

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of Minn. Reg. WPC 38 Governing the Requirements for Labeling of Products Containing PCB and for Issuing Certificates of Exemption for the Use, Possession, Sale, Purchase or Manufacture of PCB or Products Containing PCB

AFFIDAVIT OF RECEIPT OF SECRETARY OF STATE'S LIST

Marvin E. Hora, being duly sworn on oath deposes and says:

1. That he is an employee of the Water Quality Division, Minnesota Pollution Control Agency of the State of Minnesota.

2. That on the 8th day of April, 1977, 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 Minn. Stat. §15.0412.

3. That on the 8th day of April, 1977, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

FURTHER AFFIANT SAYETH NOT.

Marvin E Hora

Marvin E. Hora

Subscribed and sworn to before me this 8th day of April, 1977:

WILLIAM DONOHUE
NOTARY PUBLIC – MINNESOTA
RAMSEY COUNTY
My Commission Expires April 29, 1982

Notary Public

(5)

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of Minn. Reg. WPC 38 Governing the Requirements for Labeling of Products Containing PCB and for Issuing Certificates of Exemption for the Use, Possession, Sale, Purchase or Manufacture of PCB or Products Containing PCB

ORDER FOR HEARING

IT IS HEREBY ORDERED that public hearings on the above-captioned rule be held in the Board Room of the Minnesota Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota on May 25, 1977, commencing at 9:30 a.m. and in the Lake City Council Chambers, 205 West Center Street, Lake City, Minnesota, on May 31, 1977, commencing at 7:00 p.m. These hearings shall continue until all persons have had an opportunity to be heard.

IT IS FURTHER ORDERED that a Notice of Hearing be mailed to all persons or representatives of associations or other interested groups who have registered their names with the Secretary of State for that purpose.

IT IS FURTHER ORDERED that the Notice of Hearing be published in the State Register.

Sandra S. Gardebring

Sandra S. Gardebring
Executive Director

Dated: April 6, 1977.

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of Minn. Reg. WPC 38 Governing the Requirements for Labeling of Products Containing PCB and for Issuing Certificates of Exemption for the Use, Possession, Sale, Purchase or Manufacture of PCB or Products Containing PCB

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that public hearings in the above-entitled matter will be held in the Board Room of the Minnesota Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota, on May 25, 1977, commencing at 9:30 a.m. and in the Lake City Council Chambers, 205 West Center Street, Lake City, Minnesota, on May 31, 1977, commencing at 7:00 p.m. These hearings shall continue until all persons have had an opportunity to be heard. The Agency will present its witnesses and evidence in support of the abovecaptioned rule at the hearing in Roseville, Minnesota.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Mr. William Seltzer, 1745 University Avenue, St. Paul, Minnesota 55104 (612) 296-8105) either before the hearing or within 20 days after the close of the hearing. For those wishing to submit written materials, it is requested that a least three (3) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests.

The proposed rules, if adopted, would:

1. Establish procedures for issuing certificates of exemption for the use, possession, sale, purchase or manufacture of polychlorinated biphenyls (PCB) and products containing PCB in the State of Minnesota. These include:

(a) The procedures for applying for a certificate of exemption,

(b) The process and procedures for obtaining public comment on the certificate of exemption application,

(c) The criteria for approving or denying issuance of a certificate of exemption,

(d) The terms and conditions the Agency may include in a certificate of exemption,

(e) The procedures available for modifying, suspending or revoking a certificate of exemption.

2. Require labels for new items, products or materials which contain PCB.

3. Exempt certain uses of PCB or products containing PCB.

Copies of the proposed rule are now available and one free copy may be obtained by writing to Mr. Marvin Hora, Minnesota Pollution Control Agency, Division of Water Quality, 1935 West County Road B2, Roseville, Minnesota 55113. Additional copies will be available at the door on the date of the hearings. The Agency's authority to promulgate the proposed rule is contained in Minnesota Statutes §116.37, subd. 3 (1976). A "statement of need" explaining why the Agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiner's Office at least 25 days prior to the hearing and will be available for public inspection.

Please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

Sandra S. Gardebring

Sandra S. Gardebring
Executive Director

Dated: April 6, 1977.

(4)

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of Minn. Reg. WPC 38 Governing the Requirements for Labeling of Products Containing PCB and for Issuing Certificates of Exemption for the Use, Possession, Sale, Purchase or Manufacture of PCB or Products Containing PCB

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(b) The process and procedures for obtaining public comment on the certificate of exemption application,

(c) The criteria for approving or denying issuance of a certificate of exemption,

(d) The terms and conditions the Agency may include in a certificate of exemption,

(e) The procedures available for modifying, suspending or revoking a certificate of exemption.

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Sandra S. Gardebring
Executive Director

Dated: April 6, 1977.

(3)

CERTIFICATE OF BOARD'S
AUTHORIZING RESOLUTION

I, Sandra S. Gardebring, do certify that I am the Executive Director of the Minnesota Pollution Control Agency, an Agency duly authorized under the laws of the State of Minnesota, and that a resolution was adopted at the meeting of the Agency properly called on the 1st day of March, 1977; that a quorum was present at said meeting; that the resolution is set forth in the minutes of said meeting and has not been rescinded or modified; and that the resolution authorized a public hearing for the purpose of adopting Minn. Reg. WPC 38 regarding the requirements for labeling of products containing PCB and for issuing certificates of exemption for the use, possession, sale, purchase or manufacture of PCB or products containing PCB.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 22 day of March, 1977.

Sandra S. Gardebring

Sandra S. Gardebring
Executive Director

Subscribed and sworn to before me
this 22 day of March, 1977:

WILLIAM DONOHUE
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My Commission Expires April 29, 1982

William Donohue

Notary Public

Pollution Control Agency
Label Requirements and Issuance of Exemptions for Use of Polychlorinated Byphenyl (PCB)

Notice of Public Meetings

A series of public meetings to obtain written and oral comment from government, industry and the public concerning the Minnesota Pollution Control Agency's draft polychlorinated byphenyl (PCB) rules will be held during November/December in Duluth, Rochester and the Twin Cities. Many Minnesota industries may be affected by the final PCB rules.

The rule, the result of 1976 state legislation, will establish labeling requirements and procedures for issuing certificates of exemption for use, possession, sale, purchase or manufacture of PCB or products containing PCB. The draft rules are being developed with the assistance of industry and interested individuals.

All interested citizens and groups will have the opportunity to learn more about the draft PCB rules and to make statements, comments and recommendations of a technical nature on the draft rules at these public meetings. Any written material submitted at the public meetings shall become part of the hearing record. The draft rules are available by writing to Marvin E. Hora, Minnesota Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota 55113.

The public meetings will start at 10:00 a.m. and continue until all comments have been received. Meeting dates and locations are as follows:

1. November 29, Duluth, Minnesota:
   St. Louis County Board Room
   St. Louis County Courthouse
   Second Floor, Duluth, Minnesota

2. November 30, Rochester, Minnesota:
   Rochester City Council Chambers
   Rochester City Hall
   1st Avenue and 3rd Street S.W.
   Rochester, Minnesota

3. December 1, Roseville, Minnesota:
   Minnesota Pollution Control Agency
   Board Room
   1935 West County Road B2
   Roseville, Minnesota

Please take notice that when a final rule is proposed by the agency, further notice of the proposed rule and of the hearing to be held on that rule will be given as required by law, including notice in the *State Register*.

EXHIBIT A

py below is hereby pproved as to form and egality. By: _____ (Special) (Assistant) Attorney General Date of Approval	Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by: Minnesota Pollution Control Agency (Agency) Date of Adoption: _____ By: Louis J. Breimhurst Louis J. Breimhurst Title: Director, Div. of Water Quality (Exec. Officer, Chairman or Sec.)	Name of Submitting Age Minnesota Pollutic Control Agency Name of Agency Subdivi Division of Water Quality Short Title Proposed Rules Concerning PCBs List of Affected Rules

(Do not write in this space)

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   Minnesota Pollution Control Agency
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Please take notice that when a final rule is proposed by the agency, further notice of the proposed rule and of the hearing to be held on that rule will be given as required by law, including notice in the State Register.

POLLUTION CONTROL AGENCY

Proposed Rules Governing Use of Polychlorinated Biphenyls

Notice of Intent to Solicit Outside Opinion

Notice is hereby given that the Minnesota Pollution Control Agency has begun consideration of proposed rules governing the granting of certificates of exemption for the use, possession, sale, purchase or manufacture of polychlorinated biphenyls (PCBs) or products containing PCBs and establishing labeling requirements for products or materials containing PCBs. In order to adequately determine the nature and utility of such rules, the Minnesota Pollution Control Agency hereby requests information and comments from all interested persons 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:

Mr. Marvin E. Hora
Minnesota Pollution Control Agency
Division of Water Quality
1935 West County Road B2
Roseville, Minnesota 55113

Oral statements of information and comment will be received during regular business hours over the phone at (612) 296-7255, and in person at the above address.

All statements of information and comment must be received by October 15, 1976. Any written material received by the Agency shall become part of the hearing record.

The proposed rules, if adopted, would establish rules governing the application, issuance, modification, suspension and revocation of certificates of exemptions for the use, possession, sale, purchase or manufacture of PCBs or products containing PCBs. In addition, the rules would establish labeling requirements for products or materials containing PCBs.

EXHIBIT A

Copy below is hereby approved as to form and legality. By: Jay M. Heffern (Special) (Assistant) Attorney General 9/2/76 Date of Approval	Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by: Minnesota Pollution Control Agency (Agency) Date of Adoption: 9-1-76 By: [signature] Assistant Director Title: Division of Water Quality (Exec. Officer, Chairman or Sec.)	Minnesota Pollution Control Agency Name of Submitting Agency Division of Water Quality Name of Agency Subdivision Proposed Rules Governing PCBs Short Title List of Affected Rules

(Do not write in this space)

NOTICE OF INTENTION TO SOLICIT OUTSIDE OPINION

Notice is hereby given that the Minnesota Pollution Control Agency has begun consideration of proposed rules governing the granting of certificates of exemption for the use, possession, sale, purchase or manufacture of polychlorinated biphenyls (PCBs) or products containing PCBs and establishing labeling requirements for products or materials containing PCBs. In order to adequately determine the nature and utility of such rules, the Minnesota Pollution Control Agency hereby requests information and comments from all interested persons or groups concerning the subject matter of the proposed rules.

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STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of Minn. Reg. WPC 38 Governing the Requirements for Labeling of Products Containing PCB and for Issuing Certificates of Exemption for the Use, Possession, Sale, Purchase or Manufacture of PCB or Products Containing PCB

CERTIFICATE OF DELIVERY
SECRETARY OF STATE LIST

I hereby certify that the attached 503 labels & 11 1/4 sheets, constitute the complete list of persons, associations, and other interested groups who as of 9:15 o'clock a.m., this 8th day of April, 1977, have requested pursuant to Minn. Stat. §15.0412 subd. 4 (1976), 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.

Joan Anderson Growe
SECRETARY OF STATE
JOAN ANDERSON GROWE

By Cecil Dunn

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of Minn. Reg. WPC 38 Governing the Requirements for Labeling of Products Containing PCB and for Issuing Certificates of Exemption for the Use, Possession, Sale, Purchase or Manufacture of PCB or Products Containing PCB

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

John Jones, being first duly sworn, deposes and says:

That on the 20 day of April, 1977, at the City of Roseville, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing in the above entitled matter by depositing in the United States mail at said City of Roseville, a true and correct copy thereof, properly enveloped, with postage prepaid, and addressed to those named on the attached Mailing List.

John Jones
John Jones

Subscribed and sworn to before me this 21st day of April, 1977:

Lila Holmdahl
Notary Public

LILA HOLMDAHL
NOTARY PUBLIC - MINNESOTA
HENNEPIN COUNTY
My Commission Expires Nov. 1, 1983

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of Minn. Reg. WPC 38 Governing the Requirements for Labeling of Products Containing PCB and for Issuing Certificates of Exemption for the Use, Possession, Sale, Purchase or Manufacture of PCB or Products Containing PCB

PCA-77-008-WS

STATEMENT OF NEED

The above-captioned rules are not amendments to any existing rules of the Minnesota Pollution Control Agency. They are being proposed for adoption pursuant to Minnesota Statutes §116.37 subd. 4 (1976) which mandates that the Agency promulgate rules governing labeling of products containing PCB and the issuing of certificates of exemption for the use, possession, sale, purchase or manufacture of PCB or products containing PCB.

The need for these rules arises out of the hazardous nature of polychlorinated biphenyl (PCB) and its widespread presence in the environment. PCB is a chlorinated organic compound which has had broad historical use. Its presence is persistent in the environment and it has a tendency to bioaccumulate in food chains, with potential adverse effects on animals and man. PCB has been found to be a ubiquitous contaminant of water, air, land and aquatic sediments, even occurring in remote artic areas far from disposal sites or areas of usage.

PCB is a toxic material to humans. In Japan, during 1968, an outbreak of a skin disease characterized by follicular accentuation, acne-form eruption, and pigmentation of skin and nails was found

to be caused by the consumption of rice oil contaminated by PCB heat transfer fluid. The disease called "Yusho" affected over 1000 people. Some patients have not yet fully recovered from ingesting rice oil contaminated with 2000 mg/kg PCB.

PCB toxicity to aquatic or terrestrial organisms can be viewed two ways -- acute lethal toxicity or chronic long-term toxicity. Acute lethal toxicity means a stimulus which is severe enough to cause death by direct action speedily, usually within four days. Acute lethal toxicity for PCB is usually quite low but may vary considerably depending upon the organism tested. Tests to determine acute toxicities of PCB to organisms do not adequately reflect the potential harm from PCB.

Chronic long-term toxicity means a stimulus which continues for a long time and causes symptoms or effects not as severe as death. Lingering physical dysfunctions or abnormal effects are typical results of chronic toxicity. Long-term exposure of organisms to PCB and bioaccumulation of PCB has been shown to cause harm to birds, mammals, and fish. Reproductive failures in fish eating birds and pheasants have been attributed to PCB. Other effects on birds and mammals are changes in the liver including weight increase, fatty degeneration, hyalin degeneration and necrosis, cardiac and pulmonary edema, reduction in the ability of an animal to resist disease through effects on lymphoid system, spleen size reduction and atrophy of the cortex of the thymus. Mink, after being fed fish contaminated with PCB, have experienced reproduction failures.

Toxilogical investigations of female rhesus monkeys exposed to chronic dietary levels as low as 2.5 and 5.0 mg/kg of PCB developed facial acne, subcutaneous edema, conjunctivitis and loss of facial hair. Reproductive dysfunctions were manifested by irregular menstrual cycles, early abortions and stillbirths. As a result of transplacental migration of PCB, all infants born to PCB-exposed animals contained PCB in their tissues at birth. The infants, which continued to be exposed to PCB by ingestion of milk from lactating mothers, developed skin lesions and 50 percent expired within four months. Rats fed PCB have reportedly had hepatocellular carcinomas and neoplastic nodules in their livers. The liver has been reported as a site for PCB metabolism. PCB may be metabolized via a carcinogenic intermediate, arene oxides.

PCB pollution in Minnesota has the potential for adverse effects on public health and the environment. Some fish in the Mississippi and Minnesota Rivers exceed the United States Food and Drug Administration (US FDA) action level of 5 mg/kg. The Minnesota Department of Health has issued a consumption advisory of one-meal-a-week to fishermen who angle in contaminated areas of these rivers. The US FDA has issued an advisory to commercial fishermen of the Lake Pepin area to use only carp under five pounds if they plan to ship the carp fillets in interstate commerce. Carp under five pounds usually contain less than 5 mg/kg PCB. These advisories have had a definite economic impact on the commercial and sport fishing industries of this region.

PCB has been identified in Minnesota in the water, aquatic sediment, municipal wastewater treatment plant effluent and sludge, sanitary landfill monitoring wellwater, industrial effluent, fish and fish-eating birds. No significant single source of PCB or group of sources of PCB was identified during a comprehensive investigation of PCB in the Upper Mississippi River; however, it is clear that the PCB problem does exist.

