

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

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

Version 3
August 20, 2018

Department of Natural Resources

Adopted Amendments to the Rules Governing Snowmobiles

6 MCAR 1.0057 E. 4.a. No snowmobile manufactured on or after April 1, 1975~~,-for-sale-in-Minnesota~~, except a snowmobile designed for competition purposes only, shall be sold, ~~or~~ offered for sale, or operated in Minnesota unless it is so equipped ~~that-overall-noise-emission-does-not-exceed~~ and has been certified by the manufacturer to conform to a sound level limitation of not more than 78 decibels on the A scale at 50 feet as originally equipped.

~~6-MCAR-1.0057-E.-4.b.--No-snowmobile-manufactured-on-or-after-July-1,-1979,-for-sale-in-Minnesota,-except-a-snowmobile-designed-for-competition-purposes-only,-shall-be-sold-or-offered-for-sale,-unless-it-is-so-equipped-that-overall-noise-emission-does-not-exceed-73-decibels-on-the-A-scale-at-50-feet.~~

~~6-MCAR-1.0057-E.-4.c.--At-a-time-when-the-state-of-the-art-of-noise-control-technology-permits,-and-after-promulgation-of-a-regulation-in-the-manner-prescribed-by-law,-the-standard-for-snowmobile-noise-shall-not-exceed-60-decibels-on-the-A-scale-at-50-feet.~~

6 MCAR 1.0057 E. 5. ~~Noise-levels-established-herein-shall-be determined-according-to-SAE-Recommended-Practice-J192-entitled "Exterior-Sound-Levels-for-Snowmobiles."~~

In certifying that a new snowmobile complies with the noise limitation requirements of this rule, a manufacturer shall make such a certification based on measurements made in accordance with the SAE Recommended Practice J192(a), as set forth in the Report of the Vehicle Sound Level Committee, as approved by the Society of Automotive Engineers September 1970 and revised November 1973.

6 MCAR 1.0057 E.6. No snowmobile ~~or snowmobile muffler~~ shall be sold or offered for sale in Minnesota unless its maker shall have previously furnished the Commissioner with a certificate of compliance certifying that all such snowmobiles ~~or mufflers~~ made by that maker meet or exceed the applicable noise level restrictions established by these rules. The certification of compliance required in the foregoing shall be in the form of a "Snowmobile Safety Certification Committee" label conspicuously attached to the machine showing certification by the Snowmobile Safety and Certification Committee, Inc. Snowmobiles ~~or snowmobile mufflers~~ intended for competition purposes only shall be exempt from this rule provided a separate placard identifying that such snowmobile is not so equipped is conspicuously and permanently affixed thereto.

6 MCAR 1.0057 E.7. Except for organized events as authorized by Minn. Stat. 84.871, no snowmobile shall be modified by any person in any manner that shall amplify or otherwise increase total ~~engine~~ noise level above that emitted by the snowmobile as originally equipped, regardless of date of manufacture.

6 MCAR 1.0058 PENALTIES.

(A) Any person who shall violate any of the provisions of these regulations shall be guilty of a misdemeanor ~~and be punished by a fine of not more than $300, or by imprisonment for not more than 90 days, or both.~~

(B) A manufacturer who certifies that a new snowmobile can meet the sound level limitations imposed by these rules shall be subject to the penalty provisions of subsection (a) for each machine so certified which does not meet the applicable sound level limitations.

~~6 MCAR 1.0059. Conservation Regulations 51-59 relating to snowmobiles are hereby repealed.~~

APPROVED AS TO FORM AND LEGALITY

Oct. 1, 1979

WARREN SPANNAUS, ATTORNEY GENERAL

BY _____

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT - 2 1979
Joan Anderson Growe
Secretary of State
11:10 AM

#529 Dept of Natural Resources

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 7-20-79 Temporary Rule _____

Resubmitted and Received 8-30-79 – 9/27/79

10/1 - Call to Cal app w/ Orig & Order Adopted

DUE DATE 8-9-79 - 9-9-79 - 10/7/79

a. Returned to Agency w/o filing w/Secy of State 8/9 // 8/31
b. Approved 10-1-79 Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N.A.
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 N.A.
13. Order Adopting ✓
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable N.A. → In existing rule
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N.A
17. Petition by Public, where applicable N.A.

ADMIN. Our File: #529

STATE OF MINNESOTA

DEPARTMENT: Attorney General

Office Memorandum

JOSEPH N. ALEXANDER
Commissioner
TO : Department of Natural Resources

DATE: October 2, 1979

c/o A. WILLIAM CLAPP
Special Assistant Attorney General

FROM : Lee E. Sheehy
Special Assistant
Attorney General

PHONE: 296-1238

SUBJECT: Rules as Approved In the Matter of the Proposed Amendment of Rules of the Department of Natural Resources Governing Snowmobiles

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

Directly following the approved rules is a complete set of required documents and transcript which must be retained with the rules by you or your agency.

If you have any questions in this regard, please contact me.

LES/dw
Enclosure

cc: Duane Harves
Marshall Whitlock
Melvin Goldberg

Our File #529

ATTORNEY GENERAL

A. WILLIAM CLAPP
Special Assistant
Attorney General

LEE E. SHEEHY
Special Assistant
Attorney General

296-1288

August 31, 1979

In the Matter of the Proposed Amendments of Rules of the Department of Natural Resources Governing Snowmobiles

The above-captioned rules have not been approved as resubmitted. The Department in the resubmittal corrected the earlier noted problem of incorporation by reference of "S.A.E. Recommended Practice J192(a)" by printing the provision in its entirety. However, two problems arise.

First, the text of J192(a) also contains incorporations by references. Given that fact, perhaps there are sufficient words and pages incorporated directly and indirectly in J912(a) to meet the standards set forth in Minn. Stat. § 15.0412, Subd. 4. If so, this matter should be submitted to the Chief Hearing Examiner for his review.

Secondly, the text of J192(a), specifically Section 1 entitled "Introduction", seems to imply that changes will be made in the requirements of J192(a). This office wishes to remind the agency that any such changes must be done through compliance with the proper rule promulgation process. Further, the agency must avoid the pitfalls set forth in Wallace v. Commissioner of Revenue, _____Minn._____, 184 N.W. 2d 588 (1971). To do so, the agency may wish to adopt J192(a) as of a certain date. Other possibilities exist which I would be happy to discuss with you.

If you have any questions, do not hesitate to contact me.

LES/bw
cc: Duane Harves
Marshall Whitlock
Melvin B. Goldberg

ATTORNEY GENERAL

A. WILLIAM CLAPP
Special Assistant
Attorney General

August 9, 1979

LEE E. SHEEHY
Special Assistant
Attorney General

296-1288'

In the Matter of the Proposed Amendments of Rules of the Department of Natural Resources Governing Snowmobiles.

The above-captioned rules have not been approved by this office. After consideration of the below enumerated reason, these rules may be resubmitted. At that time, please ensure that the original of the Order Adopting and the rules as adopted accompanies the materials resubmitted.

The reason the rules have not been approved are as follows:

1. Incorporation by Reference: Minn. Stat. § 15.0412 Subd. 4 now requires that the full text of the rules be proposed or, in the alternative, any incorporation by reference be approved by the Chief Hearing Examiner pursuant to the standards established therein. 6 MCAR 10057 E. 5. proposes for adoption through incorporation by reference "S.A.E.O. Recommended Practice J192(a)." As such, the full text of the newly proposed "Practice" must be included in the rule or an incorporation of reference must be approved by the Chief Hearing Examiner. The existence of a similar provision in the existing rules is not legally significant to excuse compliance with the above-cited statutory requirement because, among other reasons, (i) the "Practice" is newly proposed language and (ii) is not apparently identical to the existing "Practice" incorporated by reference.

Relating to the question of the agency's general statutory authority in this matter, this office has concluded that the rules can be viewed within the department's authority. The rule only permits latitude for snowmobile manufacturers to establish muffler specification so long as the machine equipped with the specified muffler stays within a maximum decibel level. As such, the rules are within the agency's statutory authority.

LES/bw
cc: Duane Harves
Diane Hollern
Marshall Whitlock
Melvin Goldberg

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Attorney General
Natural Resources

TO : LEE SHEEHY

DATE: 9-26-79

FROM : BILL CLAPP Bill

PHONE:

SUBJECT: Snowmobile Rules Amendment

Here it comes again, on Try #3. J192A is back as an incorporation by reference, but this time with the hearing examiner's OK. Also, the incorporation is now worded so as not to include future amendments.

encs.

