will represent the agency; and
(i) The Statement of Need and Evidence.

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

5. The record remained opened through February 9, 1977, for the receipt of written comments and statements.

6. Statutory authority to promulgate the proposed rule is found in Minnesota Statutes § 116C.32.

7. That the Hearing Examiner has expedited his report and given it priority over other matters, and the EQB should act similarly for a number of reasons. The legislation makes this master permit coordination process effective on February 15, 1977, and Attorney General and publication delays will postpone that effective date a minimum of 37 days after EQB action. The public at the hearing urged expedition without exception. Citizens generally not only supported these rules as proposed, but praised the permit coordination staff for the thorough way in which it has elicited and assimilated public and agency input in preparing the rules as proposed. With the exception of a couple of minor matters hereinafter discussed (raised by only two of the many potentially affected state agencies) there was no citizen or state agency opposition to the staff proposal. Consequently, this Report does not contain the usual detailed provision-by-provision discussion of need and reasonableness. The EQB is referred to the comprehensive, detailed and well thought-out-Statement of Need (Ex.11), which contains this kind of analysis

and is incorporated by reference as an integral part of these Findings and attached hereto as Appendix A. Except as hereinafter discussed, the staff has adequately documented by an affirmative presentation of facts the need for and the reasonableness of each of the proposed rules, as well as the statutory authority to adopt them.

8. That the minor grammatical and other amendments presented by the staff at the hearing (R12 et seq. and Ex. 12) are needed, reasonable and insubstantial changes. They were presented and distributed at the hearing in a fashion calculated to invite reaction at the hearing. No argument has arisen with regard to the substance of those proposals or with the contention of the staff that they are insubstantial.

9. That no need or reasonableness has been demonstrated for omitting "optional" from the statement of purpose contained in proposed rule 101B, as pointed out by the Department of Transportation in written comments (Comment I). In the first line, "a procedure" should be changed to read "an optional procedure" using the legislature's language in the enabling legislation.

10. That there are three minor revisions required in the definitions contained in proposed rule 101D:

(a) The definition of "council" contained in subsection 3 should be revised to explain to readers that the name of the Environmental Quality Council has been changed to "Environmental Quality Board" by Laws of 1975, chapter 271. In order to economically change the name this statute allows use of the old name until the first Monday in January, 1978 at the latest. The reasonableness of conducting another rules proceeding between now and that date to revise the name in these rules has not been demonstrated. It is specifically recommended that the name change be incorporated upon initial adoption as follows: (1) "Council" wherever it appears in the remainder of these proposed rules should be changed to "board"; (2) a new definition of "board" should be added which would specifically spell-out the agency title (instead of simply referencing the statute as is done in the proposed definition) to assist those unfamiliar with the statute; (3) the new definition of "board" should incorporate reference to the former term "council"

to alert readers to the revised nomenclature pursuant to the above-referenced statute.

(b) The last sentence of the definition of "days" contained in subsection 4 should be stricken. This section would not count Saturdays, Sundays and legal holidays whenever the time period is 15 days or less. The record as a whole did not demonstrate the need for excluding Saturdays, Sundays, or legal holidays in the computation of time periods of 15 days or less with respect to these Rules.

(c) The definition of "hearing examiner" contained in subsection 6 should be revised as suggested at the hearing by striking "or assigned by contract" and substituting "by the chief hearing examiner". The staff responded positively to this suggestion at the hearing (R85) and it is specifically found to be an insubstantial clarification.

(d) Concern was expressed at the hearing concerning coordination of the master application process with the Metropolitan Council critical areas and metropolitan significance procedures (R62 et seq. and Comments D and G). Doubt was expressed as to whether the Metropolitan Council when acting in these capacities meets the definition of "agency" and whether its determinations fit the broad definition of "permit" contained in the proposed rules. As indicated on the record, the Hearing Examiner is also the hearing examiner assigned to the Metropolitan Council "metro significance" rule proceeding. If the Metropolitan Council does meet the definition of "agency" and its determinations fit the definition of "permit" contained in the proposed rules those determinations must mandatorily be included if the optional coordinated procedure is selected by a permit applicant. If the above conditions do not exist the proposed rules do contain a provision for the discretionary inclusion of such "permits" if both the agency and applicant agree that such inclusion would be beneficial. In either situation the proposed rules, as written provide adequate language to indicate the applicability of this process to the Metropolitan Council's determinations. It must be noted that the proposed rules do not contain specific reference to any other "agencies" or "permits" and the EQB finds that singularly pointing out the Metropolitan Council is not reasonable or necessary.

11. That proposed rule 102 A.2 should be amended as suggested by representatives of the Pollution Control Agency to tighten up the post-construction permit exclusion. This revision was supported by permit coordination staff and was not objected to at the hearing or in subsequent written comments. It is reasonable and insubstantial.

12. That proposed rule 102 D.2 should be revised as suggested by Hennepin County in Comment F to clarify whether the reference is to the "draft" or the "final" environmental impact statement. The Hennepin County comment apparently makes reference to the old EIS rules MEQC 31 and 33. The newly adopted EIS rules nonetheless carry forward this distinction and they should "mesh" with these rules.

13. That the provision of proposed rule 102 E.2 requiring agency response within 20 days as to whether a permit and hearing will be necessary is reasonable, necessary and in accord with the specific legislative mandate. Some kind of modification to permit a variance or extension as requested by the Pollution Control Agency would be beyond the authority of the EQB as the statute supersedes the rules in all cases. No persuasive contrary legal authority has been cited by proponents at or after the hearing. The statute provides in 116C.28, subd. 4 for extensions of time limits by the EQB chairman in another situation excluding the possibility of such an interpretation in this section. Similarly, it specifically provides for modification of the timing provisions by the full board only "to the limited extent necessary to comply with procedural requirements of federal statutes relating to permit systems operated by the State". The legislative history submitted with Comment E from the Minnesota Association of Commerce and Industry shows that the legislators were very cognizant of the time limit, dealing with it deliberately. The bill when introduced required a response within 15 days. The Senate Committee Report revised the limit, leaving it to the permit coordination unit to establish the limit "not exceeding 20 days from receipt". The Conference Committee Report, finally adopted, revised this provision again eliminating coordination unit discretion. Comments from the public (Comments C and G) urged the importance of retaining these legislatively established "specific time limits" as did citizens at the hearing. The PCA problem was limited to whether a hearing would be required, indicating that the PCA Citizen's Board bases its decision on the nature of the public demand for such hearings. The number of times that this problem would arise

appears minimal as the State of Washington which has similar permit coordination procedures has less than 10 proceedings a year. As a practical matter, because of the likelihood some other agency will be requiring a hearing anyway, the problem may seldom, if ever, arise. A spokesman for the 3M Company suggested a "fail-safe" procedure for handling these rare occasions of asking for the hearing within 20 days and then withdrawing the request as provided in proposed rule 109 in the event that the PCA Board determines subsequently that a hearing is unnecesary (R43). Although the EQB recognizes the suggestion as a possible means of avoiding the problem it does not find in the authorizing statute the flexibility to allow such a procedure. A PCA spokesman also confirmed (R48 and 49) reports of the public at the hearing that the PCA Board sometimes functions using telephone polls, indicating that this was "strictly an emergency procedure" without explaining why it should not be utilized in these situations. He also confirmed that the PCA Board is currently meeting more than once a month, and that the worst imposition of this rule would be to simply require more frequent meetings to ensure timely action on applications.

14. That despite criticism raised by the PCA and DNR, proposed rule 102 E.4 should be adopted as proposed. The section deals with exceptional situations where an agency may order a permit application even though it failed to require such an application within the 20-day period. These sitations are essentially: (a) Inadequate initial information; (b) new laws; and (c) unusual circumstances. The complaining agencies contend that the final "in which case the council may order that the permit be required" language modifies only exception (c). The legislative history shows that the alphabetizing and division of this section occurred when exception (b) was added in conference committee, and that the engrossment they were amending was intended to be a single sentence, leaving the procedural question of whether an exception should be made in all cases to the EQB. Mr. William Seeley of Northern States Power Company (R56) supported the permit coordination staff position indicating, based on considerable experience, that there is often room for difference of opinion as to whether necessary information has been provided. A separate court proceeding each time an agency decides it was given inadequate information would frustrate, or in the extreme completely contravene, the purpose of the statute or expeditious action. Mr. Seeley's

position was concurred with by Mr. Shields on behalf of the Minnesota Association of Commerce and Industry. The records supports the conclusion of the Environmental Quality Board attorney (Comment H) that whether to permit an exception is properly a "procedural requirement" for a board determination.

15. That proposed rule 102 F should be modified in light of the recommended change in the definition of "day". The provision deals with situattions where an alteration in a project proposal requires reconsideration by the agency of whether additional permits may be required by the alteration. The agencies objected to the requirement that they respond within 10 days. Permit coordination staff responded in part that this would actually be at least 12 and as many as 14 days because the period is less than 15 days and the weekend would consequently not be counted. Under the rule as recommended herein, these weekends would be counted and the response time should consequently be extended to 15 days.

16. That proposed rule 105 B.7 presents two separate problems. The first is agency objection to holding the hearing within 45 days after the date of last publication, citing lack of time for preparation. The statute specifies a minimum time (20 days) and the permit coordination staff proposes a maximum time in accord with the thrust of the Act to provide for predictable expeditious consideration. The objections misstate the available preparation time which is actually on the order of six months from initial notice of the nature of the project which is the receipt of the master application form. This consists of 20 days for agency response, five days for transmittal of forms to the applicant, 90 days for applicant submission of forms, an unknown amount of time necessary to arrange for publication of notice, 21 days for publication, and 45 between last publication and hearing date. The record supports the need for and reasonableness of applying at least this limitation to the time required for convening the hearing.

The second problem involved in this proposed section of the rule is the contents of the published notice. The rules actually provide for three notices. Proposed rule 106 provides for the Order for Hearing to be served on the applicant and a separate notice of hearing to the applicant and all agencies having a permit interest, while proposed rule 105 B.7 would require a third and different (R37 et seq.) notice for publication. No effort was made to document the need for or reasonableness of this proposed duplication.

The omission of the contents of the Order for Hearing in the published notice was raised on the record and there was no showing at the hearing or afterwards in written comments that it was necessary or reasonable to omit these hearing order provisions. The provisions of the order are outlined in Uniform Rule HE 204 and include such matters as "a citation to these rules and to any applicable procedural rules of the agency." If the notice does not contain a citation to the Uniform Rules, there is a possibility that potential interested parties will not be informed of fundamental procedural matters such as the necessity of timely intervention. In fact, if a final date for intervention is specified, it must be done in the Order for Hearing (HE 210), further strengthening the need to include all provisions of the Order for Hearing in the published notice. Without belaboring, the Order for Hearing, in most contested cases, is the only notice; essential provisions listed in HE 204 for information that must be in that notice include the address of the Hearing Examiner. In this way parties can file notices of appearance or intervention and such other fundamental procedural provisions such as notice of the right to an attorney. The rule should be amended by inserting after the word "hearing" the following: "and other contents of the order for hearing". This revision would not be a "substantial change" in the rules as originally proposed requiring a reconvened hearing pursuant to HE 108.

17. That a DNR representative properly questioned the need for and reasonableness of the final sentence of proposed rule 106 E. which would require that agency decisions be consistent with Hearing Examiner rules. Mr. Shields explicitly concurred with the suggestion that this sentence be deleted, indicating that it "is covered in chapter 15 adequately " (R83 and 84). No objection was raised to this proposed revision by persons at or after the hearing and it is specifically found that nc need was demonstrated for this sentence.

18. That a proposal in final written comments by the Department of Transportation (Comment I) that certain permits which it issues should be explicitly excluded in the finally adopted rules should be rejected on this record. The letter itself is the only documentation offered to support the need for and reasonableness of this proposal, and it is clearly inadequate. Moreover, because it came in final written comments, the public has not had an opportunity to respond to this major substantive proposal. It would constitute a substantial change and consequently, if the EQB desires to pursue the exclusion, it should do so only after a new notice and hearing.