The primary use of PCB in Minnesota is in electrical equipment. Further, at least one company in the State is using PCB hydraulic oils in its die-casting machines. In the past two years there have been at least ten PCB spills or related PCB incidents in Minnesota. The costs of cleanup and disposal of the contaminated spill material is extremely expensive.

The PCB problem in Minnesota is largely occurring due to a large number of small inputs from many sources. To achieve basic control over PCB it is necessary to know where the PCB is located and the quantity of PCB involved. Further, to have proper disposal of PCB and safe handling procedures for PCB the PCB must be labeled so that people are aware of its presence and utilize appropriate safeguards in handling the material. Consequently, there is need to adopt regulations which are designed to identify and control in Minnesota the use, possession, sale, purchase or manufacture of PCB or products containing PCB.

Sandra S. Gardebring
Executive Director

Dated: April 29, 1977

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of Minn. Reg. WPC 38 Governing the Requirements for Labeling of Products Containing PCB and for Issuing Certificates of Exemption for the Use, Possession, Sale, Purchase or Manufacture of PCB or Products Containing PCB

PCA-77-008-WS

STATEMENT OF EVIDENCE

In addition to the "Statement of Need" which is available for inspection or purchase at the Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, and in support thereof, the Minnesota Pollution Control Agency intends to introduce the following manuals, books, scientific treatises, letters and other documentary evidence:

1. American National Standards Institute. Guidelines for Handling and Disposal of Capacitor and Transformer - Grade Askerals Containing Polychlorinated Biphenyls, 1974.

2. Canadian Task Force on PCBs - Background to the Regulation of PCBs in Canada (1976).

3. Environment Canada - Ontario. Polychlorinated Biphenyls (PCBs) In Municipal Wastewaters, Research Report No. 19, 1976.

4. Interdepartmental Task Force on PCBs. Polychlorinated Bipheny and the Environment, May, 1972.

5. John S. Jacoby, M.D. - Letter. Honeywell Corporation Use of PCBs in Die Casting Machines, October 6, 1976.

6. T.A. Jacoby - Letter. Tecumseh Products Company Letter on Amounts of PCBs Used in Air Conditioning Capacitors in Minnesota, November 22, 1976.

7. Stanton J. Kleinert. The PCB Problem in Wisconsin (1976).

8. R.L. Lewis - Letter. Hoerner Waldorf Corporation Letter on PCBs in Paper, Carbon Black, November 30, 1976.

9. Minnesota Pollution Control Agency, Results of the PCB Usage Questionnaire Distributed to Electrical Utilities Throughout Minnesota, January 12, 1976.

10. Minnesota-Wisconsin PCB Interagency Task Force. Polychlorinated Biphenyls (PCBs) in the Upper Mississippi River Basin, 1976.

11. Ontario Ministry of the Environment. Polychlorinated Biphenyls in the Ontario Environment, July, 1976.

12. W.R. Redmann - Letter. Insurance Company of North America Payments to Minnesota Mink Ranches, March 3, 1976.

13. U.S. EPA - Office of Toxic Substances. National Conference on Polychlorinated Biphenyls, November, 1975.

14. U.S. EPA - Office of Toxic Substances. Assessment of Wastewater Management Technology and Associated Costs for Abatement of PCBs Concentrations in Industrial Effluents, Task II, February, 1976.

15. U.S. EPA - Office of Toxic Substances. PCBs in the United States Industrial Use and Environmental Distribution, Task I, February, 1976.

16. U.S. EPA - Office of Toxic Substances. PCB's Public Hearing on Use, Labeling and Disposal of Polychlorinated Biphenyls, January, 1977.

17. U.S. EPA, Public Meeting Solicitation of Comments, 42 F.R. 3701, et seq., January 19, 1977.

18. U.S. EPA, Polychlorinated Biphenyls (PCB) Toxic Pollutant

Effluent Standards, 42 F.R. 6532, et seq., February 2, 1977.

19. Toxic Substances Control Act of 1976, Public Law 94-469, 90 Stat. 2003.

20. John P. Madgett. Dairyland Power Cooperative Letter on Rules Governing the Use of PCBs, October 8, 1976.

21. Dan McConnon. United Power Association Letter on Rules Governing Certificate of Exemptions for Products Containing PCBs, October 14, 1976.

22. R.E. Koski. U.S. Steel Corporation Letter on Proposed Rules Governing Use of PCBs, October 15, 1976.

23. G.V. Welk. Northern States Power Letter on Proposed PCB Regulations, October 15, 1976.

24. L.R. Salmela. Northern States Power Letter on Proposed PCB Regulation, WPC-38, December 15, 1976.

The Agency may call one or more of the following expert witnesses:

1. Dr. James R. Allen, Professor, Departments of Pathology and Food Microbiology and Toxicology, University of Wisconsin, who will testify that he has conducted extensive research on the pathobiological effects of PCBs on non-human primates. These experiments were designed to establish toxic levels of PCBs and involved feeding various concentrations of PCBs to rhesus monkeys to ascertain their effects. He fed monkeys 300 mg/kg (ppm) PCB and noted severe physiological effects. All animals in this study died within three months.

Further Dr. Allen will testify that he fed monkeys 100 mg/kg

PCB and noted similar symptoms as in the 300 mg/kg experiment. An experiment at a 25 mg/kg level also showed similar physiological effects. Tests were then conducted at the FDA action level of 5 mg/kg and at 2.5 mg/kg PCB. At these levels severe physiological effects were noted and reproduction processes were severely affected. The infants born to mothers fed 5.0 and 2.5 mg/kg PCB were small and contained PCBs due to transplacental migration.

2. Mr. Karl E. Bremer, Toxic Substances Coordinator, United States Environmental Protection Agency, Region V, Chicago, Illinois, who will testify on the predominant uses of PCBs such as in electrical devices and in hydraulic fluids. He will explain the sources of PCBs and describe how PCBs enter the environment such as by PCB fluid spills and improper disposal of PCB products. Mr. Bremer will present an overview of health aspects concerning PCBs with regard to the Yusho PCB poisoning of Japanese citizens. Further Mr. Bremer will testify on levels of PCBs in aquatic organisms and will describe the current work being done by private industry on PCB substitutes. Mr. Bremer will also present current EPA positions on manufacture and use of PCBs and on available PCB substitutes.

3. Mr. Marvin E. Hora, Senior Biologist, Division of Water Quality, Minnesota Pollution Control Agency, will testify regarding the general properties and chemistry of PCBs and the potential sources of PCB in the Minnesota environment. His testimony will include an analysis of the findings of the interstate task force on PCBs and the levels of PCB in the water, sediment and fish in Minnesota. Further, Mr. Hora will testify as to the basis and rationale for the proposed regulation substantially as follows:

A. Introduction

1. Purpose - The regulation implements Minnesota Statutes §116.36 and §116.37. The regulation establishes procedures for the issuance by the Agency of certificates of exemption for the use, possession, sale, purchase or manufacture of polychlorinated biphenyls (PCB), a product or class of products containing PCB and labeling requirements for items, products or materials sold in the state which contain PCB.

B. Definitions

1. "Agency" means the Minnesota Pollution Control Agency and is defined in Minnesota Statutes §116.02 and §116.36 subd. 2. The Minnesota Pollution Control Agency has the statutory responsibility for development and implementation of the PCB regulation.

2. "Certificate of exemption" is defined to allow PCB or product containing PCB use, possession, sale, purchase or manufacture if no substitutes or feasible alternatives are available. (U.S. Steel Letter, October 15, 1976; Honeywell Letter, October 6, 1976; NSP Letter, October 15, 1976; Dairyland Power Letter, October 8, 1976; and United Power Association Letter, October 14, 1976).

3. "Class of products containing PCB" is defined to provide criteria for a class of products exemption (NSP Letter, October 15, 1976).

4. "Director" means Executive Director of the Minnesota Pollution Control Agency. The Director is the head of the Agency staff and has the duties and responsibilities set forth in Minnesota Statutes §116.03.

5. "PCB" is defined by Minnesota Statutes §116.36 subd. 4 and identifies those compounds covered by the regulation. The compounds included in the definition have been shown to be carcinogenic and co-carcinogenic to animals. PCB has been shown to cause reproductive dysfunctions in monkeys and mink. The compounds in this definition have been found in some Mississippi River fish at levels exceeding the U.S. Food and Drug Administration temporary tolerance levels (Minnesota-Wisconsin PCB Task Force; Klienert, 1976). Very little information is available on chlorinated biphenyls which contain other functional groups. This definition is in agreement with the proposed U.S. EPA definition for PCBs (42 F.R. 3701 et seq., January 19, 1977).

6. "Person" is defined by Minnesota Statutes §115.01 subd. 10. The definition is meant to clarify whom the regulation applies to.

7. "Possess or possession" is defined to limit its application to physical control and excludes items, products, or materials being shipped in commerce.

8. "Product containing PCB" is defined to include an item, product or material which contains a PCB concentration equal to or greater than 500 milligrams per kilogram. This concentration is the same as the concentration proposed by the U.S. EPA for defining a PCB mixture (42 F.R. 3701 et seq., January 19, 1977). The definition excludes incidental concentrations of PCB.

The extensive historical use of PCB in a wide variety of products has led to its presence in low concentrations in many items, products, and materials (Canadian Task Force on PCBs, 1976). Although not intentionally added, PCB has been shown to be present at one time or other in the following items, products or materials: dairy products such as milk, fish fillets, recycled paper products, virgin pulp paper products, and animal feeds (U.S. Food and Drug Administration, 1972; Hoerner Waldorf Letter, November 30, 1976). The 500 mg/kg level will exclude incidental contamination levels of PCB and should allow retrofilling with PCB substitutes and use of valuable equipment which now has PCB in it. The flushing of PCB equipment to remove PCB is not 100% effective. Thus, incidental concentrations of PCB will remain after flushing. Available information indicates that industries cleaning PCB transformers and hydraulic die casting machines can approach the 500 mg/kg level (Honeywell Letter, October 6, 1976; Transcript of EPA Hearing on Section 6(e) of the Toxic Substances Control Act, January 24, 1977).

9. "Subsequent use" is defined to allow similar uses of PCB without requiring a new application for a certificate of exemption (NSP Letter, December 15, 1976).

10. "Written" was defined to clarify what is expected from the applicant.

C. Application, Public Notice, and Issuance Procedures for a Certificate of Exemption

These provisions establish the requirements for obtaining a certificate of exemption. They require an applicant to submit

sufficient information to justify the need for a certificate of exemption. They allow for public comment on the application for a certificate of exemption and provide for the opportunity for public hearing. The regulations contemplate that decisions regarding issuance of a certificate of exemption will be made on a case-by-case basis. These provisions are needed to insure that applications for a certificate of exemption will be processed in an efficient and expeditious manner and that certificates of exemptions will be issued only after adequate need for the exemption has been demonstrated.

D. Labels

This section prescribes labeling requirements for new items, products or materials containing PCB as required by Minnesota Statutes §116.37 subd. 3. Labeling requirements are necessary because of the hazardous nature of PCB and are designed to alert persons that appropriate safeguards must be utilized in handling PCB. The 500 mg/kg labeling standard is consistent with the definition of product containing PCB.

E. Exemption

1. Products containing PCB which were purchased or otherwise acquired by a individual person for consumer use in the home is exempted by Minnesota Statutes §116.37 subd. 2, so that these regulations do not cause an economic burden or unreasonable hindrance on the consumer. Further, this exclusion is consistent with the exemption for incidental concentrations.

2. Wastepaper, pulp or other wood fiber materials purchased for

use in the State in the manufacture of recycled paper products is exempted by Minnesota Statutes §116.37 subd. 2 to encourage paper recycling in the State.

3. Any electrical capacitor or transformer which contains less than one kilogram of PCB is exempt. At present, approximately 90 to 95% of all capacitors manufactured in the United States contain PCB. General Electric estimated that there are approximately 100 million PCB capacitors manufactured in the United States each year (EPA PCB Conference, 1975; EPA Versar Task I, 1976). PCB capacitors are generally separated into large and small capacitors. Usually small capacitors are considered to be those capacitors under 2.0 lb. (.91 kg)(ANSI, 1975; U.S. EPA PCB Conference, 1975; EPA Tasks I and II, 1976; Canadian PCB Task Force, 1976; Tecumseh Letter, November 22, 1976).

Small capacitors are utilized in fluorescent lighting systems, air conditioners, televisions and many other products. In lighting applications, the current production is about 44,000,000 units annually. The current market for capacitors for air conditioning is about 12,000,000 units annually. It would be impossible to have a certificate of exemption program which would have enough manpower to adequately perform a program covering all of these small uses. Some of the capacitors are so small that labeling would be entirely impractical and of limited value (ANSI, 1974). Transformers containing less than 1 kg of PCB are not known to exist.

4. Dr. Gilman D. Veith, Research Chemist, Environmental Research Laboratory, United States Environmental Protection Agency,

Duluth, Minnesota, who will testify on the chemical and physical properties of PCBs. He will explain how PCB is formed and the nomenclature of various PCB isomers and homologs. He will discuss the process by which the Monsanto Corporation produces and names their PCB compounds. Further, Dr. Veith will testify that PCBs may accumulate in fish by direct absorption from water through the gills and/or through the ingestion of PCB containing food organisms. He will testify on his experiments on the accumulation of PCB by fathead minnows.

Finally, Dr. Veith will present a formula for the concentration of PCB in fish based on the concentration of PCB in water times the bioconcentration factor of the fish. Dr. Veith will state that the bioconcentration factor of the fathead minnow ranges from 30,000 to 250,000.

The Agency will be citing Minnesota Statutes §116.36 and §116.37 as authority for promulgating these regulations.

Sandra S. Gardebring
Executive Director

Dated: April 29, 1977

ADMIN 1000

STATE OF MINNESOTA

DEPARTMENT Attorney General-MPCA

Office Memorandum

TO : Michael Miller
Department of Administration
G19-K Administration Building

DATE: 10/11/77

FROM : Jocelyn F. Olson JFO
Special Assistant
Attorney General

PHONE:

SUBJECT: In the Matter of the Proposed Adoption of Minn. Reg. WPC 38 Governing the Requirements for Labeling of Products Containing PCB and for Issuing Certificates of Exemption for the Use, Possession, Sale, Purchase or Manufacture of PCB or Products Containing PCB

Enclosed are copies of the hearing documents in the above-captioned matter. If there is anything I have omitted, please give me a call.

JFO:ms

Enclosures

Jocelyn Olson

Oct. 7, 1977

-Pollution Control Agency -WPC 38-Requirements for Labeling of Products Containing PCB

State of Minnesota
Pollution Control Agency

Chapter Thirty-Eight: WPC 38 Requirements for Labeling of Products Containing PCB and for Issuing Certificates of Exemption for Use, Possession, Sale, Purchase or Manufacture of PCB or Products Containing PCB.

A. INTRODUCTION

1. PURPOSE. This regulation is hereby adopted and promulgated by the Agency to implement the provisions of Minnesota Statutes §§116.36 and 116.37. This regulation establishes procedures for the issuance by the Agency of certificates of exemption for the use, possession, sale, purchase or manufacture of polychlorinated biphenyls (PCB) and products or class of products containing PCB, and labeling requirements for items, products or materials sold in the State which contain PCB.

2. SCOPE. The provisions of this regulation shall apply to PCB and products or a class of products containing PCB used, possessed, sold, purchased or manufactured in the State of Minnesota.

3. SEVERABILITY. The provisions of this regulation shall be severable and the invalidity of any lettered paragraph or any subparagraph or subdivision thereof shall not void any other lettered paragraph, subparagraph or subdivision or any other part thereof.

B. DEFINITIONS

1. "Agency" means the Minnesota Pollution Control Agency.

2. "Certificate of Exemption" means a document issued by the Agency for the purpose of permitting the use, sale, possession,

purchase or manufacture of PCB, a product containing PCB, or a class of products containing PCB.

