

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

#467 Pollution Control Agency- WPC ~~43~~ 39

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 9-15-78 Temporary Rule _____

Resubmitted and Received ~~11-21-78~~ / 12-1

DUE DATE 10-5-78 / ~~10-7~~ 12-8

a. Returned to Agency w/o filing w/Secy of State 10/5
b. Approved 12/4 Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable ✓
4. Order for Hearing ✓
5. Notice of Hearing ✓
   (i) Sufficiency ✓
6. Secretary of State's List ✓
7. Certificate of Acquisition of Secretary of State's List ✓
8. Affidavit of Mailing ✓
   (i) At least 30 days prior to hearing ✓
9. Statement of Need and Evidence ✓
10. Hearing Examiner's Report ✓
11. Agency's Findings of Fact ✓
12. Certificate of Board's Resolution Adopting Rules, where applicable ✓
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable ✓
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓
17. Petition by Public, where applicable N.A.

① Rule limited to Class 2B waters? Assurance for R. Molinari that ~~s~~ water describe in preface to UPC 43 is 2B water only

② HE Findy #13 chgg "regulat" to "rule" not done

③ ~~p. 3~~ "**" prosec discretion may

④ p. 4 E may "equivalent" or "approved alternate" See HE Findy No. 15, too

⑤ p. 4 F "may"

⑥ Incorp By Ref | Delegation problem of Chief HE Amending out "or | revising thereto"

CERTIFICATE OF AGENCY'S
ADOPTION OF 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 23rd day of March, 1976; that a quorum was present at said meeting; that the resolution was passed by a majority of the Agency; and that said resolution is set forth in the minutes of said meeting and has not been rescinded or modified:

> BE IT RESOLVED THAT, a public hearing is authorized to consider the adoption of effluent standards for discharges to the Zumbro River or portions of that river and the Executive Director is authorized to order the scheduling of this hearing at a time and place to be determined by him.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 15th day of June, 1977.

Sandra S. Gardebring
Sandra S. Gardebring
Executive Director

Subscribed and sworn to before me
this 15th day of June, 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 a Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River

PCA-77-010-MG

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner Myron S. Greenberg on the 29th day of August, 1977, at the City Council Chambers, City Hall, Rochester, 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 at the above-mentioned location, commencing at approximately 7:00 p.m. Subsequently, said hearing was duly recessed and reconvened on the 30th day of August, 1977, at the Rochester Public Library, Rochester, Minnesota, commencing at approximately 9:30 a.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 43 entitled "Effluent Standards For Disposal Systems Discharging to the South Fork of the Zumbro River" is adopted this 15th day

of May , 1978, in the form published in 1 State Register 94 (July 18, 1977), pursuant to authority vested in this Agency by Minn. Stat. §115.03 subd. 1(e) (1976), with the following amendments:

1. WPC 43 (D) Standards of Effluent Quality and Purity. It is herein established that the Agency shall require the treatment of all discharges of sewage, industrial waste or other waste effluent to meet the following effluent standards (see Section (c)(6), WPC 14 for additional effluent requirements):

Substance or Characteristic**	Limiting Concentration or Range
5-Day Biochemical Oxygen Demand*	~~10~~ 14 milligrams per liter
Total Suspended Solids*	~~10~~ 20 milligrams per liter
Minimum Dissolved Oxygen*	5 milligrams per liter
Ammonia (N)*	~~1.5~~ 1.6 milligrams per liter

*The concentration specified in Regulation WPC 14 Section (c)(6) may be used in lieu of the concentrations specified herein if the discharge of effluent is restricted to the spring flush or other high runoff periods when the stream flow rate above the discharge point is sufficiently greater than the effluent flow rate to insure that the applicable water quality standards are met during such discharge periods. The ammonia (N) and dissolved oxygen effluent standards are not applicable if a controlled form of discharge is utilized and the applicable water quality standards for ammonia (N) and dissolved oxygen, respectively, are not violated during the discharge period.

**If treatment works are designed and constructed to meet the specified limits given above for a continuous discharge, at the discretion of the Agency the operation of such works may allow for the effluent quality to vary between the limits specified above and in WPC 14 Section (c)(6), provided the water quality standards and all other requirements of the Agency and the U.S. Environmental Protection Agency are being met. Under this variability of treatment option the ammonia (N) effluent concentration could vary up to levels normally obtained by operation of secondary

treatment facilities provided the applicable water quality standard for ammonia (N) is met. Such variability of operation must be based on adequate monitoring of the treatment works and the effluent and receiving waters as specified by the Agency.

2. WPC 43(E) Determination of Compliance. Compliance will be based on effluent samples which are representative of the discharge. In making tests or analyses of the sewage, industrial wastes or other wastes to determine compliance with the standards, samples shall be collected in such manner and place, and shall be of such type, number and frequency as may be considered satisfactory by the Agency from the viewpoint of adequately reflecting the condition of the composition of the effluents. Reasonable allowance will be made for dilution of the effluents, which are in compliance with Section (D), to meet established water quality standards following discharge into waters of the State. The Agency by allowing dilution may consider the effect on all uses of the waters into which the effluents are discharged. The samples shall be preserved in accordance with procedures given in the ~~1971~~ fourteenth edition of Standard Methods for the Examination of Water and Waste-Water, by the American Public Health Association, American Water Works Association, and the Water Pollution Control Federation dated 1976. ~~and any revisions or amendments thereto.~~ Test procedures for the analysis of pollutants shall conform to regulations promulgated pursuant to Section 304 of the Federal Water Pollution Control Act of 1972, 33 U.S.C. Section 1314 (1972) and Minnesota Statutes, Section 115.03 Subdivision 1(e)(7) (1976). The Agency

may accept or may develop other methods, procedures, guidelines or criteria for measuring, analyzing and collecting samples. The arithmetic mean for concentrations of 5-day biochemical oxygen demand, total suspended solids, and ammonia (N) shall not exceed the stated values in Section (D) of this regulation in a period of 30 consecutive days. The value of dissolved oxygen shall never be less than 5 milligrams per liter.

MINNESOTA POLLUTION CONTROL AGENCY

Joseph F. Grinnell
Chairman

Sandra S. Gardebring
Executive Director

Dated: May 5, 1978

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the)
Proposed Adoption of a)
Rule Establishing Effluent)
Standards for Disposal)
Systems Discharging to the)
South Fork of the Zumbro River)

ORDER FOR HEARING

IT IS HEREBY ORDERED that public hearings on the above-captioned rule be held in the Council Chambers of the City Hall, Rochester, Minnesota, on Monday, August 29, 1977, commencing at 9:30 a.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: June 20, 1977.

CERTIFICATE OF BOARD'S
ADOPTION OF RULES 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 2nd day of May, 1978; that a quorum was present at said meeting; that the resolution that was passed was stated orally as follows:

BE IT RESOLVED, that the Minnesota Pollution Control Agency Board adopt the Amended Findings of Fact and Conclusions and the Order Adopting the Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of Zumbro River and that the Minnesota Pollution Control Agency Board adopt and pass the resolution before it directing the City of Rochester to conduct a PCB monitoring program; and

BE IT FURTHER RESOLVED, that the Chairman and Executive Director be authorized to sign the attached Findings of Fact and Conclusions and the attached Order Adopting the Rule.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 30th day of August, 1978.

Sandra S. Gardebring
Sandra S. Gardebring
Executive Director

Subscribed and sworn to before me
this 30th day of August, 1978:

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. Rule WPC 43, a Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River

ORDER AMENDING ORDER ADOPTING RULES

The Minnesota Pollution Control Agency (hereinafter Agency) adopted "Findings of Fact and Conclusions" and an "Order Adopting Rules" in the above-captioned matter on May 2, 1978. Subsequently, the rule was reviewed by the Chief Hearing Examiner and the Office of the Attorney to determine whether Minn. Rule WPC 43 as adopted by the Agency was in compliance with all applicable State laws governing the promulgation of rules.

On October 5, 1978, the Office of the Attorney General approved all aspects of Minn. Rule WPC 43 with the exception of certain language in section E. and F. of said rule and with the exception of the use of the word "regulation" instead of the use of the word "rule."

NOW, THEREFORE, IT IS HEREBY ORDERED, that the Order Adopting Rules dated May 15, 1978, shall be amended in the following manner:

A. The following sentence on page 3 and 4 of the Order Adopting Rules shall be eliminated:

> The Agency may accept or may develop other methods, procedures, guidelines or criteria for measuring, analyzing and collecting samples.

B. The following subdivision will be added on page 4 of the Order Adopting Rules in lieu of the current language in Minn. Rule WPC 43 (F):

3. WPC 43 (F). Any person may apply for a variance from any requirements of this rule. Such variances shall be applied for and acted upon by the Agency in accordance with Minnesota Statutes, Chapter 116.07 Subdivision 5 (1976) and other applicable statutes and rules.

C. Furthermore, it is ordered that the word "rule" be employed in lieu of the word "regulation" wherever it appears in Minn. Rule WPC 43 and when the reference is made to Agency regulations.

Minnesota Pollution Control Agency

Joseph F. Grinnell
Chairman

Sandra Gardebring
Executive Director

Dated:

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of WPC 43, a Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River

RULE AS ADOPTED

State of Minnesota
Pollution Control Agency

Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River

WPC 43: The following standards of effluent quality and purity are hereby adopted and established for all of the intrastate waters of the South Fork of the Zumbro River from the dam at Silver Lake in Section 26, Township 107 North, Range 14 West in the city of Rochester to the beginning of Lake Zumbro in Section 23, Township 108 North, Range 14 West, Olmsted County.

A. Scope. These effluent standard requirements shall be in addition to the effluent standards imposed by WPC 14 and any other standards imposed by other rules applying to these waters, and shall supersede any less stringent effluent standards conflicting with provisions of this rule.