RECEIVED
SEP 27 1979
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

DNR-79-011-MG

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF THE PROPOSED AMENDMENT OF RULES OF THE DEPARTMENT OF NATURAL RESOURCES GOVERNING SNOWMOBILES.	ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, on September 6, 1979, the Minnesota Department of Natural Resources submitted a request to the Chief Hearing Examiner for approval of the incorporation by reference of certain materials in the above-referenced rules; and

WHEREAS, pursuant to Minn. Stat. 1978, § 15.0412, subd. 4, agencies may incorporate by reference provisions of federal law or rule or other material from sources which the Chief Hearing Examiner determines are conveniently available for viewing, copying and acquisition by interested persons, and which exceed 3,000 words or five pages of publication in the State Register; and

WHEREAS, the Chief Hearing Examiner has reviewed SAE Recommended Practice J192(a) as set forth in the Report of the Vehicle Sound Level Committee, approved by the Society of Automotive Engineers, September, 1970, and last revised November, 1973, which includes incorporation by reference of SAE J184, Qualifying a Sound Data Acquisition System, and Type 1 requirements of ANSI S1.4-1971, Specification for Sound Level Matters, all of which are available on request from I SIA, Washington, D. C., 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 are otherwise conveniently available for viewing, copying and acquisition by interested persons.

NOW, THEREFORE, IT IS ORDERED that the Department shall have the approval of the Chief Hearing Examiner to incorporate by reference in the proposed rules the above-referenced materials.

Dated this 12th day of September, 1979.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Attorney General
Natural Resources

TO : MYRON GREENBERG
Hearing Examiner

RECEIVED DATE: 6-19-79

JUN 20 1979

OFFICE OF HEARING EXAMINERS

FROM : A. W. CLAPP, III
Special Assistant
Attorney General

PHONE:

SUBJECT: Snowmobile Rules Amendments

You have raised the question of the degree to which the agency has documented its statutory authority to take the proposed action. The proposed action is to make certain amendments to the agency's rules regarding snowmobile sound emission levels. The basic amendment is deleting the 73 decibel goal.

You question whether the agency ever had authority to adopt that to-be-deleted goal. That question is probably immaterial since in fact it is being done away with. Your greater concern is whether there is authority for NR 57 (e)(4)(aa) - the 78 dBA standard in effect since 4-1-75. It regulates "overall noise emission" of a snowmobile, relying on statutory authority to adopt rules for "(5) Specifications relating to snowmobile mufflers". Minn. Stat. § 84.86. Your concern, I suggest, should be forgotten.

The provision that concerns you has been in the rule since 1972. Since 1972 and prior to the present proposed changes, there have been 3 amendments concerning overall noise emission levels. The 1972 rule and the 3 amendments were all approved as to form and legality by the Office of the Attorney General. The last 2 of the hearings were conducted by the Office of Hearing Examiners, at each of which ISIA raised the issue of statutory authority exactly as you are now raising it and the hearing examiner chose not to address the issue in his Report. The legislature has had 7 opportunities since 1972 to tell DNR that the agency had gone beyond what the legislature meant by "mufflers". It is not so acted.

Minn. Stat. § 645.16 directs us on how to interpret and construct laws of Minnesota. The overriding goal is to "ascertain and effectuate the intention of the legislature". We are warned that "the letter of the law shall not be disregarded under the pretext of pursuing the spirit". The history of the rule, recited above, cannot be characterized by the pejoratives "disregarded" and "pretext". Therefore, the 3rd paragraph of Minn. Stat. § 645.16, with its list of 8 factors becomes controlling. I have not had the time to review the case law, so I have to ask you to review the cases digested in Minnesota Statutes Annotated, in Note 2 after Minn. Stat. § 645.16 - particularly those in the Pocket Part.

DORSEY, WINDHORST, HANNAFORD, WHITNEY & HALLADAY

2300 FIRST NATIONAL BANK BUILDING

MINNEAPOLIS, MINNESOTA 55402

1468 W-FIRST NATIONAL BANK BUILDING
ST. PAUL, MINNESOTA 55101
(612) 227-8017

(612) 340-2600
CABLE: DOROW
TELEX: 29-0605
TELECOPIER: (612) 340-2868

115 THIRD STREET SOUTHWEST
ROCHESTER, MINNESOTA 55901
(507) 288-3156

RECEIVED
JUN 19 1979
OFFICE OF HEARING EXAMINERS

June 19, 1979

ROBERT A. SCHWARTZBAUER
(612) 340-2782

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

Re: Statutory authority of DNR to Promulgate 6 MCAR § 1.0057 regulating snowmobile noise emissions

Dear Mr. Greenberg:

The following arguments support the proposition that the regulations promulgated by the DNR regarding snowmobile noise levels are within that agency's statutory grant of authority. It should be pointed out at the outset that this letter does not necessarily represent the position of the International Snowmobile Industry Association. It is provided in furtherance of our discussions at Monday's meeting.

1. The Express Language of the Statute Provides for DNR Regulation of Overall Noise Emissions

Minn. Stat. §§ 84.86, subd. 1(5) and 84.871 were both part of a 1969 legislative package which expanded the DNR's already extensive control over snowmobiles. Section 84.86, subd. 1(5) authorizes the promulgation of rules by the Commissioner establishing "specifications relating to snowmobile mufflers." In section 84.871 the legislature goes on to describe what must be accomplished by these muffler specifications:

> . . . [E]very snowmobile shall be equipped at all times with a muffler in good working order which blends the exhaust noise into the overall snowmobile noise and is in constant operation to prevent excessive or unusual noise.

Thus, to carry out the mandate of the legislature, the Commissioner must develop muffler specifications with an eye toward two goals. First, mufflers must blend exhaust noise into overall noise. Second, mufflers must prevent excessive or unusual noise. The legislature did not say that mufflers should only prevent excessive "exhaust" noise. Rather, mufflers must prevent excessive noise. This must be read to mean that the DNR can set standards based on overall noise because a muffler is supposed to reduce overall noise.

In addition, since noises must be blended, the reference to "excessive or unusual noise" must certainly mean overall noise. It would be inconsistent for the legislature in one breath to say that noises must be blended, and then in the same sentence require that only one of the noises in the blend be reduced to a non-excessive level.

2. The Legislative Intent Permits Regulation of Overall Sound Emissions

Even if one concludes that the statutory language does not expressly allow the DNR to regulate overall noise emissions, the statute does not expressly disallow such regulation either. The DNR can regulate exhaust mufflers and, at best, it is an open question whether mufflers are intended to reduce excessive overall noise or just excessive exhaust noise.

When the words of a law are not explicit, Minn. Stat. § 645.16 provides various rules of interpretation and construction. The opening paragraph of that section states that "The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature."

Despite the fact that the express language of these statutes is arguably unclear, there can be no doubt about the intent of the legislature. Minn. Stat. § 645.16 lists some of the factors to be considered when ascertaining the intention of the legislature, including:

(a) The circumstances under which the law was enacted.

(b) The mischief to be remedied.

(c) The object to be attained.

(d) The consequences of a particular interpretation.

(e) Legislative and administrative interpretation of the statute.

Let us examine each of these factors.

(a) In 1969, a serious problem unquestionably existed regarding overall noise from snowmobiles. The obvious solution to curb this nuisance was to require mufflers which reduced overall noise to an acceptable level. Considering the immediacy and growing nature of the problem and the then existing technology in this area, it is not surprising that muffler specifications were the immediate and (thought to be) sole means of curbing overall noise from snowmobiles. For that reason, the legislature demanded that exhaust mufflers must not only be effective but also must blend all noise to an acceptable level.

(b) and (c) The mischief to be remedied was the excessive noise emanating from snowmobiles generally. If we could break down overall noise into each of its component parts, perhaps none of the isolated noises could be considered excessive. Therefore, the mischief to be cured was the overall noise, and the legislature sought to reduce this to a tolerable level by adopting muffler standards.

(d) Any other interpretation of the statute would place an impossible burden on the DNR when attempting to adopt muffler specifications. Since "exhaust" noise is supposed to be "blended" into "overall noise," there would be no practical way to test muffler performance without measuring overall noise levels. A muffler cannot blend noise and at the same time isolate a particular noise for independent measurement.

(e) Since 1969, the legislature has made several amendments and additions to the DNR's general power to regulate all areas of snowmobile use. Yet, the statutes enabling the DNR to regulate snowmobile noise have not been changed. This inaction demonstrates the legislature's acquiescence in the Commissioner's interpretation of the law, and the hearing officer's acceptance of that interpretation.

Finally, a statute should not be so construed as to attribute to the legislature a construction which leads to absurd results. Minn. Stat. § 645.17(1). The idea that the legislature would exclusively concern itself with curbing just one component of total noise, while allowing overall noise levels to remain at intolerable levels, is indefensible. One must bear in mind that the DNR's power to govern snowmobile noise was granted two years prior to the legislature's grant of power to the PCA to control noise in general. Therefore, in 1969, the legislature must have intended that the DNR control overall noise, since no other body was empowered to deal with the problem.