3. "Class of products containing PCB" means a group or category of closely related items, products or materials having a similar function or making similar use of the chemical or physical properties of the PCB which they contain.

4. "Director" means the Executive Director of the Minnesota Pollution Control Agency.

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

6. "Person" means the state or any agency or institution thereof, any municipality, governmental subdivision, public or private corporation, individual, partnership or other entity, including, but not limited to, association, commission, or any interstate body, and includes any officer or governing or managing body of any municipality, governmental subdivision, or public or private corporation.

7. "Possess" or "Possession" means the ownership or physical control of a item, product or material. "Possess" or "Possession" does not include physical control by a person other than the owner while the item, product or material is being shipped in commerce.

8. "Product containing PCB" means a product, item or material which contains a concentration of PCB equal to or greater than 500 milligrams per kilogram (mg/kg). Concentration for the purposes of this definition is calculated as follows:

a. If PCB is distributed throughout a product, item or material, the concentration of PCB is determined on the basis milligram (mg) of PCB per kilogram (kg) of the mass in which the PCB is distributed.

b. If PCB is a constituent of only a portion of a product, item or material, the concentration of PCB is determined on the basis of milligram (mg) of PCB per kilogram (kg) of only that portion of the product, item or material in which the PCB is a constituent.

9. "Subsequent Use" means a use of PCB or a product or class of products containing PCB which is identical in function to the use exempted in a certificate of exemption currently in effect.

10. "Written" includes printing, typewriting or any other intentional reduction to tangible form.

Other terms and abbreviations used herein which are not specifically defined by law shall be construed in conformance with the context and commonly accepted professional usage.

C. CERTIFICATE OF EXEMPTION

1. APPLICATION

a. Existing Facilities, Equipment and Products. Any person who presently uses, possesses, sells, purchases or manufactures PCB or a product containing PCB shall submit a complete

application for a certificate of exemption within 90 days after the effective date of this regulation.

b. New Facilities, Equipment and Products. Any person who intends to use, possess, sell, purchase or manufacture PCB or a product containing PCB shall submit a complete application for a certificate of exemption at least 180 days prior to the proposed date of use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

c. Forms and Signatures

(1) Applications shall be submitted on forms prescribed by the Director.

(2) Signatures. Applications shall be signed as follows:

(a) In case of a corporation, by a principal executive officer of at least the level of vice president, or his duly authorized representative.

(b) In case of a partnership, by a general partner.

(c) In case of a sole proprietorship, by the proprietor.

(d) In case of a municipal, state or other public entity by either the principal executive officer or by an official authorized by a resolution passed at an official meeting of the governing body.

d. Contents of Application.

(1) The application for certificate of exemption shall include:

(a) The name and address of the applicant.

(b) The amount of PCB involved in the use, possession, sale, purchase, or manufacture or contained in a product containing PCB.

(c) The purpose for the use, possession, sale, purchase, or manufacture of PCB or a product containing PCB.

(d) A concise description of the location of the use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(e) Justification for the use, possession, sale, purchase or manufacture of the PCB or a product containing PCB. The justification shall include, but is not limited to, a detailed evaluation of the following:

(i) The impact upon the air, water and land resources of the State which may result from the applicant's use, possession, sale, purchase or manufacture of PCB or a product containing PCB, including any impacts that may result from the accidental spill of PCB or fluids containing PCB.

(ii) The risk to public health and safety which may result from the applicant's use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(iii) The toxicity, flammability and reasonable availability of PCB substitutes.

(iv) Any feasible alternatives to the continued use, possession, sale, purchase or manufacture of PCB or a product containing PCB which have been considered by the applicant.

(v) The data, information or analyses which the applicant has relied upon or developed in determining the public health, safety, and environmental impacts which may result from the applicant's use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(f) A description of the applicant's practices and procedures for handling and storing PCB or products containing PCB. The description shall include, but is not limited to, the following:

(i) The existing safeguards utilized in handling or storing PCB or products containing PCB.

(ii) The procedures utilized in the control and cleanup of spilled PCB or products containing PCB.

(iii) The procedures followed for disposing of PCB, products containing PCB, or materials and items contaminated by PCB.

(2) Any application for a certificate of exemption for the use or replacement of existing electrical transformers or capacitors shall include, in addition to the requirements of section C.1.d.(1) of this regulation.

(a) A detailed assessment of the cost of replacing the existing electrical transformers or capacitors with equipment that does not contain PCB.

(b) The cost of purchasing and installing non-PCB fluids in existing equipment.

e. Complete Application. All certificate of exemption applications shall be reviewed for completeness by the Director. If an application is incomplete or otherwise deficient, the Director shall promptly advise the applicant of such incompleteness or deficiency. Further processing of the application may be suspended until the applicant has supplied the necessary information or otherwise corrected the deficiency. A certificate of exemption shall not be issued until a complete application is submitted to the Agency.

f. Any person may submit an application for a certificate of exemption for a class of products possessed by the applicant which contain PCB. An application for a class of products exemption shall comply with section C.1.d. of this regulation.

2. PRELIMINARY DETERMINATION AND DRAFT CERTIFICATE OF EXEMPTION.

a. The Director shall make preliminary determinations regarding a complete certificate of exemption application prior to issuance of public notice of the application. These preliminary determinations shall include a proposed determination to issue or deny a certificate of exemption.

b. The Director shall inform the applicant of the proposed determination to issue or deny a certificate of exemption.

c. If the proposed determination is to issue a certificate of exemption, the Director shall prepare a draft certificate.

3. PUBLIC NOTICE OF CERTIFICATE OF EXEMPTION APPLICATION.

a. Circulation of Public Notice. The Director shall prepare and issue a public notice of the certificate of exemption application. The notice shall be circulated within the geographical area of the use, possession, sale, purchase or manufacture of the PCB or a product containing PCB. The Director may circulate the notice in any of the following ways:

(1) Posting the notice in public libraries or other public buildings or places located in the designated geographical area.

(2) Posting the notice at or nearby the entrance to the applicant's premises.

(3) Publishing the notice in one or more newspapers of general circulation in the designated geographical area of the applicant or, if appropriate, in an applicable periodical.

(4) Publishing the notice in the State Register.

b. Availability of Public Notice.

(1) The Director shall mail a copy of the public notice to the applicant and to interested persons upon written request.

(2) The Director shall make available a copy of the public notice at the main Agency office and at the appropriate Agency regional office.

c. Public Notice Comment Period.

(1) Any interested person, including the applicant, may, within 30 days following the issuance of the public notice, submit written comments on the certificate of exemption

application to the Agency. The time for public comment may be extended by the Director if he determines that such extension of time is necessary to facilitate public comment.

(2) All written comments submitted during the comment period shall be retained and considered in the formulation of final determinations concerning the certificate of exemption application.

d. Public Notice Contents. The public notice of the certificate of exemption application shall include:

(1) The name and address of the applicant.

(2) A concise description of the applicant's use, possession, sale, purchase or manufacture of PCB or a product containing PCB and location of that use, possession, sale, purchase or manufacture.

(3) A statement of the Director's preliminary determination to issue or deny the certificate of exemption.

(4) If the proposed determination is to issue a certificate of exemption, a statement regarding the proposed duration of the draft certificate of exemption.

(5) A statement that any interested person may submit written comments to the Agency for 30 days after the issuance of the public notice.

(6) The date the 30 day comment period terminates.

(7) If the proposed determination is to issue a certificate of exemption, a statement that a copy of the draft certificate of exemption will be mailed to any person upon written request.

(8) The address and telephone number of the main Agency office and the appropriate Agency regional office.

(9) A concise statement explaining the procedures for petitioning for a public hearing on the certificate of exemption application.

4. PUBLIC HEARING ON CERTIFICATE OF EXEMPTION APPLICATION.

a. The applicant or any interested person may, within the 30 day comment period, file a petition with the Director for a public hearing on a certificate of exemption application. A petition for a public hearing shall include:

(1) The basis for the hearing request.

(2) The specific portion of the draft certificate of exemption, if one has been prepared pursuant to section C.2 of this regulation, that necessitates a public hearing.

(3) The interest in or relationship of the petitioner to the applicant.

The Agency shall, in its discretion, grant or deny the hearing request.

b. All public hearings on certificate of exemption applications shall be held in accordance with the rules and regulations of the Office of the Hearing Examiners.

5. DURATION OF CERTIFICATE OF EXEMPTION. All certificates of exemption issued by the Agency shall have a fixed term which shall not exceed five years.

6. ISSUANCE OF CERTIFICATE OF EXEMPTION.

a. The Agency shall not issue a certificate of exemption unless:

(1) A complete application has been filed with the Agency.

(2) The applicant has provided sufficient justification, to the satisfaction of the Agency, for the use, possession, sale, purchase or manufacture of PCB or a product or class of products containing PCB in accordance with section C.1. of this regulation.

b. In determining whether to issue or deny the certificate of exemption, the Agency shall consider, but is not limited to:

(1) The effect upon the air, water and land resources of the State which may result from the applicant's use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(2) The gravity of risk to public health and safety which may result from the applicant's use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(3) The toxicity, flammability and reasonable availability of PCB substitutes.

(4) The existence of feasible alternatives to the applicant's use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(5) The potential risk for dispersion of PCB into the air, water and land resources of the State which may result from the applicant's use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(6) The applicant's practices and procedures, including compliance with applicable State and federal statutes and regulations, for the handling, storing and disposing of PCB, products containing PCB, or materials and items contaminated by PCB.

c. If the certificate of exemption application involves the use or replacement of existing electrical transformers or capacitors, the Agency shall consider, in addition to the requirements of sections 6.a. and b. of this regulation:

(1) The safety of proven alternatives or substitutes.

(2) The cost of replacing existing electrical transformers or capacitors with equipment that does not contain PCB.

(3) The cost of purchasing and installing non-PCB fluids in existing equipment.

7. TERMS AND CONDITIONS OF A CERTIFICATE OF EXEMPTION.

The Agency may include in a certificate of exemption such terms and conditions as are necessary in order to abate, control or prevent pollution of the air, water and land resources of the State including, but not limited to:

a. A requirement that annual reports be submitted to the Agency within 30 days following the end of each calendar year and that these reports include the following information:

(1) Name and address of the person responsible for filing the report.

(2) Quantity of PCB used, possessed, sold, purchased or manufactured during the preceding calendar year.

(3) Location and nature of the use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(4) Handling, storage or disposal practices and procedures utilized in the use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(5) Such other information as the Executive Director deems necessary.

b. A requirement that any item, product or material containing PCB be labeled in a manner which discloses the following:

(1) The presence of PCB in the item, product or material.

(2) A statement regarding proper disposal of the item, product or material.

(3) A warning regarding potential environmental and public health hazards of PCB.

c. A requirement that all records, including analytical and test analyses, be retained by the holder of the certificate of exemption for a period of three years.

d. A schedule for the replacement of existing equipment which contains PCB or PCB compounds or fluids with equipment which does not contain PCB or PCB compounds or fluids.

e. Such other terms and conditions as the Executive Director deems necessary.

8. SUBSEQUENT USES.

If the Agency issues a certificate of exemption for the use of PCB or a product or class of products containing PCB, the certificate of exemption shall be valid for all subsequent uses of PCB or the product or class of products containing PCB if the subsequent uses are consistent with the terms and conditions of the original certificate of exemption.

9. MODIFICATION, SUSPENSION, AND REVOCATION OF CERTIFICATE OF EXEMPTION.

a. Grounds for Modification, Suspension, or Revocation. The Agency may modify, suspend, or revoke any term or condition of the certificate of exemption, or the certificate of exemption in its entirety, upon finding:

(1) There has been a change in the applicant's justification for use, possession, sale, purchase or manufacture of PCB or a product or class of products containing PCB.

(2) There has been a violation of law.

(3) There has been a misrepresentation or omission of significant facts upon which certificate of exemption was based.

(4) The terms and conditions of the certificate of exemption have not been complied with or have been violated.

(5) Other just cause exists for such action.

b. Notice of Modification, Suspension or Revocation. No certificate of exemption may be modified, suspended or revoked by the Agency unless the exempt person is notified of the proposed action at least 30 days prior to the effective date of the modification, suspension or revocation.

c. Opportunity for Public Hearing. Any person may request, in accordance with Minn. Reg. MPCA 9(b), the Agency to hold a public hearing on the proposed modification, suspension or revocation. The Agency shall, in its discretion, grant or deny the hearing request. The Agency, upon its own motion, may order that a public hearing be held.

d. Section C.9 of this regulation shall not limit or preclude the Agency from exercising its emergency powers pursuant to Minn. Stat. §116.11.

D. LABELS

1. Any person after July 1, 1977, who adds PCB in the manufacture of any new item, product, or material or any person in this State who sells any new item, product, or material to which PCB has been added shall conspicuously label the PCB or product containing PCB.

a. The label shall disclose the following:

(1) The presence of PCB in the item, product or material.

(2) The item, product, or material contains a concentration of PCB equal to or greater than 500 milligrams per kilogram (mg/kg).

(3) A statement regarding proper disposal.

(4) A warning regarding potential environmental and public health hazards of PCB.

b. The label shall be written and affixed to the item, product or material so that a reasonable person ought to have noticed it.

c. The following statement may be used to satisfy the requirements of section D.1.a. of this regulation:

WARNING: Contains a concentration of polychlorinated biphenyl (PCB) equal to or greater than 500 mg/kg. Severe environmental contaminant. Care should be taken to prevent entry into the environment through spills, leakage, use,

vaporization or disposal of liquid or containers. Avoid prolonged breathing of vapors or mists, contact with eyes or prolonged contact with skin. This item must be used and disposed of in accordance with State and federal statutes and regulations.

E. EXEMPTIONS

1. The following uses of PCB or products containing PCB are exempted by the Agency:

a. Any product containing PCB which was purchased or otherwise acquired by an individual person for consumer use in the home.

b. Wastepaper, pulp or other wood fiber materials purchased for use within this State in the manufacture of recycled paper products.

c. Any electrical capacitor or transformer which contains less than one kilogram of PCB.

2. The certificate of exemption and labeling requirements shall not apply to the uses or products exempted under section E.1. of this regulation.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA POLLUTION CONTROL AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION OF MINN. REG. WPC 38 GOVERNING THE REQUIREMENTS FOR LABELING OF PRODUCTS CONTAINING PCB AND FOR ISSUING CERTIFICATES OF EXEMPTION FOR THE USE, POSSESSION, SALE, PURCHASE OR MANUFACTURE OF PCB OR PRODUCTS CONTAINING PCB.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on May 25, 1977, and reconvened on May 31, 1977, before William Seltzer, 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 Pollution Control Agency on July 21, 1977; and

WHEREAS, the Pollution Control Agency has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Pollution Control Agency 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 Pollution Control Agency has met all requirements of Minn. Stat. § 15.0412, Subd. 4.

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

Dated this 9th day
of September, 1977.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION CONTROL AGENCY

PCA-77-008-WS

In the Matter of the Proposed Adoption of Minn. Reg. WPC 38 Governing the Requirements for Labeling of Products Containing PCB and for Issuing Certificates of Exemption for the Use, Possession, Sale, Purchase or Manufacture of PCB or Products Containing PCB

STATEMENT OF COMPLIANCE WITH MANUAL OF RULE MAKING PROCEDURES

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

Jocelyn Furtwangler Olson
Special Assistant Attorney General

Dated: September 10, 1977

CERTIFICATE OF AGENCY'S
ADOPTION OF RULES RESOLUTION

I, Sandra S. Gardebring, do hereby certify that I am the Executive Director of the Minnesota Pollution Control Agency, an Agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete and correct copy of a resolution adopted at a meeting of the Agency duly and properly called and held on the 6th day of September, 1977; that a quorum was present at said meeting; that the resolution was passed by a majority of the Agency Board; that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified.