B. Severability. All provisions of this rule shall be severable and the invalidity of any lettered paragraph or any subparagraph or subdivision thereof shall not void any other lettered paragraph or subparagraph, subdivision or any part thereof.

C. Definitions. The terms "seepage," "industrial wastes," "other wastes," "treatment works," "disposal systems," and "waters of the state," as well as any other terms for which definitions are given in the Water Pollution Control Statutes, as used herein have the meanings ascribed to them in Minnesota Statutes, Sections 115.01 and 115.41 (1976) with the exception that disposal systems or treatment works operated under permit of the Agency shall not be construed to be "waters of the state" as the term is used herein. Other terms and abbreviations used herein which are not specifically defined in applicable federal or state law shall be construed in conformance with the context, and in relation to the applicable section of the statutes pertaining to the matter at hand and current professional usage.

D. Standards of Effluent Quality and Purity. It is herein established that the Agency shall require the treatment of all discharges of sewage, industrial waste or other waste effluent to meet the following effluent standards (see Section (c) (6), WPC 14 for additional effluent requirements):

Substance or Characteristic**	Limiting Concentration or Range
5-Day Biochemical Oxygen Demand*	14 milligrams per liter
Total Suspended Solids*	20 milligrams per liter
Minimum Dissolved Oxygen*	5 milligrams per liter
Ammonia (N)*	1.6 milligrams per liter

*The concentration specified in Rule WPC 14 Section (c)(6) may be used in lieu of the concentrations specified herein if the discharge of effluent is restricted to the spring flush or other high runoff periods when the stream flow rate above the discharge point is sufficiently greater than the effluent flow rate to insure that the applicable water quality standards are met during such discharge periods. The ammonia (N) and dissolved oxygen effluent standards are not applicable if a controlled form of discharge is utilized and the applicable water quality standards for ammonia (N) and dissolved oxygen, respectively, are not violated during the discharge period.

**If treatment works are designed and constructed to meet the specified limits given above for a continuous discharge, at the discretion of the Agency the operation of such works may allow for the effluent quality to vary between the limits specified above and in Rule WPC 14 Section (c)(6), provided the water quality standards and all other requirements of the Agency and the U.S. Environmental Protection Agency are being met. Under this variability of treatment option the ammonia (N) effluent concentration could vary up to levels normally obtained by operation of secondary treatment facilities provided the applicable water quality standard for ammonia (N) is met. Such variability of operation must be based on adequate monitoring of the treatment works and the effluent and receiving waters as specified by the Agency.

E. Determination of Compliance. Compliance will be based on effluent samples which are representative of the discharge. In making tests or analyses of the sewage, industrial wastes or other wastes to determine compliance with the standards, samples shall be collected in such manner and place, and shall be of such type, number and frequency as may be considered satisfactory by the Agency from the viewpoint of adequately reflecting the condition of the composition of the effluents. Reasonable allowance will be made for dilution of the effluents, which are in compliance with Section (D), to meet established water quality standards following discharge into waters of the state. The Agency by allowing dilu-

tion may consider the effect on all uses of the waters into which the effluents are discharged. The samples shall be preserved in accordance with procedures given in the fourteenth edition of Standard Methods for the Examination of Water and Waste-Water, by the American Public Health Association, American Water Works Association, and the Water Pollution Control Federation, dated 1976. Test procedures for the analysis of pollutants shall conform to rules and regulations promulgated pursuant to Section 304 of the Federal Water Pollution Control Act of 1972, 33 U.S.C. Section 1314 (1972) and Minnesota Statutes, Section 115.03 Subdivision 1(e)(7) (1976). The arithmetic mean for concentrations of 5-day biochemical oxygen demand, total suspended solids, and ammonia (N) shall not exceed the stated values in Section (D) of this rule in a period of 30 consecutive days. The value of dissolved oxygen shall never be less than 5 milligrams per liter.

F. Variance from Standards. Any person may apply for a variance from any requirements of this rule. Such variances shall be applied for an acted upon by the Agency in accordance with Minnesota Statutes, Chapter 116.07 Subdivision 5 (1976) and other applicable statutes and rules.

APPROVED AS TO FORM AND LEGALITY

DEC. 4 1978

19

WARREN SPANNAUS, ATTORNEY GENERAL

BY

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
DEC - 4 1978
Joan Anderson Growe
Secretary of State
3:40 PM

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

RECEIVED
DEC 1 1978
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

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

November 30, 1978

Mr. Lee Sheehy
Special Assistant Attorney General
G-25 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

RE: In the Matter of the Adoption of Minn. Rule WPC 43

Dear Mr. Sheehy:

In accordance with your memo of October 5, 1978, the Minnesota Pollution Control Agency Board has amended the Order Adopting Rules in the above-entitled matter. The Agency is hopeful that the amendments which have been made will comply with all Minnesota statutes and regulations governing the promulgation of rules.

I have enclosed for your final review the original Order Adopting Rules, Order Amending Order Adopting Rules and the Rule as Adopted. Please inform me if I can be of any additional assistance.

Best wishes,

Sincerely,

Robert C. Moilanen
Special Assistant
Attorney General

RCM:sp
Enclosures

cc: Larry Peissig
Division of Water Quality

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the
Proposed Adoption of WPC 43,
a Rule Establishing
Effluent Standards for
Disposal Systems Discharging
to the South Fork of the
Zumbro River

RULE AS ADOPTED

State of Minnesota
Pollution Control Agency

Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River

WPC 43: The following standards of effluent quality and purity are hereby adopted and established for all of the intrastate waters of the South Fork of the Zumbro River from the dam at Silver Lake in Section 26, Township 107 North, Range 14 West in the city of Rochester to the beginning of Lake Zumbro in Section 23, Township 108 North, Range 14 West, Olmsted County.

A. Scope. These effluent standard requirements shall be in addition to the effluent standards imposed by WPC 14 and any other standards imposed by other regulations applying to these waters, and shall supersede any less stringent effluent standards conflicting with provisions of this regulation.

B. Severability. All 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 or subparagraph, subdivision or any part thereof.

C. Definitions. The terms "seepage," "industrial wastes," "other wastes," "treatment works," "disposal systems," and "waters of the state," as well as any other terms for which definitions are given in the Water Pollution Control Statutes, as used herein have the meanings ascribed to them in Minnesota Statutes, Sections 115.01 and 115.41 (1976) with the exception that disposal systems or treatment works operated under permit of the Agency shall not be construed to be "waters of the state" as the term is used herein. Other terms and abbreviations used herein which are not specifically defined in applicable federal or state law shall be construed in conformance with the context, and in relation to the applicable section of the statutes pertaining to the matter at hand and current professional usage.

D. Standards of Effluent Quality and Purity. It is herein established that the Agency shall require the treatment of all discharges of sewage, industrial waste or other waste effluent to meet the following effluent standards (see Section (c)(6), WPC 14 for additional effluent requirements):

Substance or Characteristic**	Limiting Concentration or Range
5-Day Biochemical Oxygen Demand*	14 milligrams per liter
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Minimum Dissolved Oxygen*	5 milligrams per liter
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*The concentration specified in Regulation WPC 14 Section (c)(6) may be used in lieu of the concentrations specified herein if the discharge of effluent is restricted to the spring flush or other high runoff periods when the stream flow rate above the discharge point is sufficiently greater than the effluent flow rate to insure that the applicable water quality standards are met during such discharge periods. The ammonia (N) and dissolved oxygen effluent standards are not applicable if a controlled form of discharge is utilized and the applicable water quality standards for ammonia (N) and dissolved oxygen, respectively, are not violated during the discharge period.

**If treatment works are designed and constructed to meet the specified limits given above for a continuous discharge, at the discretion of the Agency the operation of such works may allow for the effluent quality to vary between the limits specified above and in Regulation WPC 14 Section (c)(6), provided the water quality standards and all other requirements of the Agency and the U.S. Environmental Protection Agency are being met. Under this variability of treatment option the ammonia (N) effluent concentration could vary up to levels normally obtained by operation of secondary treatment facilities provided the applicable water quality standard for ammonia (N) is met. Such variability of operation must be based on adequate monitoring of the treatment works and the effluent and receiving waters as specified by the Agency.

E. Determination of Compliance. Compliance will be based on effluent samples which are representative of the discharge. In making tests or analyses of the sewage, industrial wastes or other wastes to determine compliance with the standards, samples shall be collected in such manner and place, and shall be of such type, number and frequency as may be considered satisfactory by the Agency from the viewpoint of adequately reflecting the condition of the composition of the effluents. Reasonable allowance will be made for dilution of the effluents, which are in compliance with Section (D), to meet established water quality standards following discharge into waters of the state. The Agency by allowing dilution may consider the

effect on all uses of the waters into which the effluents are discharged. The samples shall be preserved in accordance with procedures given in the fourteenth edition of Standard Methods for the Examination of Water and Waste-Water, by the American Public Health Association, American Water Works Association, and the Water Pollution Control Federation, dated 1976. Test procedures for the analysis of pollutants shall conform to regulations promulgated pursuant to Section 304 of the Federal Water Pollution Control Act of 1972, 33 U.S.C. Section 1314 (1972) and Minnesota Statutes, Section 115.03 Subdivision 1(e)(7) (1976). The Agency may accept or may develop other methods, procedures, guidelines or criteria for measuring, analyzing and collecting samples. The arithmetic mean for concentrations of 5-day biochemical oxygen demand, total suspended solids, and ammonia (N) shall not exceed the stated values in Section (D) of this regulation in a period of 30 consecutive days. The value of dissolved oxygen shall never be less than 5 milligrams per liter.