CONCLUSIONS

1. That the Environmental Quality Board duly acquired and now has jurisdiction over the within proceeding.

2. That all relevant legal and procedural requirements of statute and rule have been properly complied with.

3. That the rules hereinafter recommended for adoption will properly implement the legislative mandate of chapter 303, Minnesota Laws of 1976.

4. That a clear and compelling need has been demonstrated for the adoption of the proposed rules hereinafter recommended for adoption.

5. That individually and taken together, the rules hereinafter recommended for adoption are a reasonable implementation of the legislature's delegated responsibility.

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the proposed rules of the Environmental Quality Board be modified as suggested in the above findings of fact, promulgated, approved and adopted.

STATE OF MINNESOTA
ENVIRONMENTAL QUALITY COUNCIL
CAPITOL SQUARE BUILDING
550 CEDAR STREET
ST. PAUL, 55101

Appendix A

December 23, 1976

In the Matter of the Proposed Adoption of the Rules of the Minnesota Environmental Quality Council Relating to Environmental Permit Coordination (MEQC 101 - MEQC 115)

STATEMENT OF NEED AND EVIDENCE

INTRODUCTION

The Minnesota Environmental Coordination Procedures Act of 1976 (ECPA) establishes an optional, consolidated application and hearing procedure for certain environmental permits. The Act also authorizes the creation of an environmental permits coordination unit within the Environmental Quality Council (EQC). Finally, the Act appropriates money for the purpose of establishing permit information centers. The intent of the Legislature in passing the ECPA was to provide a permit procedure, available at the discretion of an applicant, for satisfying the requirements of state government prior to the implementation of any proposal contemplating the use of the state's air, land and water resources. The purpose is to provide a mechanism which would assist project proposers by coordinating administrative and decision-making procedures pertinent to permit issuance.

Another major function of ECPA is to establish an efficient and consolidated method for the dissemination of information pertinent to the use of state natural resources. It has become increasingly important in matters related to environmental decision-making to have the public well informed about those state and local regulatory requirements which must be satisfied prior to undertaking a project.

The Legislature recognized that a problem existed for project proposers who were subjected to a complex and often random procedure for procuring development permits from state agencies. It became apparent that the amount of time and expenditures involved in applying for regulatory permits was having a negative economic impact upon private developers in the state. In performing their respective administrative functions, state agencies were often duplicating efforts when projects required permits from several agencies. Of particular concern to the Legislature was the fact that public hearings, if deemed necessary by individual agencies, were scheduled separately rather than at one time. This type of procedure has proven costly to the state and to respective project proposers.

To implement the Act, the Legislature directed the EQC to promulgate Rules consistent with the provisions established in Minn. Stat., Sec. 116C.22 through 116C.34. The following Rules have been drafted with assistance from the EQC's Technical Committee and representatives from the private sector.

It is the purpose of these Rules to interpret ECPA consistent with the legislative intent of the Act. Every attempt has been made to create a mechanism that is predictable to all affected parties and encourages close cooperation between the proposer of a project and the state agencies with regulatory and administrative jurisdiction over that project. Further, these Rules encourage a non-duplicative, streamlined process to accommodate permit application requirements within a reasonable amount of time while considering the variety of circumstances that might occur during the process.

While reviewing these Rules, it must be remembered that they provide an optional procedure for processing permit applications. Proposed projects which vary in scope, magnitude and purpose will differ in terms of required state agency permits. Therefore, the process established by these Rules will not apply universally to all developments.

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 101 AUTHORITY, PURPOSE, EXEMPTIONS, DEFINITIONS

A. Authority. These Rules are prescribed by the Minnesota Environmental Quality Council under:

1. Minn. Stat., Sec. 116C.23, establishing an environmental permits coordination unit. This unit will implement the provisions of Minn. Stat., Sec. 116C.22 through 116C.34, herein titled the Environmental Coordination Procedures Act;

2. Minn. Stat., Sec. 116C.32, to adopt rules, not inconsistent with rules of procedure established by the office of hearing examiner, implementing the Environmental Coordination Procedures Act.

... This rule is proposed by the agency in response to Minn. Stat., Sec. 116C.23 which directs the Council to adopt rules implementing the Minnesota Environmental Coordination Procedures Act. These rules are needed to assist the Council in implementing the intent of the Act in an organized manner by defining the legislative mandates in terms of performance criteria. This specific rule identifies the sections of the Act which give to the Council the authority to promulgate rules creating an environmental permits coordination unit and establishing the process by which the unit will operate.

B. Purpose. These Rules provide a procedure to assist a person who, before undertaking a project which would use the state's air, land, or water resources, must obtain more than one state permit as defined by these Rules when that person voluntarily decides to use this procedure. The assistance involves: identifying all such required permits before the project is implemented; providing a single hearing on appropriate permit applications; providing time frames for the making of agency decisions; and providing to the applicant statements of the reasons that agencies approve or deny the permit applications.

... In order for potential users of these rules to readily understand the intended benefits of a consolidated permit application process, it is necessary for the agency to provide a rule outlining those benefits in an early section of the rules. This rule provides a summary of the purposes of the Act and the basic types of assistance offered by the process.

An optional method of procuring state agency permits is provided as a service to project proposers in accord with Minn. Stat., Sec. 116C.23. In addition, assistance is offered to the general public seeking information about state regulations and requirements involving the use of the state's air, land and water resources. To allow for projects which would not benefit from this procedure, the Legislature specifically intended that the use of this process be at the option of the project proposer.

The other kinds of assistance offered are needed to provide an efficient procedure for procuring permits while adhering to administrative procedures relative to such actions. A single hearing for permit applications involving more than one agency is reasonable because it conserves time and money for both the proposer and the agencies. The establishment of time frames for agency decision making will provide a predictable amount of time needed to process permit applications and schedule necessary hearings, thus allowing project proposers to plan development schedules or phase project plans in a reasonable manner. The provision that agency denial or approval be substantiated allows project proposers to ascertain how such a decision was formulated and to possibly correct defeciencies in their proposals. Performance standards and criteria which establish the basis for agency decision making must be substantiated.

C. Exemptions. These Rules shall not apply to projects that:

1. Require permits issued under Minn. Stat., Chapter [redacted], pertaining to reservations, permits and leases of state owned mineral lands; Minn. Stat., Sec. 116C.51 to 116C.69, the Minnesota Power Plant Siting Act; or Minn. Stat., Sec. 116H.13, pertaining to certificates of need for large energy facilities; or

2. Are initiated for taconite tailings disposal or mining, producing or beneficiating copper, nickel or copper-nickel.

... Minn. Stat., Sec. 116C.24, subd. 7 specifically exempts the types of projects cited in this rule. To fully comply with the intent of the Legislature, it is necessary to include in the proposed rules a section identifying the types of projects to which these rules do not apply.

D. Definitions. The terms specified below shall have the following meanings for the purpose of these Rules:

1. "Agency" means a state department, commission, board or other instrumentality of the state, however titled, or a local government unit or instrumentality if that local unit is acting within existing legal authority to grant or deny a permit that otherwise would be granted or denied by a state agency.

... This definition is needed to identify the regulatory agencies subject to the procedures of these rules. The term "agency" is defined in accord with the definition provided in Minn. Stat., Sec. 116C.24, subd. 8. The inclusion of the various types of government agencies is reasonable to ensure that all agencies having regulatory power to grant or deny natural resource permits are included as potential parties to the consolidated permit procedure.

2. "Coordination Unit" means the Environmental Permits Coordination Unit established pursuant to Minn. Stat., Sec. 116C.25, to assist persons using the master application process.

... Minn. Stat., Sec. 116C.25 provides that "the Council shall establish an environmental permits coordination unit to implement and administer the provisions of" the Environmental Coordination Procedures Act. This definition is needed to establish a common term for referencing that unit and to identify the major purpose the unit will serve.

3. "Council" means that agency established pursuant to Minn. Stat., Sec. 116C.03, to coordinate interaction among the state agencies concerning solutions to the state's environmental problems.

... The Legislature has assigned to the Minnesota Environmental Quality Council the responsibility for implementing the Environmental Coordination Procedures Act. The Act goes on to provide a definition of the "Council" in section 116C.24, subd. 2 for the purpose of identifying the "Council" in a more abbreviated form. This definition is needed so that it is clearly understood that the implementing agency is the Minnesota Environmental Quality Council which was created by Minn. Stat., Sec. 116C.03.

4. "Days": In computing any period of time prescribed or allowed in these Rules, the day the designated period of time begins shall not be included. The last day of the period shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which case the period will extend until the end of the next day that is not a Saturday, Sunday, or a legal holiday. When the period of time prescribed or allowed is 15 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded.

... One of the principle benefits of the Act is to provide predictability to potential users of the master application process. To achieve this predicability, a number of rules impose time constraints on the proposer, the regulatory agencies and the Council. To avoid confusion over the time allotted for complying with those rules, it is necessary to clarify which days are included in the time period. The definition, as written, is consistent with the definition of "days" for other EQC programs to avoid confusion by the Council over which days are included.

5. "Environmental review process" means any procedure for review established by the Council pursuant to Minn. Stat., Sec. 116D.04, subd. 2.

... This term identifies the process involved in the Council's certification procedures with respect to projects under its jurisdiction as determined by the Council's Environmental Impact Statement rules. The term, as used for the purpose of these rules, refers to the situation in which either an Environmental Assessment Worksheet or an Environmental Impact Statement is being prepared on a proposed project. The definition is needed to provide an abbreviated term when referring to those processes. This term is attaining common usuage when referring to a project undergoing preparation of an environmental document pursuant to Minn. Stat., Sec. 116D.04, subd. 2.

6. "Hearing examiner" means a hearing examiner regularly appointed or assigned by contract as provided for in Minn. Stat., Sec. 15.052.

... The Act in section 116C.28, subd. 1 directs the Council to hold any hearings under these procedures pursuant to the contested case provision of Minn. Stat., Chapter 15. This definition is needed to indicate that when the services of a hearing examiner are used, the examiner will be provided by the State Office of Hearing Examiners, thus ensuring that the hearings will be held in accord with the legislative intent.

7. "Joint hearing" means the optional hearing at which one or more agencies participate as herein described as a replacement for individual state agency hearings that may be held following each agency's separate permit review procedures.

... This definition is provided to allow the reader to clearly understand that the hearing procedure established in these rules is a replacement for procedures that might otherwise be applied by participating agencies. The term indicates that a hearing in which one or more agencies participate is a consolidated effort, despite separate agency review of proposed project permit requirements. This definition is necessary so that interested persons and users of the process have a common understanding of the procedures.

8. "Local government unit" means a county, city, town, or special district with legal authority to issue a permit.

... To ensure the reader is able to identify the level of government indicated by this term, a specific delineation of those units is needed. In this manner, the term readily identifies those types of government units meant by the word "local".

9. "Master application" means an application requesting the issuance of all state permits necessary for construction or operation of a project requiring more than one permit.

... Minn. Stat., Sec. 116C.26, subd. 1 cites the procedure to be used in reference to this definition. The term specifically identifies the form used by the Coordination Unit for purposes of requesting information about particular projects. This definition is needed in order to establish conformity in the use of terms in the text of the rules.

10. "Participating agency" means an agency with one or more permit programs under its jurisdiction that are pertinent to a project for which a completed master application has been submitted to the coordination unit and which orders a hearing to be held pursuant to these Rules.

... This definition expands the term "agency" to identify which agencies are subject to the hearing procedures contained in these rules. To determine which agencies must assume the costs of a hearing and must reach their permit decisions based on the hearing record, it is necessary to distinguish between those agencies involved in the hearing procedures and those agencies which are not involved.

11. "Permit" means a license, permit, certificate, certification, approval, compliance schedule, or other similar document pertaining to a regulatory or management program related to the protection, conservation, or use of or interference with, the natural resources of land, air or water, which is required to be obtained from a state agency prior to constructing or operating a project in this state. Nothing in these Rules shall relate to the granting of a proprietary interest in publicly owned property through a sale, lease, easement, use permit, license or other conveyance.

... This definition is provided in accord with Minn. Stat., Sec. 116C.24, subd. 5 to identify the types of documents subject to the permit coordination process. It is necessary to specify those items encompassed by the definition and those items which do not relate to enable the reader to clearly understand the portions of the text where the term is used.