RESOLVED, that Minn. Reg. WPC 38, "Requirements for Labeling of Products Containing PCB and for Issuing Certificates of Exemption for Use, Possession, Sale, Purchase or Manufacture of PCB or Products Containing PCB," as amended in accordance with the Recommendations of the Hearing Examiner as specified in the Hearing Examiner's Report in Findings of Fact Nos. 18, 21, 22, 27, 28, 29, 30, 39 and 40, be and are hereby approved and adopted.

BE IT FURTHER RESOLVED that Joseph F. Grinnell, Chairman of the Agency, and Sandra S. Gardebring, Executive Director, be and are hereby authorized to sign the attached Findings of Fact and Conclusions in support of these regulations and an Order adopting these regulations.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 7th day September, 1977.

Sandra S. Gardebring
Sandra S. Gardebring

Subscribed and sworn to before me
this 7th day September, 1977:

WILLIAM DONOHUE
NOTARY PUBLIC – MINNESOTA
RAMSEY COUNTY
My Commission Expires April 29, 1982

William Donohue
Notary Public

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of Minn. Reg. WPC 38 Governing the Requirements for Labeling of Products Containing PCB and for Issuing Certificates of Exemption for the Use, Possession, Sale, Purchase or Manufacture of PCB or Products Containing PCB

PCA-77-008-WS

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner William Seltzer on the 25th day of May, 1977, at the Board Room of the Minnesota Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota, commencing at 9:30 a.m., after proper notice required by Minn. Stat. § 15.0412 (1976) was served on all persons, associations and other interested groups registered with the Secretary of State for that purpose. Said hearing was duly recessed and reconvened on the 31st day of May, 1977, at the Lake City Council Chambers, 205 West Center Street, Lake City, Minnesota, commencing at approximately 7:00 p.m.

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

NOW, THEREFORE, IT IS ORDERED that Minn. Reg. WPC 38 entitled "Requirements for Labeling of Products Containing PCB

and for Issuing Certificates of Exemption for Use, Possession, Sale, Purchase or Manufacture of PCB or Products Containing PCB" is adopted this 6th day of September, 1977, pursuant to authority vested in this Agency by Minn. Stat. §§ 116.36 and 116.37 (1976).

MINNESOTA POLLUTION CONTROL AGENCY

Joseph Grinnell
Chairman

Sandra S. Gardebring
Executive Director

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of Minn. Reg. WPC 38 Governing the Requirements for Labeling of Products Containing PCB and for Issuing Certificates of Exemption for the Use, Possession, Sale, Purchase or Manufacture of PCB or products containing PCB.	REPORT OF HEARING EXAMINER

The above-entitled matter came duly on for hearing before William Seltzer, Hearing Examiner, on the 25th day of May, 1977, at the Board Room of the Minnesota Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota, commencing at 9:30 a.m. Said hearing was duly recessed and reconvened on the 31st day of May, 1977, at the Lake City Council Chambers, 205 West Center Street, Lake City, Minnesota, commencing at approximately 7:00 p.m.

Jay Heffern, Special Assistant Attorney General, appeared for and on behalf of the Minnesota Pollution Control Agency Staff in support of the within considered proposed regulation.

All interested persons, representatives of individuals or associations, and other interested groups present at the hearing had an opportunity to present evidence and question witnesses.

With one exception, the record of the within proceeding remained open through June 20, 1977. For proper cause shown, the Minnesota Pollution Control Agency Staff was allowed to make submissions to the record through June 24, 1977. All written submissions received by the Minnesota Office of Hearing Examiners before the close of the record are to be considered as part of the record of the within subject proceedings.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1976), this Report shall be available for review to all affected individuals upon request for at least ten days. The Pollution Control Agency shall, if it proposes to adopt the rules as originally proposed or amended, submit the complete hearing record, including its Findings

and Order, to the Chief Hearing Examiner no earlier than ten days subsequent to the receipt of this Report. Such submission shall also clearly indicate any changes made to the rules as originally proposed, preferably in the format that will be submitted to the State Register for publication. The Chief Hearing Examiner shall complete his review and submit his report to the Pollution Control Agency on the issues of substantial changes in the rules and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Pollution Control Agency shall be responsible for filing the rules with the Attorney General.

The Hearing Examiner, upon all records, files, evidence, arguments of counsel, and written comments filed before the close of the record, hereby makes and issues the following Findings of Fact, Conclusions and Recommendations:

FINDINGS OF FACT

1. That the Order for Hearing issued April 6, 1977, was in all respects proper in form, content, execution and filing.

2. That due, timely and adequate Notice of Hearing as ordered by the Minnesota Pollution Control Agency (hereinafter sometimes referred to as "Agency") was properly served and filed on April 6, 1977. All other relevant substantive and procedural requirements of statute or rule have been complied with for the purposes of establishing jurisdiction of the subject matter to proceed to public hearing pursuant to law.

3. That authority of the Agency to promulgate the above-entitled proposed rules is contained in Minn. Stat. § 116.36, and Minn. Stat. § 116.37 (1976). Although the specific rulemaking authority of the Agency is found in Subd. 4, the Agency adequately demonstrated its statutory rulemaking authority in its Notice of Hearing by referring to Minn. Stat. § 116.37, subd. 3 (1976).

4. That the proposed rules, if adopted, would:

> (a) Establish procedures for issuing certificates of exemption for the use, possession, sale, purchase or manufacture of polychlorinated biphenyls (PCB) and products containing PCB in the state of Minnesota. These procedures include:
>
> (1) the procedures for applying for a certificate of exemption,

(2) the process and procedures for obtaining public comment on the certificate of exemption application,

(3) the criteria for approving or denying issuance of a certificate of exemption,

(4) the terms and conditions the Agency may include in a certificate of exemption,

(5) the procedures available for modifying, suspending or revoking a certificate of exemption.

(b) Require labels for new items, products or materials manufactured or sold after July 1, 1977, which contain PCB.

(c) Exempt certain uses of PCB or products containing PCB.

5. PCBs are a class of organic compounds known as polychlorinated biphenyls, and include any of several compounds produced by replacing one or more hydrogen atoms on the biphenyl molecule with chlorine. PCB does not include chlorinated biphenyls that have functional groups attached other than chlorine. PCBs are manufactured by the reaction of biphenyl with chlorine in the presence of a catalyst. During the formation of PCBs, hydrogen atoms are successfully replaced by chlorine atoms at one or more of the available positions on the biphenyl molecule. PCBs have varying degrees of chlorination and PCBs with the same number of chlorine atoms are known as homologs. Each homolog can exist in a number of different forms, called isomers, in which the chlorine is attached to the molecules at different positions. Each isomer is named according to the position of substitution in conformance with a standardized number scheme. PCBs are mixtures, each of which contain several homologs each of which is represented by a number of isomers.

PCBs are manufactured in the United States solely by the Monsanto Industrial Chemicals Corporation. Monsanto markets commercial PCB mixtures under the trade name, AROCLOR. [Tr. 5/25/77, pp. 71-72]

6. PCBs are very persistent in the environment. They are mobile oils or viscous liquids at room temperature. They volatilize slowly at normal temperatures and have a very low solubility in water, but are soluble in organic solvents. They are strongly

partitioned from water into lipids (discussed further hereinbelow) in biological systems resulting in large degrees of bioaccumulation. PCBs are strongly absorbed into solids, sediments, and airborne particulates. In aquatic environments, the absorption leads to passive transport with moving sediments. PCBs that are absorbed in sediments can be released into water and thereafter ingested by fish even if the fish do not come in contact with the sediments.

Environmental residue of PCBs do not correspond to commercial mixtures very well because of changes that occur after discharge. There are differences in the way less chlorinated compounds are volatilized, become soluble and are absorbed. Bacterial metabolism primarily affects the mono and dichlorobiphenyls. It is difficult to distinguish environmental residues derived from the various PCBs and impracticable to establish special criteria or standards for specific AROCLORS. [Tr. 5/25/77, pp. 73-74]

7. PCBs have been utilized in the United States since 1929. They are now primarily used in the United States as insulating fluids in electrical equipment. In 1974, approximately 40 million pounds of PCB were manufactured in the United States, and approximately 450,000 pounds were imported. At present, 90 to 95 percent of all impregnated capacitors manufactured in the United States contain PCB. General Electric estimates that approximately 100 million PCB capacitors are produced each year. PCBs are used in five to ten percent of the transformers manufactured in the United States. Also, they continue to be used in hydraulic fluids and in investment casting waxes although quantities used for these purposes are very small compared to the quantities used in electrical devices.

8. As is the general case throughout the nation, the primary use of PCBs in Minnesota is in electric equipment, transformers and capacitors. The Pollution Control Agency sent a questionnaire to 192 Minnesota electrical utilities to determine the extent of PCB use in the state. Of the 143 utilities who responded, 55 percent stated they did not own or use PCBs. Thirty-six percent stated they used or owned PCBs and nine percent did not know if they used

or owned PCBs. The questionnaire results indicated PCBs were being used in capacitors much more than any other electrical device. The non-flammable properties of PCB were frequently stated as the basis for determining where PCB fluid devices were used or placed. Further, responses to the questionnaire indicated that non-repairable devices containing PCBs were disposed of most frequently in three ways. First, they were sold to junk dealers; second, returned to the manufacturer; and third, placed in land fills. These methods of disposal emphasize the importance of labeling PCBs and products containing PCB in order to ensure that persons handling these products are aware of the PCB content.

9. It is the unique physical and chemical properties of PCB which result in its usage by electric utilities. PCBs have low vapor pressure at ambient temperatures, they are resistent to combustion, have remarkable chemical stability with high dielectric constant, and have high specific electrical resistivity and low water solubility.

10. At least one company in Minnesota, Honeywell, is using PCB hydraulic oils. The PCB hydraulic oil is being used in dye-casting machines. Honeywell currently has 115 dye-cast machines with PCB in them; however, up to 91 will be shipped out of this state by the Department of Defense prior to January 1, 1978. Honeywell has estimated that it will cost the company $6,000 per machine to flush each machine to a PCB level of 500 to 1,000 ppm. To reduce the level of PCB below 500 ppm, it is estimated that the cost would be increased to $35,000 per machine. [Tr. 5/25/77, pp. 76-77]

11. PCB contamination of the environment may occur in a number of ways:

(a) Improper disposal of "transformer oil" as it is called by the industry, simply by the fact that workers servicing transformers have no idea of the inherent toxicity (which will be discussed later hereinbelow).

(b) There is vaporization from the plasticizers and during improper incineration; destruction must take place during incineration at 1200-1600 degrees centigrade for a specified dwell time.

The Surveilance and Analysis Division of the United States Environmental Protection Agency in Chicago has completed a sampling program on ambient air and incinerator stacks. Ambient air ranged from 140-170 ng/m^3. Average stack concentration at a major incineration facility in Chicago was 32,880 ng/m^3. Possible sources include cardboards and small electrical components reaching incineration.

(c) Waste oil recycling of hydraulic fluids and transformer oil for a number of users is another pathway to the environment.

(d) Water and sediments seem to be the final major sink for PCBs whether they are transported by tributary streams, municipal and industrial out-falls, or transported by the atmosphere. Because PCBs are more persistent than DDT, we may expect to deal with the problem over the next ten to 15 years. [Tr. 5/25/77, pp. 41-42]

12. The tissues of fish and other aquatic organisms contain significant amounts of natural oils called lipid. When chemicals such as PCBs which are only slightly soluble in water but very soluble in organic solvents and natural lipid are introduced into natural waters, the PCBs tend to move from the water to the lipid or other organic materials. Thus, while PCBs have the unique physical and chemical properties described in Paragraph No. 9 above, they are lipid and soluble and hence, the potential for absorption into fatty tissues and into the liver is high. Once PCBs are ingested, they are retained by most organisms rather than excreted. The qualities of persistence which make PCBs useful for many industrial purposes greatly aggravates their potential for harm in the ecosystem. [Tr. 5/25/77, pp. 28, 40-41]

13. Currently, a serious PCB problem exists in lake trout found in Lake Superior. According to the Great Lakes Environmental Contaminants Survey, six statistical sampling districts were set up in Lake Superior extending from Isle Royal to White Fish Point. During 1974, PCBs in the Siscowet (Fat) variety of lake trout ranged from 0.29 to 14.40 ppm PCBs in the filet portions. The mean concentration for 99 trout was 5.3 ppm PCB and 46 of 99 fish exceeded

the FDA temporary tolerance level of 5 ppm. During the same survey in 1974, the lean variety of lake trout ranged from less than the detection level to 24.00 ppm. The mean concentration for 154 lake trout was 2.45 ppm with 17 of 154 fish exceeding the 5.0 ppm tolerance level. On March 4, 1976, the Department of Public Health, State of Michigan, recommended that consumption of Lake Superior lake trout should not exceed one meal per week.

14. At a national conference on PCBs held in Chicago in November of 1975, the U. S. Environmental Protection Agency presented data on residues of PCBs in the general population of the United States. Surveys conducted during 1974 and 1975 indicated that 40.3 percent of human adipose tissue collected contained 1 ppm or more of PCBs on a wet-weight basis. Approximately 2,300 tissue samples were analyzed. Preliminary data during 1976 on PCBs in milk of nursing mothers indicated that the average level ranged from 1 to 3 ppm of PCBs in the fat portion. [Tr. 5/25/77, pp. 42-43]

15. The Toxic Substances Control Act, signed into federal law in October of 1976, made special provision for PCBs. The law requires the Administrator of the Environmental Protection Agency to take action regulating polychlorinated biphenyls by issuing labeling and disposal regulations by July, 1977, restricting the chemical's use to closed systems (such as closed electrical systems) by January, 1978, prohibiting all production by January of 1979 and distribution in commerce by July of 1979.

In accordance with the Federal Act, the U. S. Environmental Protection Agency has considered the availability of substitutes for PCBs in transformers and efforts are under way to develop substitutes for PCBs in capacitors as well. At this time however, it is still too early to determine with confidence whether the substitutes are not only functionally effective, but are also safe in terms of potential fire hazard and other safety considerations, and whether such substitutes are environmentally safe. The Environmental Protection Agency concludes that it cannot at this time set a toxic pollutant effluent standard, or prohibition on discharge, upon the assumption of the ready availability of a substitute product. However, the EPA is persuing an active policy to

encourage industry to develop as rapidly as possible feasible substitutes for PCBs. [Tr. 5/25/77, pp. 43-44]

16. In 1967, the University of Wisconsin-Madison began a study concerning the proliferation of a cell called the endoplasmic reticulum in hepatic tissue; i.e., the liver. Shortly after the University of Wisconsin began its study, they received reports of an outbreak in Japan of PCB intoxication that resulted from the consumption of rice oil contaminated with PCBs. In this outbreak, the Japanese consumed from 0.5 grams to 5.0 grams of the PCB mixture in their diet over approximately a six-month period. As a result, the exposed persons developed, within a short period, nausea, lethargy, subcutaneous edema of the face and pigmented skin pustules, commonly known as chloracne. Infants born to mothers who ingested the PCB-contaminated rice oil were smaller than average, had discolored skin and an abnormal ocular discharge.

The outbreak in Japan caused the University of Wisconsin to expand its studies to include the general body effects of PCBs in monkeys and rats. Initially, the University was concerned with establishing an animal model that would more closely simulate the lesions that occurred in the Japanese subject to PCB intoxication. With that in mind, the University found that the non-human primate developed signs and lesions quite similar to those that occurred in humans, including acne, loss of hair, loss of eyelashes, facial edema and puffy eyelids.

Thereafter, the University embarked upon a series of experiments to establish the levels at which the subject compounds would be toxic to the non-human primate. In the initial study, the non-human primates were fed doses of 300 ppm PCB in their daily diet on a continuous basis. Within a period of three to four weeks, the study animals developed severe acne, swelling of the eyelids, swelling of the face and loss of hair. Additionally, there was a decided thickness of the gastrict mucosa and the development of distince ulcers in the stomach within two to three months. All of the animals died by the end of the third month.

Next, the study involved lowering the dosage in the diet of the non-human primates to a level of 100 ppm. In spite of the

decrease of PCB dosage, signs of PCB intoxication developed at the same rate as the animals fed 300 ppm. Death occurred to the second group of animals within a period of two to three months.