3. The Authority Granted to the DNR Preempts PCA's General Authority

The PCA was given a general grant of authority to control all types of noise from any source. However, this power should be preempted by the specific authority granted to the DNR to control excessive noise from snowmobiles by promulgating muffler specifications. This should be the case even though the PCA's authority was granted more recently (1971) because the legislature has not repealed the DNR's authority in this area, even though it has reviewed and amended other areas of DNR control over snowmobiles.

I hope these arguments and authorities are helpful to you in dealing with this difficult problem.

Very truly yours,

Robert A. Schwartzbauer

RAS:gb

cc: William Clapp, Esq.
Diane Hollern, Esq.
Stephen J. Snyder, Esq.

~~Draft #2~~ 2nd Submitted

Department of Natural Resources

Adopted Amendments to the Rules Governing Snowmobiles

The rules published at State Register, Volume 3, Number 39, April 2, 1979 (3 S.R. 1815) are now adopted, with the following changes.

6 MCAR 1.0057 E. 4.a. No snowmobile manufactured on or after April 1, 1975, ~~in Minnesota,~~ except a snowmobile designed for competition purposes only, shall be sold, offered for sale, or operated in Minnesota unless it is so equipped that overall noise emission does not exceed and has been certified by the manufacturer ~~as being able~~ to conform to a sound level limitation of not more than 78 decibels on the A scale at 50 feet as originally equipped.

6 MCAR 1.0057 E. 5. In certifying that a new snowmobile complies with the noise limitation requirements of this rule, a manufacturer shall make such a certification based on measurements made in accordance with the SAE Recommended Practice J192(a), ~~as amended or with such other standards for measurement of sound level as the department may adopt.~~ as set forth in the Report of the Vehicle Sound Level Committee, which was approved by the Society of Automotive Engineers September 1970 and last revised November 1973, and which reads as follows.

1. Introduction. This SAE Recommended Practice is intended

as a guide toward standard practice, but may be subject to frequent change to keep pace with experience and technical advances.

2. Scope. This SAE Recommended Practice establishes the instrumentation, test site, and test procedure for determining the maximum exterior sound level for snowmobiles.

3. Instrumentation. The following instrumentation shall be used for the measurements required:

3.1 A sound level meter which meets the Type 1 requirements of ANSI S1.4-1971, Specification for Sound Level Meters.

3.1.1 As an alternative to making direct measurements using a sound level meter, a microphone or sound level meter may be used with a magnetic tape recorder and/or a graphic level recorder or other indicating instrument provided the system meets the requirements of SAE J184.

3.1.2 The microphone shall be used with an acceptable windscreen. To be acceptable, the screen must not affect the microphone response by more than ±1 dB for frequencies of 20-4000 Hz or ±1-1/2 dB for frequencies of 4000-10,000 Hz.

3.2 An acoustic calibrator.

3.3 Calibrated engine speed tachometer.

3.4 Thermometer.

3.5 Barometer.

3.6 Sling psychrometer, or dew point apparatus.

3.7 Windvane.

3.8 Anemometer.

4. Test Site.

4.1 A suitable test site is a level open space free from the effects of large sound reflecting surfaces. Parked vehicles, signboards, or other obstacles must not be located within 100 ft. (30 m) of either the vehicle path or the microphone. (See Fig. 1.)

4.2 The microphone shall be located 50 ft (15 m) from the centerline of the vehicle path and 4 ft (1.2 m) above the snow or turf. The normal to the vehicle path from the microphone shall establish the microphone point on the vehicle path.

4.3 The measurement area shall be the triangular area formed by the start point, the end point, and the microphone location.

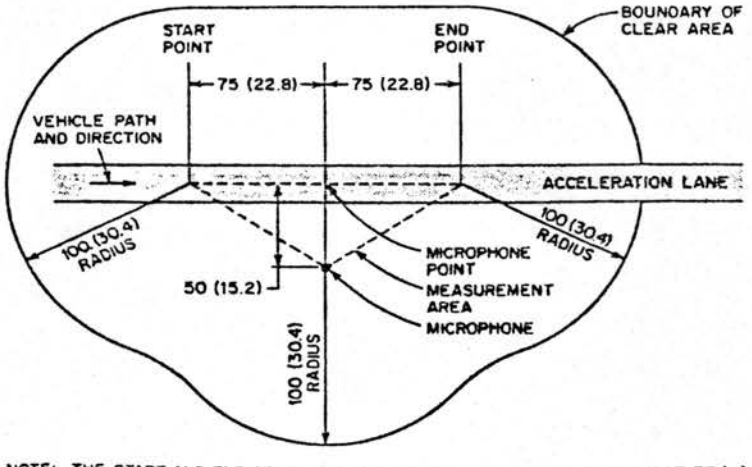


FIG. 1—UNIDIRECTIONAL TEST SITE LAYOUT

4.4 The surface of the ground within the measurement area, including the vehicle path, shall be covered with a maximum of 3 in (75 mm) loose snow over a base consisting of at least 2 in (50 mm) of snow sufficiently compacted to support the snowmobile without penetration. An alternate surface of turf, primarily grass up to a maximum of 3 in (75 mm) may be used, which, except for the vehicle operating path, shall be free of visible droplets of water.

4.5 The reference point of the vehicle, to indicate where the vehicle is on the vehicle path, shall be the front of the vehicle ski(s).

4.6 While making sound level measurements, not more than one person other than the observer reading the meter shall be within 50 ft (15 m) of the vehicle or microphone, and that person shall be directly behind the observer reading the meter, on a line through the microphone and the observer.

4.7 The ambient A-weighted sound level (including wind effects), coming from sources other than the vehicle being measured, shall be at least 10 dB lower than the level of the tested vehicle.

5. Procedure.

5.1 Vehicle Operation. A full-throttle acceleration test as specified below is the basis for establishing maximum noise capabilities of the snowmobile.

5.1.1 For the test, accelerate the vehicle from a standing start by establishing wide-open throttle at the start point shown in Fig. 1. Maintain wide-open throttle until the end point is reached. The centerline of the vehicle must not deviate more than 3 ft (1 m) from either side of the centerline of the vehicle path. Record the maximum engine speed reached.

5.2 The sound level meter shall be set for fast response and the A-weighting network.

5.2.1 The applicable reading shall be the highest sound level indicated for the run, between the start point and the end point, ignoring unrelated peaks due to extraneous noises.

5.2.2 Test runs shall be repeated until three readings within a 2 dB range per vehicle side have been obtained. The sound level for each side of the vehicle shall be the average of all three readings, rounded to the nearest integer. The sound level reported shall be that for the side of the vehicle with the highest readings.

5.3 During the test period, the atmospheric temperature, pressure, humidity, wind speed, and wind direction shall be recorded at intervals not exceeding 1 h.

6. General Comments.

6.1 It is recommended that persons technically trained and experienced in the current techniques of sound measurements select the equipment and conduct the tests.

6.2 The operation of recording and measuring equipment is likely to be affected by temperature near or below 32°F (0°C); hence, special precautions must be taken to ensure the reliability of sound level meter readings and/or recordings.

6.3 Proper acoustical calibration procedure shall include the influence of extension cables, etc. Field calibration shall be made immediately before and after each test sequence. Internal calibration means is acceptable for field use, provided that external calibration is accomplished immediately before and after field use.

6.4 A 2 dB tolerance over the sound level limit shall be included to provide for variations in test site, temperature gradients, wind velocity gradients, test equipment, and inherent differences in nominally identical vehicles. (It has been observed that under some test site conditions, variability in test results greater than 2 dB can be experienced.)

6.5 Instrument manufacturer's specifications for the proper use of the test equipment shall be adhered to.

6.6 Measurements shall be made only when the wind speed is below 12 mph (19 km/h) and the barometric pressure is between 27.5 and 30.5 in Hg (93 and 103 kPa).

6.7 The vehicle manufacturer's recommendations governing the proper operation of the vehicle shall be followed.

7. Reference Material -- Suggested reference material, or subsequent revisions thereof, is as follows:

7.1 ANSI S1.1 -- 1960 (R. 1971), Acoustical Terminology.

7.2 ANSI S1.4 -- 1971, Specification for Sound Level Meters.

7.3 ANSI S1.13 -- 1971, Methods of Measurements of Sound Pressure Levels.

7.4 SAE J184, Qualifying a Sound Data Acquisition System.

Application for copies of ANSI documents should be addressed to: American National Standards Institute, Inc., 1430 Broadway, New York, N. Y. 10018.