12. "Permit Information Center" means an office established to provide information to the public about the requirements of state and local government regulations concerning the use of natural resources and protection of the environment.

... Subd. 1 of Minn. Stat., Sec. 116C.34 provides criteria for the establishment of permit information centers. This definition consolidates those criteria and provides a workable term to describe the action of the Environmental Procedures Coordination Act for purposes of consistency when the term is used in the text of these rules.

13. "Person" means an individual, an association, partnership, or cooperative, or a municipal, public, or private corporation, including but not limited to a state agency and a county.

... Minn. Stat., Sec. 116C.24, subd. 6 provides this definition. In order to expand the scope of the generic term, this definition includes other terms which can be identified in relation to the enabling legislation. For purposes of clarity and standardization, this definition is necessary.

14. "Project" means a new activity or an expansion of or addition to an existing activity, which is fixed in location and which requires permits from an agency(ies) prior to construction or operation, including but not limited to industrial and commerical operations and development.

... This definition, taken from Minn. Stat., Sec. 116C.24, subd. 7, identifies the types of activities for which this process may be used, and, by virtue of omission, identifies the types of projects for which the coordinated permit procedures are unavailable. The term is defined to provide for a standardized interpretation of the term when it appears in the text of these rules.

15. "Regional Development Commission" means any Regional Development Commission created pursuant to Minn. Stat., Sec. 462.381 to 462.396, and the Metropolitan Council created pursuant to Minn. Stat., Chapter 473B.

... This definition is needed to identify what constitutes a regional development commission for the purpose of these rules. Although the term has obtained a common meaning through the state, it is necessary to clearly identify the meaning of the term to eliminate confusion as to which organizations are eligible for the permit information center grant monies under the existing appropriation language.

MEQC 102 MASTER APPLICATION

A. Scope. A person proposing a project that might require more than one permit may, before the initial construction of the project or the initial operation of the project if construction of the project requires no permits, submit to the Coordination Unit a master application requesting the issuance of all permits necessary for construction and (or) operation of the project.

... Minn. Stat., Sec. 116C.26, subd. 1 identifies who may choose to use the master application process and under what conditions the process is available. This rule paraphrases the beginning sentence of that subdivision and is needed to indicate that only proposed projects requiring more than one natural resource

permit are eligible to use the process. The rule is written in a permissive tone as it is the clear intent of the Legislature that the process be available only to those project proposers wishing to make use of it.

Common sense dictates that the project proposer is the only reasonable entity to initiate the process; the proposer is the only one in a position to identify the proposed project and having access to the information needed by the regulatory agencies to determine the applicability of their permit programs. In order for the permit process to be truly coordinated, it is necessary to require that the master application be submitted to the Coordination Unit which is assigned the responsibility of notifying the regulatory agencies.

1. Other permits, in addition to those defined by these Rules, may be included in these permit coordination procedures if the applicant and state regulatory agency so agree and if such procedure is permissible under the statutes and regulations that apply to such non-included permits. A written agreement to such an arrangement shall be provided by the agency to the Coordination Unit within 30 days of receipt by the agency of the master application. If such other permit applications are included within the master application process, they shall remain with the process until final disposition of the master application and for purposes of the master application process shall be included as a permit as defined by these Rules.

... Although the Act refers only to natural resource type permits as eligible for inclusion in the coordination process, it is reasonable to include other permits to increase the efficiency of the coordination process. This rule is needed to provide, at the option of both the applicant and the regulatory agency, a mechanism to include such extraneous permits in the process. If the Coordination Unit is to fulfill its function as the coordinating body, it must be apprised of the inclusion of these permits; thus, there is the need to have a written agreement submitted to the unit by the agency. Minn. Stat., Sec. 116C.26, subd. 2 requires an agency to respond if it has a permit interest in the proposed project within 20 days after receipt of the master application. However, because an agreement must be reached between the two parties to include extraneous permits, it is necessary to allow an extra ten days to determine if both parties wish to include such permits with the master application. If the two parties select this option and if the overall objective of predictability is to be maintained, the rule must contain the provision that those permits be included in the process until the final disposition of the master application.

2. If a permit is required for the operation of a project or if a state agency must approve the engineering design plans of a project, and if sufficient information needed by the agency to reach a decision would be unavailable through the master application process, then that permit or approval may be processed independently from the master application process provided both the applicant and the agency agree.

... Certain operational permits are not issued by regulatory agencies until the proposed project has been completed and is functional. To avoid delaying the entire master application process or to prohibit its use by the applicant, this rule is needed to provide that certain permits may be processed independently of the master application. To reduce the possibility of misuse of this rule, it specifically identifies which types of permits or approvals may be processed separately and also requires that both parties be in agreement that separate processing is in the best interest.

B. Master Application Form. The Coordination Unit shall provide a master application form which requests information necessary for agencies to determine permit applicability. Information required shall include but not be limited to:

1. The name and address of the applicant.

2. The location of the project.

3. A description of the project, including but not limited to possible discharges of waste; use of or interference with natural resources; the time for project completion; and, if the project is to be phased, the timing of such phases.

... To provide a coordinated and consistent process, it is necessary that a single form be available for the submission of information needed by the regulatory agencies to determine permit applicability. The Legislature recognized this need and in Minn. Stat., Sec. 116C.26, subd. 1 directed the Coordination Unit to provide a form to applicants indicating the kinds of

information needed. The information required by this rule and by the Legislature must be provided by the applicant as the applicant is most likely to have the best access to the information.

This rule contains an outline of the information required to be furnished by the applicant. Development of the complete form is best accomplished through discussions with state agencies and potential users of the procedure. It is inappropriate to include the complete form in these rules, since doing so would preclude revising the form without going through the lengthy and costly hearing process. At the time these rules become effective a form will be available; however, it is anticipated that after gaining experience, the Coordination Unit will update and revise the form to accommodate the users of the master application process and the state agencies.

C. Signatories. Permit forms of agencies shall be signed as required by the rules of the respective agencies. Any form, exclusive of the agencies' permit forms, submitted to the Coordination Unit shall be signed as follows:

1. In the case of a corporation, by a principal executive officer or his duly authorized representative or agent, if such representative or agent is responsible for the project for which the permit is requested.

2. In the case of a partnership, by a general partner.

3. In the case of a sole proprietorship, by the proprietor.

4. In the case of a municipal, state or other public signatory, by either a principal executive officer, ranking elected official, or other duly authorized employee.

... This rule is needed to clarify which signatures are required for the master application and agency permit forms. It is reasonable that only authorized agents should be permitted to represent project proposers. This rule is necessary to protect agencies and permit applicants and to identify a principal contact person for the project.

D. Certification. The Coordination Unit shall provide certification application forms which shall be submitted respectively by all applicants as follows:

... Minn. Stat., Sec. 116C.26, subd. 1 requires that before an applicant submits a master application, the project must be certified to be in compliance with local regulations and that any environmental review procedures required by the EQC have been completed. To eliminate potential confusion regarding the information required in a certification, the Coordination Unit will prepare a standardized form in which will be available to all applicants.

1. Certification must be obtained from the local government unit(s) in which the proposed project will be located that the project complies with all local zoning ordinances, subdivision regulations, and environmental regulations administered by the local government unit. Certification under this paragraph must be issued not more than 120 days before the submission date of the master application. The local government unit(s) shall either issue a certification or deny that certification in accord with the following procedures.

... This rule is derived from the mandates of Minn. Stat., Sec. 116C.31, subd. 1 which require a local government to certify that the proposed project is in compliance with all local regulations, not more than 120 days prior to the submittal of a master application by the project proposer. The need for this rule is clearly established in the Act. The rule also indicates that a local unit of government has the option of either certifying or denying certification of a proposed project. In addition, this rule and the ones to follow provide the procedures to be followed by the local unit in reaching its certification decision. If such provisions were not included in these rules, the local units would be required to comply with the procedures without any guidance. If that guidance were not available, there could potentially be numerous, inconsistent ways of certifying a project resulting in a great deal of confusion.

a. Within 45 days after the applicant has submitted a certification application form to the local government unit, the unit shall return the completed form to the applicant or notify the applicant in writing that the certification is denied, including the reasons for the denial.

... To achieve the objective of predictability of this process, it is necessary to require that certification decisions be made in a timely manner. This rule is needed to identify the time period allowed the local unit in reaching its certification decision. Because most local governing bodies meet at least one a month, 45 days should provide them ample opportunity to review their regulations and determine whether the proposed project is in compliance with them. If the local unit determines the proposed project is not in compliance with the local regulations, it is appropriate to require that the unit inform the proposer where the nonconformance exists. This rule, as do others, requires that the reasons for the decisions of public agencies be justifiable and open to public scrutiny, a concept implicit throughout the Environmental Coordination Procedures Act.

b. No local government unit shall rescind such a certification for a master application, even though the local government may have changed its zoning ordinances, subdivision regulations, or environmental regulations. A change of zoning ordinances, subdivision regulations, or environmental regulations shall not invalidate a previously given certification for the purpose of securing a state permit under MEQC 101 to 110. After certification, the local government may change such zoning ordinances, subdivision regulations, or environmental regulations, but not so as to affect the proposed project until the procedures of MEQC 101 to 110, including any administrative or judicial reviews, are completed.

... Minn. Stat., Sec. 116C.31, subd. 1 provides that in the event of a change or modification of local government regulatory ordinances during the time that a project is involved in the master application process, certification cannot be repealed. In this manner, the project proposer is not unfairly caused to requalify for certification after once attaining that status. It is in the best interest of the applicant that this provision be included to prevent economic hardship and time loss in the event of a change in local government regulatory and administrative procedures or a shift in local policies.

This rule does not prohibit a change in local regulations after a project is certified but it does require that such change shall not invalidate the previously granted certification. This rule does not preclude a future action on the project by the local unit such as a denial of local permit applications.

c. A local government unit denial of certification shall not be appealable under these Rules. Such denial shall not preclude the applicant from filing a permit application under any other available statute or procedure.

... This provision was included in the Act (Minn. Stat., Sec. 116C.31, subd. 2) and in these rules to provide the project proposer who is denied local certification an optional means of obtaining the required permits. The intent of this rule is to allow a proposer who has had local certification denied, the option of continuing to seek the required state permits using the state regulatory agency's normal procedures. The rule is needed to demonstrate that obtaining local certification is a "one-shot" deal but that optional procedures do exist. In essence this rule states that the master application process is not available to a project proposer denied local certification, but the proposer will still be allowed to obtain the necessary state approvals.

2. Certification must be obtained from the Council, that an environmental impact statement on the project either has been completed or is not required. Within five days after the first Council meeting following submission of a certification application form to the Council, the Council shall return the completed form or notify the applicant in writing that the proposed project is undergoing review under the environmental review process. If the project is undergoing review under the environmental review process, the Council shall return a completed form to the applicant within ten days after such process is completed. If an environmental impact statement was required on the project, a copy of the completed environmental impact statement shall be attached to the Council's certification.

... In addition to the certification of compliance by the local government units, a project proposer must also seek and obtain certification from the EQC that environmental review of the project has been completed. This rule is needed to clearly indicate that the EQC must be advised of a proposed project before any state natural resource permits are issued. It should be noted this rule does not give the EQC the option of denying a certification but only ensures that the project will be reviewed if a review is deemed necessary. Although the provision of the Act requiring this certification (Minn. Stat., Sec. 116C.26, subd. 1) does not impose time restrictions on the Council, it is necessary that such time constraints be imposed to ensure that a predictable and reliable decision making process is achieved. The time period provided in this rule places a burden on the Council to react and notify the applicant in a timely manner consistent with the intent of these rules.

Although subdivision 1 states that an environmental impact statement prepared on the project should accompany the local certification, this responsibility is more appropriately assigned to the EQC. Because all EISs must be processed through the EQC and because in certain cases the local unit may not be responsible for preparation of the EIS, it makes sense to give this responsibility to the EQC. The Council in proposing this provision is prepared to accept this responsibility.

E. Acceptance for Processing. Upon receipt of a complete master application, including certifications required in MEQC 102D, the Coordination Unit shall immediately notify the applicant that the application has been accepted and is ready for processing.