The next phase of the study involved the feeding the non-human primates levels of PCBs at 25 ppm in their daily diet. This level represents approximately five times that which is permitted in certain foods destined for human consumption. Within one month, signs of PCB intoxication and lesions were present. After two months, the study animals became sufficiently ill that it was necessary to remove them from the experimental diet. During this time, those test animals had consumed approximately 250 to 400 milligrams of PCB. Two months after removal from the experimental diet, one of the six animals died as a result of severe PCB intoxication. From the remaining five animals, six infants were born. All the infants weighed at least 150-200 grams less than infants born to control animals. The infants had detectable levels of PCB in their tissues at birth, indicating a transplacental movement of PCBs from the mother through the placenta into the infants.

The five surviving animals continued to manifest signs of PCB intoxication at least three years following the cessation of their two-months daily exposure to diets containing 25 ppm PCBs. Three years later, the animals still have no eyelashes, and continue to exhibit a considerable loss of hair and some reddening, particularly around the eyes. Fat biopsies of these animals continue to show detectable levels of PCBs in their tissues. The data is consistent with the Japanese findings that humans exposed to PCBs continue to show signs of intoxication after seven years. This data is found in KURATSUNE, et al. in the Proceedings of the National Conference on PCBs, EPA-560/6-75-004, pp. 14-29, 1967.

In subsequent studies, the University fed non-human primates 2.5 and 5.0 ppm PCBs. These levels are equal to (5.0 ppm) and one half (2.5 ppm) those that are tolerated in many foods destined for human consumption. In these studies, the University found that within less than two months, the test animals developed the classical signs of PCB intoxication; i.e., swelling of eyelids, loss of

eyelashes, edema of the face and the development of acne. After reaching a relatively steady state in the tissues at approximately six months on the diet containing 5.0 ppm PCBs, the test animals were allowed to breed with control male monkeys. It was determined that the PCBs had a decided affect on the ability of the test animals to maintain pregnancy. Of the eight animals that had received 5.0 ppm PCB diet, only one infant was born; there were five abortions and two animals did not conceive after repeated breedings.

Five infants were born to the eight animals receiving the 2.5 ppm PCB diet, and they too were extremely small. The remaining animals aborted during early gestation. In addition to their difficulty in maintaining pregnancy, these animals exhibited irregular menstrual cycles as well as excessive menstrual bleeding.

Skin biopsies taken from the six infants that were born to the femals that received 2.5 and 5.0 ppm PCBs in their diets showed detectable levels of PCB. With time, the levels of PCB in the infants' skin increased markedly, due to the high levels in the milk obtained from their mothers. Within two months, the infants began showing signs of PCB intoxication that increased in severity and exposure time. Within four months following birth, three of the six infants had died as a result of PCB intoxication. Behavioral and learning experiments conducted on the three surviving infants for one year following weaning have revealed defects in both areas. [Tr. 5/25/77, pp. 51, et seq.]

The toxic nature of PCBs is firmly established. The use of PCB must be replaced with a non-toxic and environmentally safe substitute. While technology develops such substitute, reasonable control methods must be instituted to avoid unnecessary contamination of the environment.

Evidence of PCB contamination has been experienced close to home. There have been a number of incidents of PCB contamination in Minnesota. Mink ranchers in southern Minnesota suffered reproductive failure and mortality of their animals in 1970. The mink ranchers were supplied with mink food made from fish caught in Lake Pepin on the Mississippi River. The fish were allegedly contaminated

with a toxic chemical. At the time the matter occurred, it was difficult to tell just what the cause of the problem was. However, as it developed, the problem was possibly due to PCBs. The Insurance Company of North America paid out on behalf of the mink food company to the mink ranchers a total of $360,888.00. In 1971, the USDA notified the USFDA that excessive PCB levels in turkeys were occurring in some Minnesota birds. An investigation indicated the PCB residues found in the turkeys were caused by feed. In addition, it appeared that fat used as an ingredient of the turkey feed was the course of the PCB. It was suspected, but never proven, that the fat had been contaminated during the processing stage. The source of the PCB levels in the turkeys was not estimated. Of 140 flocks tested, only one flock had PCBs above 2ppm concentration on a fat basis. That flock had levels of PCBs up to 20 ppm.

Two events occurred in May, 1975, which focused the attention of the Minnesota Pollution Control Agency to the PCB problem in the Mississippi River. First, was the action taken by the USFDA to halt the interstate shipment of carp taken from Lake Pepin by a Wisconsin commercial fisherman. An estimated 20,000 pounds of carp filets were disposed of after FDA's analysis of selected samples showed that the filets exceeded the FDA's "action limit" of 5 ppm PCB. Secondly, the publishing of a report by the Wisconsin Department of Natural Resources which indicated high levels of PCBs in fish collected from the Mississippi River and Lake Pepin. [Tr. 5/25/77, pp. 77-78]

A PCB task force was formed. The information and data collected by the task force has shown that there are definite areas in Minnesota where a PCB pollution problem does exist. The Minnesota Department of Health has issued a health advisory for the people of the State of Minnesota to limit their intake of fish from these PCB contaminated areas to one meal a week. The U. S. Food and Drug Administration strongly recommended and advised commercial fisherman who planned interstatse shipment of carp filets taken from these PCB contaminated areas to take only those carp which weigh under five pounds. Carp under five pounds have

been shown to generally have PCB concentrations in their filets under the 5 ppm action level because of lower fat content that older, larger fish. Finally, in the last two years, there have been at least ten PCB spills or related PCB incidents in the State. [Tr. 5/25/77, pp. 78, 81]

17. The Hearing Examiner has considered all issues raised in the record of proceedings. Hereinbelow specific findings are made pertaining to the cogent issues raised with regard to the proposed Regulation.

18. United Power Association suggested that proposed Rule B. 9., which defines "subsequent use", be amended to include a concluding sentence as follows: "This subsequent use may occur at a physical location other than that of the prior use."

The Hearing Examiner finds it is unnecessary to insert the suggested language. The proposed definition of "subsequent use" relates only to an identical function and not to location. Under the proposed definition, the use of PCB or a product or a class of products containing PCB at different locations is allowed provided a previous certificate of exemption was granted as to the particular PCB or product or class of products. It is not intended that a certificate of exemption be site specific, but rather apply to the regulated substance.

However, certain ambiguities in the way in which the term "subsequent uses" is used in proposed Rule C. 8. may be eliminated by amending proposed Rule C. 8. as follows:

> (SUBSEQUENT USES) If the agency issues a certificate of exemption for the use of PCB or a product or class of products containing PCB, the certificate of exemption shall be valid for all subsequent uses of <u>such</u> PCB or ~~the~~ product or class of products <u>containing</u> PCB if the subsequent uses are consistent with the terms and conditions of the original certificate of exemption.

19. The Hearing Examiner finds that the 90 day time constraint in proposed Rule C. 1. a. for filing applications for existing facilities is sufficient lead time for prospective applicants. Some objection was made that the lead time should be changed to 120 days. However, the Agency published notice of the proposed regulations on April 6, 1977, in its Notice of Hearing and, if finally adopted, such

adoption shall not be effective until after the date of this Report. The 90 day requirement will not begin to run until the effective date of the Rule. Thus, the 90 days coupled with the necessary lead time before final adoption of these Regulations provides industry with adequate time to prepare the information which must be supplied in applications for a certificate of exemption for existing facilities, equipment and products.

20. Proposed Rule C. 1. b. presupposes that the Agency will process an application for a certificate of exemption for new facilities within 180 days. Although there was insufficient testimoney on the point in question, it is presumed that the Agency is confident that all such applications can be processed within the 180 day time frame. However, if members of the Pollution Control Agency find that it is feasible or likely for a situation to arise where an application cannot be processed within the 180 day time frame, additional time could be allotted to an applicant without causing harm to an applicant and so that the Agency may have additional time in its processing procedures. If the members of the Pollution Control Agency so decide, the following additional language is suggested for inclusion in this Rule:

> <u>If the agency is unable to process an application for a Certificate of Exemption within the allotted 180 days, the use, possession, sale, purchase or manufacture of PCB or products containing PCB may, with written consent of the Executive Director, begin 180 days after application is made and continue until the agency issues or denies the Certificate of Exemption.</u>

21. Suggestion was made by industry to amend proposed Rules C.1.a. and C.1.b. to avoid certain alleged ambiguity. Suggested language to cure the alleged ambiguity is as follows:

> <u>Rule C. 1. a.</u>--Existing Facilities, Equipment and Products. Any person who presently uses, possesses, sells, purchases or manufactures PCB or a product containing PCB shall submit a complete application for a certificate of exemption <u>for such PCBs or products containing PCB</u> within 90 days after the effective date of this regulation.
>
> <u>Rule C. 1. b.</u>--New Facilities, Equipment and Products. Any person who intends to use, possess, sell, purchase or manufacture PCB or a product containing PCB shall submit a complete application for a certificate of

exemption for such PCBs or products containing PCBs at least 180 days prior to the proposed date of use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

The Hearing Examiner does not find the Rule as originally proposed to be ambiguous. However, the Pollution Control Agency Staff has no objection to the hereinabove described amendments. Likewise, the Hearing Examiner finds no objection to such amendments. Therefore, members of the Pollution Control Agency should act upon the suggestion at their discretion and should note that the Hearing Examiner finds that such suggestion neither adds nor detracts from the proposed Rule.

22. Industry suggested that the information which must be supplied in an application pursuant to proposed Rule C. 1. d. (1) (b) may not be readily available and therefore suggested the following language change:

> The amount of PCB involved in the use, possession, sale, purchase, or manufacture or contained in a product containing PCB that was manufactured after July 1, 1977. On PCB products manufactured prior to this date where the type and amount cannot be determined from available labels or records, an estimated amount shall be included.

The reason given for the suggested language change by industry is that an applicant's records may not reflect the amount of fluid in each device containing PCB. Therefore, to accurately comply with the proposed Rule, the applicant might be required to engage in analytical testing of each unlabeled capacitor and transformer suspected of containing PCB. Industry suggested that such a process might potentially involve thousands of devices. On the other hand, industry asserted when the amount of PCB involved cannot be easily determined, an estimate should be sufficient for Agency purposes. Industry asserted that as long as an estimate was given, the particular device could be appropriately labeled so that individuals handling the device or involved in its disposal would be put on notice even though the exact amount of PCB may not be known.

However, the Hearing Examiner finds that most devices containing PCB are standardized devices. The concentrations of PCB

should be readily ascertainable from the manufacturer. However, certain instances may arise where an applicant will not be able to ascertain the amount of PCB involved. In such cases, the burden of showing that such information is not available should rest with the applicant. It is expected that such cases will be far and few between. Accordingly, the Hearing Examiner finds that proposed Rule C. 1. d. (1)(b) be amended as follows:

> The amount of PCB involved in the use, possession, sale, purchase, or manufacture or contained in a product containing PCB. In instances where the amount of PCB involved is not ascertainable by an applicant, applicant shall supply the name and mailing address of the manufacturer of such product and serial and model number, if any, of the product involved. In all such cases wherein the amount of PCB involved cannot be reasonably ascertained by an applicant, the applicant shall make an estimate of the amount of PCB involved.

23. United Power Association recommended that proposed Rule C. 1. d. (1)(e), which specifies information to be supplied by an applicant in an application, be amended as follows:

> Justification for the use, possession, sale, purchase or manufacture of the PCB or product containing PCB. The justification shall include, but ~~is~~ need not be limited ~~to~~ by the Applicant to, a detailed evaluation of the following:

The recommendation was made on the reasoning that an applicant, rather than the Agency, should be the sole determinate of the justification presented in the application. However, proposed Rule C. 1. d. (1)(e) pertains to the contents of an application and naturally, an applicant can exercise its own discretion in completing the contents of an application. Thus, an applicant can elect to include any "justification" which is appropriate in the applicant's opinion. Furthermore, although an applicant may be the sole determinate of the justification supplied in an application, the legislature has charged the Minnesota Pollution Control Agency with the responsibility of regulating the use, possession, sale, purchase or manufacture in Minnesota of PCB or products containing PCB. That mandate cannot in any way be abrogated. Minn. Stat. § 116.37, subd. 1 (1976), authorizes the Agency to issue Certificate of Exemption only in certain limited situations. In

order to discharge its responsibilities, the Agency must exercise a degree of discretion in determining whether or not the justification supplied by an applicant is adequate.

Therefore, the Hearing Examiner finds that proposed Rule C. 1. d. (1)(e) should not be amended as suggested by United Power Association.

24. Minnesota Power and Light Company suggested an amendment to proposed Rule C. 1. e. as follows:

> Complete Application. All certificate of exemption applications shall be reviewed for completeness by the Director. If an application is incomplete or otherwise deficient, the Director shall ~~promply advise the applicant of such incompleteness or deficieney~~ notify the Applicant of such incompleteness or deficiencies within 30 days after receiving the application. If an Applicant is not notified concerning deficiencies within 30 days after Agency receipt of the application, the application will be considered adequate. Further processing of the application may be suspended until the Applicant has supplied the necessary information or otherwise corrected the deficiency. A certificate of exemption shall not be issued until a complete application is submitted to the Agency.

The suggested amendment is designed to facilitate orderly processing with definite action dates for both the applicant and Agency. An applicant is under time constraints pursuant to proposed Rules C. 1. a. and C. 1. b. The suggested additional language to proposed Rule C. 1. e. places time constraints on Agency action. Since applicants must operate under time constraints, it is only reasonable that the Agency operate under appropriate time constraints in order to facilitate business decisions of an applicant which, in part, require projections into the future concerning expected dates of receiving a certificate of exemption.

The originally proposed language would have required the Executive Director to inform an applicant as to incompleteness "promptly" without specific time constraints. However, applicants will gear their processing to the time constraints of proposed Rules C. 1. a. and C. 1. b. The suggested language to Rule C. 1. e. will enable applicants to rely on similar time constraints imposed upon the Agency so that proper future business projections can have an increased degree of reliability.

Agency Staff took the position that the complexity of an individual application will vary greatly so that no precise time frame for identifying deficiencies should be established in these proposed Regulations. However, the Regulation imposes time constraints upon applicants who have the larger burden of accumulating data. On the other hand, the Agency only has to review the data submitted in order to determine whether or not an application is or is not complete.

The Hearing Examiner specifically finds that proposed Rule C. 1. e. should be amended in accordance with the hereinabove suggested language.

Minnesota Power and Light Company also suggested that the Agency wait until 30 days after notification of deficiencies before suspending further processing of an application. However, the ability of the Agency to suspend processing immediately upon notification to an applicant will encourage timely corrective action on the part of an applicant. The Hearing Examiner finds no necessity for including Minnesota Power and Light Company's suggestion that an additional 30 day period be allotted after notification of incompleteness before the Agency suspends processing an application.

25. United Power Association suggested that proposed Rules C. 1. d. (1)(e) and C. 6. c. include engineering considerations. United Power Association asserted that engineering limitations are important justifications for use. A hypothetical or example cited by United Power Association is that large PCB transformers are installed in contained areas within an existing plant. Although larger non-PCB transformers could serve the same purposes electrically, such larger non-PCB transformers may not physically suit the particular plant because of lack of available space.

The Hearing Examiner finds that the specific inclusion of engineering limitations is unnecessary. Engineering problems or limitations related to the use of equipment containing PCB are addressed in the proposed Regulation. Proposed Rule C. 6. b. (4) requires the Agency to consider the existence of feasible alternatives to the applicant's use of PCB or products containing PCB.

Thus, engineering limitations and/or physical space limitations could be cited by an applicant in proposed Rule C. 6. b. (4).

26. United Power Association recommended language to be used in place of proposed Rules C. 1. d. (2)(a) and (b). The specific language suggested by United Power Association is set forth at Page 132 of the transcript of proceedings held May 25, 1977.

The language suggested by United Power Association is completely unsupported and given without reason or foundation. The suggested language change may be subject to various interpretations as to the reason behind the suggestion. Without proper reasoning to support the suggestion, the suggestion cannot be adopted.