F. Variance from Standards. In any case where, upon application of the responsible person or persons, the Agency finds that by reason of exceptional circumstances the strict enforcement of any provision of these standards would cause undue hardship, the disposal of the sewage, industrial waste or other waste is necessary for the public health, safety or welfare, and that strict conformity with the standards would be unreasonable, impractical or not feasible under the circumstances, the Agency in its discretion may grant a variance therefrom upon such conditions as it may prescribe for prevention, control or abatement of

pollution in harmony with the general purpose of these classifications and standards and the intent of the applicable state and federal laws. The U.S. Environmental Protection Agency will be advised of any permits which may be issued under this clause together with information as to the need therefor.

OUR FILE NO. 467

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Robert Moilanen
Special Assistant
Attorney General

DATE: October 5, 1978

FROM : Lee E. Sheehy
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of the Proposed Adoption of WPC 43

The above-captioned rule has not been approved by this office or filed by the Secretary of State for the below-enumerated reasons. After agency consideration of these reasons and remedial action, if any, this rule may be resubmitted for review and approval. Upon resubmittal, please insure that the original of the Order Adopting and the Adopted Rules are submitted to this office as they are required for filing with the Secretary of State. I have retained copies of all relevant documents in this matter should you wish to discuss it.

The rule is being returned for the following reasons:

1. Alternative Test Methods: WPC 43 E permits the agency to accept alternative test methods. This office concurs in part with the Hearing Examiner's concerns over the legality of such a variance provision. See H.E. Finding No. 15. There are two apparent defects. First, the rule contains no standard to judge "...other methods..." For example, the agency may wish to consider a standard such as "...other equivalent methods, procedures..." Secondly, use of the word "may" would permit the agency to reject alternative equivalent methods based on criteria other than the criteria established by rule. While this office grants great deference to agencies in discretionary and policy-making areas, the public must be informed of standards promulgated as a rule upon which the agency will act. Minn. Stat. § 15.0411, Subd. 3, requires that "every agency statement of general applicability and future effect" be included in a rule. (Emphasis added.) Criteria upon which alternative test methods will be judged are such criteria. Therefore, all criteria must be established by rule and the word "shall" must be used.

   Finally, use of the word "may" before the word "develop" is approved as it merely sets out an agency policy aspiration. As such, this statement of policy may be couched in the permissive, as opposed to mandatory, form.

2. Variance Provision: WPC 43 F is defective for the reasons discussed above. While the provision closely parallels the agency's statutory variance authority, it is imporper as a rule. Rules are intended "to implement or make specific the law enforced or administered" by the agency. See Minn. Stat. § 15.0411, Subd. 3. The rule fails to

do so as use of the word "may" permits the agency to consider criteria other than "undue hardship", necessity for public health, safety, and welfare, and barriers to strict enforcement. Secondly, the public hearing requirement contained in Minn. Stat. § 116.07, Subd. 5, does not appear in the proposed rule. Finally, if the agency merely wishes to rely on its statutory variance authority, it should incorporate the statutory provision by reference. If the agency wishes to make a rule, the rule should include every agency statement in a non-permissive form.

3. Hearing Examiner Finding No. 13 adopted by the agency requires the words "rule" or "rules and regulations" to be substituted for the word "regulation" presently found throughout WPC 43. The rule proposed for adoption does not make these required changes.

Other than the above-discussed matters, the remaining rule, or severable protions thereof, has been approved as to form and legality.

LES:mb

Enclosure

cc: Duane Harves

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River

PCA-77-010-MG

FINDINGS OF FACT AND CONCLUSIONS

The above-entitled matter came on for hearing before Hearing Examiner Myron S. Greenberg on the 29th day of August, 1977, at the City Council Chambers, City Hall, Rochester, 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 at the above-mentioned location, commencing at approximately 7:00 p.m. Subsequently, said hearing was duly recessed and reconvened on the 30th day of August, 1977, at the Rochester Public Library, Rochester, Minnesota, commencing at approximately 9:30 a.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, 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:

Finding No. 15, page 6, shall be amended to read as follows:

> WPC 43(e) is generally reasonable and necessary to establish a method of and standards for testing in order to determine compliance. This provision is standard for the MPCA and is taken primarily from Minn. Rules WPC 14(a)(5) and 15(a)(5). The reference to the Standard Methods for the Examination of Water and Wastewater should be made to the Fourteenth Edition of that document dated 1976.

Finding No. 17, page 7, should be amended to read as follows:

The effluent standards in section (d) of the proposed rule should be changed to the following:

Substance or Characteristic**	Limiting Concentration or Range
5-Day Biochemical Oxygen Demand*	14 mg/l
Total Suspended Solids*	20 mg/l
Minimum Dissolved Oxygen*	5 mg/l
Ammonia (N)*	1.6 mg/l

(meaning of asterick is shown in proposed rule)

The Minimum Dissolved Oxygen Standard, the 5-Day Biochemical Oxygen Demand (BOD^5) standard and the Ammonia standard are based directly on the results of a wasteload allocation study. (MPCA Exhibits 1 and 50). This study utilized the computorized mathematical river model known as Qual-II (MPCA Exhibits 2, 49, and 50). No challenge was offered as to the validity, reliability or application of the Qual-II model during the course of the hearing. The wasteload allocation study demonstrated that in order to insure that the applicable water quality standards of the Zumbro

River will be protected until the year 2000 down to the ten-year, seven day low flow of the river, effluent standards of 10 mg/l BOD^5, 5 mg/l Minimum Dissolved Oxygen and 1.5 mg/l Ammonia as orignally proposed in the rule are needed.

However, this determination of effluent standards was derived by using a protected effluent flow for the Rochester Wastewater Treatment Plant of 19 million gallons per day (MGD) for the year 2000. The 19 MGD projection was based upon a Regional Wastewater Treatment Management Plan prepared by the City of Rochester in 1975 (MPCA Exhibit 5). During the hearing, the City of Rochester presented evidence, based on new population data (City Exhibits 5 and 6), that the projected effluent flow would be only 13.9 MGD in the year 2000.

Utilizing the Qual-II Computer Model with the new flow projections proffered by the City, it is concluded that the 10 mg/l BOD^5 standard and the 1.5 mg/l ammonia standard in the proposed rule should be changed to 14 mg/l BOD^5 and 1.6 mg/l ammonia. The 5 mg/l minimum dissolved oxygen standard should remain the same as the 14 mg/l BOD^5 effluent standard could not be determined without this defined minimum dissolved oxygen level.

The final area of concern revolves around the 10 mg/l total suspended solids (TSS) effluent standard. This standard cannot be determined by a mathematical model. It has been reasoned that when there is limited dilution available in the receiving waters to

assimulate oxygen demanding material such as BOD^5, there is also limited water available to dilute toxic or hazardous pollutants such as PCB and heavy metals which are associated with the suspended solids. Therefore, at the public hearing, the Agency attempted to specifically identify toxic materials in Rochester's effluent in order to show what benefits could be obtained in removing suspended solids. Testimony was presented on the fact that Rochester's Wastewater Treatment Plant is elevating zinc levels in the Zumbro River (MPCA Exhibit 52) and also that Rochester's treatment plant is a source of PCBs to the river. It was shown that the 3.2 ppb PCB measured in the effluent of the Rochester's Wastewater Treatment Plant was one of the highest levels found in any treatment plant sampled in the State. It was also shown that PCB has been measured in catfish in Zumbro Lake at levels exceeding the FDA tolerance level (MPCA Exhibit 51). Finally, it was shown that toxic material such as PCB and zinc adhere to particulate matter such as suspended solids (MPCA Exhibits 51 and 52). However, the staff was not able to quantifiably define how much of this toxic material would be removed by having a TSS standard of 10 mg/l as proposed, rather than 20 mg/l as requested by the City of Rochester. The Hearing Examiner concludes that a TSS standard of 20 mg/l is acceptable and recommends this standard, but feels that the setting of this standard should be connected with a program to monitor the levels of PCBs in the Zumbro River in and around Rochester. Additionally,

efforts should be made to minimize the PCB loading to the South Fork of the Zumbro River by the Rochester Wastewater Treatment Plant.

MINNESOTA POLLUTION CONTROL AGENCY

Joseph F. Grinnell
Chairman

Sandra S. Gardebring
Executive Director

DATED: May 15, 1978

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River

PROPOSED RULE

State of Minnesota
Pollution Control Agency

Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River

WPC : The following standards of effluent quality and purity are hereby adopted and established for all of the intrastate waters of the South Fork of the Zumbro River from the dam at Silver Lake in Section 26, Township 107 North, Range 14 West in the city of Rochester to the beginning of Lake Zumbro in Section 23, Township 108 North, Range 14 West, Olmsted County.

(a) Scope. These effluent standard requirements shall be in addition to the effluent standards imposed by WPC 14 and any other standards imposed by other regulations applying to these waters, and shall supersede any less stringent effluent standards conflicting with provisions of this regulation.

(b) Severability. All 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 or subparagraph, subdivision or any part thereof.

(c) Definitions. The terms "seepage," "industrial wastes," "other wastes," "treatment works," "disposal systems," and "waters of the state," as well as any other terms for which definitions are given in the Water Pollution Control Statutes, as used herein have the meanings ascribed to them in Minnesota Statutes, Sections 115.01 and 115.41 (1976) with the exception that disposal systems or treatment works operated under permit of the Agency shall not be construed to be "waters of the state" as the term is used herein. Other terms and abbreviations used herein which are not specifically defined in applicable federal or state law shall be construed in conformance with the context, and in relation to the applicable section of the statutes pertaining to the matter at hand, and current professional usage.