... This rule is needed to clearly indicate to the applicant that he has complied with the rules governing the master application process and that the process is proceeding in a timely fashion.

1. Upon acceptance, the Coordination Unit shall immediately notify in writing each agency having a possible permit interest in the project. The notice shall be accompanied by a copy of the master application.

... Subd. 2 of Minn. Stat., Sec. 116C.26 requires the Coordination Unit to notify interested regulatory agencies immediately after receipt of a master application. This rule requires that the unit shall indeed notify the agencies and also requires the unit to forward a copy of the application, thus enabling the agencies to readily determine whether they have a permit interest in the proposed project.

2. Each notified agency shall respond in writing to the Coordination Unit within 20 days of receipt by the agency of the master application, advising whether the agency will or will not require a permit for the described project. If the agency responds affirmatively, it shall include application forms and information concerning the specific permit program(s) applicable to the project as described and state whether a public hearing is required or appropriate relating to permit requirements for the project; provided, that a statement whether a public hearing is required or appropriate relating to National Pollutant Discharge Elimination System (NPDES) permit requirements for the project shall not be required at this time. If an agency affirms that a public hearing is required or appropriate, it shall provide a brief statement identifying the reasons.

... The procedures to be followed by a regulatory agency in responding to a master application are identified in Minn. Stat., Sec. 116C.26, subd. 2 and reiterated in this rule. To achieve a predictable process and justify an agency's response, it is necessary to impose on the responding agency the conditions included in this rule. Including such restrictions is necessary to fulfill the intent of the Legislature in creating a process which is predictable to all parties and provides reasons for an agency's actions.

The requirement for processing an NPDES permit is a variation from the usual procedure in order to accommodate federal procedural requirements. Minn. Stat., Sec. 116C.33, subd. 2 provides that the master application procedure can be modified to accommodate federal requirements which are inconsistent with the requirements of the Act. In processing NPDES permits time must be allowed for public comment on a proposed project prior to an agency determination on the appropriateness of a hearing. The reasons for a public hearing should be identified by an agency in fairness to the project proposer.

3. If after all agency responses are received, only one permit is required, the master application procedure shall no longer be available to the applicant for that project. The applicant may then proceed to process the permit application using the normal procedures established by the agency requiring the permit. However, an agency(ies) shall not require an additional permit(s) of the applicant unless one of the conditions described in MEQC 102E.4 arises.

... This rule is needed to indicate the procedures to be followed if agency responses to the master application indicate that only one natural resource permit is required. It is clearly the intent of the Legislature, as demonstrated in Minn. Stat., Sec. 116C.26, subd. 1, that the master application procedure should be available only to those proposed projects which require more than one natural resource permit. This rule requires the applicant to process his permit request directly with the regulatory agency following the agency's normal procedure. In most cases this would be in the best interest of the applicant because the time required for processing a single permit application would be

less than that required for the master application process to be completed. However, because the proposer had initiated the master application in good faith but was prevented from pursuing the process because of requirements beyond his control, he should be allowed to remain under the influences of the philosophy of the Act. Thus, an agency should not be allowed to demand additional permits but should be required to abide by its original determination, made while the master application procedure was still in effect.

4. A notified agency that makes a timely response indicating that a permit(s) is not required, or that fails to make a timely response concerning a permit program or programs, shall not require such a permit of the applicant for the described project unless:

   a. The master application provided to the agency contained false, misleading, or deceptive information, or lacked information, that would reasonably lead the agency to misjudge the applicability of its permit(s) to the project; or

   b. Subsequent laws or rules require additional permits; or

   c. Unusual circumstances prevented the agency from notifying the Coordination Unit, and the agency can establish that failure to require a permit would result in substantial harm to the public health and welfare.

... This rule is proposed by the Council in accord with the requirements of Minn. Stat., Sec. 116C.26, subd. 3 which prohibits an agency from requiring a permit after it has previously determined that a permit was not required for the project unless certain conditions arise. Implicit throughout the Act is the objective of creating a predictable process. This rule demonstrates that concept by ensuring that the project proposer learns quickly which permits must be obtained after the master application has been submitted. However, the Legislature did recognize that certain conditions could arise where an agency would not have a reasonable opportunity to determine the need for a permit; thus, the Act allows that additional permits could be required if certain circumstances did occur. This rule is needed to specifically identify those circumstances for the benefit of both the agencies and the project proposers.

5. If one of the conditions listed in MEQC 102E.4.a through .c arise, the affected agency(ies) shall so notify the applicant, the Coordination Unit and the Council, and shall request a determination by the Council whether an order should be issued to require the relevant permit(s). Included with the agency's request shall be a statement justifying the need to require the additional permit(s). The Council at its first meeting held more than 15 days after being notified by the agency shall determine whether the permit(s) shall be required. If additional permit(s) are required because one of the conditions of MEQC 102E.4.a occurs necessitating a change in the notice requiredby MEQC 105A, or a change in the joint hearing procedures under MEQC 106A, or the holding of an additional hearing, the applicant shall pay the additional cost, if any, resulting from the requirement for the additional permit(s). If additional permit(s) are required because the conditions of MEQC 102E.4.b or .c occur, the agency requiring the additional permit(s) shall pay the additional cost, if any, resulting from the requirement for the additional permit(s).

... This rule is needed so that all affected parties are apprised of the mechanism for requiring additional permits should one of the conditions of MEQC 102E.4 occur. Although Minn. Stat., Sec. 116C.26, subd. 3 identifies the conditions which could result in the requiring of additional permits, it does not clearly indicate who should be assigned the responsibility for determining when such a permit should be required. However, in order to maintain the spirit of the Act regarding predictability and openness of the process, the Council and the state agencies have agreed that the determination, when needed, should be made by the Council. By assigning this responsibility to the Council, the project proposer is assured that this type of decision will be made in a forum open to public input. The Council holds regular monthly meetings open to all interested individuals, whereas, if an agency were to make the determination and open the decision making process to the public, the agency would probably have to schedule a public meeting or hearing which would be both time consuming and costly to the agency involved. This rule is also needed to establish the time frame in which the Council will make its decision.

Because of the potential complexities resulting if one of the conditions should arise, the Council will need a certain amount of time to analyze the information supplied by the agency and reach its decision. Since the Council 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. Setting this time limit also ensures the parties that a timely response will be made by the EQC.

If an additional permit is required, there is the possibility that additional costs may also be incurred. This rule is needed to identify which party would be responsible for assuming those costs. It is reasonable that any resulting costs should be borne by the party most closely associated with the action leading to the requirement of the additional permit. The responsibility for condition a. occurring is clearly that of the project proposer whereas the responsibility for conditions b. and c. are more closely associated with the activities of the regulatory agencies.

F. Alteration of Project. If the applicant without being required by a public agency alters the proposed project in a way that may affect the validity of the certifications required in MEQC 102D or an agency response required in MEQC 102E.2, the applicant shall immediately notify the Coordination Unit of the proposed alteration. The Coordination Unit shall then immediately notify the Council, the local government units involved, and all agencies which may have a permit interest in the proposed project. Within ten days after notification by the Coordination Unit, the Council, the local government unit(s), and the agencies shall respond to the Coordination Unit and the applicant whether the previous certification is still valid or additional permits are required. If a new certification is needed or additional permits are required, the master application process shall be suspended. The period of suspension shall not exceed the time periods provided in MEQC 102D.1.a, MEQC 102D.2 and MEQC 102E.2. If the joint hearing required in MEQC 105 has been held prior to notification of the proposed alteration of the project, the applicant shall be responsible for the costs of any additional hearing that may be required.

... Although the Legislature did not provide for the occurrence of this situation, this rule is necessary to provide the mechanism for handling it should the situation arise. It should be noted this rule applies only to those projects which are changed by the proposer on his own volition. If a project is altered at the request or recommendation of a public agency this rule does not apply, but the master application procedure would continue in its normal manner. The basic intent of this rule is to require the applicant to repeat only those steps of the master application process affected by the project change. Because it is recognized that almost all projects undergo change at some time in their planning, it would be unreasonable to require all project changes to be reviewed by the Council and the regulatory agencies.

Because the alteration of the project is in the hands of the proposer, it is necessary to require the proposer to initiate the review procedure by submitting a notification to the Coordination Unit. The Coordination Unit is the proper entity to receive such notification as it has been assigned by the Legislature the responsibility of coordinating all activities of the master application process.

The procedure to be followed in reviewing the project change is similar to that for making the initial determination except that the review period is shortened. Because the project has been previously reviewed in detail and the change will likely concern only a few aspects of the project, less time should be needed to review the project. Ten days should be sufficient for the public agencies to review the changes and make a determination regarding validity of the previously given responses. If one of the master application steps need be repeated, this rule specifies that the process will be temporarily suspended until that step has been completed. The time periods allowed for completing the revision are the same as those provided for in the normal master application procedure.

If additional costs are incurred because a step has to be repeated, it is reasonable to require the party causing the additional costs to assume those costs. The last provision in this rule provides that the applicant, as the initiator of the change, assume those costs.

MEQC 103 PERMIT APPLICATIONS

Within five days after the deadline for agency responses, the Coordination Unit shall submit to the applicant all necessary application forms for the permits identified in the affirmative agency responses described in MEQC 102E.2. The applicant shall complete and return these forms to the Coordination Unit, with any required individual permit fees, within 90 days.

... As previously mentioned, a principle objective of this procedure is to increase the predictability of permitting decisions. This rule is proposed to specify the time allowed for the processing of agency responses and for the completion of the permit forms by the applicant. Because the forwarding of forms by the Coordination Unit will merely involve "paper shuffling", five days will be adequate for the Coordination Unit to accomplish this task. To ensure timely progress a restriction must be placed on the applicant to complete and return the forms. If this were left open ended and the applicant were to take an inordinate amount of time in responding, it could conceivably affect the previous responses of the agencies because of changing agency policies or permit programs.

Although the Environmental Coordination Procedures Act is directed at modifying the procedures used by agencies in granting or denying permit applications, it is not intended to affect the fees currently being assessed to the applicant. To reduce the time needed for administrative processing of the application, this rule provides that each individual permit application be accompanied by the fee required for that permit. It will greatly ease the processing of the permit forms if "separate checks" are included for each permit fee.

A. Transmittal to Agencies. Within ten days of receipt of the full set of completed forms the Coordination Unit shall send each application to the appropriate agency for its permit review in accord with the procedures of these Rules, provided, that a completed NPDES form shall be forwarded to the Minnesota Pollution Control Agency (MPCA) immediately upon receipt by the Coordination Unit.

... This rule is needed to ensure the applicant that the processing of his permit applications will be carried out in a timely manner. A period of ten days is needed by the Coordination Unit to review the permit forms to make sure that each form is completed and accompanied by any required permit fee. In the majority of cases, the full ten days will not be needed but if a project involves a large number of permit applications or if there are questions about the completeness of the forms, the full ten days may be needed. This rule also provides that an NPDES application be submitted to the MPCA as soon as it is received. This adjustment to the normal procedures is definitely needed to reduce potential delays in the processing of all the permit applications. The need for this speeded-up process, involving NPDES permits, results from the time required for the processing of those applications dictated by federal requirements as demonstrated in the agency's justification for rule MEQC 104.

B. Priorities. If an agency has a procedure for setting priorities in permit issuance according to the application date, the date used shall be the day the master application is received by the Coordination Unit.

... Minn. Stat., Sec. 116C.26, subd. 6 provides the basis for this rule. In order to further reduce the delay for the issuance of permits, the agencies are required to use the date the master application is received by the Coordination Unit in determining the order for acting on the permit. The intent of this rule and the Act subdivision is to require the agency to act on the permit in a timely manner.

MEQC 104 NPDES PERMIT REVIEW

Whenever the MPCA responds under MEQC 102E that a NPDES permit is required for a master application, within 110 days after it has received a completed NDPES application under MEQC 103A the MPCA shall complete all permit review procedures necessary to determine the necessity or appropriateness of a hearing on the NPDES requirements for the project, and shall within the 110 days notify the Coordination Unit whether a hearing is required or necessary.