6 MCAR 1.0057 F. 6. No snowmobile shall be sold or offered for sale in Minnesota unless its maker shall have previously furnished the Commissioner with a certificate of compliance certifying that all such snowmobiles made by that maker meet or exceed the applicable noise level restrictions established by these rules. The certification of compliance required in the foregoing shall be in the form of either a "Snowmobile Safety Certification Committee" label conspicuously attached to the machine showing certification by the Snowmobile Safety and Certification Committee, Inc.~~,-or-a-letter with-test-results-showing-an-evaluation-of-the-noise-levels by-a-competent-independent-testing-laboratory.~~ Snowmobiles intended for competition purposes only shall be exempt from this rule provided a separate placard identifying that such

snowmobile is not so equipped is conspicuously and permanently affixed thereto.

6 MCAR 1.0057 E. 7. Except for organized events as authorized by Minn. Stat. § 84.871, no snowmobile shall be modified by any person in any manner that shall amplify or otherwise increase total noise level above that emitted by the snowmobile as originally equipped, regardless of date of manufacture.

6 MCAR 1.0058 PENALTIES.

(A) Any person who shall violate any of the provisions of these regulations shall be guilty of a misdemeanor.

(B) A manufacturer who certifies that a new snowmobile can meet the sound level limitations imposed by these rules shall be subject to the penalty provisions of subsection (A) for each machine so certified which does not meet the applicable sound level limitation.

THE OFFICE OF THE ATTORNEY GENERAL, STATE OF MINNESOTA

In the Matter of the
Proposed Amendment of
Rules of the Department
of Natural Resources
Governing Snowmobiles.

DNR RESPONSE TO
SIERRA CLUB BRIEF

Regarding the agency's authority to regulate overall noise emission levels from snowmobiles, please see the arguments of ISIA and of DNR submitted to the hearing examiner before he made his report, and the Findings of Commissioner Alexander.

As to PCA's authority to regulate noise, it should be noted that the DNR has worked closely for years with Al Perez, head of the noise section at PCA, regarding snowmobile noise. Mr. Perez testified at the hearing on the subject amendments, supporting them. PCA has never asked DNR to yield snowmobile noise emission regulation to it.

The Sierra Club's position is self-destructive. If DNR cannot control overall noise emission levels, then not only can it not amend such standards, it cannot enforce the unamended ones. Both 6 MCAR § 1.0057 E. 4. a. and b. (NR 57(e)(4)(aa) and (bb)) would be dead letters. There would be neither a 73 or 78 decibel limit on overall noise emission levels. There would be only the 82 dbA limit on engine exhaust noise, per 57(e)(3).

Dated August 2, 1979.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

BY A. W. Clapp III
A. W. CLAPP, III
Special Assistant Attorney General

cc: Diane Hollern

DNR 8

e. Within 100 feet of shore (including the shores of islands) and of swimmers, from sandbars located approximately at mile 31.0 to the confluence of the St. Croix River with the Mississippi River.

3. Any motorboat designated for law enforcement shall be exempt from provision D. of this regulation in circumstances involving emergencies or violation of law.

E. Water skiing.

1. No watercraft towing a person on water skis, aquaplane, or similar device shall be operated between sunset and sunrise on the St. Croix River from the dam at Taylors Falls to its confluence with the Mississippi River.

2. No watercraft towing a person on water skis, aquaplane, or similar device shall be operated at any time in any zone designated a restricted speed zone under provision D. of this regulation; provided, however, that any watercraft launching or landing a person on water skis, aquaplane, or similar device by the most direct route to open water shall be exempt from provision D.2.~~(d)~~(e) of this regulation.

3. From Memorial Day through Labor Day, inclusive, no watercraft towing a person on water skis, aquaplane, or similar device shall operate after 12:00 noon on Saturdays, Sundays, and legal holidays, from the sandbars located approximately at mile 31.0 to the upper end of the federal nine-foot navigation channel approximately at mile 24.5.

F. Penalties. Any person violating any of the provisions of this regulation shall be guilty of a misdemeanor.

~~C. Effective date~~

~~Beginning on Saturday, May 14, 1977, this rule is in effect whenever similar laws or regulations of the State of Wisconsin are in effect for the same reach of the St. Croix River.~~

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new or amended rule. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Natural Resources

Proposed Rules Governing Snowmobile Emission Standards

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Weyerhaeuser Room of the Minnesota Historical Building, 690 Cedar Street, St. Paul, Minnesota, on May 2, 1979, at 10:00 a.m. and continuing until all persons have had an opportunity to be heard.

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. Written material may be submitted and recorded in the hearing record for 5 working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

The rules are authorized by Minn. Stat. § 584.86.

CALENDAR

Public Hearings on Proposed Agency Rules

April 2, 1979

Date	Agency and Rule Matter	Time and Place
Apr 12	Pollution Control Agency Control of Pollution from Animal Feed Lots Hearing Examiner: Howard Kaibel	10:00 a.m., Bd. Rm., Pollution Control Agency, 1935 W. County Rd. B-2, Roseville, MN

The proposed rules, if adopted, would repeal the requirement that snowmobiles made after July 1, 1979, will emit no more than 73 decibels of noise when measured at full-throttle acceleration at 50 feet from the machine. The applicable noise limit will be 78 decibels, which has been in effect since April 1, 1975.

The proposed rules would require each manufacturer to certify compliance with the proposed noise level by conspicuously attaching to each snowmobile a label showing that the machine conforms to standards set by the Snowmobile Safety Certification Committee; or by submitting a letter to the Commissioner showing an evaluation of the noise levels by a competent independent testing laboratory.

The proposed rules also provide that any manufacturer, who certifies that a new snowmobile can meet the proposed 78 sound level imposed by these rules, shall be guilty of a misdemeanor for each machine so certified which does not meet the applicable sound level limitation.

Under Minn. Stat. § 10A.01, subd. 11 (1978), a lobbyist must register with the State Ethical Practices Board within five (5) days after he commences lobbying. According to the statute, "lobbyist" means any individual engaged for pay or other consideration or authorized by another individual or association to spend money who spends more than five hours of any month or more than $250 not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. "Lobbyist" does not include any: public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity; party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action; individual in the course of selling goods or services to be paid for by public funds; news media or their employees or agents acting in the ordinary course of business of publishing or broadcasting news items, editorials or other comments or paid advertisements which directly or indirectly urge official action; paid expert witness whose testimony is requested either by the body before which he is appearing or one of the parties to a proceeding, but only to the extent of preparing or delivering testimony; or stockholder of a family farm corporation as defined in Minn. Stat. § 500.24, subd. 1, who does not spend over $250, excluding travel expenses, in any year in communicating with public officials.

Questions regarding lobbying should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota, 55155; telephone (612) 296-1720.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of 5 working days. Any person may request notification of the date on which the hearing record has been submitted to the Attorney General by the Agency. If you desire to be notified you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report) or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of the Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing, justifying both the need for and the reasonableness of the proposed rule(s). Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

One free copy of the proposed amendments may be obtained by writing to Department of Natural Resources, Office of Regulatory Services, Box 6, Centennial Office Building, Saint Paul, Minnesota, 55155. Additional copies will be available at the door on the date of the hearing.

Amendments as Proposed

6 MCAR § 1.0057 E.4.a. No snowmobile manufactured on or after April 1, 1975, ~~for sale~~ in Minnesota, except a snowmobile designed for competition purposes only, shall be sold, ~~or~~ offered for sale, or operated unless it is so equipped ~~that overall noise emission does not exceed~~ and has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 78 decibels on the A scale at 50 feet.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language. PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

~~6 MCAR § 1.0057 E.4.b. No snowmobile manufactured on or after July 1, 1979, for sale in Minnesota, except a snowmobile designed for competition purposes only, shall be sold or offered for sale, unless it is so equipped that overall noise emission does not exceed 73 decibels on the A scale at 50 feet.~~

~~6 MCAR § 1.0057 E.4.c. At a time when the state of the art of noise control technology permits, and after promulgation of a regulation in the manner prescribed by law, the standard for snowmobile noise shall not exceed 60 decibels on the A scale at 50 feet.~~

6 MCAR § 1.0057 E.5. ~~Noise levels established herein shall be determined according to SAE Recommended Practice J192 entitled "Exterior Sound Levels for Snowmobiles."~~

In certifying that a new snowmobile complies with the noise limitation requirements of this rule, a manufacturer shall make such a certification based on measurements made in accordance with the SAE Recommended Practice J192(a), as amended or with such other standards for measurement of sound level as the department may adopt.

6 MCAR § 1.0057 E.6. No snowmobile ~~or snowmobile muffler~~ shall be sold or offered for sale in Minnesota unless its maker shall have previously furnished the Commissioner with a certificate of compliance certifying that all such snowmobiles ~~or mufflers~~ made by that maker meet or exceed the applicable noise level restrictions established by these rules. The certification of compliance required in the foregoing shall be in the form of either a "Snowmobile Safety Certification Committee" label conspicuously attached to the machine showing certification by the Snowmobile Safety and Certification Committee, Inc., or a letter with test results showing an evaluation of the noise levels by a competent independent testing laboratory. Snowmobiles ~~or snowmobile mufflers~~ intended for competition purposes only shall be exempt from this rule provided a separate placard identifying that such snowmobile is not so equipped is conspicuously and permanently affixed thereto.