27. Proposed Rule C. 3. b. (1) requires public notice to be issued by the Agency when an applicant applies for a certificate of exemption. The proposed Rule provides that an applicant will only be supplied with a copy of said notice upon written request. The Hearing Examiner finds that such notice should automatically go to an applicant. Accordingly, proposed Rule C. 3. b. (1) should be amended as follows:

> The Director shall mail a copy of the public notice to the Applicant. The Director shall mail a copy of the public notice to any ~~and-to~~ interested persons upon written request.

28. The proposed Regulation requires the Agency to provide public notice of a certificate of exemption application. After there has been publication of such notice, interested persons and the applicant are allowed 30 days to submit written comments on the certificate of exemption application. The 30 day time period for public comment "may be extended by the Director if he determines that such extension of time is necessary to facilitate public comment." [Proposed Rule C. 3. c. (1)] The Rule further provides that "All written comments submitted during the comment period shall be retained and considered in the formulation of final determinations concerning the Certificate of Exemption Application."

Since the Director has the discretion to extend the 30 day comment period, there should be a method for so informing the public and applicant. Otherwise, the provision allowing the Director to

extend the 30 day time period without notice is unreasonable.

The problem can be alleviated by one of two methods: (1) amend proposed Rule C. 3. c. (1) so as to remove the power of discretion given the Director to extend the public comment time period; or (2) if the Agency desires the Director to retain such power of extension, the proposed Regulations must be amended so as to inform the general public and the applicant of such time extension. This could be accomplished as follows:

> [Proposed Rule C. 3. c. (1)] Any interested person, including the Applicant, may, within the time allowed for public comment following the issuance of the public notice, submit written comments on the certificate of exemption application to the Agency. The time for public comment shall be 30 days unless otherwise extended by the Director. The time for public comment may be extended by the Director if he determines that such extension is necessary to facilitate public comment.
>
> [Proposed Rule 3.d. (5)] A statement that any interested person may submit written comments to the Agency during the public comment period ~~for 30 days~~ after the issuance of the public notice.
>
> [Proposed Rule 3. d. (6)] The date the ~~30-day~~ public comment period terminates.

The Hearing Examiner finds that proposed Rule C. 3. c. (1) is not reasonable as originally proposed but that the herein suggested alternatives result in curing such lack of reasonableness. As between the alternatives of either (1) deleting the inappropriate language which allows the Director to extend the public comment time period without notifying the public, or (2) making provision for notifying the public of such extended public comment time period; the record is insufficient to make a definite finding preferring one alternative over the other. Thus, members of the Pollution Control Agency should exercise their discretion in selecting their preferred alternative.

29. Proposed Rule C. 4., which provides for public hearing on certificate of exemption application is, in part, inconsistent with the Findings hereinabove at Paragraph 28.

The Hearing Examiner finds in order to correct said inconsistency, proposed Rule C. 4. a. should be amended as follows:

> The applicant or any interested person may, within the ~~30-day~~ public comment period, file a petition with the Director for a public hearing on a certificate of exemption application....

30. Proposed Rule C. 4. which provides for public hearing on certificate of exemption applications is, in part, inconsistent with Minn. Stat. § 116.37, subd. 1 (1976).

Minn. Stat. § 116.37, subd. 1 (1976), states in part:

> ...if the agency finds after there is opportunity for a public hearing on an application presented by any person, that no substitutes or feasible alternatives are reasonably available for PCB or a product containing PCB or class of products containing PCB, it shall grant a certificate of exemption which shall clearly set out the permitted use, possession, sale or purchase of PCB or a PCB product containing PCB.... (Emphasis added)

The statute specifically grants an "opportunity for a public hearing on an application." However, proposed Rule C. 4. a. is inconsistent with the statute by removing the opportunity for public hearing, by allowing the Agency to exercise its own discretion as to whether or not such public hearing will be allowed. The specific objectionable regulatory language is as follows: "The Agency shall, in its discretion, grant or deny the hearing request."

On June 24, 1977, Agency Staff filed with the Hearing Examiner its MPCA STAFF MEMORANDUM ON ISSUES RAISED BY HEARING EXAMINER. In that Memorandum, the Agency Staff took the position that:

> "The language of the statute is clear. It requires only the opportunity for a hearing. As such, the statute does not mandate a public hearing on each certificate of exemption application. If the legislature had intended to require a hearing on each application, it could easily have so provided in the statute. Instead, the Legislature recognized that a hearing was neither necessary nor appropriate in every case and consequently directed at the Agency to provide only an opportunity for hearing.
>
> The provisions of proposed Minn. Reg. WPC-38 fully satisfy this statutory requirement. The proposed regulation...provides an opportunity for any person to petition the Agency Board for a public hearing...Thus, the regulation fully provides all interested persons the opportunity for hearing that is required by Minn. Stat. § 116.37, subd. 1 (1976)."

The Hearing Examiner finds that the Agency Staff position is incorrect. The regulation does not allow the opportunity for hearing in accordance with statute.

Clearly, the statute does not mandate a hearing, but provides for the opportunity of public hearing. As originally proposed, the regulation converts the statutorily required opportunity for public hearing into a phantom opportunity. If the Legislature intended the Director or the Agency to hold the power of discretion as to whether or not a public hearing should be held, it would have specifically so stated.

The essence of justice is largely procedural. As Mr. Justice Frankfurter stated: "This history of liberty has largely been the history of procedural safeguards." [McNabb v. United States, 318 U.S. 332, 347 (1943)] The central proposition of full hearing is that adjudicative facts--facts pertaining to a particular party--normally ought not to be found without allowing the party a chance to rebut, explain, and cross-examine. Such central proposition is defeated when, as in this instance, a statute provides for the "opportunity for public hearing" but a regulation usurps to the governmental agency which is the permitting authority the power of discretion to either allow or disallow a full hearing.

The concept of privilege is a necessary concept in the law. The granting of a certificate of exemption is the granting of a privilege by a governmental entity. Like an individual, the government may make gifts, perform acts of grace, and legally recognize as privileges such interests as deserved to be something less than legal rights. Although a donee must not be allowed to compel such governmental action, the government is not and should not be free, as an individual, in selecting the recipients of granted privileges without due process. In this instance, due process requires that the right to a "opportunity for hearing" rests with the party which makes such request. The statutory right to an "opportunity for a public hearing" cannot be interpreted as a mere opportunity to request a public hearing. Accordingly, the Agency cannot hold onto itself the power of discretion as to whether or not a hearing should be held on an application for

a certificate of exemption.

The Hearing Examiner finds that proposed Rule C. 4. (a) should be amended so as to delete the following language:

> The Agency shall, in its discretion, grant or deny the hearing request.

Furthermore, in accordance with the Findings in this Paragraph 30, proposed Rules C. 4. (a) (1), (2) and (3) cannot be interpreted so as to defeat the statutory right which provides for the opportunity for public hearing. The Hearing Examiner specifically finds that these three informational requirements must be interpreted as being for informational purposes only and must not be used to allow the Agency to exercise its own judgment as to whether or not a public hearing should be held if one is requested.

31. Industry raised objection to proposed Rule C. 5. which limits the term of a certificate of exemption to five years. The objectors asserted that five years are an insufficient period of time because some products containing PCB have a useful life far in excess of five years.

However, the Hearing Examiner finds that such five year limitation is reasonable and necessary and complies with the obvious legislative intent set forth in Minn. Stat. § 116.36 and § 116.37 (1976). These statutory Sections principally prohibit the use, possession, sale, purchase or manufacture of PCB or products containing PCB after January 1, 1978. The cited statutory Sections also recognize that some limited use, possession, sale, purchase or manufacture of PCB or products containing PCB might be necessary, and therefore, authorize the Agency to issue exemptions when there is adequate justification. However, the legislature did not contemplate a permanent type of exemption. The five year duration is reasonable and necessary and should provide sufficient time for most industries to change from PCB to non-PCB fluids and products. Such change over is consistent with statutory intent.

Finally, the proposed Regulation does not prohibit the reissuance of a certificate of exemption if there is sufficient

justification for such exemption after the initial five year period has expired.

At the end of a five year period, the Agency will be able to evaluate its PCB regulations and determine what adjustments, if any, are necessary for compliance with federal PCB regulations. In the meantime, new technical breakthroughs can be implemented to replace existing PCB uses so as to eliminate the PCB problem as soon as is practicably possible.

32. United Power Association suggested that proposed Rule C. 6. (b) be amended as follows:

> In determining whether to issue or deny the certificate of exemption, the Agency shall ~~consider but is not~~ make technical considerations including but not limited to:....

The recommendation of United Power Association cannot be accepted. Such amendment would limit the Agency to technical considerations only. Minn. Stat. § 116.37, subd. 1 (1976), requires the Agency to consider, in part, the following:

> ...In granting certificate of exemption the agency shall at all times consider the public health and safety threatened by the use of PCB....

33. Otter Tail Power Company suggested that proposed Rule C. 7. be amended. The proposed Rule reads as follows:

> The Agency may include in a certificate of exemption such terms and conditions as are necessary in order to abate, control or prevent pollution of the air, water and land resources of the State including, but not limited to:....

Otter Tail Power Company suggested to delete the term "but not limited to" from the proposed Rule. However, this proposal would unduly restrict the Agency from attaching such terms and conditions to a certificate of exemption as may be legal and proper under statutory authority simply because such term or condition is not specified in the proposed Regulation. The Agency must be able to exercise its lawful discretion to attach such terms and conditions as are necessary to abate, control or prevent pollution of the air, water and land resources of the State. There is no rationale to limit the lawful authority of the Minnesota Pollution Control Agency to attach appropriate conditions when

issuing a certificate of exemption. Should the Agency exceed its authority in any particular case, appropriate remedies are available.

The Agency is wise to include language in the within considered proposed Regulation which takes advantage of all powers legally and properly belonging to the Agency under statute.

The Hearing Examiner rejects the suggestion of Otter Tail Power Company as unreasonably restricting the Agency from exercising its authority pursuant to statute.

34. United Power Association recommended proposed Rules C. 7. (a) (3) and (4) which set forth annual reporting requirements as a condition of a certificate of exemption be amended. United Power Association takes the proposition that periodic submittals of information should not be necessary unless the information provided in the original application has changed. United Power Association asserted that an applicant should have the option of up-dating information supplied in the application or a previous annual report or, if appropriate, stating that such information remains the same.

The Hearing Examiner finds that the Agency has the authority to impose annual reporting requirements upon the recipient of a certificate of exemption. Annual reporting improves the posture of the Agency in keeping a watchful eye on those events which impact our environment.

If the recipient of a certificate of exemption must supply data or information on an annual basis which was previously supplied to the Agency in the initial application, and if such data or information remains unchanged, it would be a simple matter for the particular recipient to merely repeat the data or information previously given.

The Hearing Examiner rejects the suggestion to amend or change proposed Rule C. 7. a. (3) and (4) as suggested by United Power Association.

35. Industry expressed concern over a possible excessively broad grant of authority given to the Agency's Executive Director in proposed Rules C. 7. a. (5) and C. 7. (e). Generally, proposed

Rule C. 7. pertains to the terms and conditions of a certificate of exemption. Proposed Rule C. 7. reads as follows:

> The agency may include in a certificate of exemption such terms and conditions as are necessary in order to abate, control or prevent pollution of the air, water and land resources of the State including, but not limited to:

Proposed Rule C. 7. a. (5) sets forth a condition to a certificate of exemption that the recipient file an annual report with the Agency. Subparts a. (1) through (4) set forth specific information which must be supplied in such annual report. However, subpart (5) of the proposed Rule C. 7. a. is non-specific and reads as follows:

> Such other information as the Executive Director deems necessary.

The Hearing Examiner finds that proposed Rule C. 7. a. (5) is not overly broad, ambiguous or improper for lack of specificity. The grant of authority contained in proposed Rule C. 7. a. (5) is modified by the language in proposed Rule C. 7. which narrows the terms and conditions of a certificate of exemption to:

> ...such terms and conditions as are necessary in order to abate, control or prevent pollution of the air, water and land resources....

The stated purposes therein are within the purview of authority of the Minnesota Pollution Control Agency.

Subparts "b", "c" and "d" of Rule C. 7. delineate other conditions besides annual reporting that may be included in a certificate of exemption. Subpart "e" of Rule C. 7. states that the Agency may require:

> Such other terms and conditions as the Executive Director deems necessary. [Proposed Rule C. 7. (e)]

The language of proposed Rule C. 7. (e) is not overly broad, ambiguous or improper for lack of specificity. Proposed Rule C. 7. (e) relates back to the terms and conditions that can be required in a certificate of exemption as are necessary in order to "abate, control or prevent pollution of the air, water and land resources of the State."

It is clearly implied that proposed Rules C. 7. a. (5) and C. 7. (e) relate only to terms and conditions of a certificate of

exemption which are necessary in order for the Agency to discharge its statutory duties. The Agency is irrevocably bound to act within the purview of statutory grants of authority. Any attempt to exceed such statutory authority by regulation is unlawful. However, the Rules in question can logically be interpreted as falling within the purview of statutory grant of authority to the Agency and as relating to the purposes of proposed Rule C. 7.

The uses of PCB are widely diversified throughout the State. As such, considerations that may be significant in relation to an electric utility's use of PCB may be considerably different from those pertinent to the regulation of PCB use in die-casting machines. Thus, to ensure the administrative viability of the regulatory program, it is essential that the proposed regulation be capable of fully covering the issuance of all certificates of exemption with appropriate terms and conditions. The language in question is designed to accomplish such purposes.

The Hearing Examiner finds that proposed Rules C. 7. a. (5) and C. 7. (e) are reasonable and necessary.

36. Northern States Power Company asserted that proposed Rule C. 7. b. regulates the labeling of existing equipment and that such requirement is in excess of the Agency's statutory authority. Northern States Power argued that the statute limits the labeling requirement to the manufacture and sale of new items after July 1, 1977. According to the subject Rule, the Agency is allowed to include in a certificate of exemption such terms and conditions as are necessary in order to abate, control or prevent pollution of the air, water and land resources of the State including, but not limited to:

> A requirement that, any item, product or material containing PCB be labeled in a manner which discloses the following:
>
> (1) the presence of PCB in the item, product or material.
>
> (2) a statement regarding proper disposal of the item, product or material.
>
> (3) a warning regarding potential environmental and public health hazards of PCB.

Northern States Power asserts that the Agency supports the above-quoted Rule by pointing to a section of the enabling statute which reads:

> ...if the agency grants a certificate of exemption, it shall be valid for all subsequent uses of PCB or products containing PCB if the subsequent uses are consistent with the terms and conditions of the certificate of exemption....[Minn. Stat. § 116.37, subd. 1 (1976)] (Emphasis added)

Northern States Power then admits that the wording in the above-cited statute implies that a certificate of exemption may contain terms and conditions. The Company then states that standing alone, that statutory provision might be interpreted to authorize a requirement of labeling. However, the Company states that other sections of the statute address the matter of labeling and that it is a well-settled principle of statutory construction that a statute be construed in its entirety and that all parts of an act be considered together. Northern States Power then cites the statutory sections which refer to labeling; to wit:

> Subdivision 3. Labels Required. Beginning July 1, 1977, no person in this state shall add PCB in the manufacture of any new item, product or material, nor shall any person in this state sell any new item, product or material to which PCB has been added unless the PCB or products containing PCB are conspicuously labeled to disclose the presence of PCB and the concentrations of PCB. (Emphasis added)

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

Northern States Power holds that subdivision 4 refers back to subdivision 3 in directing the Agency to develop labeling requirements. That subdivision 3 speaks only of new items, products, and materials; and therefore, subdivision 4 applies only to the labeling of those new items, products and materials. The Company asserts that subdivision 4 is no broader than subdivision 3 with respect to the things which must be labeled. By specifically authorizing only the labeling of new equipment, the legislature must have

intended to exclude the power to require labeling of existing equipment. Thus, broad implications in another portion of the statute cannot be regarded as a grant of authority where such authority has been initially omitted. Northern States Power Company concluded by recommending that proposed Rule C. 7. b. be amended to embrace new items only and not existing equipment.