... Minn. Stat., Sec. 116C.33, subd. 2 provides that the Council may modify the normal master application procedures to accommodate the requirements of federal statutes. Requirements for the processing of NPDES permits are dictated by federal statutes which require a longer time period for reaching certain decisions than is allowed by the Environmental Coordination Procedures Act.

Because federal requirements require a public notice before the decision can be made on the need for a public hearing, it would be impossible to make that determination within the 20 days allowed by the Act. The 110 day time period allows the MPCA to complete its public notice requirement and to determine the need for a public hearing.

MEQC 105 NOTICE

A. Publication. Immediately after transmittal of the completed permit applications and any required permit fees to the appropriate agency, the Coordination Unit shall publish notice, at the applicant's expense once each week on the same day of the week for three consecutive weeks, in a newspaper of general circulation in each county in which the project is proposed to be constructed or operated.

... This rule is proposed by the agency to ensure that the public and affected citizens are provided with an opportunity to become aware of the proposed project. A major purpose of the legislatively enacted master application procedure is to provide to the public an opportunity to obtain information regarding proposed projects which may affect them. Minn. Stat., Sec. 116C.27, subd. 1 requires that this provision be included as in integral part of the master application procedure.

If the potentially affected public is to be informed of the pending project, it is only reasonable the notice be published in a newspaper to which they have ready access. The requirement for the applicant to bear the cost of a newspaper notice is proposed at the directive of the Legislature, which included such a provision in Minn. Stat., Sec. 116C.27, subd. 1.

B. Content. The notice shall contain:

1. A description of the proposed project.

2. The name and address of the applicant.

3. The location of the project.

4. The permits applied for and the agencies with permit jurisdiction.

5. The Coordination Unit telephone number to contact for more information about the project.

6. A statement that a copy of the master application and a copy of all permit applications for the project are available for public inspection during normal business hours in the office of the county auditor of each county in which the project is proposed to be constructed or operated, and in other locations the Coordination Unit may designate.

7. Except as provided in MEQC 104 or MEQC 105C, the time and place of the joint hearing, to commence not less than 20 days or more than 45 days after publication of the last newspaper notice.

8. Additional information concerning the permit application or hearing, upon notification by an agency that such specified information is required to be provided in the notice.

... In order for the newspaper notice to fulfill its intended use, it is necessary that it contain information which will enable interested citizens to gain a basic understanding of the proposed project. In addition to requiring the notice, Minn. Stat., Sec. 116C.27, subd. 1 also identifies the type of information which should be contained in the notice. This rule is needed to illustrate what information is required to be published.

The listed items are all necessary if it is to be expected that the reader will be able to comprehend the proposed project. With the inclusion of the items listed in this proposed rule, the public will be informed as to the nature of the project, whom to contact for further information concerning the project, when and where they will be provided an opportunity to comment, and which state natural resource permits are required to implement the proposed project.

C. If Joint Hearing of No Value. If agency responses to the master application unanimously affirm that a public hearing concerning the master application is not required or is not in the public interest, the newspaper notice shall not refer to a joint hearing. The notice shall state that members of the public may present relevant views and supporting material concerning specified permits in writing to the Coordination Unit within 30 days after the last notice has been published.

... This rule is drafted in accord with Minn. Stat., Sec. 116C.27, subd. 2. In the event that all the permitting agencies confirm that a joint hearing would be of no value, the master application public notice would reflect this finding. The public would still be permitted to present relevant views and information regarding the project within the 20 day period following publication of the last notice. This is necessary to allow public participation in the process, even when formal hearing is scheduled.

D. Additional Notice. Persons wishing to receive notice by mail of master applications may do so upon written request. The request shall give the name and address of the person to receive notice and the counties for which master application notice is requested. The request shall be valid for one year and may be renewed upon notice of expiration by the Coordination Unit. Upon notification by an agency, the Coordination Unit shall also mail notices to any additional persons entitled to receive notice according to the requirements of individual permit programs.

... This rule establishes a procedure which allows individuals to receive notice of master applications by mail. It is reasonable to assume that interested parties desiring to be listed as recipients of such notice would find the information important. This procedure also provides for participating agencies to request that the Coordination Unit mail notice to persons entitled to receive such notices under their individual permit programs.

E. Confidentiality

If the applicant requests that information contained on the application or in supplement to the application be certified as confidential, the information shall not be released unless the appropriate agency responds in writing that the information is not to be certified as confidential. If the agency so responds, the Coordination Unit shall immediately notify the applicant that the agency has failed to certify the information as confidential. Within ten days after such notification, the applicant may withdraw the subject information by giving written notice to the Coordination Unit. The information shall not be subsequently released if it is withdrawn by the applicant within the ten day period.

... This rule is needed to protect the privacy of information the applicant may not wish to have made public. In a competitive marketplace project proposers often generate information which if released to the general public would cause them to lose their competitive advantage. This rule requires that such information will not be released if the applicant takes positive action. To protect against misuse of this provision, it is necessary that the agency most familiar with the type of information at issue be assigned the responsibility of determining whether it should be withheld from public perusal. Even if an agency fails to concur with the project proposer, the opportunity exists for the proposer to withdraw the information. It must be recognized that at this time the information would have already been reviewed by a number of parties and thus available to the public. However, the rule provides a check on the information being released by allowing for supplements to be submitted along with the master application. Conceivably those supplements could contain information desired to be kept confidential by the proposer.

If an agency responds negatively to a requested confidential certification, the proposer must act in a timely fashion to prevent that information from being released. A ten day time period should provide ample time to the proposer to notify the Coordination Unit if he still believes it is in his best interest to keep the information from public review.

MEQC 106 JOINT HEARING

A. Joint Hearing Procedure. When one or more agencies affirm that a hearing is required or appropriate relating to its permit requirements for the project, the agency(ies) shall issue an order for a hearing. In preparing the order for hearing, the agency(ies) shall consult with the Coordination Unit in setting the time and place for the joint hearing. The Coordination Unit shall issue a notice that a joint hearing will be held pursuant to the contested case provisions of Minn. Stat., Chapter 15, the Rules and Regulations of the Office of Hearing Examiners, and these Rules. Copies of the notice and order(s) shall be immediately forwarded to all agencies having a permit interest in the project and to the applicant by the Coordination Unit.

... Minn. Stat., Sec. 116C.28, subd. 1 provides a means for a consolidated hearing process on permits involved in the master application procedure thereby substantially reducing the time and expense of state agencies and the proposer. If this procedure did not exist, there could easily be a number of individual permit hearings required for each project. To enable this consolidated hearing to be coordinated among all permitting agencies, it is necessary that the Coordination Unit be involved in setting the time and place for the hearing.

In order for all affected parties to be fully aware of these developments, it is necessary to assign to the Coordination Unit the responsibility to notify them of the pending hearing. Because of its role in the entire process, the Coordination Unit is in the best position to ensure that the proper parties are notified; thus it is reasonable to give them this responsibility.

B. State Agency Participation. Each participating state agency shall be represented at the joint hearing by its chief administrative officer or his designee. The representative shall participate in the portion of the joint hearing pertaining to submission of information, views, and supporting materials that are relevant to the specific permit application(s) under the jurisdiction of that agency. The manner of agency participation shall be consistent with the contested case provisions of the Rules and Regulations of the Office of Hearing Examiners. The hearing examiner may, when appropriate, continue a joint hearing from time to time and place to place. The joint hearing shall be recorded in any manner suitable for transcription pursuant to Minn. Stat., Chapter 15. The record of the joint hearing shall be made available for public inspection by the Coordination Unit.

... Minn. Stat., Sec. 116C.28, subd. 2 identifies which state agencie shall participate in the joint hearing and the manner by which the hearing will be managed. This rule, as proposed, is consistent with the directives of that subdivision.

The rule establishes the procedure used by participating agencies to insure their adequate representation at joint hearings. To ensure attendance it is reasonable to allow an authorized administrative officer to designate another person if the officer would be unable to attend the hearing. Further, it is anticipated that any designee from a participating agency would be cognizant of the pertinent issues, information, views and supporting materials concerning specific permit applications under the jurisdiction of that agency. The rules indicate that participation by pertinent agencies must be in accord with the Rules and Regulations of the Office of Hearing Examiners. A transcipt of the hearing will be made available by the Coordination Unit to allow for public inspection, thereby maximizing public awareness and participation.

C. Hearing Examiner Report. Upon termination of the joint hearing, the hearing examiner's report, containing recommendations on each permit, shall be forwarded to the Coordination Unit. The Coordination Unit shall forward copies of the report to the participating agencies and to the applicant.

... This rule is needed to develop a mechanism for distributing the hearing examiner's findings and recommendations. To fulfill its role as the coordinating element of the master application process, it is reasonable to assign to the Coordination Unit the responsibility of ensuring that all affected parties receive a copy of the report.

D. Costs. Costs of the joint hearing shall be apportioned by the Coordination Unit to each participating agency. The hearing costs shall be apportioned based on the percentage of the hearing record that is pertinent to each participating agency.

... As mentioned earlier, the joint hearing process is a replacement for separate hearings that would have been held by individual agencies. Because those agencies would have been holding hearings and paying for them before the master application process was instituted, it is only reasonable to expect them to pay for the part of the joint hearing that involves their permit application. The rule is needed to identify who is responsible for the joint hearing costs and to establish the mechanism for distributing those costs. Since the Coordination Unit was established to coordinate the entire process and is in the best position to be aware of all the issues involved in a master application, it is reasonable to assign them the responsibility of determining the proportionate shares of the hearing cost. In the majority of cases one or more of the permit applications because of more complicated issues involved, will consume a disapportionate amount of the hearing time. Rather than arbitarily splitting the hearing costs among those agencies having a permit involved in the hearing, it is only equitable to have those agencies consuming the most time at the hearing pay a proportionately larger share of the costs.

E. Final Agency Decision. Within 60 days of receipt of the hearing examiner's report or notification by the Coordination Unit of its availability to those agencies not participating in the hearing, each agency shall notify the Coordination Unit of its final decision on the permit applications within its jurisdiction, provided that this date may be extended by the Chairman of the Council for reasonable cause. A request for such extension, setting forth specific reasons, shall be filed with the Coordination Unit, which shall immediately notify the Chairman of the Council and the applicant. Such extension shall be the minimum time needed by the agency to reach a final decision and shall be considered an exception to normal operating procedure. Each final decision shall set forth the reasons for the decision together with a final order denying or granting the permit, including any conditions under which the permit is issued. Each final decision of the participating agencies shall be consistent with the requirements of the Rules and Regulations of the Office of Hearing Examiners.

... This rule sets forth a procedure for agencies to render final decisions, establishes deadlines for reaching those decisions, and delineates the manner in which those decisions should be set forth. Minn. Stat., Sec. 116.28, subd. 3 provides the basis for this rule by dictating the time allowed for agencies to reach their decision and the manner in which those decisions will be made. Extension of the time period is allowed by this subdivision; however, if the entire process is to maintain predictability, it must be recognized that a decision granting such an extension will not be automatic but will be based on the particular permit involved, the findings of the hearing examiner and the scale of the information still needed by the agency to reach the appropriate decision.

This rule is reasonable in that it allows agencies adequate time to render a decision and outlines a procedure for requesting additional time. Since agencies have reasons for granting or denying a permit request, it is reasonable to require that they state their reasons for the benefit of the project proposer and interested citizens. Thus, a final decision can serve as an educational and informational tool to the general public and developers, given that the decision contains a rationale for action on a permit and the conditions under which the permit is issued.

The last provision of this rule is needed to clearly demonstrate to those agencies participating in the joint hearing that their decisions must be reached on the basis of evidence presented in the hearing. This provision does not imply that the agency's decision must be the same as recommended by the hearing examiner but that the decision be consistent with the material contained in the hearing record.