6 MCAR § 1.0057 E.7. Except for organized events as authorized by Minn. Stat. § 84.871, no snowmobile shall be modified by any person in any manner that shall amplify or otherwise increase total ~~engine~~ noise level above that emitted by the snowmobile as originally equipped, regardless of date of manufacture.

6 MCAR § 1.0058 Penalties.

A. Any person who shall violate any of the provisions of these regulations shall be guilty of a misdemeanor. ~~and be punished by a fine of not more than $300, or by imprisonment for not more than 90 days, or both~~.

B. A manufacturer who certifies that a new snowmobile can meet the sound level limitations imposed by these rules shall be subject to the penalty provisions of subsection (a) for each machine so certified which does not meet the applicable sound level limitation.

~~6 MCAR § 1.0059 Repeal. Conservation Regulations 51-59 relating to snowmobiles are hereby repealed.~~

SUPREME COURT

Decisions Filed Friday, March 23, 1979

48402/403 **Thomas A. Rausch, et al, Plaintiffs, vs. Beech Aircraft Corporation, Elliott Flying Service, Inc., third party plaintiff, Appellant, vs. Elan Industries, Inc., and American Motorists Insurance Company, garnishee. Ramsey County.**

Contractual obligation to pay attorneys fees in personal injury actions based on plane crash is not covered by insurance policy excluding coverage for liability arising out of the use of an aircraft.

Affirmed. Sheran, C. J. Took no part, Otis, J.

48172
48355/292 **Gerald Haagenson, and His Wife, Jeanette Haagenson vs. National Farmers Union Property and Casualty Company, Appellant. Hennepin County.**

There is sufficient evidentiary support for the jury's finding that plaintiff insured was injured while entering into a motor vehicle while the vehicle was being used as a motor vehicle, so that plaintiff's injuries are covered under the

ATTORNEY GENERAL

A. WILLIAM CLAPP
Special Assistant
Attorney General

August 1, 1979

LEE E. SHEEHY
Special Assistant
Attorney General

296-1288

In the Matter of Proposed Adoption of Amendments of the Rules of the Department of **Natural Resources Governing Snowmobiles**

I am in receipt of legal memorandum submitted on behalf of the Sierra Club by Ms. Diane Hollern, a copy of which was transmitted to you, in the above-captioned matter. I am requesting the agency to inform me of whether it intends to file a response to Ms. Hollern's legal memorandum. If so, this should be done immediately. As you are aware, this office should act on the submitted rules by August 9, 1979.

If you have any questions, do not hesitate to contact me.

LES:mb

cc: Diane Hollern

Gilbert Onion Skin
25% COTTON FIBRE

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Amendment of Rules of the Department of Natural Resources Governing Snowmobiles.

CERTIFICATE OF COMPLIANCE

I, A. W. Clapp, III, am a special assistant attorney general at the DNR division of the office of the Attorney General. I am familiar with the proposed rule amendments, the steps that have been followed in adopting them, and the hearing record. Based on that and my knowledge of laws and rules regarding rule-making, I believe that all substantive and procedural requirements have been satisfied.

Dated: July , 1979.

A. W. Clapp III

A. W. CLAPP, III

Lee, see page 20 for easy reference.

MINNESOTA

1979

SNOWMOBILE SAFETY LAWS, RULES AND REGULATIONS



NOTE: All Persons Requiring a License Who Hunt or Fish within the Boundaries of the Leech Lake Indian Reservation Must Have on their Person an Appropriate Unrestricted Hunting or Fishing License; or an Appropriate Restricted Hunting or Fishing License with a Leech Lake Reservation Stamp Attached.

Department of Natural Resources
License Center
625 No. Robert Street
St. Paul, Minnesota 55101

CONTENTS

SNOWMOBILE LAWS — MINNESOTA STATUTES 3

Definitions 3

Snowmobile Registration 3

Requirements For Makers of Snowmobiles 5

Disposition of Receipts 5

Transfer or Termination of Snowmobile Ownership 5

Licensing by Political Subdivisions 5

Rules and Regulations 5

Operation: Regulation by Municipalities 6

Operation Generally 7

Regulations by Political Subdivisions 8

Mufflers 8

Crossing of Streets or Highways by Youthful Snowmobile Operators; Prohibitions 8

Signal from Officer to Stop 9

Penalties 9

Confiscation of Snowmobile Used in Burglary 10

Limitations on the operation of Recreational Motor Vehicles within and without the Seven-County Metropolitan Area; Posting of Private Lands; Gates and Fences 10

Game Laws Relating to Use of Snowmobiles 11

NATURAL RESOURCES DEPARTMENT REGULATIONS 12

Registration and Display of Numbers 12

Dealers' and Manufacturers' Registration 13

Game and Fish Resources 14

Public Lands and Waters 14

Uniform Signs 15

Accident Reports 16

Snowmobile Education and Training Programs 17

Revocation of Snowmobile Safety Certificate 18

Required Equipment 18

Mufflers 19

Penalties 20

after provided, such snowmobile shall be registered and a registration number assigned which shall be affixed to the snowmobile in such manner as the commissioner of natural resources shall prescribe. Each deputy registrar of motor vehicles acting pursuant to section 168.33, shall also be a deputy registrar of snowmobiles. The commissioner of natural resources in agreement with the commissioner of public safety may prescribe the accounting and procedural requirements necessary to assure efficient handling of registrations and registration fees. Deputy registrars shall strictly comply with these accounting and procedural requirements. A fee of 50 cents in addition to that otherwise prescribed by law shall be charged for each snowmobile registered by the registrar or a deputy registrar. The additional fee shall be disposed of in the manner provided in section 168.33, subdivision 2.

Subd. 3. **Fees for registration.** (a) The fee for registration of each snowmobile, other than those registered by a dealer or manufacturer pursuant to clauses (b) or (c) of this subdivision, shall be as follows: $12 for three years and $2 for a duplicate or transfer.

(b) The total registration fee for all snowmobiles owned by a dealer and operated for demonstration or testing purposes shall be $37.50 per year.

(c) The total registration fee for all snowmobiles owned by a manufacturer and operated for research, testing, experimentation, or demonstration purposes shall be $150 per year. Dealer and manufacturer registrations are not transferable.

Subd. 4 **Renewal.** Every owner of a snowmobile shall renew his registration in such manner as the commissioner shall prescribe, upon payment of the same registration fees provided in subdivision 3 hereof.

Subd. 5. **Snowmobiles owned by state or political subdivision.** A registration number shall be issued without the payment of a fee for snowmobiles owned by the state of Minnesota or a political subdivision thereof upon application therefor.

Subd. 6. **Exemptions.** No registration hereunder shall be required for the following described snowmobiles:

(a) Snowmobiles owned and used by the United States, another state, or a political subdivision thereof.

(b) Snowmobiles registered in a country other than the United States temporarily used within this state.

(c) Snowmobiles covered by a valid license of another state and which have not been within this state for more than 30 consecutive days.

Subd. 7. **Special permits.** The commissioner of natural resources may issue special permits to out of state snowmobiles from a state or country where registration is not required to operate in Minnesota for limited periods of time not to exceed 30 days in connection with organized group outings, trailrides, races, rallies and other promotional events.

Subd. 8. **Registration by persons under 18 prohibited.** No person under the age of 18 years may register a snowmobile.

84.821 Requirements For Makers of Snowmobiles

Subdivision 1. All snowmobiles made after Ju[redacted], 1972, and sold in Minnesota, shall bear the maker's permanent identification number stamped in letters and numbers in the form and at a location prescribed by rule and regulation of the commissioner.

Subd. 2. All snowmobiles made after June 30, 1972, and sold in Minnesota, shall be designed and made to provide an area on which to affix the registration number. This area shall be at a location and of dimensions prescribed by rule and regulation of the commissioner.

84.83 Disposition of Receipts

Fees from registration of snowmobiles shall be deposited with the state treasurer to the credit of the general fund.

84.84 Transfer or Termination of Snowmobile Ownership

Within 15 days after the transfer of ownership, or any part thereof, other than a security interest, or the destruction or abandonment of any snowmobile, written notice thereof shall be given to the commissioner in such form as he shall prescribe. Every owner or part owner of a snowmobile shall, upon failure to give such notice, be subject to the penalties imposed by Laws 1967, Chapter 876.

84.85 Licensing by Political Subdivisions

No political subdivision of this state shall require licensing or registration of snowmobiles covered by the provisions of Laws 1967, Chapter 876.