(d) Standards of Effluent Quality and Purity. It is herein established that the Agency shall require the treatment of all discharges of sewage, industrial waste or other waste effluent to meet the following effluent standards (see Section (c)(6), WPC 14 for additional effluent requirements):

Substance or Characteristic**	Limiting Concentration or Range
5-Day Biochemical Oxygen Demand*	10 milligrams per liter
Total Suspended Solids*	10 milligrams per liter
Minimum Dissolved Oxygen*	5 milligrams per liter
Ammonia (N)*	1.5 milligrams per liter

*The concentration specified in Regulation WPC 14 Section (c)(6) may be used in lieu of the concentrations specified herein if the discharge of effluent is restricted to the spring flush or other high runoff periods when the stream flow rate above the discharge point is sufficiently greater than the effluent flow rate to insure that the applicable water quality standards are met during such discharge periods. The ammonia (N) and dissolved oxygen effluent standards are not applicable if a controlled form of discharge is utilized and the applicable water quality standards for ammonia (N) and dissolved oxygen, respectively, are not violated during the discharge period.

**If treatment works are designed and constructed to meet the specified limits given above for a continuous discharge, at the discretion of the Agency the operation of such works may allow for the effluent quality to vary between the limits specified above and in Regulation WPC 14 Section (c)(6), provided the water quality standards and all other requirements of the Agency and the U.S. Environmental Protection Agency are being met. Under this variability of treatment option the ammonia (N) effluent concentration could vary up to levels normally obtained by operation of secondary treatment facilities provided the applicable water quality standard for ammonia (N) is met. Such variability of operation must be based on adequate monitoring of the treatment works and the effluent and receiving waters as specified by the Agency.

(e) Determination of Compliance. Compliance will be based on effluent samples which are representative of the discharge. In making tests or analyses of the sewage, industrial wastes or other wastes to determine compliance with the standards, samples shall be collected in such manner and place, and shall be of such type, number and frequency as may be considered satisfactory by the Agency from the viewpoint of adequately reflecting the condition of the composition of the effluents. Reasonable allowance will be made for dilution of the effluents, which are in compliance with Section (d), to meet established water quality standards following discharge into waters of the state. The Agency by allowing dilution may consider the

effect on all uses of the waters into which the effluents are discharged. The samples shall be preserved in accordance with procedures given in the 1971 edition of Standard Methods for the Examination of Water and Waste-Water, by the American Public Health Association, American Water Works Association, and the Water Pollution Control Federation, and any revisions or amendments thereto. Test procedures for the analysis of pollutants shall conform to regulations promulgated pursuant to Section 304 of the Federal Water Pollution Control Act of 1972, 33 U.S.C. Section 1314 (1972) and Minnesota Statutes, Section 115.03 Subdivision 1(e)(7) (1976). The Agency may accept or may develop other methods, procedures, guidelines or criteria for measuring, analyzing and collecting samples. The arithmetic mean for concentrations of 5-day biochemical oxygen demand, total suspended solids, and ammonia (N) shall not exceed the stated values in Section (d) of this regulation in a period of 30 consecutive days. The value of dissolved oxygen shall never be less than 5 milligrams per liter.

(f) Variance from Standards. In any case where, upon application of the responsible person or persons, the Agency finds that by reason of exceptional circumstances the strict enforcement of any provision of these standards would cause undue hardship, that disposal of the sewage, industrial waste or other waste is necessary for the public health, safety or welfare, and that strict conformity with the standards would be unreasonable, impractical or not feasible under the circumstances, the Agency in its discretion may grant a variance therefrom upon such conditions as it may prescribe for prevention, control or abatement of

pollution in harmony with the general purpose of these classifications and standards and the intent of the applicable state and federal laws. The U.S. Environmental Protection Agency will be advised of any permits which may be issued under this clause together with information as to the need therefor.

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River.	REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, the above-entitled matter came on for hearing before Hearing Examiner Myron S. Greenberg, pursuant to proper notice, on August 29 and 30, 1977; and

WHEREAS, on February 10, 1978, the Hearing Examiner issued his Report; and

WHEREAS, the Minnesota Pollution Control Agency issued its Order Adopting Rules on May 15, 1978; and

WHEREAS, the Minnesota Pollution Control Agency has now submitted the above-entitled rules ot the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, subd. 4, and Minn. Rule HE 107; and

WHEREAS, the Chief Hearing Examiner, having reviewed the above-referenced rules, finds that the rules as adopted are not substantially different than those as proposed for hearing, and that the Minnesota Pollution Control Agency has complied with the provisions of Minn. Stat. § 15.0412, subd. 4.

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

Dated: August 8, 1978.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River.	ORDER OF THE CHIEF HEARING EXAMINER

The above-entitled matter originally came on for hearing before Hearing Examiner Myron S. Greenberg on August 29 and 30, 1977, pursuant to properly published notice of hearing. The Hearing Examiner issued his Report on February 10, 1978. On May 15, 1978, the Minnesota Pollution Control Agency issued its Order Adopting Rules and its Findings of Fact and Conclusions. The file was submitted to the Chief Hearing Examiner for his review pursuant to Minn. Rule HE 107 on May 24, 1978.

Upon review, the Chief Hearing Examiner found that the Minnesota Pollution Control Agency was incorporating by reference the Environmental Protection Agency guidelines which were published pursuant to Section 304 of the Federal Water Pollution Control Act of 1972, 33 U.S.C. § 1314 (1972), and parts from a book entitled, Standard Methods for the Examination of Water and Waste-Water, Fourteenth Edition. No prior approval of the Chief Hearing Examiner had been sought by the Minnesota Pollution Control Agency for the incorporation by reference. Further, it was found that the citation to the above-referenced book included the terminology which would have amounted to an unlawful delegation of authority by the Agency which had to be deleted.

On August 7, 1978, the Minnesota Pollution Control Agency resubmitted the rules for consideration by the Chief Hearing Examiner with a request for approval of incorporation by reference and included therein an Amended Findings of Fact and Conclusions deleting the reference relating to the aforementioned delegation of authority.

The Chief Hearing Examiner has reviewed the aforementioned items sought to be incorporated by reference, and has found them to be in excess of 3,000 words and has determined that they would exceed five pages of publication in the State Register, and further finds that they are conveniently available for viewing, copying and acquisition by interested persons.

Based upon the foregoing, it is hereby ordered that the Minnesota Pollution Control Agency shall have the approval of the Chief Hearing Examiner to incorporate by reference in their proposed rules the above-referenced materials.

Dated: August 8, 1978.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

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

September 1, 1978

Mr. Lee Sheehy
Special Assistant Attorney General
G-25 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: In the Matter of the Adoption of Minn. Rule WPC 34

Dear Mr. Sheehy:

In accordance with the rulemaking procedure set out in Minn. Stat. §15.0413(4), I am now submitting for your review the above-entitled rule. I am filing with your office a copy of the hearing record and the following documents:

a) Four copies of the Rule as Adopted

b) An original and four copies of the Order Adopting Rules

c) Three copies of the Rule as Proposed

d) Three copies of the Agency's Certificate of Adoption of Rules Resolution

e) Three copies of Agency's Adopted Findings of Fact and Conclusions

f) Three copies of the Hearing Examiner's Report

g) Three copies of the Chief Hearing Examiner's Report

h) Three copies of Agency's Authorizing Resolution

i) Three copies of Order for Hearing

j) Three copies of Notice of Hearing

k) Three copies of Affidavit of Acquisition of Secretary of State's Mailing List

l) Three copies of Secretary of State's List and Certificate of Delivery

m) Three copies of Affidavit of Mailing

n) Three copies of Statement of Need

o) Three copies of the Statement of Evidence

p) Three copies of the Notice of Intent to Solicit Outside Opinion

q) Statement of Compliance with the Attorney General's Rulemaking Procedure

Please contact me if you need any additional information for your review of this rule. Thank you for your assistance.

Sincerely,

Robert C. Moilanen
Special Assistant
Attorney General

Enclosures

RCM/jm

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the
Proposed Adoption of WPC 43,
A Rule Establishing Effluent
Standards for Disposal Systems
Discharging to the South Fork
of the Zumbro River

STATEMENT OF COMPLIANCE
WITH MANUAL OF RULE
MAKING PROCEDURES

I, Special Assistant Attorney General Robert C. Moilanen, 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.

Robert C. Moilanen
Special Assistant
Attorney General

Date: 8/24/78

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the Council Chambers of the City Hall, Rochester, Minnesota on Monday, August 29, 1977, commencing at 9:30 a.m., reconvening at 7:00 p.m., and continuing on subsequent days until all persons have had an opportunity to be heard. At this hearing the Minnesota Pollution Control Agency will present its witnesses and evidence in support of the adoption of the above-captioned rule.

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. Myron Greenberg, 1745 University Avenue, St. Paul, Minnesota 55104, (612)296-8109 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 at least three (3) copies be furnished. In addition, in the interest of efficiency it is suggested 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 rule, if adopted, will establish effluent standards for all disposal systems discharging effluent into the waters of the South Fork of the Zumbro River from the dam at Silver Lake in Section 26, Township 107 North, Range 14 West in the City of Rochester to the beginning of Lake Zumbro in Section 23, Township 108 North, Range 14 West, Olmsted County. These effluent standards shall be in addition to those imposed by Minnesota Regulations WPC 14 and any other effluent standards imposed by any other regulations applying to these waters, and shall supersede any conflicting standards which may be less stringent. The Agency's authority to promulgate the proposed rule is contained in Minnesota Statutes Section 115.44 subdivision 4 (1976).

Copies of the proposed rule are now available and one free copy may be obtained by writing to Mr. Lanny R. Peissig, Division of Water Quality, Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113. Additional copies will be available

at the hearing. A "statement of need" explaining why the Agency feels the proposed rule is necessary and a "statement of evidence" outlining the testimony it 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: June 20, 1977.