MEQC 107 NON-HEARING PROCEDURE

If no joint hearing is conducted, pursuant to MEQC 105C, the Coordination Unit shall, not less than 30 days after publication of the last newspaper notice, submit a copy of all views and supporting material it has received to the agencies. The agencies shall consider such information during review of permit applications. Concurrently, therewith, the Coordination Unit shall notify each agency, in writing of the date, 60 days after agency receipt of such notice, by which final decisions on applications shall be forwarded to the Coordination Unit, provided that this date may be extended by the Chairman of the Council for reasonable cause. A request for such extension, setting forth specific reasons, shall be filed with the Coordination Unit, which shall immediately notify the Chairman of the Council and the applicant. Such extension shall be the minimum time needed by the agency to reach a final decision and shall be considered an exception to normal operating procedure. Every final decision shall set forth the information required by MEQC 106E.

... This rule is needed to clearly spell out the intentions of Minn. Stat. Sec. 116C.28, subd. 4. The justification for this rule is similar to that for MEQC 106E except that the information from which the agency reaches its decision comes from a different source. Because in this case the public would not have the opportunity to present its views at a public hearing, this procedure is needed to ensure that their comments will reach and be considered by the permitting agencies. The intent of the Legislature in subd. 4 is clearly to allow the public an opportunity for input to agency permit decisions regardless of whether a public hearing is held on the permit applications.

MEQC 108 AGENCY DECISIONS

Upon receipt by the Coordination Unit of all final decisions of the agencies, the Coordination Unit shall immediately incorporate them, without modification, into one document and transmit the document to the applicant either personally or be registered mail.

... Minn. Stat., Sec. 116C.28, subd. 5 and this rule indicate the manner in which agency decisions will be transmitted to the permit applicant. This procedure is necessary as it allows the Coordination Unit to gather the final decisions from all agencies that participated in the master application process and transmit them to the applicant. It precludes the Coordination Unit from sending a partial list of the final decisions to the applicant. The provision for transmitting documents to the applicant either personally or by registered mail is necessary to assure the Coordination Unit that the applicant has received the document.

1. A person aggrieved by a final decision of an agency in granting or denying a permit shall seek redress directly and individually from that agency in the manner provided by Minn. Stat., Chapter 15, or any other statute authorizing either judicial or administrative review of an agency decision.

... The intent of this section is to provide a procedure for the applicant and/or concerned citizens to appeal agency permit decisions by stating whom the aggrieved person should address and the appropriate procedure for seeking redress.

This rule is needed to assure the applicant and concerned citizens that a mechanism for appeal does exist but that when such an appeal is necessary, the Coordination Unit will not be involved. The rule is proposed at the direction of Minn. Stat., Sec. 116C.30, subd. 1.

EQC 109 WITHDRAWAL FROM THE MASTER APPLICATION PROCESS

A. Agency Withdrawal. If an agency responds that it has one or more permit programs applicable to a project, it may at any time withdraw from further participation in procedures hereunder concerning such project by submitting written notification to the Coordination Unit and the applicant that the agency has subsequently determined that it has no permit programs under its jurisdiction that are applicable to the project. If such withdrawal necessitates a change or withdrawal of any notice required under these Rules, said agency shall pay the cost, if any, of such change or withdrawal of notice unless the agency's withdrawal resulted from an alteration in the project made by the applicant that was not required by a public agency or if the agency's initial determination that a permit was required was made on the basis of incorrect information supplied by the applicant in which case the applicant shall pay the cost, if any, of such change or withdrawal of notice.

... The purpose of this section is to provide an official mechanism for agencies to reassess their participatory role in the master application process. In some cases, an application may imply to the agency that a certain permit would be required. This procedure does not bind agencies to previous determinations but allows the agencies to reconsider whether a permit is required. This rule is reasonable in that it permits flexibility and provides a method for agencies to withdraw from the process in the event that permit applicability were not appropriate.

Minn. Stat., Sec. 116C.29 provides that this procedure be incorporated in these rules, and this rule also provides the guidance for determining who will be responsible for assuming the costs of a change in newspaper notice if a change is required The only reasonable means of assigning such costs is to require the party responsible for the incurring of the costs to bear them. This rule provides that the party at fault shall pay the costs.

B. Applicant Withdrawal. If an applicant has initiated the master application process, the applicant may at any later time withdraw from further participation in the process by submitting written notification to the Coordination Unit. If such withdrawal necessitates a change or withdrawal of any notice required under these Rules, the applicant shall pay the cost, if any, of such change or withdrawal of notice.

... Although no provision in the Act allows for withdrawal from the process, by the applicant, this rule is proposed to provide an official mechanism for the applicant to withdraw from the master application process.

An applicant may encounter some change in plan which will make it unnecessary to utilize the master application process. This procedure does not bind applicants to previous proposals.

This rule is reasonable in that it permits flexiblity and provides a method by which the applicant can withdraw from the process in the event that his proposal has been altered since the filing of the master application. The applicant is responsible for any cost resulting from the withdrawal, since the applicant originally indicated that the master application process was necessary.

EQC 110 APPLICATION

A. Agency Jurisdiction. Each agency having jurisdiction to issue or reject a permit shall retain this authority as vested in it before the effective date of these Rules. Nothing in these Rules shall lessen or reduce such authority and these Rules shall modify only the procedures followed in carrying out such authority.

... Minn. Stat., Sec. 116C.30, subd. 2 and this rule establish that agencies will maintain their permitting authority, as vested in them by their previous authority.

Presently, applicants apply and receive permits directly from the agencies. The necessity of this rule is to assure applicants that the authority to grant or deny a permit still remains with the agencies, even though the applicant's channels for submitting permit applications will be different. It was not the intent of the Legislature to change, in any manner, the ultimate authority of an agency to decide on the propriety of any permit.

1. A state agency may, in performing its responsibilities under these Rules, request or receive additional information from an applicant. A copy of that request or receipt shall be immediately forwarded to the Coordination Unit, which shall immediately notify all other agencies having a permit interest in the project.

... The intent of this section is to provide a mechanism through which agencies can acquire additional information from the applicant and to establish procedures for centrally disseminating such information to the other permitting agencies.

The rule allows agencies to obtain other materials that may play a vital role in the evaluation of the permit application. It also allows the other agencies to consider the requested materials.

If an applicant does not submit all information relevant to a project, then a permitting agency's decision may not reflect the total scope of the project. This rule is reasonable as it provides the basis for agencies to make valid decisions. The rule is proposed at the direction of Minn. Stat.,

2. Fee schedules authorized by statute or rules for an application or permit shall continue to be applicable even though the application or permit is processed according to these Rules. The Coordination Unit shall not charge the applicant or participating agencies a fee for services.

... Minn. Stat., Sec. 116C.30, subd. 4 and this rule provides that any existing or futurepermit fees shall be applicable even though the individual permit is processed as a part of the master application process. The Legislature clearly did not intend to alter any fee process by the passage of the Act, nor did it intend that the Coordination Unit would profit from administering the process. A separate appropriation to the State Planning Agency covers the operational costs of the Coordination Unit thus making any service charges unnecessary. There is no provision in these rules whereby any of the unit's operating costs are passed on to either the applicant or an agency. The only costs assigned by these rules to either party are the costs of a newspaper notice, as required in Minn. Stat., Sec. 116C.27, subd. 1, and the costs of the joint hearing. As previously mentioned, under the existing permitting process hearing costs are borne by the agencies, so, in effect, there is no change in responsibility for bearing those costs.

B. Post-decision Proceedings. These Rules shall have no applicability to an application for a permit renewal, amendment, extension, or other similar document required subsequent to the completion of decisions and proceedings under MEQC 101 to MEQC 110, or to a replacement thereof or to a quasi-judicial or judicial proceeding held pursuant to an order of remand or similar order by a court in relation to a final decision of an agency.

... Minn. Stat., Sec. 116C.30, subd. 5 and this rule further clarify which permit applications may be processed under the master application procedure. These rules are intended to apply only to original permits as defined by the Act, and not to resubmissions nor to proceedings in the courts after a permit decision has been made.

C. Nothing in these Rules shall modify in any manner whatsoever the applicability or inapplicability to the lands of any agency of any land use regulation, statute, or local government zoning ordinance.

... This rule is drafted in accord with Minn. Stat., Sec. 116C.30, subd. 6. The intent of this subdivision is clearly that the Act relates only to the procedure involved in the granting or denying of natural resource permits and does not alter the need for a permit. If an approval for the use of the state's air, land or water resources was needed prior to the enactment of this legislation, that same approval is still needed after the permit coordination procedures are in effect.

D. The Council, to the limited extent necessary to comply with procedural requirements of federal statutes relating to permit systems operated by the state, may modify the notice, timing, hearing and related procedural matters provided in these Rules.

... Because there are a number of federal permits, such as NPDES permits, for which the responsibility for processing has been assigned to a state agency it is necessary to provide flexibility in these rules to accommodate the federal requirements associated with that reassignment. Minn. Stat., Sec. 116C.33, subd. 2 provides that the master application procedures can be modified as the need arises to take into account such requirements. It should be noted that this accommodation will occur only to the extent necessary and every attempt will be made by the Council to ensure that the overall process proceeds in a timely and predictable manner.

MEQC 111 - MEQC 114 RESERVED FOR FUTURE USE

... Because MEQC 115 relates to a specific appropriation which may not be repeated by the Legislature and to a subject matter somewhat separate from the master application process, these sections were left blank to separate the two procedures. If it is appropriate to amend the master application process using additional sections in these rules, it will not be necessary to mix the two procedures as would be the case if the permit information grant rules were immediately following the master application rules. Needless to say, any additional sections proposed by the EQC will not be incorporated into the rules without going through the state's hearing process.

MEQC 115 PERMIT INFORMATION CENTERS GRANT PROGRAM

Even though the permit information center grant appropriation was made to the director of the State Planning Agency, it is appropriate that the rules of the MEQC address themselves to the grant process. The Legislature has created a number of ties between the operations of the EQC and the State Planning Agency. In addition to assigning State Planning Agency the responsibility of providing staff to the EQC, the Legislature has traditionally provided that all EQC appropriations be processed through the State Planning Agency. The ECPA appropriations are in line with this traditional approach; thus, it is reasonable to include in MEQC rules directives which provide to the director of the State Planning Agency a process for distributing the information center grants.

A. Applicability. Funds appropriated for grants for the establishment of regional permit information centers by Minn. Stat., Sec. 116C.34 (1976) and any future funding for such centers appropriated to the State Planning Agency shall be distributed to those public bodies authorized by laws pursuant to the recommendation of the Director of the State Planning Agency and these Rules:

... Minn. Stat., Chapter 303, Sections 13 through 16 (1976) provides for the creation of regional permit information centers at the option of each regional development commission. Section 16 also includes a provision which enables the director of the State Planning Agency to make grants for the establishment of regional centers. The need for this rule is to delineate the decision process to be used in determining how the grants will be made.

Although sections 13 through 16 refer only to regional development commissions, excluding the Metropolitan Council, as potential recipients of the grants, and provide an appropriation only for the establishment of such centers, this rule is written with the flexibility to allow for future enactments of the legislature. If the legislature, at some future time, expands the potential recipients beyond the regional development commissions or allows for "maintenance" funding of the centers, the rule will be available as the mechanism for making any required funding decisions. Because the appropriation was made to the director of the State Planning Agency, it is proper that the director should be the one who makes the recommendation as to the distribution of the funds.

B. Eligibility. A Regional Development Commission may apply for a grant from the Director of the State Planning Agency for the establishment of a regional permit information center provided that the following conditions are met:

... By specifically identifying that the appropriation for the establishment of regional permit information centers be distributed as grants, the legislature clearly intended that the grant recipients be required to perform several functions to be eligible to receive the grants. If the Legislature had intended that the appropriation be distributed without any "strings attached", they could have directed that the appropriation go directly to the recipients bypassing the director of the State Planning Agency, or they could have have included appropriation language allowing the regional development commissions the flexibility to establish their own standards for the regional centers. In doing neither, the Legislature clearly intended that the director of the State Planning Agency set standards applicable to all grant recipients.

It is not anticipated that any burden will be placed on the regional development commissions by having to meet these conditions primarily because a large number of the commissions are currently providing similar services to the citizens of their regions.