84.86 Rules and Regulations

Subdivision 1. With a view of achieving maximum use of snowmobiles consistent with protection of the environment the commissioner of natural resources shall adopt rules and regulations in the manner provided by Chapter 15, for the following purposes:

(1) Registration of snowmobiles and display of registration numbers.

(2) Use of snowmobiles insofar as game and fish resources are affected.

(3) Use of snowmobiles on public lands and waters under the jurisdiction of the commissioner of natural resources.

(4) Uniform signs to be used by the state, counties, cities, villages, and boroughs, which are necessary or desirable to control, direct, or regulate the operation and use of snowmobiles.

(5) Specifications relating to snowmobile mufflers.

(6) A comprehensive snowmobile information and safety education and training program, including but not limited to the preparation and dissemination of snowmobile information and safety advice to the public, the training of snowmobile operators, and the issuance of snowmobile safety certificates to snowmobile operators who successfully complete the snowmobile safety education and training course.

For the purpose of administering such program and to defray a portion of the expenses of training and certifying

snowm[redacted] operators, the commissioner shall collect a fee of not [redacted]ceed $2 from each person who receives the training and shall deposit the fee in the general fund and the amount thereof is appropriated annually to the commissioner of natural resources for the administration of such programs. The commissioner shall cooperate with private organizations and associations, private and public corporations, and local governmental units in furtherance of the program established under this clause. The commissioner shall consult with the commissioner of public safety in regard to training program subject matter and performance testing that leads to the certification of snowmobile operators.

(7) The operator of any snowmobile involved in an accident resulting in injury requiring medical attention or hospitalization to or death of any person or total damage to an extent of $100 or more, shall promptly forward a written report of the accident to the commissioner on such form as he shall prescribe.

Subd. 2. The commissioner of public safety may adopt rules and regulations not inconsistent herewith in the manner provided by Chapter 15, regulating the use of snowmobiles on streets and highways.

84.87 OPERATION: REGULATION BY MUNICIPALITIES

Subdivision 1. **Operation on streets and highways** (a) No person shall operate a snowmobile upon the roadway, shoulder, or inside bank or slope of any trunk, county state aid, or county highway in this state and, in the case of a divided trunk or county highway, on the right of way between the opposing lanes of traffic, except as provided in Sections 84.81 to 84.90. No person shall operate a snowmobile within the right of way of any trunk, county state aid, or county highway between the hours of one-half hour after sunset to one-half hour before sunrise, except on the right hand side of such right of way and in the same direction as the highway traffic on the nearest lane of the roadway adjacent thereto. No snowmobile shall be operated at any time within the right of way of any interstate highway or freeway within this state.

(b) A snowmobile may make a direct crossing of a street or highway at any hour of the day provided:

(1) The crossing is made at an angle of approximately 90 degrees to the direction of the highway and at a place where no obstruction prevents a quick and safe crossing; and

(2) The snowmobile is brought to a complete stop before crossing the shoulder or main traveled way of the highway; and

(3) The driver yields the right of way to all oncoming traffic which constitutes an immediate hazard; and

(4) In crossing a divided highway, the crossing is made only at an intersection of such highway with another public street or highway; and

(5) If the crossing is made between the hours of one-half hour after sunset to one-half hour before sunrise or in con-

ditions of reduced visibility, only if both front and rear lights are on; and

(6) A snowmobile may be operated upon a bridge, other than a bridge that is part of the main traveled lanes of an interstate highway, when required for the purpose of avoiding obstructions to travel when no other method of avoidance is possible; provided the snowmobile is operated in the extreme right hand lane, the entrance to the roadway is made within 100 feet of the bridge and the crossing is made without undue delay.

(c) No snowmobile shall be operated upon a public street or highway unless it is equipped with at least one head lamp, one tail lamp, each of minimum candlepower as prescribed by regulations of the commissioner, reflector material of a minimum area of 16 square inches mounted on each side forward of the handle bars, and with brakes each of which shall conform to standards prescribed by rule of the commissioner pursuant to the authority vested in him by Section 84.86, and each of which shall be subject to approval of the commissioner of public safety.

(d) A snowmobile may be operated upon a public street or highway other than as provided by clause (b) in an emergency during the period of time when and at locations where snow upon the roadway renders travel by automobile impractical.

(e) All provisions of Chapter 169 shall apply to the operation of snowmobiles upon streets and highways, except for those relating to required equipment, and except those which by their nature have no application.

(f) Any sled, trailer, or other device being towed by a snowmobile must be equipped with reflective materials as required by rule and regulation of the commissioner.

Subd. 1a. **Organized contests, use of highways, etc.** Nothing in this section or Chapter 169 shall prohibit the use of snowmobiles within the right of way of any state trunk or county state-aid highway or upon public lands or waters under the jurisdiction of the commissioner of natural resources, in any organized contest, subject to the consent of the official or board having jurisdiction over the highway or public lands or waters.

In permitting such contest, the official or board having jurisdiction may prescribe such restrictions or conditions as they may deem advisable.

Subd. 2. **Operation generally.** It shall be unlawful for any person to drive or operate any snowmobile in the following unsafe or harassing ways:

(a) At a rate of speed greater than reasonable or proper under all the surrounding circumstances;

(b) In a careless, reckless or negligent manner so as to endanger the person or property of another or to cause injury or damage thereto;

(c) While under the influence of intoxicating liquor or narcotics or habit forming drugs;

(d) Without a lighted head and tail light when required

for safe[redacted]

(e) [redacted]ny tree nursery or planting in a manner which damages or destroys growing stock.

Subd. 2a. **Operation prohibited on airports.** It is unlawful for any person to drive or operate any snowmobile on an airport defined in section 360.013, subdivision 5, or other applicable law.

Subd. 3. **Regulations by political subdivisions.** Notwithstanding anything in this section to the contrary, a county board may by resolution permit the operation of snowmobiles upon the roadway, shoulder, or inside bank or slope of any county highway or county state aid highway, if safe operation in the ditch or outside bank or slope thereof is impossible, in which case the county board shall cause appropriate notice thereof to be given.

Any county, city, village or borough, or any town acting by its town board, may regulate the operation of snowmobiles on public lands, waters, and property under their jurisdiction and on streets and highways within their boundaries by resolution or ordinance of the governing body and by giving appropriate notice, provided such regulations are not inconsistent with the provisions of sections 84.81 to 84.88 inclusive and rules and regulations, promulgated thereunder. However, no such governmental unit may adopt an ordinance which (1) imposes a fee for the use of public land or water under the jurisdiction of either the commissioner of natural resources or any other agency of the state, or for the use of any access thereto owned by the state, or a county, city, village, or borough; or (2) require a snowmobile operator to possess a motor vehicle driver's license while operating a snowmobile.

84.871 Mufflers

Except as provided in this Section every snowmobile shall be equipped at all times with a muffler in good working order which blends the exhaust noise into the overall snowmobile noise and is in constant operation to prevent excessive or unusual noise. The exhaust system shall not emit or produce a sharp popping or crackling sound. This section does not apply to organized races or similar competitive events held on (1) private lands, with the permission of the owner, lessee, or custodian of the land; (2) public lands and water under the jurisdiction of the commissioner of natural resources, with the commissioner's permission; or (3) other public lands, with the consent of the public agency owning the land. No person shall have for sale, sell, or offer for sale on any new snowmobile any muffler that fails to comply with the specifications required by the rules and regulations of the commissioner after the effective date of the rules and regulations.

84.872 Youthful Snowmobile Operators; Prohibitions

Notwithstanding anything in Section 84.87 to the contrary, no person under 14 years of age shall make a direct

crossing of a trunk, county state aid, or county highway as the operator of a snowmobile, or operate a snowmobile upon a street or highway within a municipality. A person 14 years of age or older, but less than 18 years of age, may make a direct crossing of a trunk, county state aid, or county highway only if he has in his immediate possession a valid snowmobile safety certificate issued by the commissioner. No person under the age of 14 years shall operate a snowmobile on any public land or water under the jurisdiction of the commissioner unless accompanied by one of the following listed persons on the same or an accompanying snowmobile, or on a device towed by the same or an accompanying snowmobile: his parent, legal guardian, or other person 18 years of age or older. However, a person 12 years of age or older may operate a snowmobile on public lands and waters under the jurisdiction of the commissioner if he has in his immediate possession a valid snowmobile safety certificate issued by the commissioner.

It is unlawful for the owner of a snowmobile to permit the snowmobile to be operated contrary to the provisions of this section.

When the judge of a juvenile court, or any of its duly authorized agents, shall determine that any person, while less than 18 years of age, has violated the provisions of sections 84.81 to 84.88 or any other state or local law or ordinance regulating the operation of snowmobiles, the judge, or duly authorized agent, shall immediately report such determination to the commissioner and may recommend the suspension of the person's snowmobile safety certificate. The commissioner is hereby authorized to suspend the certificate, without a hearing.