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River

AFFIDAVIT OF RECEIPT OF SECRETARY OF STATE'S LIST

David Ellis, being duly sworn on oath deposes and says:

1. That he is an employee of the Minnesota Pollution Control Agency of the State of Minnesota.

2. That on the 21st day of June, 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 21st day of June, 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.

David Ellis

David Ellis

Subscribed and sworn to before me this 21st day of June, 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 a Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River

CERTIFICATE OF DELIVERY
SECRETARY OF STATE LIST

I hereby certify that the attached Schedule #12 sheets, constitute the complete list of persons, associations, and other interested groups who as of 2:00 o'clock pm, this 21st day of June, 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 a Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

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

That on the 18 day of July, 1977, at the City of Roseville, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing and Proposed Rule in the above entitled matter by depositing in the United States mail at said City of Roseville, true and correct copies thereof, properly enveloped, with postage prepaid, and addressed to those named on the attached Mailing List.

John W. Jones

Subscribed and sworn to before me this 18th day of July, 1977:

Notary Public

WILLIAM DONOHUE
NOTARY PUBLIC – MINNESOTA
RAMSEY COUNTY
My Commission Expires April 28, 1982

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River

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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. Myron Greenberg, 1745 University Avenue, St. Paul, Minnesota 55104, (612)296-8109 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 at least three (3) copies be furnished. In addition, in the interest of efficiency it is suggested 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 rule, if adopted, will establish effluent standards for all disposal systems discharging effluent into the waters of the South Fork of the Zumbro River from the dam at Silver Lake in Section 26, Township 107 North, Range 14 West in the City of Rochester to the beginning of Lake Zumbro in Section 23, Township 108 North, Range 14 West, Olmsted County. These effluent standards shall be in addition to those imposed by Minnesota Regulations WPC 14 and any other effluent standards imposed by any other regulations applying to these waters, and shall supersede any conflicting standards which may be less stringent. The Agency's authority to promulgate the proposed rule is contained in Minnesota Statutes Section 115.44 subdivision 4 (1976).

Copies of the proposed rule are now available and one free copy may be obtained by writing to Mr. Lanny R. Peissig, Division of Water Quality, Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota 55113. Additional copies will be available

at the hearing. A "statement of need" explaining why the Agency feels the proposed rule is necessary and a "statement of evidence" outlining the testimony it 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
Executive Director

Dated: June 20, 1977.

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River

PROPOSED RULE

State of Minnesota
Pollution Control Agency

Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River

WPC : The following standards of effluent quality and purity are hereby adopted and established for all of the intrastate waters of the South Fork of the Zumbro River from the dam at Silver Lake in Section 26, Township 107 North, Range 14 West in the city of Rochester to the beginning of Lake Zumbro in Section 23, Township 108 North, Range 14 West, Olmsted County.

(a) Scope. These effluent standard requirements shall be in addition to the effluent standards imposed by WPC 14 and any other standards imposed by other regulations applying to these waters, and shall supersede any less stringent effluent standards conflicting with provisions of this regulation.

(b) Severability. All 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 or subparagraph, subdivision or any part thereof.

(c) Definitions. The terms "seepage," "industrial wastes," "other wastes," "treatment works," "disposal systems," and "waters of the state," as well as any other terms for which definitions are given in the Water Pollution Control Statutes, as used herein have the meanings ascribed to them in Minnesota Statutes, Sections 115.01 and 115.41 (1976) with the exception that disposal systems or treatment works operated under permit of the Agency shall not be construed to be "waters of the state" as the term is used herein. Other terms and abbreviations used herein which are not specifically defined in applicable federal or state law shall be construed in conformance with the context, and in relation to the applicable section of the statutes pertaining to the matter at hand, and current professional usage.

(d) Standards of Effluent Quality and Purity. It is herein established that the Agency shall require the treatment of all discharges of sewage, industrial waste or other waste effluent to meet the following effluent standards (see Section (c)(6), WPC 14 for additional effluent requirements):

Substance or Characteristic**	Limiting Concentration or Range
5-Day Biochemical Oxygen Demand*	10 milligrams per liter
Total Suspended Solids*	10 milligrams per liter
Minimum Dissolved Oxygen*	5 milligrams per liter
Ammonia (N)*	1.5 milligrams per liter

*The concentration specified in Regulation WPC 14 Section (c)(6) may be used in lieu of the concentrations specified herein if the discharge of effluent is restricted to the spring flush or other high runoff periods when the stream flow rate above the discharge point is sufficiently greater than the effluent flow rate to insure that the applicable water quality standards are met during such discharge periods. The ammonia (N) and dissolved oxygen effluent standards are not applicable if a controlled form of discharge is utilized and the applicable water quality standards for ammonia (N) and dissolved oxygen, respectively, are not violated during the discharge period.

**If treatment works are designed and constructed to meet the specified limits given above for a continuous discharge, at the discretion of the Agency the operation of such works may allow for the effluent quality to vary between the limits specified above and in Regulation WPC 14 Section (c)(6), provided the water quality standards and all other requirements of the Agency and the U.S. Environmental Protection Agency are being met. Under this variability of treatment option the ammonia (N) effluent concentration could vary up to levels normally obtained by operation of secondary treatment facilities provided the applicable water quality standard for ammonia (N) is met. Such variability of operation must be based on adequate monitoring of the treatment works and the effluent and receiving waters as specified by the Agency.

(e) Determination of Compliance. Compliance will be based on effluent samples which are representative of the discharge. In making tests or analyses of the sewage, industrial wastes or other wastes to determine compliance with the standards, samples shall be collected in such manner and place, and shall be of such type, number and frequency as may be considered satisfactory by the Agency from the viewpoint of adequately reflecting the condition of the composition of the effluents. Reasonable allowance will be made for dilution of the effluents, which are in compliance with Section (d), to meet established water quality standards following discharge into waters of the state. The Agency by allowing dilution may consider the

effect on all uses of the waters into which the effluents are discharged. The samples shall be preserved in accordance with procedures given in the 1971 edition of Standard Methods for the Examination of Water and Waste-Water, by the American Public Health Association, American Water Works Association, and the Water Pollution Control Federation, and any revisions or amendments thereto. Test procedures for the analysis of pollutants shall conform to regulations promulgated pursuant to Section 304 of the Federal Water Pollution Control Act of 1972, 33 U.S.C. Section 1314 (1972) and Minnesota Statutes, Section 115.03 Subdivision 1(e)(7) (1976). The Agency may accept or may develop other methods, procedures, guidelines or criteria for measuring, analyzing and collecting samples. The arithmetic mean for concentrations of 5-day biochemical oxygen demand, total suspended solids, and ammonia (N) shall not exceed the stated values in Section (d) of this regulation in a period of 30 consecutive days. The value of dissolved oxygen shall never be less than 5 milligrams per liter.

(f) Variance from Standards. In any case where, upon application of the responsible person or persons, the Agency finds that by reason of exceptional circumstances the strict enforcement of any provision of these standards would cause undue hardship, that disposal of the sewage, industrial waste or other waste is necessary for the public health, safety or welfare, and that strict conformity with the standards would be unreasonable, impractical or not feasible under the circumstances, the Agency in its discretion may grant a variance therefrom upon such conditions as it may prescribe for prevention, control or abatement of

pollution in harmony with the general purpose of these classifications and standards and the intent of the applicable state and federal laws. The U.S. Environmental Protection Agency will be advised of any permits which may be issued under this clause together with information as to the need therefor.

STATE OF MINNESOTA

COUNTY OR RAMSEY

MINNESOTA POLLUTION

CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River

PCA-77-010-MG

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, 55104, telephone (612) 296-6910, and in support thereof, the Minnesota Pollution Control Agency intends to introduce the following reports, books, letters and other documentary evidence*:

1. Minnesota Pollution Control Agency, "Load Allocation Study for the South Fork of the Zumbro River below Rochester, Minnesota," February, 1976.
2. William R. Norton, Larry A. Roesner, D.E. Evenson and John R. Monser, Computer Program Documentation for the Stream Quality Model QUAL-II, Water Resources Engineers, revised August, 1974.
3. U.S. Environmental Protection Agency, Quality Criteria for Water, Washington, D.C., July, 1976.
4. William R. Norton, Final Report for the Upper Mississippi River Basin Model Project, Water Resources Engineers, September, 1974.

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* Additional information on the sources of these materials can be obtained from Mr. Lanny Peissig, Division of Water Quality, Minnesota Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota, 55113, telephone (612) 296-7250.

5. Kirkham-Michael and Associates, Wallace Holland Kastler Schmitz and Company, 1975 Regional Wastewater Treatment Management Plan Upper Zumbro River Watershed, September 17, 1975.

6. James W. Patterson, Ph.D., P. Shimada, and C.N. Haas, "Heavy Metals Transport Through Municipal Sewage Treatment Plants," Illinois Institute of Technology, May 5, 1975.

7. Gordon M. Fair, John C. Geyer, Daniel A. Okun, Water Purification and Wastewater Treatment and Disposal, pp. 20-15 through 20-17, 1968.

8. TenEch Environmental Consultants, Inc., Study and Analyses in an Effort to Obtain a Relaxation of Water Reclamation Plant Effluent Standards Phase I Report, City of Rochester, Minnesota, June 14, 1976.

9. Minnesota Pollution Control Agency, STORET Data, Station ZRS-20, 1973-77.

10. Minnesota Pollution Control Agency, Analytical data for fish tissue and sediment collected in Zumbro Lake and Zumbro River and influent, effluent and sludge collected at Rochester Wastewater Treatment Plant on December 1, 1976 and May 18, 1977.