In response to NSP's argument, Agency Staff asserted that the subject statute requires the certificate of exemption to "set out the permitted use, possession, sale or purchase of PCB or a PCB product...." [Minn. Stat. § 116.37, subd. 1 (1976)] The Staff asserts that such language recognizes that each certificate of exemption may properly be limited by the Agency in order to regulate PCB or products containing PCB by including terms and conditions in each certificate of exemption. The Staff then asserts that such conclusion is further supported by the language in subdivision 1 which provides that a certificate of exemption shall be valid for all subsequent uses of PCB or products containing PCB "if the subsequent uses are consistent with the terms and conditions of the certificate of exemption."

The Staff then argues that although subdivision 3 mandates that new items, products, or materials containing PCB be labeled, the subdivision does not expressly preclude the Agency from requiring, in appropriate cases, labels for existing items, products or materials. In addition, the Staff argued, in granting certificates of exemption the Agency is directed to consider at all times the public health and safety threatened by the use of PCB in Minn. Stat. § 116.37, subd. 1. Therefore, the Staff concludes that the proposed Regulation gives effect and meaning to each of these provisions by mandating labels for all new items, products or materials containing PCB and by allowing the Agency to require (in a certificate of exemption) labels for existing equipment which contains PCB when the circumstances dictate that such condition is necessary to protect the public health and safety. By vesting regulatory power in an administrative agency, the Legislature need not expressly delineate every aspect of the power conferred. The Legislature may leave to the administrative agency the power

reasonable implication. Since PCBs are a severe environmental contaminant, and as such, pose a threat to the public health and safety, the inclusion of the requirement of labeling for existing equipment is a reasonable exercise of the Agency's rule-making powers, according to the Staff.

The Hearing Examiner finds that proposed Rule C. 7. b. is consistent with the authority granted the Agency by Statute and should be adopted as originally proposed.

In effect, subdivision 3 of Minn. Stat. § 116.37 (1976) quoted hereinabove, requires the labeling of new items, products or materials entering the stream of commerce. Subdivision 3 can be distinguished from subdivision 1 in that subdivision 3 applies to new products which have not yet reached the final consumer while subdivision 1 is all inclusive and applies to final consumers. Subdivision 3 does not preclude labeling of existing products after they have reached or are in the possession of a final consumer. The distinction between subdivision 1 and subdivision 3 is that in subdivision 1, the legislature gives special attention to PCB items at the inception of their introduction into the stream of commerce. It is only logical that the statutory mandate to control and limit the use of PCB begin at the earliest stage possible. A manufacturer of new items containing PCB and the seller of new items containing PCB are in the best position to appropriately label such new items. It would be inconsistent with logic to interpret a statute which is designed to prohibit the use of a toxic substance in such a manner as to suppose that the precautions instituted to eliminate the substance are, in part, only effective for items manufactured or sold after July 1, 1977.

The Hearing Examiner further finds that subdivision 4 incorporates by reference the labeling requirements of subdivision 3 to "persons holding certificates of exemption." That quoted phrase is non-restrictive and must not be interpreted narrowly so as to only apply to persons holding a certificate of exemption for items which are manufactured or sold as of July 1, 1977.

Minn. Stat. § 116.37, subd. 1 (1976), make it unlawful for any person to use, possess, sell, purchase or manufacture PCB or products containing PCB unless a certificate of exemption is issued. The subdivision 3 addresses itself to persons who add PCB in the manufacture of any new item, product or material as of July 1, 1977, and any person who sells any new item, product or material as of July 1, 1977 to which PCB has been added. Because of the mandate in subdivision 1, all persons dealing with the subject matter in subdivision 3 must obtain a certificate of exemption. Subdivision 4 relates the labeling requirements to persons holding certificates of exemption without limiting that phrase to only those persons holding certificates of exemption for the purposes specified in subdivision 3. Subdivision 4 reads as follows:

> Rules. The agency shall promulgate rules by January 1, 1977 governing the granting of certificates of exemption and the requirements of labels specified in subdivision 3. The rules governing the requirement of labels specified in subdivision 3 may require other information relating to the public health and environmental effects of PCB and shall apply to persons holding certificates of exemption. (Emphasis added)

37. United Power Association suggested that proposed Rule C. 7. which pertains to the terms and conditions of a certificate of exemption be amended so that subpart "d" reads as follows:

> The Agency may include in a certificate of exemption:
>
> A schedule for the replacement of existing equipment which contains PCB or PSC compounds or fluids with equipment which does not contain PCB or PCB compounds or fluids. Such a schedule may necessarily be projected rather than committed since the necessity and feasibility of such future replacement may be unknown at the time that the certificate of exemption is issued.

The suggestion put forth by United Power Association is without foundation. The Legislature found PCB to be hazardous and prohibited its use, possession, sale, purchase or manufacture. Since in some cases it may be reasonable to allow applicants a period of time to change from PCB fluids and products to non-PCB fluids and products, the Agency may issue a certificate of exemption with a schedule for "phasing out" the PCB use altogether. The

inclusion of a replacement schedule in a certificate of exemption is consistent with the legislative goal of prohibiting PCB in Minnesota.

Consistent with the statute, the Agency has stated its position that "PCBs will be used in Minnesota only if there is a real need for the PCB and no feasible substitute or alternative is available." [Tr. 5/25/77, p. 85] The Agency must be held to that stated position in making its determinations.

In granting a certificate of exemption, the Agency must at all times consider the public health and safety threatened by the use of PCB. Accordingly, if the Agency determines to grant a certificate of exemption, the Agency has authority, if consistent with the particular facts of a particular case, to set up a schedule for replacement of the equipment which contains PCB and which is the subject of a certificate of exemption.

38. United Power Association suggested an amendment to proposed Rule C. 9. b. which pertains to the modification, suspension and revocation of certificates of exemption. The Rule in question provides for 30 day notice by the Agency to the exempt facility prior to the effective date of any modification, suspension or revocation. United Power Association asserted that such a short notification could have a staggering effect on electrical service and suggested that the Agency could more quickly mitigate any danger to public health, welfare and the environment by some existing enforcement mechanism which would have must less effect on electrical service.

It should be noted that remedies available to the Agency in its enforcement efforts are, in part, set forth in Minn. Stat. § 115.071 (1976). The remedies contained therein are and must be available to the Agency pursuant to statute. However, the provisions of proposed Rule C. 9. b. are mitigated by the right of a certificate holder to request a hearing on any modification, suspension or revocation prior to the 30 day termination pursuant to proposed Rule C. 9. c.

The Hearing Examiner finds that proposed Rule C. 9. b. is reasonable and necessary.

39. Proposed Rule C. 9. c. establishes the opportunity for public hearing when the Agency has given notice to modify, suspend or revoke a certificate of exemption. The Rule was proposed as follows:

> Opportunity for Public Hearing. Any person may request, in accordance with Minn. Reg. MPCA 9(b), the Agency to hold a public hearing on the proposed modification, suspension or revocation. The Agency shall, in its discretion, grant or deny the hearing request. The Agency, upon its own motion, may order that a public hearing be held.

The Hearing Examiner finds that this Rule should be amended so as to remove the language which makes the hearing discretionary at the Agency's option. Once an applicant is the recipient of a certificate of exemption, the applicant has a vested interest similar to a property right for the term of the certificate of exemption. An applicant does not have a right to receive a certificate of exemption but is the recipient of a privilege granted by the State once the certificate of exemption is granted. In order to modify, suspend or revoke such certificate of exemption, due process requires a hearing.

The United States Court of Appeals, 4th Circuit, in Consolidation Coal Company, Inc. v. Environmental Protection Agency, 9 ERC 1056 (1976), set forth the proposition that a coal company whose National Pollutant Discharge Elimination System Permit has been limited to two years by West Virginia's certification pursuant to Section 401 of the Federal Water Pollution Control Act is entitled to either state or federal adjudicatory hearing prior to any final administration action on the permit, and lack of opportunity at the state level required a hearing to be held by the United States Environmental Protection Agency. In that case, the Court stated in part:

> In the relatively new area of environmental law "[t]he Constitution requires an opportunity at a meaningful time and in a meaningful manner for a hearing appropriate to the nature of the case"....

Although Consolidation stood for the principle that an appeal procedure after the fact can probably satisfy due process requirements, the Hearing Examiner finds that opportunity for hearing at "a meaningful time" and "in a meaningful manner" dictates that

the holder of a certificate of exemption should be entitled to a hearing, if requested, prior to any modifcation, suspension or revocation by the Agency.

A good principle to follow was set forth by a California Court in discussing revocation of a liquor license. The Court stated:

> "We cannot forget that the law contemplates justice, whether the license is granted as a privilege or recognized as a vested right; that under the American system of justice it is the policy of our law that a person should not be deprived even of a 'permit' to engage in a legitimate business without a fair and impartial hearing and without an opportunity to present competent evidence for consideration by the licensing authority in opposition to the proposed revocation of his permit." [Irvine v. State Board of Equalization, 40 Cal. App. 2d 280, 284-285, 104 P.2d 847, 850 (1940)]

Therefore, an actual opportunity to be heard should be present and the opportunity must not be illusionary with discretion vested in a non-moving party to foreclose the hearing process. Although an appeal process could satisfy the due process requirement concerning proposed Rule C. 9. c., the Hearing Examiner finds that the appropriate time for hearing is at the administrative level prior to any modification, suspension or revocation of a certificate of exemption.

Although opportunity for hearing is a necessary right with respect to the holder of a certificate of exemption, the opportunity for hearing need not be present for "any person" in order to satisfy due process. In accordance with the above, the Hearing Examiner recommends that proposed Rule C. 9. c. be amended to read as follows:

> Opportunity for Public Hearing. Any exempt person may request, in accordance with Minn. Reg. MPCA 9(b), the Agency to hold a public hearing on the proposed modification, suspension or revocation of the exempt persons certificate of exemption. ~~The Agency shall, in its discretion, grant or deny the hearing request.~~ The Agency, upon its own motion, may order that a public hearing be held.

Naturally, when modification, suspension or revocation is ordered as the result of a hearing, such order will include the reasons for the action taken. However, the Agency should also

state its reasons for modifying, suspending or revoking a certificate of exemption when the action taken was not pursuant to public hearing in those instances where the exempt person did not request hearing. Therefore, the Hearing Examiner finds that proposed Rule C. 9. c. should conclude with the following language:

> In issuing its order of modification, suspension or revocation of a certificate of exemption, the Agency shall state the reasons for such action.

40. Northern States Power Company suggested that proposed Rule E. 1. c. be revised to exempt "any electrical ballast capacitor, transformer or other closed equipment which contains less than 1.36 killograms."

Agency Staff is of the opinion that one killogram is a reasonable cutoff rather than 1.36 killograms. The Hearing Examiner finds that the Agency's cutoff of one killogram is reasonable.

However, Agency Staff took the position that it was not necessary to include electrical "ballasts" specifically in the Rule. The Agency Staff asserted that conversations the Staff had with Certified Ballast Manufacturers Association and with Advance Transformer Company disclosed that PCBs in ballast are associated with the capacitor in the ballast. Therefore, the exemption for capacitors would include ballasts.

It is noted that Otter Tail Power Company requested a similar amendment that would have included the word "ballast" in proposed Rule E. 1. c. The Hearing Examiner finds that the request of the electric utilities is not unreasonable and will not effect the intent of the proposed Rule. Proposed Rule E. 1. c. should be amended to read as follows:

> Any electrical ballast,capacitor or transformer which contains less than one killogram of PCB.

CONCLUSIONS

A. That the Minnesota Pollution Control Agency duly acquired and now has jurisdiction over the subject proceeding.

B. That all relevant legal and procedural requirements of statute and regulation have been properly complied with.

C. That the Minnesota Pollution Control Agency has statutory authority to promulgate and adopt the subject Regulations.

D. That considering the complete record of the within proceedings and considering the proposed Regulation as originally proposed, the Hearing Examiner concludes that the proposed Regulation as amended in accordance with the Findings of Fact hereinabove, is reasonable and necessary for the purposes of complying with Minn. Stat. § 116.37, (1976) and satisfies the legislative intent to eliminate and control the use, possession, sale, purchase and manufacture of PCBs in the State of Minnesota.

E. That in proposing the changes suggested by this Hearing Examiner in the Findings of Fact hereinabove, and reviewing the finally proposed Regulation as noticed for public hearing, consideration was given to Minn. Reg. HE 108, which sets forth the criteria necessary to determine whether a rule as finally adopted is substantially different from the rule as originally proposed. The Hearing Examiner concludes that the changes suggested by the Findings of Fact hereinabove will not result in a substantial change from the originally proposed Regulation.

RECOMMENDATIONS

IT IS HEREBY RESPECTFULLY RECOMMENDED: That the Minnesota Pollution Control Agency adopt proposed Minnesota Regulation WPC 38 as finally proposed by the Agency with the changes suggested by the Hearing Examiner in his Findings of Fact hereinabove, at Paragraphs 18, 20, 21, 22, 24, 27, 28, 29, 30, 39 and 40.

Dated: July 21, 1977.

William Seltzer

WILLIAM SELTZER
Hearing Examiner

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of Minn. Reg. WPC 38 Governing the Requirements for Labeling of Products Containing PCB and for Issuing Certificates of Exemption for the Use, Possession, Sale, Purchase or Manufacture of PCB or Products Containing PCB

PCA-77-008-WS

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for hearing before Hearing Examiner William Seltzer on the 25th day of May, 1977, at the Board Room of the Minnesota Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota, commencing at 9:30 a.m., after proper notice required by Minn. Stat. § 15.0412 (1976) was served on all persons, associations and other interested groups registered with the Secretary of State for that purpose. Said hearing was duly recessed and reconvened on the 31st day of May, 1977, at the Lake City Council Chambers, 205 West Center Street, Lake City, Minnesota, commencing at approximately 7:00 p.m.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having considered all of the evidence adduced upon the records, files and proceedings herein, this Agency hereby accepts and adopts the Findings of Fact and Conclusions of the Hearing Examiner as contained in his Report and incorporates them herein by reference with the following amendments thereto:

Findings of Fact

Finding No. 24, page 17, first two paragraphs, shall be amended to read as follows:

> Agency staff took the position that the complexity of an individual application will vary greatly so that no precise time frame for identifying deficiencies should be established in the proposed Regulations. The Agency finds that there is likely to be differences between the degree of complexity of information provided by individual applicants such that more time may be needed to review one application than to review another. Thus no uniform time frame can be established for the review of the adequacy of applications.
>
> The Agency specifically finds that the proposed Rule C.1.e. should not be amended in accordance with the hereinabove suggested language.

Finding No. 30, page 22, second paragraph, shall be amended to read as follows:

> The Agency finds that the language of Minn. Stat. §116.37 subd. 1 (1976) providing for an opportunity for hearing was included to protect the rights not only of the applicant but also of third parties who have some interest in the application under consideration or whose legal rights, duties or privileges may be determined or affected by the Agency's decision. Due process does not afford the same protection to persons who can show no interest whatsoever in the proceeding and have entered a hearing request for a clearly unreasonable or frivolous purpose. The regulation as amended (deleting the discretionary language) does not preclude the Agency from denying such clearly unreasonable or frivolous hearing requests. Proposed Rules C.4.(a)(1), (2) and (3) are informational items. Although they may not be used to defeat the statutory right providing for the opportunity for public hearing to persons having an interest in the proceeding, they can be used by the Agency as an aid in determining

whether the petitioner for a public hearing lacks entirely any interest in the proceeding such that the request is clearly unreasonable or frivolous.

MINNESOTA POLLUTION CONTROL AGENCY

Joseph F. Grinnell
Chairman

Sandra S. Gardebring
Executive Director

Dated: September 6, 1977

Adopted

State of Minnesota
Pollution Control Agency

Chapter Thirty-Eight: WPC 38
Requirements for Labeling of
Products Containing PCB and for
Issuing Certificates of Exemption
for Use, Possession, Sale,
Purchase or Manufacture of PCB or
Products Containing PCB.