84.873 Signal from officer to stop

It is unlawful for a snowmobile operator, after having received a visual or audible signal from any law enforcement officer to come to a stop, to (a) operate a snowmobile in wilful or wanton disregard of such signal, or (b) interfere with or endanger the law enforcement officer or any other person or vehicle, or (c) increase his speed or attempt to flee or elude the officer.

84.88 Penalties

Subd. 1. Any person who shall violate any provision of sections 84.81 to 84.89 or any regulation of the commissioner of natural resources or of the commissioner of public safety promulgated pursuant to law shall be guilty of a misdemeanor.

Subd. 2. A person registered as owner of a snowmobile may be fined not to exceed $300 if a snowmobile bearing his registration number is operated contrary to the provisions of Minnesota Statutes, Sections 84.81 to 84.88, 100.26, Subdivision 1, or 100.29, Subdivisions 28 or 29. The registered owner may not be so fined if (a) the snowmobile was reported as stolen to the commissioner or a law enforcement agency at the time of the alleged unlawful act, or if (b) the registered owner demonstrates that the snowmobile either

was st[redacted] or was not in use at the time of the alleged unlawfu[redacted], or if (c) the registered owner furnishes to law enforcement officers upon request the identity of the person in actual physical control of the snowmobile at the time of such violation. The provisions of this subdivision do not apply to any person who rents or leases a snowmobile if such person keeps a record of the name and address of the person or persons renting or leasing such snowmobile, the registration number thereof, the departure date and time, and expected time of return thereof. Such record shall be preserved for at least six months and shall be prima facie evidence that the person named therein was the operator thereof at the time it was operated contrary to Minnesota Statutes, Sections 84.81 to 84.88, 100.26, Subdivision 1, or 100.29, Subdivisions 28 or 29. The provisions of this subdivision do not prohibit or limit the prosecution of a snowmobile operator for violating any of the sections referred to in this subdivision.

84.89 Confiscation of Snowmobile Used in Burglary

A law enforcement officer shall seize any snowmobile, as defined in Section 84.81 used for the purpose of gaining access to property for the purpose of committing the crime of burglary as defined in Section 609.58. Any snowmobile seized pursuant to this Section shall be held, subject to the order of the district court of the county in which the burglary was committed, and shall be confiscated after conviction of the person from whom the snowmobile was seized and disposed of in accordance with the procedure provided for equipment used in committing game and fish violations by Section 97.50, Subdivision 6, except that the balance of the proceeds from the sale of a confiscated snowmobile which are paid into the state treasury shall be credited to the general fund.

84.90 Limitations on the operation of recreational motor vehicles.

Subd. 1. For the purposes of this section the following terms have the meanings given them: (a) "Recreational motor vehicle" means any self-propelled vehicle and any vehicle propelled or drawn by a self-propelled vehicle used for recreational purposes, including, but not limited to snowmobile, trail bike or other all-terrain vehicle, hovercraft, or motor vehicle licensed for highway operation which is being used for off-road recreational purposes, (b) "Snowmobile" has the same meaning given by section 84.81, subdivision 3.

Subd. 2. Within the seven county metropolitan area, no person shall enter and operate a recreational motor vehicle on lands not his own, except where otherwise allowed by law, without the written or oral permission of the owner, occupant, or lessee of such lands. Written permission may be given by a posted notice of any kind or description that the owner, occupant, or lessee prefers, so long as it specifies the kind of vehicles allowed, such as by saying "Recreational Vehicles Allowed", "Snowmobiles Allowed", "Trail Bikes Allowed", "All-Terrain Vehicles Allowed", or words substantially similar.

Subd. 3. Outside the seven county metropolit[illegible]rea, no person shall enter on any land not his own for [illegible]urpose of operating a recreational motor vehicle after being notified, either orally or by written or posted notice, by the owner, occupant, or lessee not to do so. Where posted notice is used, signs shall bear letters not less than two inches high and shall state one of the following: "Recreational Vehicles Prohibited", "Snowmobiles Prohibited", "Trail Bikes Prohibited", "All-Terrain Vehicles Prohibited", or words substantially similar. In lieu of the above notice an owner, occupant or lessee may post any sign prohibiting recreational motor vehicles which has been adopted by rule or regulation of the Commissioner of Natural Resources. The notice or sign shall be posted at corners and ordinary ingress and egress to the property and when so posted shall serve so as to raise a conclusive presumption that a person operating a recreational motor vehicle thereon had knowledge that he had entered upon such posted lands. Failure to post notice as provided in this subdivision shall not deprive a person of the right to bring a civil action for damage to his person or property as otherwise provided by law.

Subd. 4. It is unlawful for a person to post, mutilate, or remove any notice or sign provided in this section upon any lands or waters over which he has no right, title, interest, or license. It is unlawful for a person other than a duly constituted legal authority to so post any public lands, including but not limited to tax forfeited lands, as above described.

Subd. 5. No person shall enter or leave the lands of another with a recreational motor vehicle, or pass from one portion of such lands to another portion, through a closed gate, without returning the gate to its original position. No person shall enter or leave the lands of another with a recreational motor vehicle by cutting any wire or tearing down or destroying any fence.

Subd. 6. Nothing in this section shall limit or otherwise qualify the power of municipalities, counties, school districts, or other political subdivisions of the state or any agency of the state to impose additional restrictions or prohibitions on the operation of recreational motor vehicles on property not owned by the operator in accordance with law.

Subd. 7. A person violating the provisions of this section is guilty of a misdemeanor.

Game Laws Relating to Use of Snowmobiles

98.46 Fees

Subd. 22. No deer or moose taken in this state shall be transported or possessed unless a locking seal bearing the license number of the owner and the year of its issue has been affixed to its carcass between the tendon and the bone and around the bone of the leg so that such seal cannot be removed without breaking the lock. The seal must be so placed and locked at the time the deer or moose is brought into any hunting camp, dwelling, farm yard, or other place of abode of any kind occupied overnight, or before being

placed wholly or partially on a motor vehicle of any kind, or upon any conveyance towed by a motor vehicle of any kind. Provided, that deer taken by bow and arrow and moose shall be tagged by a conservation officer or other authorized agent as may be prescribed by the commissioner, in addition to the seal herein provided for.

100.26 Unprotected Animals

Subdivision 1. Weasel, coyote (brush wolf), gopher, porcupine, badger, and all other quadrupeds for which no closed season or other protection is accorded by chapters 97 to 102, are unprotected animals and may be taken either in the daytime or at night, and in any manner, except with the aid of artificial lights, and possessed, bought, sold or transported in any quantity, provided that for the safety of humans and domestic stock, poison may not be used in the taking thereof, except in the manner authorized by section 18.022. It shall be unlawful to intentionally drive, chase, run over or kill with any motor propelled vehicle any unprotected animals.

100.29 Restrictions and Prohibitions

Subd. 29. It shall be unlawful to use any motor propelled vehicle to intentionally drive, chase, run over, kill, or otherwise take any protected wild animal.

Subd. 30. It shall be unlawful to use a snowmobile or any type of all-terrain vehicle during the season open for the taking of beaver or otter and for two days thereafter, for the purpose of transporting or checking beaver or otter traps or transporting beaver or otter carcasses or pelts. However, the commissioner may issue a special permit to use a snowmobile or all-terrain vehicle to transport or check beaver or otter traps, or to transport beaver or otter carcasses or pelts, to any licensed trapper having any of the physical disabilities described in section 98.48, subdivision 12. The permit shall be issued in the same manner as provided in section 98.48, subdivision 12.

SNOWMOBILE RULES AND REGULATIONS CHAPTER FIVE: NATURAL RESOURCES 51-59

NR 51 — REGISTRATION AND DISPLAY OF NUMBERS

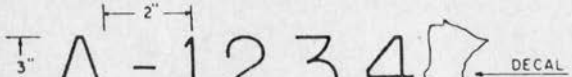
(a) Individual Registration

(1) Application for snowmobile registration shall be made to the Commissioner of Natural Resources or his authorized agent on the form prescribed. Registrants must be 18 years of age or older prior to applying for registration of a snowmobile. Upon presentation of a bill of sale in the form prescribed by the Commissioner, and payment of the fee required, a snowmobile registration certificate will be issued to the applicant. Registration certificates are valid for a period of three years. A decal showing the expiration date shall be affixed to the machine as illustrated below.

(2) The applicant shall furnish all the information required by the application for snowmobile registration.