11. Kenneth E. Boyer, P.E., letter containing projected flow rates for Rochester, October 22, 1975.

12. Robert W. Thomann, Systems Analysis and Water Quality Management, pp. 92-97, 1972.

13. Louis Breimhurst, MPCA, letter confirming receipt of application for variance, March 2, 1977.

14. Gerald H. Swanson, City of Rochester, letter regarding NPDES No. 0024619 and City of Rochester Application for a Variance, January 14, 1977.

15. Robert W. Freson, City of Rochester, letter regarding rejection of proposed stipulation agreement, December 13, 1976.

16. Peter Gove, MPCA, letter presenting proposed stipulation agreement and justifying suspended solids limitation, September 17, 1976.

17. Gerald Swanson, City of Rochester, letter detailing proposed consultant studies to evaluate effluent limitations, July 16, 1976.

18. E. E. Shannon, F. J. Ludwig and I. Valdmanis, Polychlorinated Biphenyls (PCB) in Municipal Wastewaters, Research Report No. 49, Environment Canada, p. 28.

19. Polychlorinated Biphenyls (PCB) Toxic Pollutant Effluent Standards, Federal Register, vol. 22 no. 22, February 2, 1977, pp. 6532 - 6555.

20. Stanton J. Kleinert, Sources of Polychlorinated Biphenyls In Wisconsin, National Conference on Polychlorinated Biphenyls, November 19-21, 1975, pp. 124 - 126.

21. Transcript of the Hearing In the Matter of Proposed Adoption of Minnesota Regulation 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, Minnesota Pollution Control Agency, May 25, 1977, pp. 1-157.

22. Stipulation between the Minnesota Pollution Control Agency and the City of Rochester, May 22, 1972.
23. Compliance monitoring data from Rochester waste treatment plant and data from other selected activated sludge waste treatment plants in the State, May, 1976 to May, 1977.
24. Photographic slides of the Rochester waste treatment plant, the Zumbro River, and Zumbro Lake taken May - July, 1977. Additional slides showing field sampling techniques and model representations will be used.
25. Minnesota Regulations WPC 14 and 24.

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

1. Mr. Jerry C. Winslow, P.E., Staff Engineer, Division of Water Quality, Minnesota Pollution Control Agency, who will testify on the field surveys conducted in the preparation of the waste load allocation study. Work activities will be described, and the data will be discussed with regard to how it relates to the development of the river model and the load allocation process. Documents 1, 9, 11, and 24 will be presented and utilized.
2. Mr. Lanny Peissig, P.E., Principal Engineer, Division of Water Quality, Minnesota Pollution Control Agency, who will testify on the QUAL-II river modeling technique. The

applicable water quality standards will be presented along with a description of the QUAL-II water quality model, why it was chosen, and how it was applied to the South Fork of the Zumbro River. Since QUAL-II has been widely and successfully used to establish effluent limitations for other river segments, testimony will not be presented on the basic formulas and inter-relationships in the model. Testimony will be primarily concerned with the application of this model to the Zumbro River. Documents 1-5, 8-9, 12-17, and 22-25 will be presented and utilized. Mr. Peissig will also testify on the need for the 10 mg/l suspended solids limitation. Documents 1, 3, 5, 6, 7, 8, 9, 14, 16, 22, 23 and 25 will be presented and utilized.

3. Mr. Ed Barth, Chief of the Biological Treatment Section of the Advanced Waste Treatment Research Laboratory, U.S. Environmental Protection Agency, Cincinnati, Ohio, who will present testimony by letter or in person regarding the treatment process selected in the Rochester Facility Plan and on the cost estimates contained in that plan. He will also discuss the relationship between treatment processes and the effluent limits which can be achieved. Documents 1 and 5 will be presented and utilized. In addition, selected references may be presented at the public hearing.

4. Mr. Marvin E. Hora, Senior Biologist, Division of Water Quality, Minnesota Pollution Control Agency, who will

testify on the levels of Polychlorinated Biphenyls (PCB) found in the Rochester wastewater treatment plant and in Zumbro River and Zumbro Lake bottom sediments. He will also testify on PCB levels in fish tissue from these waterways. This data will be used to show the relationship between treatment plant discharge and the amount of PCB in the river and lake. Documents 1, 10, 18, 19, 20, and 21 will be presented and utilized.

DISCUSSION

As discussed in the Statement of Need, Minnesota Regulations WPC 14 and 24 require that the water quality of the South Fork of the Zumbro River be maintained at a level which will preserve beneficial uses of the river, including cool and warm water fishing and suitability for all kinds of aquatic recreation. The reach of the South Fork between Silver Lake and Lake Zumbro, however, does not always meet these standards because of the large waste loadings contained in the effluent from the Rochester area and the limited capacity of this reach to assimilate waste loadings during times of low flow. Therefore, it is necessary to establish for this reach more restrictive effluent standards which will insure that the applicable water quality standards will be met. It is the purpose of the proposed rule to establish these standards.

The proposed effluent standards are based on a waste load allocation study conducted on the above-described reach of South Fork of the Zumbro River (document 1); the field work was initiated in 1974. The specific discharge sources which were considered in

the study include the Rochester Water Reclamation Plant, Book's Mobile Home Village, Hallmark Terrace, Inc., and a number of cooling water discharges to Cascade Creek. The study pointed out that the Rochester facility is the key discharger due to its large waste load as compared to the other dischargers.

The process of waste load allocation involved the collection of field data followed by the calibration and verification of an established, computerized water quality model (QUAL-II). In calibration, data from an initial field survey were used to adjust the model so that it simulated the natural river conditions. To verify the accuracy of the model, data from a second field survey were entered into the model and the model's predictions were compared with the field data. Once the model was calibrated and verified it was utilized to predict how the river would react to numerous projected waste load configurations.

The waste load allocation study demonstrated that the effluent standards required as a minimum by Minnesota Regulations WPC 14(c)(6) are inadequate to maintain in this reach of river the dissolved oxygen and ammonia (N) water quality standards required by Minn. Reg. WPC 14(d). Therefore, effluent treatment more stringent than that required must be provided in order to maintain these water quality standards. (For a detailed discussion of these requirements, see the Statement of Need.)

The study concluded that in order for the applicable water quality standards to be preserved until the year 2000, the necessary

effluent standards for the City of Rochester and all other dischargers to the reach of river to which the proposed rule applies should be as follows:

5-day Biochemical Oxygen Demand (BOD_5)	10 mg/l
Total Suspended Solids	10 mg/l
Ammonia (N)	1.5 mg/l
Dissolved Oxygen (minimum value)	5 mg/l

The effluent limits for BOD_5 and dissolved oxygen are necessary to maintain the applicable dissolved oxygen water quality standard of 5 mg/l during the summer. The 1.5 mg/l ammonia (N) limit is needed to protect the applicable 1.0 mg/l ammonia (N) water quality standard. The recommended effluent limit of 10 mg/l total suspended solids serves to further regulate the discharge of treated organic wastes and related contaminants. These effluent limits are listed in section d of the proposed rule.

As set forth in section e of the proposed rule, determination of compliance with the above listed effluent standards will be based on representative sampling of the effluent. The samples shall be preserved in accordance with the 1971 edition of Standard Methods for the Examination of Water and Wastewater, by the American Public Health Association, American Water Works Association, and the Water Pollution Control Federation, and any revisions or amendments thereto. Test procedures for the analysis of pollutants shall conform to regulations promulgated pursuant to Section 304 of the Federal Water Pollution Control Act of 1972, 33 U.S.C. Section 1314 (1972), and Minnesota Statutes Section 115.03, Subdivision 1(e)(7) (1976).

Section f of the proposed rule provides opportunity to obtain a variance from the requirements of the rule where the Agency finds that strict enforcement would be unreasonable, impractical or not feasible.

The effluent standard requirements contained in this rule shall be in addition to any other requirements imposed by Minn. Reg. WPC 14 or by any other applicable state or federal statutes or regulations, and shall supersede any less stringent effluent standards conflicting with the provisions of the proposed rule.

Dated: August 2, 1977

Sandra S. Gardebring
Executive Director
Minnesota Pollution Control Agency

EXHIBIT A

opy below is hereby
pproved as to form and
egality.

y: Stephen B. Martin
(Special) (Assistant)
Attorney General

17 March 1977
ate 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: 3/17/77

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 Effluent in So. Fork of Zumbro River
Short Title

Minn. Reg. WPC 14
List of Affected Rules

(Do not write in this space)

Published 1 S.R. 1442 (28 Mar 77)

PROPOSED RULES ESTABLISHING EFFLUENT LIMITATIONS
FOR THE SOUTH FORK OF THE ZUMBRO RIVER

NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION

Notice is hereby given that the Minnesota Pollution Control Agency is considering proposed rules establishing effluent limitations for all of the intrastate waters of the South Fork of the Zumbro River from the dam at Silver Lake in Section 26, Township 107 North, Range 14 West, in the City of Rochester to the beginning of Lake Zumbro in Section 23, Township 108 North, Range 14 West, Olmsted County. The primary discharger into these waters at the present time is the City of Rochester. 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. Lanny R. Peissig
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 telephone at (612) 296-7250, and in person at the above address.

All statements of information and comment must be received

by May 15, 1977. Any written material received by the Agency shall become part of the hearing record.

the municipal facilities assistance program, the Minnesota state water pollution control fund and federal grant funds allotted to Minnesota. In order to adequately determine the nature and utility of such amendments, the Minnesota Pollution Control Agency hereby requests information and comments from all interested persons or groups concerning the subject matter of the proposed amendments.

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. Perry T. Beaton
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 telephone at (612) 296-7201, and in person at the above address.