A. INTRODUCTION

1. PURPOSE. This regulation is hereby adopted and promulgated by the Agency to implement the provisions of Minnesota Statutes §§116.36 and 116.37. This regulation establishes procedures for the issuance by the Agency of certificates of exemption for the use, possession, sale, purchase or manufacture of polychlorinated biphenyls (PCB) and products or class of products containing PCB, and labeling requirements for items, products or materials sold in the State which contain PCB.

2. SCOPE. The provisions of this regulation shall apply to PCB and products or a class of products containing PCB used, possessed, sold, purchased or manufactured in the State of Minnesota.

3. SEVERABILITY. The provisions of this regulation shall be severable and the invalidity of any lettered paragraph or any subparagraph or subdivision thereof shall not void any other lettered paragraph, subparagraph or subdivision or any other part thereof.

B. DEFINITIONS

1. "Agency" means the Minnesota Pollution Control Agency.

2. "Certificate of Exemption" means a document issued by the Agency for the purpose of permitting the use, sale, possession,

purchase or manufacture of PCB, a product containing PCB, or a class of products containing PCB.

3. "Class of products containing PCB" means a group or category of closely related items, products or materials having a similar function or making similar use of the chemical or physical properties of the PCB which they contain.

4. "Director" means the Executive Director of the Minnesota Pollution Control Agency.

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

6. "Person" means the state or any agency or institution thereof, any municipality, governmental subdivision, public or private corporation, individual, partnership or other entity, including, but not limited to, association, commission, or any interstate body, and includes any officer or governing or managing body of any municipality, governmental subdivision, or public or private corporation.

7. "Possess" or "Possession" means the ownership or physical control of an item, product or material. "Possess" or "Possession" does not include physical control by a person other than the owner while the item, product or material is being shipped in commerce.

8. "Product containing PCB" means a product, item or material which contains a concentration of PCB equal to or greater than 500 milligrams per kilogram (mg/kg). Concentration for the purposes of this definition is calculated as follows:

a. If PCB is distributed throughout a product, item or material, the concentration of PCB is determined on the basis milligram (mg) of PCB per kilogram (kg) of the mass in which the PCB is distributed.

b. If PCB is a constituent of only a portion of a product, item or material, the concentration of PCB is determined on the basis of milligram (mg) of PCB per kilogram (kg) of only that portion of the product, item or material in which the PCB is a constituent.

9. "Subsequent Use" means a use of PCB or a product or class of products containing PCB which is identical in function to the use exempted in a certificate of exemption currently in effect.

10. "Written" includes printing, typewriting or any other intentional reduction to tangible form.

Other terms and abbreviations used herein which are not specifically defined by law shall be construed in conformance with the context and commonly accepted professional usage.

C. CERTIFICATE OF EXEMPTION

1. APPLICATION

a. Existing Facilities, Equipment and Products. Any person who presently uses, possesses, sells, purchases or manufactures PCB or a product containing PCB shall submit a complete

application for a certificate of exemption for such PCB or products containing PCB within 90 days after the effective date of this regulation.

b. New Facilities, Equipment and Products. Any person who intends to use, possess, sell, purchase or manufacture PCB or a product containing PCB shall submit a complete application for a certificate of exemption for such PCB or products containing PCB at least 180 days prior to the proposed date of use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

c. Forms and Signatures

(1) Applications shall be submitted on forms prescribed by the Director.

(2) Signatures. Applications shall be signed as follows:

(a) In case of a corporation, by a principal executive officer of at least the level of vice president, or his duly authorized representative.

(b) In case of a partnership, by a general partner.

(c) In case of a sole proprietorship, by the proprietor.

(d) In case of a municipal, state or other public entity by either the principal executive officer or by an official authorized by a resolution passed at an official meeting of the governing body.

d. Contents of Application.

(1) The application for certificate of exemption

shall include:

(a) The name and address of the applicant.

(b) The amount of PCB involved in the use, possession, sale, purchase, or manufacture or contained in a product containing PCB. In instances where the amount of PCB involved is not ascertainable by an applicant, applicant shall supply the name and mailing address of the manufacturer of such product and the serial and model number, if any, of the product involved. In all such cases wherein the amount of PCB involved cannot be reasonably ascertained by an applicant, the applicant shall make an estimate of the amount of PCB involved.

(c) The purpose for the use, possession, sale, purchase, or manufacture of PCB or a product containing PCB.

(d) A concise description of the location of the use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(e) Justification for the use, possession, sale, purchase or manufacture of the PCB or a product containing PCB. The justification shall include, but is not limited to, a detailed evaluation of the following:

(i) The impact upon the air, water and land resources of the State which may result from the applicant's use, possession, sale, purchase or manufacture of PCB or a product containing PCB, including any impacts that may result from the accidental spill of PCB or fluids containing PCB.

(ii) The risk to public health and safety which may result from the applicant's use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(iii) The toxicity, flammability and reasonable availability of PCB substitutes.

(iv) Any feasible alternatives to the continued use, possession, sale, purchase or manufacture of PCB or a product containing PCB which have been considered by the applicant.

(v) The data, information or analyses which the applicant has relied upon or developed in determining the public health, safety, and environmental impacts which may result from the applicant's use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(f) A description of the applicant's practices and procedures for handling and storing PCB or products containing PCB. The description shall include, but is not limited to, the following:

(i) The existing safeguards utilized in handling or storing PCB or products containing PCB.

(ii) The procedures utilized in the control and cleanup of spilled PCB or products containing PCB.

(iii) The procedures followed for disposing of PCB, products containing PCB, or materials and items contaminated by PCB.

(2) Any application for a certificate of exemption for the use or replacement of existing electrical transformers or capacitors shall include, in addition to the requirements of section C.1.d.(1) of this regulation.

(a) A detailed assessment of the cost of replacing the existing electrical transformers or capacitors with

equipment that does not contain PCB.

(b) The cost of purchasing and installing non-PCB fluids in existing equipment.

e. Complete Application. All certificate of exemption applications shall be reviewed for completeness by the Director. If an application is incomplete or otherwise deficient, the Director shall promptly advise the applicant of such incompleteness or deficiency. Further processing of the application may be suspended until the applicant has supplied the necessary information or otherwise corrected the deficiency. A certificate of exemption shall not be issued until a complete application is submitted to the Agency.

f. Any person may submit an application for a certificate of exemption for a class of products possessed by the Applicant which contain PCB. An application for a class of products exemption shall comply with section C.1.d. of this regulation.

2. PRELIMINARY DETERMINATION AND DRAFT CERTIFICATE OF EXEMPTION.

a. The Director shall make preliminary determinations regarding a complete certificate of exemption application prior to issuance of public notice of the application. These preliminary determinations shall include a proposed determination to issue or deny a certificate of exemption.

b. The Director shall inform the applicant of the proposed determination to issue or deny a certificate of exemption.

c. If the proposed determination is to issue a certificate of exemption, the Director shall prepare a draft

certificate.

3. PUBLIC NOTICE OF CERTIFICATE OF EXEMPTION APPLICATION.

a. Circulation of Public Notice. The Director shall prepare and issue a public notice of the certificate of exemption application. The notice shall be circulated within the geographical area of the use, possession, sale, purchase or manufacture of the PCB or a product containing PCB. The Director may circulate the notice in any of the following ways:

(1) Posting the notice in public libraries or other public buildings or places located in the designated geographical area.

(2) Posting the notice at or nearby the entrance to the applicant's premises.

(3) Publishing the notice in one or more newspapers of general circulation in the designated geographical area of the applicant or, if appropriate, in an applicable periodical.

(4) Publishing the notice in the State Register.

b. Availability of Public Notice.

(1) The Director shall mail a copy of the public notice to the applicant. The Director shall mail a copy of the public notice to any interested persons upon written request.

(2) The Director shall make available a copy of the public notice at the main Agency office and at the appropriate Agency regional office.

c. Public Notice Comment Period.

(1) Any interested person, including the applicant, may, within the time allowed for public comment following the

issuance of the public notice, submit written comments on the certificate of exemption application to the Agency. The time for public comment shall be 30 days unless otherwise extended by the Director. The time for public comment may be extended by the Director if he determines that such extension is necessary to facilitate public comment.

(2) All written comments submitted during the comment period shall be retained and considered in the formulation of final determinations concerning the certificate of exemption application.

d. Public Notice Contents. The public notice of the certificate of exemption application shall include:

(1) The name and address of the applicant.

(2) A concise description of the applicant's use, possession, sale, purchase or manufacture of PCB or a product containing PCB and location of that use, possession, sale, purchase or manufacture.

(3) A statement of the Director's preliminary determination to issue or deny the certificate of exemption.

(4) A statement regarding the proposed duration of the certificate of exemption.

(5) A statement that any interested person may submit written comments to the Agency during the public comment period after the issuance of the public notice.

(6) The date the public comment period terminates.

(7) If the proposed determination is to issue a certificate of exemption, a statement that a copy of the draft certificate of exemption will be mailed to any person upon written

request.

(8) The address and telephone number of the main Agency office and the appropriate Agency regional office.

(9) A concise statement explaining the procedures for petitioning for a public hearing on the certificate of exemption application.

4. PUBLIC HEARING ON CERTIFICATE OF EXEMPTION APPLICATION.

a. The applicant or any interested person may, within the public comment period, file a petition with the Director for a public hearing on a certificate of exemption application. A petition for a public hearing shall include:

(1) The basis for the hearing request.

(2) The specific portion of the draft certificate of exemption, if one has been prepared pursuant to section C.2 of this regulation, that necessitates a public hearing.

(3) The interest in or relationship of the petitioner to the applicant.

b. All public hearings on certificate of exemption applications shall be held in accordance with the rules and regulations of the Office of the Hearing Examiners.

5. DURATION OF CERTIFICATE OF EXEMPTION. All certificates of exemption issued by the Agency shall have a fixed term which shall not exceed five years.

6. ISSUANCE OF CERTIFICATE OF EXEMPTION.

a. The Agency shall not issue a certificate of exemption unless:

(1) A complete application has been filed with the Agency.

(2) The applicant has provided sufficient justification, to the satisfaction of the Agency, for the use, possession, sale, purchase or manufacture of PCB or a product or class of products containing PCB in accordance with section C.1. of this regulation.

b. In determining whether to issue or deny the certificate of exemption, the Agency shall consider, but is not limited to:

(1) The effect upon the air, water and land resources of the State which may result from the applicant's use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(2) The gravity of risk to public health and safety which may result from the applicant's use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(3) The toxicity, flammability and reasonable availability of PCB substitutes.

(4) The existence of feasible alternatives to the applicant's use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(5) The potential risk for dispersion of PCB into the air, water and land resources of the State which may result from the applicant's use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(6) The applicant's practices and procedures, including compliance with applicable State and federal statutes and regulations, for the handling, storing and disposing of PCB, products containing PCB, or materials and items contaminated by PCB.

c. If the certificate of exemption application involves the use or replacement of existing electrical transformers or capacitors, the Agency shall consider, in addition to the requirements of sections 6.a. and b. of this regulation:

(1) The safety of proven alternatives or substitutes.

(2) The cost of replacing existing electrical transformers or capacitors with equipment that does not contain PCB.

(3) The cost of purchasing and installing non-PCB fluids in existing equipment.

7. TERMS AND CONDITIONS OF A CERTIFICATE OF EXEMPTION.

The Agency may include in a certificate of exemption such terms and conditions as are necessary in order to abate, control or prevent pollution of the air, water and land resources of the State including, but not limited to:

a. A requirement that annual reports be submitted to the Agency within 30 days following the end of each calendar year and that these reports include the following information:

(1) Name and address of the person responsible for filing the report.

(2) Quantity of PCB used, possessed, sold, purchased or manufactured during the preceding calendar year.

(3) Location and nature of the use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(4) Handling, storage or disposal practices and procedures utilized in the use, possession, sale, purchase or manufacture of PCB or a product containing PCB.

(5) Such other information as the Executive

Director deems necessary.

b. A requirement that any item, product or material containing PCB be labeled in a manner which discloses the following:

(1) The presence of PCB in the item, product or material.

(2) A statement regarding proper disposal of the item, product or material.

(3) A warning regarding potential environmental and public health hazards of PCB.

c. A requirement that all records, including analytical and test analyses, be retained by the holder of the certificate of exemption for a period of three years.

d. A schedule for the replacement of existing equipment which contains PCB or PCB compounds or fluids with equipment which does not contain PCB or PCB compounds or fluids.

e. Such other terms and conditions as the Executive Director deems necessary.

8. SUBSEQUENT USES.

If the Agency issues a certificate of exemption for the use of PCB or a product or class of products containing PCB, the certificate of exemption shall be valid for all subsequent uses of such PCB or product or class of products containing PCB if the subsequent uses are consistent with the terms and conditions of the original certificate of exemption.

9. MODIFICATION, SUSPENSION, AND REVOCATION OF CERTIFICATE OF EXEMPTION.

a. Grounds for Modification, Suspension, or Revocation. The Agency may modify, suspend, or revoke any term or condition of the certificate of exemption, or the certificate of exemption in

its entirety, upon finding:

(1) There has been a change in the applicant's justification for use, possession, sale, purchase or manufacture of PCB or a product or class of products containing PCB.

(2) There has been a violation of law.

(3) There has been a misrepresentation or omission of significant facts upon which certificate of exemption was based.

(4) The terms and conditions of the certificate of exemption have not been complied with or have been violated.

(5) Other just cause exists for such action.

b. Notice of Modification, Suspension or Revocation. No certificate of exemption may be modified, suspended or revoked by the Agency unless the exempt person is notified of the proposed action at least 30 days prior to the effective date of the modification, suspension or revocation.

c. Opportunity for Public Hearing. Any exempt person may request, in accordance with Minn. Reg. MPCA 9(b), the Agency to hold a public hearing on the proposed modification, suspension or revocation. The Agency, upon its own motion, may order that a public hearing be held. In issuing its order of modification, suspension or revocation of a certificate of exemption, the Agency shall state the reasons for such action.

d. Section C.9 of this regulation shall not limit or preclude the Agency from exercising its emergency powers pursuant to Minn. Stat. §116.11.

D. LABELS

1. Any person after July 1, 1977, who adds PCB in the

manufacture of any new item, product, or material or any person in this State who sells any new item, product, or material to which PCB has been added shall conspicuously label the PCB or product containing PCB.

a. The label shall disclose the following:

(1) The presence of PCB in the item, product or material.

(2) The item, product, or material contains a concentration of PCB equal to or greater than 500 milligrams per kilogram (mg/kg).

(3) A statement regarding proper disposal.

(4) A warning regarding potential environmental and public health hazards of PCB.

b. The label shall be written and affixed to the item, product or material so that a reasonable person ought to have noticed it.

c. The following statement may be used to satisfy the requirements of section D.1.a. of this regulation:

> WARNING: Contains a concentration of polychlorinated biphenyl (PCB) equal to or greater than 500 mg/kg. Severe environmental contaminant. Care should be taken to prevent entry into the environment through spills, leakage, use, vaporization or disposal of liquid or containers. Avoid prolonged breathing of vapors or mists, contact with eyes or prolonged contact with skin. This item must be used and disposed of in accordance with State and federal statutes and regulations.

E. EXEMPTIONS

1. The following uses of PCB or products containing PCB are exempted by the Agency:

a. Any product containing PCB which was purchased or otherwise acquired by an individual person for consumer use in the home.

b. Wastepaper, pulp or other wood fiber materials purchased for use within this State in the manufacture of recycled paper products.

c. Any electrical ballast, capacitor or transformer which contains less than one kilogram of PCB.

2. The certificate of exemption and labeling requirements shall not apply to the uses or products exempted under section E.1. of this regulation.

APPROVED AS TO FORM AND LEGALITY
OCT 5 1977 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY /s/ Michael B. Miller

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 6 1977
Joan Anderson Growe
Secretary of State
1:30 P.M.