1. The grant application is submitted before May 1 of the fiscal year for which the legislative appropriation was made.

... To ensure that grant applications will be processed through the state's administrative system before the close of the state's fiscal year (June 30), it is necessary to establish a cut-off date by which all applications must be submitted to the director of the State Planning Agency. It is normal procedure for the Legislature to make an appropriation for a fiscal year; if the appropriation is not committed by the end of that year, any funds remaining from the appropriation revert to the general fund and are unavailable for distribution. Because of the multitude of approvals needed and the paperwork required for processing a grant application, it is necessary to allow at least two months between the last day applications can be submitted and the close of the fiscal year. It should be noted that this rule does not preclude an earlier submission of a grant application; in fact, every effort will be made to encourage submission as close to the beginning of the fiscal year as possible.

2. The amount of the grant application does not exceed the legislative appropriation.

... This rule is needed to ensure that any legislative mandate regarding the amount of the grant available to any one recipient will not be exceeded. The current appropriation establishes a maximum of $5,000 to each applicant; however, if the Legislature should provide future appropriations for regional permit information centers, this rule, as written, will be interpreted in accord with the legislative appropriation language.

3. The Regional Development Commission agrees to perform the following functions for at least one year following approval of the grant application.

... The rationale for requiring regional development commissions to meet certain standards was demonstrated in the agency's statement for rule MEQC 115 B. Requiring the grant recipients to meet those standards for one year is necessary to ensure that the grant monies be used in a manner consistent with the intent the Legislature had in providing the funds. A one year time requirement is reasonable in that it allows the grant recipient ample time to establish a regional permit information center, to determine the usefulness of the center, and to decide whether to continue its operation. In addition to the grant recipient, the Legislature will also be provided an opportunity to evaluate the usefulness of the centers and determine whether future funding is appropriate.

a. Designate one person to act as liaison between the regional permit information center and the Environmental Permit Coordination Unit.

... To better coordinate the activities of the St. Paul permit information center and the regional centers, it is necessary for the regional centers to designate one individual to serve as a contact between the two operations. If a number of individuals were to fill this capacity for each regional center, confusion over the availability of information could result. The regional contact person will serve an important function especially in regard to the interchange of information between the two operations. This rule does not require that the regional center must necessarily appoint only one operator of the center but that it identify one individual to serve as liaison with the St. Paul center.

b. Provide an information and referral system to assist the public in understanding and complying with the requirements of state and local government regulations concerning the use of natural resources and protection of the environment.

... Minn. Stat., Chapter 303, Section 13, subd. 1 identifies the principle purpose for establishing a permit information center. Although Section 13 only states the purpose of the information center in St. Paul, it is reasonable to interpret the rationale for the St. Paul center as applying to the regional centers as well. This rule extends the purpose of the St. Paul center to the regional centers and provides the basic requirement for the function of permit information centers. and the reason for creating them.

The major reason for creating a permit information center is to help the public cope with the many government requirements and regulations concerning the use of the state's natural resources. In order to comply with the philosophy of this legislative provision, it is reasonable to require that all permit information centers provide this service to citizens of Minnesota. As mentioned previously, this rule should not place an additional burden on the regional development commissions as many of them are currently performing similar services for the citizens and local government units in their regions.

In this rule and in the ones to follow, the reference to local government requirements and regulations refers only to those local units within the boundaries of each regional development commission It would be unreasonable to expect a regional development commission and the St. Paul center to maintain first hand knowledge of local regulations in other parts of the state.

c. Provide for the dissemination of printed materials concerning the requirements of state and local government regulations.

... To fully comply with the legislative intent and to better serve the users of the permit information centers, the centers should distribute informational material in response to requests when such information is available. This rule is necessary to clearly indicate that centers should go beyond merely giving out verbal replies but should also provide written information when available if requested by the center users. The rule as written does not require the centers to generate such materials but only that they distribute them. The requirement for the dissemination of printed materials is also dictated by Minn. Stat., Sec. 116C.34, subd. 1.

d. Publicize the availability and location of the permit information center.

... For a center to meet the needs of its users, it only makes sense that the public be made aware of the center's existence. It would be extremely unreasonable and a waste of state funds if a center were created but its potential users were not aware of its availability. This rule does not dictate the form or manner by which a regional center should be publicized but merely states that the center will inform the public of its availability and location.

e. Provide information to the public on the regulatory functions relating to the environment of the local government units in its region.

... As mentioned previously, Minn. Stat., Sec. 116C.34, subd. 1 identifies the purpose of a regional permit information center and includes the requirement that information regarding local government unit regulations be available to the public through the centers. A regional center will be required to provide information about the local units in its region for the reasons given in the agency's statement in MEQC 115 B.3.b.

f. Establish and maintain a file for applicable state resource agency permits including pertinent rules and regulations, criteria for permit issuance and use, and compliance with relevant statute requirements.

... For the public to fully comprehend the requirements of state agencies and to enable them to comply with the various state regulations, it is necessary for the regional centers to maintain an up-to-date file system on the requirements and regulations. This rule is needed to clearly indicate that maintenance of such a system will be required as an integral part of a regional center if it is to be eligible for grant funds. Although the rule does not indicate who is responsible for generating the information, it is anticipated that such generation will be the responsibility of the St. Paul center. This responsibility is not specified in the rule to allow the regional center the flexibility of generating its own information if it so desires. If the rule specifically identified the St. Paul center as the source, the regional center could be prohibited from generating any additional information.

g. Maintain information on state environmental programs.

... A major reason for the creation of the permit information centers is to provide the public with better access to information regarding management of the state's natural resources. By requiring the centers to maintain information on various environmental, but not necessarily regulatory, programs, citizens interested in pursuing or using such a program could have ready access to information on that program. One example of such a program is in establishing a game refuge. A private person may be interested in establishing a refuge on land he owns; to determine what must be done and to get advice on how best to establish the refuge, the person would be able to contact the regional center for that information and would not be required to contact the DNR offices in St. Paul.

h. Maintain a list or directory of pertinent state agency contacts in each region and in St. Paul as well as a list of local government unit contacts for its region.

... Although every attempt will be made by the centers to provide requesting individuals with sufficient information for them to understand and comply with government regulations, at times the individual may desire more specific information than is available or technical guidance. When this situation occurs, the regional center must be able to direct that individual to the proper agency or technical expert. This rule is needed to ensure that the regional centers will maintain a current listing of such contacts in order to best serve the requesting individual. If this requirement were not included, the individual would not be any better off than before the creation of the information centers. If the centers are to provide the full range of services anticipated by the legislature, it is indeed reasonable to expect them to maintain a listing of knowledgeable resource people to whom they can direct their clients. So as not to place an unreasonable burden on the regional centers, the St. Paul center will assist them in maintaining a list of state agency contacts.

C. Grants. Within 30 days after receipt of a completed grant application, the Director of the State Planning Agency shall approve the grant or notify the Regional Development Commission in writing the reasons why the grant application was denied.

... In order to make a predictable process for processing the grant applications, a time period for approving or denying the applications should be imposed on the director of the State Planning Agency. Thirty days is a reasonable amount of time for the director to review the application for compliance with these rules and the legislative appropriation language and to reach a decision. If the director decides to deny the grant application, he should be required to inform the applicant of the reasons for the denial in order that the applicant can modify this application to meet the requirements. This rule does not place any burden on the grant recipients or the information center users; it is needed to indicate when the director must act on a grant applica-

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA ENVIRONMENTAL QUALITY BOARD

In the Matter of the Rules of the Minnesota Environmental Quality Board Relating to Environmental Permit Coordination (MEQB 101 - MEQB 115).

ORDER 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 January 20, 1977, 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 Board, at its March 29, 1977 meeting, adopted the above-captioned and attached rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as MEQB 101 through MEQB 115 are adopted this 4th day of April, 1977, pursuant to authority vested in me by law and resolution of the Minnesota Environmental Quality Board.

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY BOARD

Peter Vanderpoel

Peter Vanderpoel, Chairman

STATE OF MINNESOTA

COUNTY OF RAMSEY

ENVIRONMENTAL QUALITY BOARD

In the Matter of the Rules of the Minnesota Environmental Quality Board Relating to Environmental Permit Coordination (MEQB 101 - MEQB 115).

STATEMENT OF COMPLIANCE

I, Special Assistant Attorney General Donald A. Kannas do hereby declare that I have examined the attached 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.

D. A. Kannas

DONALD A. KANNAS
Special Assistant Attorney General

Subscribed and sworn to before me this 4 day of April, 1977.

Karen Beckman

Notary Public

KAREN BECKMAN
Notary Public, Dakota County Minn.
My Commission Expires Nov. 3, 1981

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

March 2, 1977

Mr. Thomas Rulland, Manager
Environmental Management Program
Environmental Planning
State Planning Agency
Room 100, Capitol Square Building
Saint Paul, Minnesota 55101

Re: In the Matter of the Proposed Adoption of Rules of the Minnesota Environmental Quality Board relating to Environmental Permit Coordination (MEQC 101 - MEQC 115).
Docket No. EQC-77-006-HK

Dear Mr. Rulland:

Enclosed and served upon you please find a copy of my Report in the above-entitled matter.

Sincerely,

Howard L. Kaibel Jr.
HOWARD L. KAIBEL, JR.
Hearing Examiner

HLK:sw
Enclosure

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE ENVIRONMENTAL QUALITY BOARD

In the Matter of the Proposed Adoption of Rules of the Minnesota Environmental Quality Board relating to Environmental Permit Coordination (MEQC 101 - MEQC 115)	)))))	REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Howard L. Kaibel, Jr. of the Minnesota Office of Hearing Examiners on January 20, 1977 at 9:00 a.m. in Conference Room A of the Capitol Square Building, 550 Cedar Street, Saint Paul, Minnesota.

Donald C. Kannas, Special Assistant Attorney General, 550 Cedar Street, Saint Paul, Minnesota 55101, appeared as counsel for the Environmental Quality Board. 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. § 15.0412, subd. 4 (1975 Supp.), this Report shall be available for review to all affected individuals upon request for at least ten days.

The Board shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record to the Chief Hearing Examiner no earlier than ten days subsequent to the receipt of this Report. This submission shall also clearly set out any changes made from the rules as originally proposed, if any, which may be in the same format which will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Board on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Board shall be responsible for filing the rules with the Attorney General.

Based upon all the records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

PROCEDURAL REQUIREMENTS

1. On October 19, 1976, the Board filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules;
(b) A proposed Order for Hearing;
(c) A proposed Notice of Hearing; and
(d) A Statement of the estimated length and number of people attending the hearing.

2. On December 13, 1976, a Notice of Hearing and a copy of the proposed rules were published at 1 State Register 916.

3. On November 29, 1976, the Board 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.

4. On December 28, 1976, the Board 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 Secretary of State's Certificate and list;
(f) The Statement of Need;
(g) 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.
(h) The names of Board personnel who will represent the agency.
(i) The Statement of Evidence.

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

5. The record remained opened through February 9, 1977, for the receipt of written comments and statements.

6. Statutory authority to promulgate the proposed rule is found in Minnesota Statutes § 116.32.

7. That this Report has been expedited and given priority over other matters, and the Board should act similarly for a number of reasons. The legislation makes this master permit coordination process effective on February 15, 1977, and Attorney General and publication delays will postpone that effective date a minimum of 37 days after Board action. The public at the

hearing urged expedition without exception. Citizens generally not only supported these rules as proposed, but praised the permit coordination staff for the thorough way in which it has elicited and assimilated public and agency input in preparing the rules as proposed. With the exception of a couple of minor matters hereinafter discussed (raised by only two of the many potentially affected state agencies) there was no citizen or state agency opposition to the staff proposal. Consequently, this Report will not contain the usual Office of Hearing Examiners' detailed provision-by-provision discussion of need and reasonableness. The Board is referred to the comprehensive, detailed and well thought-out Statement of Need (Ex. 11), which contains this kind of analysis. Except as hereinafter discussed, the staff has adequately documented by an affirmative presentation of facts the need for and the reasonableness of each of the proposed rules, as well as the statutory authority to adopt them.

8. That the minor grammatical and other amendments presented by the staff at the hearing (R12 et seq. and Ex. 12) are needed, reasonable and insubstantial changes. They were presented and distributed at the hearing in a fashion calculated to invite reaction at the hearing. No argument has arisen with regard to the substance of those proposals or with the contention of the staff that they are insubstantial.