All statements of information and comment must be received by May 15, 1977. Any written material received by the Agency shall become part of the hearing record.

Proposed Rules Establishing Effluent Limitations for the South Fork of the Zumbro River

Notice of Intent to Solicit Outside Opinion

Notice is hereby given that the Minnesota Pollution Control Agency is considering proposed rules establishing effluent limitations for all of the intrastate waters of the South Fork of the Zumbro River from the dam at Silver Lake in Section 26, Township 107 North, Range 14 West, in the City of Rochester to the beginning of Lake Zumbro in Section 23, Township 108 North, Range 14 West, Olmsted County. The primary discharger into these waters at the present time is the City of Rochester. 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. Lanny R. Peissig
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 telephone at (612) 296-7250, and in person at the above address.

All statements of information and comment must be received by May 15, 1977. Any written material received by the Agency shall become part of the hearing record.

Erratum

1 S.R. 194: change "payments" to "overpayments" after "AFDC" and before "caused" at DPW 44 F.3.b.

STATE OF MINNESOTA

COUNTY OF RAMSEY

MINNESOTA POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River

PCA-77-010-MG

STATEMENT OF NEED

The above-captioned rule is not an amendment to any existing rule of the Minnesota Pollution Control Agency (hereinafter MPCA). The need to adopt this rule arises from requirements placed upon the State of Minnesota by the Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 et seq. (1972)) and by Minnesota Statutes section 115.44 (1976). The purpose of the rule is to achieve national goals for water quality and to bring about compliance with existing Minnesota water quality standards for the South Fork of the Zumbro River.

Sections 301(b)(1)(A) and (b)(1)(B) of the FWPCAA, supra, require that all effluent discharged from point sources into the nation's waters meet certain effluent standards. Section 301(b)(1)(C) requires that any more stringent standards established pursuant to state or other federal law also be met. As explained below, maintenance of the water quality at the level required for the South Fork of the Zumbro River cannot be accomplished in the reach between Silver Lake and Lake Zumbro if the effluent discharged into the river is subject only to the FWPCAA standards. Therefore, more stringent effluent standards are needed.

Minnesota Statutes section 115.44, subdivision 2 (1976) directs the MPCA to group the waters of the state into classes based upon

use. With regard to the intrastate waters of the state, including the South Fork of the Zumbro River, this classification has been established by Minnesota Regulations WPC 24. Section 115.44, subdivisions 2and 4 further require that water quality standards be established for each of the water classes; such standards for intrastate waters are included in Minn. Reg. WPC 14. The South Fork of the Zumbro River is classified 2B, 3C, 4A, 4B, 5 and 6 by WPC 24; only the water quality standards applicable to class 2B waters, however, are being or are in danger of being violated, and therefore only these standards are addressed by the proposed rule. These standards,which are set forth in Minn. Reg. WPC 14(d)(2) Class B, specify that waters of this class must be of a quality which permits the propogation and maintenance of cool or warm water sport or commercial fishes and which provides suitability for all types of aquatic recreation including swimming; this section also provides a list of concentrations and ranges for substances in and characteristics of these waters.

In addition to water quality standards, Minn. Stat. §115.44, subd. 4 (1976) provides that effluent standards be established for effluent discharged into the state's waters. Whereas water quality standards are standards of purity which are to be maintained in any given body of water, effluent standards are standards of purity to be met by wastewaters discharged from point sources into a body of water. Minn. Reg. WPC 14(c)(6) sets a general effluent standard applicable to discharges into any intrastate waters; WPC 14(c)(8) provides that in situations where the required water quality can not be maintained through adherence to these effluent standards,

more stringent effluent standards may be established.

Effluent standards sufficient to maintain the water quality standards required for a given body of water are usually developed by means of a "waste load allocation" study; further explanation and discussion is provided in the Statement of Evidence. The waste load allocation study which was conducted by the MPCA for the reach of the South Fork of the Zumbro River to which the proposed rule would apply demonstrated that the general effluent standards of Minn. Reg. WPC 14 are not adequate to maintain either at present or in the future the applicable water quality standards discussed above. The study concluded that in order to maintain the appropriate water quality until the year 2000, more stringent effluent standards must be applied. It is these standards which the MPCA seeks to establish by the adoption of the proposed rule.

Dated: August 2, 1977

Sandra S. Gardebring

Sandra S. Gardebring
Executive Director
Minnesota Pollution Control Agency

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Joann Cervantez, being first duly sworn, hereby deposes and says:

That at the City of St. Paul, county and state aforementioned, on the 13th day of February, 1978, she did serve the Report of Hearing Examiner PCA-77-010-MG upon Sandra Gardebring, Executive Director, Pollution Control Agency by personally handing to Juline Metz, said Report of Hearing Examiner.

Joann Cervantez

Subscribed and sworn to before me this 13th day of February, 1977.

Eileen A. Gaiovnik

EILEEN A. GAIOVNIK
Notary Public, Ramsey Co., Minn.
MY COMMISSION EXPIRES
December 14, 1980

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

February 14, 1978

Ms. Sandra Gardebring
Executive Director
Pollution Control Agency
1935 W. County Road B
Roseville, Minnesota - 55113

RE: In the Matter of the Proposed Adoption of a Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River.
Our File No. PCA-77-010-MG

Dear Ms. Gardebring:

I enclose herewith and serve upon you the Report of the Hearing Examiner in the above-entitled matter together with the official record. I am also certifying the original transcript to your office.

Yours very truly,

Myron S. Greenberg

MYRON S. GREENBERG
Hearing Examiner

MSG/eag
Encs.

AN EQUAL OPPORTUNITY EMPLOYER

STATE OF MINNESOTA

OFFICE OF HEARING EXAMINERS

FOR THE POLLUTION CONTROL AGENCY

In the Matter of the Proposed Adoption of a Rule Establishing Effluent Standards for Disposal Systems Discharging to the South Fork of the Zumbro River.

REPORT OF HEARING EXAMINER

The above-entitled matter came on for hearing before Hearing Examiner Myron S. Greenberg, assigned by the Chief Hearing Examiner, in Rochester, Minnesota on August 29 and 30, 1977.

This is a rules hearing pursuant to Minn. Stat. Ch. 15 to determine whether the proposed new Minn. Rule WPC 43 should be adopted.

Stephen B. Masten, Special Assistant Attorney General, appeared as counsel for the Minnesota Pollution Control Agency (hereinafter "PCA" or "Agency"). Testifying on behalf of the PCA were Lanny Peissig, a principal engineer in the Division of Water Quality of the PCA; Jerry C. Winslow, a staff engineer in the Division of Water Quality of the PCA; Willis Mattison, Regional Director for the PCA in Rochester; and Marvin B. Hora, a senior biologist in the Division of Water Quality of the PCA.

Mr. Gerald Swanson, City Attorney, appeared as counsel for the City of Rochester, Minnesota (hereinafter "Rochester"). Appearing as witnesses on behalf of the City of Rochester were Fred K. Beatty, a partner of the firm of Black & Veatch; Ken Boyer, a consultant with the firm of Wallace, Holland, Kastler, & Schmitz Company; Phil Wheeler, Long-Range Planning Supervisor for the Olmsted County Consolidated Planning Department; Marvin Skodje, Superintendent of Water Reclamation Plant at Rochester; and Roger Plumb, Director of Public Services for the City of Rochester.

Six individuals testified on behalf of the public. The hearing continued until all interested persons or groups had an opportunity to participate and be heard.

Pursuant to Minn. Stat. § 15.0412, subd. 4, this Report shall be available for review to all affected individuals upon request for at least five days.

The 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 five days subsequent to the receipt of this Report. This 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 Agency on the issues of substantial changes in the rule and compliance with Minn. Stat. § 15.0412 within ten calendar days. Thereafter, the Agency shall be responsible for filing the rules with the Attorney General.

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

FINDINGS OF FACT

1. On June 21, 1977, the PCA filed the following documents with the Chief Hearing Examiner:

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

2. On June 27, 1977, the PCA filed a revised first page of the Notice of Hearing with the Examiner.

3. On July 18, 1977, A Notice of Hearing and a copy of the proposed rules were published at 1 State Register 94. (MPCA Ex. 34)

4. On July 18, 1977, the Agency mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice. (MPCA Ex. 37)

5. On August 3, 1977, the Agency filed the following documents:

(a) The Order for Hearing;
(b) The Notice of Hearing as mailed;
(c) The Affidavit of Receipt of the Secretary of State's list;
(d) The Affidavit of Mailing;
(e) The Secretary of State's Certificate and list;
(f) The Statement of Need;

(g) The Statement of Evidence, including the names of witnesses to be called;
(h) An affidavit concerning response to Notice of Intent to solicit outside opinion,ppublished pursuant to Minn. Stat. § 15.0412, subd. 6 (1976) at 1 State Register 1442 (March 28, 1977) and
(i) The names of Agency personnel who will represent the MPCA.

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

5. The record remained open through September 19, 1977, for the receipt of written comments and statements.

Additional notice of the hearing was provided by materials which appeared in the Rochester Post-Bulletin newspapers articles on June 19 and August 11, 1977, and as legal notices on August 19 and 25, 1977. (MPCA's Exs. Nos. 43, 44, 46 and 47).

During the hearing and the period after the hearing, during which the record remained open, four comments were received by the Examiner. Comment No. 1 was submitted by the Lake Zumbro Improvement Association favoring the proposed rule; Comment No. 2 is from attorneys representing several of Rochester's dairy industries opposing adoption of the proposed rule; Comment No. 3 is a post-hearing statement by the MPCA, and Comment No. 4 is a post-hearing statement by the City of Rochester.