9. That no need or reasonableness has been demonstrated for omitting "optional" from the statement of purpose contained in proposed rule 101B, as pointed out by the Department of Transportation in written comments (Comment I). In the first line, "a procedure" should be changed to read "an optional procedure" using the legislature's language in the enabling legislation.

10. That there are four minor revisions required in the definitions contained in proposed rule 101D:

(a) The definition of "council contained in subsection 3 should be revised to explain to readers that the name of the

Environmental Quality Council has been changed to "Environmental Quality Board" by Laws of 1975, chapter 271. In order to economically change the name this statute allows use of the old name until the first Monday in January, 1978 at the latest. The reasonableness of conducting another rules proceeding between now and that date to revise the name in these rules has not been demonstrated. It is specifically recommended that the name change be incorporated upon initial adoption as follows: (1) "Council" wherever it appears in the remainder of these proposed rules should be changed to "board"; (2) a new definition of "board" should be added which would specifically spell-out the agency title (instead of simply referencing the statute as is done in the proposed definition) to assist those unfamiliar with the statute; (3) the definition of "council" should be revised to alert readers to the revised nomenclature pursuant to the above-referenced statute.

(b) The last sentence of the definition of "days" contained in subsection 4 should be stricken. This section would not count Saturdays, Sundays and legal holidays whenever the time period is 15 days or less. This section of the proposed rules is beyond the legal authority of the Board as the authorizing statute specifically requires that they be "not inconsistent with rules of procedure established by the Office of Hearing Examiners". Uniform Rule HE 209 contains no variation for periods of less than 15 days. The staff admitted (R86) that "we may have an inconsistency", but argued that these rules should be consistent with other environmental quality board rules governing other types of proceedings. On the contrary, all of the other procedural rules are no longer operative since the adoption of HE 209. The Administrative Procedures Act unequivocally requires that this and the other procedural rules promulgated by the Chief Hearing Examiner "shall be binding upon all agencies and shall supersede any other agency procedural rules with which they may be in conflict" (Minn. Stat. § 15.052, subd. 4). Time computation is a fundamental aspect of uniform

administrative procedural practice.

(c) The definition of "hearing examiner" contained in subsection 6 should be revised as suggested at the hearing by striking "or assigned by contract" and substituting "by the chief hearing examiner". The staff responded positively to this suggestion at the hearing (R85) and it is specifically found to be an insubstantial clarification.

(d) Considerable concern was expressed at the hearing concerning coordination of the master application process with the Metropolitan Council critical areas and metropolitan significance procedures (R62 et seq. and Comments D and G). Doubt was expressed as to whether the Metropolitan Council when acting in these capacities meets the definition of "agency" and whether its determinations fit the broad definition of "permit" contained in the proposed rules. The rules must be clarified to eliminate any ambiguity. As indicated on the record, this Hearing Examiner is also the hearing examiner assigned to the Metropolitan Council "metro significance" rule proceeding. This "determination" provided for in Minn. Stat. § 473.173 is clearly the kind of "certification, approval, compliance schedule, or other similar document" which is defined as a "permit" in the rules and the state-appointed Metropolitan Council similarly fits in the definition of "agency". The Metropolitan Significance statute requires a decision within 90 days, and specifically provides for coordination with this Act in that "to avoid duplication, the review may be suspended for not more than 90 days to await completion of review of a matter by another public agency". Similarly, the executive order designating the Mississippi River corridor as a critical area (State Register, November 23, 1976) specifically incorporates regulations [I(2)(c) and I(2)(e)] authorizing Metropolitan Council discretionary hearings on development permit applications with a decision on whether to hold a hearing required within 20 days (1 S.R. 783). The rules should accordingly be modified by adding the following insubstantial clarifying language after

the first sentence in the proposed subsection 11 definition of "permit": "The term specifically includes Metropolitan Council Critical Area development permit approvals and Metropolitan Significance determinations."

11. That proposed rule 102(a)(2) should be amended as suggested by representatives of the Pollution Control Agency to tighten up the post-construction permit exclusion. This revision was supported by permit coordination staff and was not objected to at the hearing or in subsequent written comments. It is reasonable and insubstantial.

12. That proposed rule 102(d)(2) should be revised as suggested by Hennepin County in Comment F to clarify whether the reference is to the "draft" or the "final" environmental impact statement. The Hennepin County comment apparently makes reference to the old EIS rules MEQC 31 and 33. The newly-adopted EIS rules nonetheless carry forward this distinction and they should "mesh" with these rules. The new rules [MEQC 31(d)] require delay of hearings until the "draft" EIS is complete and similar specification here would allow for consolidation of any hearings on the draft.

13. That the provision of proposed rule 102(e)(2) requiring agency response within 20 days as to whether a permit and hearing will be necessary is reasonable, necessary and in accord with the specific legislative mandate. Some kind of modification to permit a variance or extension as requested by the Pollution Control Agency would be beyond the authority of the Board as the statute supersedes the rules in all cases. No persuasive contrary legal authority has been cited by proponents at or after the hearing. The statute provides in 116C.28, subd. 4 for extensions of time limits by the chairman in another situation excluding the possibility of such an interpretation in this section. Similarly, it specifically provides for modification of the timing provisions by the full council only "to the limited extent necessary to comply with procedural requirements of federal statutes relating to permit systems operated by

the State". The legislative history submitted with Comment E from the Minnesota Association of Commerce and Industry shows that the legislators were very cognizant of the time limit, dealing with it deliverately. The bill when introduced required a response within 15 days. The Senate Committee Report revised the limit leaving it to the permit coordination unit to establish the limit "not exceeding 20 days from receipt". The Conference Committee Report, finally adopted, revised this provision again eliminating coordination unit discretion. Comments from the public (Comments C and G) urged the importance of retaining these legislatively established "specific time limits" as did citizens at the hearing. The PCA problem was limited to whether a hearing would be required, indicating that the PCA Citizen's Board bases its decision on the nature of the public demand for such hearings. The number of times that this problem would arise appears minimal as the State of Washington which has similar permit coordination procedures has less than 10 proceedings a year. As a practical matter, because of the likelihood some other agency will be requiring a hearing anyway, the problem may seldom, if ever, arise. A spokesman for the 3M Company suggested a "fail-safe" procedure for handling these rare occasions of asking for the hearing within 20 days and then withdrawing the request as provided in proposed rule 109 in the event that the Board determines subsequently that a hearing is unnecessary (R43). A PCA spokesman also confirmed (R48 and 49) reports of the public at the hearing that the Board sometimes functions using telephone polls, indicating that this was "strictly an emergency procedure" without explaining why it should not be utilized in these situations. He also confirmed that the Board is currently meeting more than once a month, and that the worst imposition of this rule would be to simply require more frequent meetings to ensure timely action on applications.

14. That despite criticism raised by the PCA and DNR, proposed rule 102(e)(4) should be adopted as proposed. The section

deals with exceptional situations where an agency may order a permit applcation even though it failed to require such an application within the 20-day period. These situations are essentially: (a) Inadequate initial information; (b) new laws; and (c) unusual circumstances. The complaining agencies contend that the final "in which case the council may order that the permit be required" language modifies only exception (c). The legislative history shows that the alphabetizing and division of this section occurred when exception (b) was added in conference committee, and that the engrossment they were amending was intended to be a single sentence, leaving the procedural question of whether an exception should be made in all cases to the Board. Mr. William Seeley of Northern States Power Company (R56) supported the permit coordination staff position indicating, based on considerable experience, that there is often room for difference of opinion as to whether necessary information has been provided. A separate court proceeding each time an agency decides it was given inadequate information would frustrate, or in the extreme completely contravene, the purpose of the statute or expeditious action. Mr. Seeley's position was concurred in by Mr. Shields on behalf of the Minnesota Association of Commerce and Industry. The records supports the conclusion of the Environmental Quality Board attorney (Comment H) that whether to permit an exception is properly a "procedural requirement" for a board determination.

15. That proposed rule 102(f) should be modified in light of the recommended change in the definition of "day". The provision deals with situations where an alteration in a project proposal requires reconsideration by the agency of whether additional permits may be required by the alteration. The agencies objected to the requirement that they respond within 10 days. Permit coordination staff responded in part that this would actually be at least 12 and as many as 14 days because the period is less than 15 days and the weekend would consequently not be counted. Under the Uniform rule, these weekends would

be counted and the response time should consequently be extended to 15 days.

16. That proposed rule 105(b)(7) presents two separate problems. The first is agency objection of holding the hearing within 45 days after the date of last publication, citing lack of time for preparation. The statute specifies a minimum time (20 days) and the permit coordination staff proposes a maximum time in accord with the thrust of the Act to provide for predictable expeditious consideration. The objections misstate the available preparation time which is actually on the order of six months from initial notice of the nature of the project which is the receipt of the master application form. This consists of 20 days for agency response, five days for forms to the applicant, 90 days for applicant submission of forms, an unknown amount of time necessary to arrange for publication of notice, 21 days for publication, and 45 between last publication and hearing date. The record supports the need for and reasonableness of applying at least this limitation to the time required for convening the hearing.

The second problem involved in this proposed section of the rule is the contents of the published notice. The rules actually provide for three notices. Proposed rule 106 provides for the Order for Hearing to be served on the applicant and a separate notice of hearing to the applicant and all agencies having a permit interest, while proposed rule 105(b)(7) would require a third and different (R37 et seq.) notice for publication. No effort was made to document the need for or reasonableness of this proposed duplication. The omission of the contents of the Order for Hearing in the published notice was raised on the record and there was no showing at the hearing or afterwards in written comments that it was necessary or reasonable to omit these hearing order provisions. The provisions of the order are outlined in Uniform Rule HE 204 and include such matters as "a citation to these rules and to any applicable procedural rules of the agency." If the notice does not contain a citation to the Uniform Rules, there is a possibility that

potential interested parties will not be informed of fundamental procedural matters such as the necessity of timely intervention. In fact, if a final date for intervention is specified, it must be done in the Order for Hearing (HE 210), further strengthening the need to include all provisions of the Order for Hearing in the published notice. Without belaboring, the Order for Hearing in most contested cases, is the only notice and essential provisions listed in HE 204 that must be included in that notice include the address of the Hearing Examiner so that parties can file notices of appearance or intervention and such other fundamental procedural provisions such as notice of the right to an attorney. The rule should be amended by inserting after the word "hearing" the following: "and other contents of the order for hearing". This revision would not be a "substantial change" in the rules as originally proposed requiring a reconvened hearing pursuant to HE 108.

17. That a DNR representative properly questioned the need for and reasonableness of the final sentence of proposed rule 106(e) which would require that agency decisions be consistent with Hearing Examiner rules. Mr. Shields explicitly concurred with the suggestion that this sentence be deleted, indicating that it "is covered in chapter 15 adequately." (R83 and 84). No objection was raised to this proposed revision by persons at or after the hearing and it is specifically found that no need was demonstrated for this sentence.

18. That a proposal in final written comments by the Department of Transportation (Comment I) that certain permits which it issues should be explicitly excluded in the finally adopted rules should be rejected on this record. The letter itself is the only documentation offered to support the need for and reasonableness of this proposal, and it is clearly inadequate. Moreover, because it came in final written comments, the public has not had an opportunity to respond to this major substantive proposal. It would constitute a substantial change and consequently, if the Board desires to

pursue the exclusion, it should do so only after a new notice and hearing.

CONCLUSIONS

1. That the Environmental Quality Board duly acquired and now has jurisdiction over the within proceeding.

2. That all relevant legal and procedural requirements of statute and rule have been properly complied with.

3. That the rules hereinafter recommended for adoption will properly implement the legislative mandate of chapter 303, Minnesota Laws of 1976.

4. That a clear and compelling need has been demonstrated for the adoption of the proposed rules hereinafter recommended for adoption.

5. That individually and taken together, the rules hereinafter recommended for adoption are a reasonable implementation of the legislature's delegated responsibility.

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the proposed rules of the Environmental Quality Board be promulgated, approved and adopted after attention to possible modifications suggested by the Findings.

Dated: February 28, 1977.

HOWARD L. KAIBEL, JR.
Hearing Examiner