7. The transcript of the instant hearing was received by the Examiner on September 29, 1977.

STATUTORY AUTHORITY

8. The proposal and adoption of rules such as WPC 43 is authorized, and to some extent delimited, by statutes and duly promulgated rules. Minn. Stat. § 115.44, subd. 2 (1976), directs the MPCA to group the waters of the state into classes based upon use. With regard to the intrastate waters of the state, including the South Fork of the Zumbro River, this classification has been established by Minn. Rule WPC 24. Minn. Stat. § 115.44, subds. 2 and 4 further require that water quality standards be established for each of the water classes; such standards for intrastate waters are included in Minn. Rule WPC 14.

The South Fork of the Zumbro River is classified 2B, 3C,

4A, 4B, 5 and 6 by WPC 24. Only the water quality standards applicable to Class 2B waters, however, are being or are in danger of being violated, and therefore, only these standards are addressed by the proposed rule. These standards, which are set forth in Minn. Rule WPC 14(d)(2), Class B, specify that waters of Class 2B must be of a quality which permits the propagation and maintenance of cool or warm water sport or commercial fishes and which provides suitability for all types of aquatic recreation, including swimming. WPC 14(d)(2) also provides a list of concentrations and ranges for substances in and characteristics of these waters.

In addition to water quality standards, Minn. Stat. § 115.44, subd. 4 (1976), provides that effluent standards be established for effluent discharged into the state's waters. While water quality standards are standards of purity which are to be maintained in any given body of water, effluent standards are standards of purity to be met by wastewaters discharged from point sources into a body of water. Minn. Rule WPC 14(c)(6) sets a general effluent standard applicable to discharges into any intrastate waters; WPC 14(c)(8) provides that in situations where the required water quality can not be maintained through adherence to these effluent standards, more stringent effluent standards may be established. (See MPCA's Statement of Need)

9. Rochester asserts that Minn. Stat. § 115.03, subd. 1(3)(8) applies to the rules under consideration and imposes a burden upon the agency to show a reasonable relationship between (1) the economic costs associated with the rules, if adopted; and (2) the benefits to be realized by promulgation and enforcement of such rules. (Com. 4 at 9-10) The Examiner finds that position to be in error. First, Minn. Stat. § 115.03, is contained in that part of the statutes which apply to sanitary districts; municipalities are addressed specifically in §§ 115.41 et seq. Second, the type of considerations which are raised with respect to sanitary districts in § 115.03 are noted generally in § 115.43, subd. 1, with respect to municipalities. Third, and most important, § 115.03, subd. 1(e)(8) is taken al-

most directly from the Federal Water Pollution Control Act (FWPCA) (33 U.S.C. 1251 et seq.), Section 302. That Section, and the use of the phrase "best available technology" are applicable to industries rather than municipalities.

Minn. Stat. § 115.03, subd. 1(e)(8) is not apposite to the instant proceedings and does not preclude the Examiner from balancing the economic costs against the anticipated benefits of the proposed rule. As mandated in Minn. Stat. § 115.43, subd. 1,

> ". . . In exercising all [its] powers the agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom and shall take or provide for such action as may be reasonable, feasible and practical under the circumstances."

The Examiner concludes from the above that the MPCA must consider all aspects (including financial and tax consequences) of its proposed action, but need not show or establish a specific relationship between the cost of implementing the rules and a quantified benefit expected from such implementation.

10. General standards have been established for quality of effluent discharged by municipal sewage treatment plants. (WPC 14(c)(6)) and for quality and purity of ambient waters (WPC 14(d)). It is clear that the two sets of standards are integrally related because the quality (and amount) of effluent discharged into a river (or other body of water) directly and immediately affects the quality of the receiving water.

GENERAL PROVISIONS OF PROPOSED WPC 43

11. Section (d) of the proposed rule sets the effluent limits, and is the section toward which the bulk of the testimony at the hearing was directed. These limits will be discussed below. The preamble of the rule and the remaining sections, sections (a), (b), (c), (e) and (f), are largely ancillary and administrative provisions. Because of their nature and their similarity to the provisions of existing rules setting effluent limitations, they were not given extensive attention at the hearing.

12. The "preamble" to WPC 43 is reasonable and necessary to define the waters to which the rule applies.

13. WPC 43(a) and (b) are general in nature and are reasonable and necessary to establish the scope and severability of the rule.

The term "regulation" is used in WPC 43(c) and throughout the rule. Recent revisions to Minnesota Administrative Procedures Act eliminate use of the term "regulation" (as redundant) and indicates a legislative preference for the term "rule." The rule should, therefore, be revised to reflect such preference, unless it is intended by the MPCA that federal regulations be considered applicable also. In that case, the appropriate phrase would be "rules and regulations" as it appears the first time in WPC 14(a), and "rule" as it appears as the last word of that paragraph.

The term "regulation" should be changed appropriately as it appears in other instances throughout the rule (See WPC 43(d) and (e)).

14. WPC 43(c) is reasonable and necessary to reference the statutory source of definition of terms which are not otherwise defined.

15. WPC 43(e) is generally reasonable and necessary to establish a method of and standards for testing in order to determine compliance. This provision is standard for the MPCA and is taken primarily from Minn. Rule WPC 14(c)(5) and 14(c)(6).

Questions were addressed to the Agency by the Examiner regarding (1) the necessity for the phrase "from the viewpoint of adequately reflecting the condition of the composition of the effluents" (Tr. 469-470); and (2), the legality and propriety of the Agency's employment of "other methods, procedures, guidelines or criteria for measuring, analyzing and collecting samples." (Tr. 470-471) These parts of WPC 43(e) are commended to the Agency for review. The elimination of the first-noted phrase would not be a substantial change. Alteration of the second phrase could be a substantial change, depending on the nature of such alteration.

16. WPC 43(f) reiterates the standard variance provision set forth by Minn. Stat. § 116.07, subd. 5 (1976), and by Minn. Rule WPC 14(a)(9). As such, it appears to be reasonable and necessary.

17. Essentially three positions were taken at the hearing regarding WPC 43(d): (1) The PCA wants the rules adopted as proposed; (2) Rochester wants the effluent standards set at 14 mg/l BOD_5, 1.6 mg/l ammonia and 20 mg/l suspended solids; and (3) the Lake Zumbro Citizens Association prefers 5 mg/l BOD_5 a and 5 mg/l suspended solids. The positions are summarized in the following table.

	Proposed PCA Rule	City of Rochester	Lake Zumbro Citizens Assn.
5-day Biochemical Oxygen Demand (BOD_5)	10 mg/l	14 mg/l	5 mg/l
Total Suspended Solids (TSS)	10 mg/l	20 mg/l	5 mg/l
Minimum Dissolved Oxygen	5 mg/l	not specified	not specified
Ammonia (N)	1.5 mg/l	1.6 mg/l	not specified

Unless contradicted by a specific Finding in this Report, the Examiner finds the standards desired by the City of Rochester to be reasonable and necessary to effectuate the goals enunciated by the PCA. The Examiner adopts the content of the post-hearing statement on behalf of the City of Rochester (Com. No. 4) as the reasons for such Finding.

It is all but inconceivable to the Examiner that the Rochester city officials -- whether elected or not -- are insensitive to a clear threat to the health of the city population, especially a city with such a great number of people involved in the health field and aware of health-related problems. The fact that the danger from the PCB's may not be immediately palliated or exacerbated by the establishment of new effluent standards is not or should not be the controlling consideration for the city fathers. Rather, it is the concern for the health and well-being of those who recreate and procreate in the area (and are exposed to the harmful pollutants).

The type of rule-making whereby specific actions are required of a single, specific entity is as close as an administrative agency can come to encroaching upon strictly legislative

jurisdiction. The Examiner is extremely cautious about favoring or recommending the imposition of an action by a state agency on a single local unit of government when such government is, itself, responsive directly to an electorate for its actions or inaction.

The Examiner is not impressed with the argument that the cost to Rochester is only 10% of the actual dollar expenditure. Just because the cost will not be borne exclusively by the city is no reason to spend the money. The funds come from federal and state tax revenues. Those dollars are not from the "deep pocket" of the government, but more accurately, from the shallow (and quite empty) pocket of the American and Minnesota taxpayer who does not want to pay for unnecessary projects.

No argument was raised by Rochester against the proof of the bad characteristics of PCB's. The only relevant argument regarding the standard of 10 mg/l proposed for TSS is that such standard cannot be shown to reduce the level of PCB's or other deleterious substances in the water by any amount significantly or even nominally greater than a standard of 20 mg/l. Without an affirmative presentation by the Agency establishing the reasonableness and necessity for the 10 mg/l standard, the Examiner cannot recommend adoption of such rule.

If not for the seriousness of the threat posed by PCB's, the Examiner would be content with the findings set forth above. Considering the dangers associated with PCB's, however, the Examiner feels compelled to suggest that a monitoring program be established to keep track of the levels and sources of PCB's in the Zumbro River.

Based on the foregoing, the Hearing Examiner makes the following:

CONCLUSIONS

1. Due, timely and adequate notice of the hearing was properly served and published by the Agency. All other substantive and procedural requirements of statute and rule have been fulfilled.

2. The Agency has demonstrated its statutory authority to adopt the proposed rules unless specifically indicated to the contrary in the preceding Findings.

3. By an affirmative presentation of facts, the Agency has demonstrated a need for and reasonableness of the proposed rules, unless specified to the contrary in the preceding Findings.

RECOMMENDATION

The Hearing Examiner recommends that the proposed rules, as modified herein, be adopted. The Examiner further recommends that a program be established to monitor the levels and sources of PCB's (and other pollutants) in the Zumbro River in and around Rochester.

Dated this 10th day of February, 1978.

MYRON S. GREENBERG
Hearing Examiner