(3) The registration number of the snowmobile, shown on the registration certificate, shall be affixed to the snowmobile

and maintained in a clear, legible manner. On all [redacted]hines made after June 30, 1972, and sold in Minnesota, s[redacted]egistration number shall be affixed in the space provided therefore in accordance with NR 57 (d). On all other machines it shall be affixed on each side of the cowling on the upper half of the machine, as follows:



(4) All letters and numbers shall be of a color which will contrast with the surface to which applied, and shall be at least three (3) inches high and ⅜ inch stroke. When any previously affixed registration number or decal is destroyed or lost, a duplicate shall be affixed in the manner shown above. The registration number shall remain the same if renewed by July 1 following the expiration date.

(5) No person shall operate or transport, and no person shall permit the operation of, a snowmobile within this state which does not have its registration number and unexpired decal affixed in the form and manner required by NR 51 (a), unless the owner is exempted from the registration requirements of this state by Minnesota Statutes, Section 84.82.

(6) A duplicate registration certificate will be issued upon application by the owner to the Commissioner on the form prescribed and upon payment of the fee required by law. Replacement registration decals may be obtained from the Department of Natural Resources License Center or any conservation officer.

(7) Application for transfer of ownership shall be made to the Commissioner within 15 days of the date of transfer. An "Application for Transfer" form is to be executed by the registered owner and the purchaser and submitted together with the fee required by law, the owner's registration certificate and a bill of sale in the form prescribed by the Commissioner.

(8) Abandoned, stolen, or destroyed snowmobiles shall be reported to the Commissioner within (15) days by completing the reverse side of the registration certificate. No fee is charged for the reporting.

(b) Dealer's and Manufacturer's Registration

(1) Application for registration of all snowmobiles owned by a dealer and operated for demonstration or testing purposes shall be made to the Commissioner on the form prescribed. Upon payment of the fee required by law, three (3) registration plates will be issued, together with a registration certificate which shall be conspicuously displayed by the dealer in his place of business.

(2) Application for registration of all snowmobiles owned by a manufacturer and operated for research, testing, experimentation or demonstration purposes shall be made to the Commissioner on the form prescribed. Upon payment of

the fee required by law, twelve (12) registration plates will be issued together with a registration certificate which shall be conspicuously displayed by the manufacturer in his place of manufacture.

(3) Additional duplicate registration plates may be purchased by a dealer or manufacturer upon payment of a fee of $3.00 per plate.

(4) No dealer or manufacturer shall operate, or permit to be operated, within this state, any snowmobile owned by or under the control of such dealer or manufacturer unless a valid registration plate is clearly displayed on such snowmobile.

(5) Dealer and manufacturer registrations are not transferrable.

(c) Special Permits

Upon written application by the responsible event sponsor to the Commissioner, special operating permits for limited periods of time not to exceed thirty (30) days may be issued to operators of snowmobiles from states which do not require registration when such snowmobiles are to be used in connection with a responsibly organized group outing, trailride, race, rally or other promotional events. Such permit shall be conspicuously displayed on the snowmobile and is valid only when the snowmobile is used in connection with the event for which the permit was issued and for the period of time shown on the permit.

NR 52 — GAME AND FISH RESOURCES

(a) No person shall operate a snowmobile between the hours of 7:00 a.m. and 3:00 p.m. in any area open for the taking of deer by firearms, except for law enforcement purposes or by Commissioner's order; provided, however, that conservation officers may issue written permits authorizing operation of snowmobiles during such hours in case of emergency or other unusual conditions.

(b) Deer being dragged by a snowmobile must have the prescribed deer tag properly placed and locked at the time the operator arrives at an improved roadway or designated trail. The tag must be properly placed and locked at the time the deer is brought into any hunting camp, dwelling, farmyard or other place of abode of any kind occupied overnight, or before being placed wholly or partially on a snowmobile, or upon a conveyance towed by a snowmobile.

NR 53 — PUBLIC LANDS AND WATERS

(a) Snowmobiles may be operated on public lands or waters under the jurisdiction of the Commissioner of Natural Resources except that no persons shall operate a snowmobile in any of the following, except for law enforcement purposes:

(1) In any state park, state recreation area, state historic site, or state scientific and natural area with the exception of posted snowmobile trails or areas.

(2) In any state wildlife management area without the written permission of the agent in charge thereof in that

part of the state lying south and west of a line described as follows: U.S. Highway No. 2 from East Grand Forks easterly to Bemidji; thence southerly along U.S. Highway No. 71 to Wadena; thence easterly along U.S. Highway No. 10 to Staples and U.S. Highway No. 210 to Carlton; thence east in a straight line to the easterly boundary of the state.

(3) In any area in which such operation is or may hereafter be prohibited by law, regulations, order, or directive.

(b) Governmental subdivisions of the state may by resolution or ordinance regulate the operation of snowmobiles on public waters within their boundaries, provided such resolution or ordinance is not inconsistent with law or these regulations. No resolution or ordinance restricting the period of time within which snowmobiles may be operated on public waters shall be valid with respect to such restriction unless first submitted to the Commissioner of Natural Resources and approved by him in writing.

(c) No person shall deposit any garbage, rubbish, offal, the body of any dead animal, or other litter upon public lands or waters or the ice thereon, other than in containers, provided thereof, or, without the consent of the owner, on private lands or water or ice thereon.

(d) (1) (2) (3). It shall be unlawful for any person to drive or operate any snowmobile at a rate of speed greater than is reasonable or proper under all of the surrounding circumstances or at a rate that is greater than that set by the Commissioner of Natural Resources pursuant to NR53 (d) (2), on public lands or waters of this State under the jurisdiction of the Commissioner of Natural Resources, provided that the operation of any snowmobile at a rate of speed in excess of fifty miles per hour on such lands or waters shall be unreasonable and unlawful unless operated pursuant to and in accordance with the provisions of NR 53 (d) (3).

(2) Where necessary, the Commissioner of Natural Resources may establish and post at reasonable intervals, a reasonable and safe maximum speed limit for the operation of snowmobiles along a specific portion of public trail under his jurisdiction, or in a specific area of public land or water under his jurisdiction. Such speed limit shall be effective when signs are erected and any operation of a snowmobile within such posted portion of trail or area in excess of the posted speed limit is unlawful.

(3) The speed limits established by NR 53(d) (1) and by the Commissioner of Natural Resources under the authority of NR 53(d) (2) may be waived in writing by the Commissioner during the pendency of an organized race or similar competitive event held upon such lands or waters.

NR 54 — UNIFORM SIGNS

The following signs are designated as necessary and desirable to control, direct, or regulate the operation and use of snowmobiles for the purposes indicated:



Informational Blazer: to be used in indicating intersections or major changes in trail direction through use of the 7½ inch decals shown below or comparable screened insignia.

Above blazer to be orange scotchlite #3274 or its equivalent.



Directional Blazer: to be used in indicating minor changes in trail direction through use of the 5¼ inch arrow decal shown below or comparable screened insignia.



Reassuring Blazer: placed along trail often enough to reassure the user he is on trail.

All above blazers to be orange scotchlite #3274 or its equivalent.



Directional Decal: to be used on the 14" x 18¼" Informational Blazer.



Directional Decal: to be used on the 9¼" x 12" Directional Blazer.



Intersection Decals: to be used on the 14" x 18¼" Informational Blazer.

All above decals to have background of orange scotchlite #3274 or equivalent with insignia screened black.



Stop Sign: to be used along trail prior to road or highway crossing. Placement to be approximately 25 feet from such crossing point. Colors and reflectorization to conform to highway standards.



No Snowmobiling: to be used to indicate trails and areas where snowmobile use is prohibited. Background color is to be orange scotchlite #3274 or equivalent; snowmobile symbol to be 60% black, prohibiting slash and letters solid black.

See Boat and Water Safety Laws for information on WATERWAY MARKER that may be used for special water hazards.

From and after October 1, 1970, no sign intended for any of the purposes indicated in the preceding paragraph shall be erected by the state or its governmental subdivisions unless such sign is substantially in the form, shape, dimensions and colors shown in the preceding paragraph.

Detailed plans and specifications of such signs will be available upon written request to the Commissioner.

NR 55 — ACCIDENT REPORTS

(a) Definitions. For the purposes of this rule, certain terms or words used herein shall be interpreted as follows:

(1) "Operator" means every person who operates or is in actual physical control of a snowmobile.

(2) "Involved in an accident" means every snowmobile which either strikes or is struck by another person, snowmobile, motor vehicle or other animate or inanimate object.

(3) "Injury requiring medical attention" means an injury of such a degree that its proper treatment requires consultation with or a visit to a doctor or hospital emergency room.

(4) "Total damage" means total apparent property damage resulting to each snowmobile and its related equipment or to any other property which is involved in the accident.

(5) "Promptly" means that such written report shall be forwarded as soon as possible after an accident but not more than 48 hours after such accident.

(b) General Requirement. The operator of any snowmobile involved in an accident resulting in injury requiring medical attention or hospitalization to or death of any person or total damage to an extent of $100 or more, shall promptly forward a written report of the accident on the form prescribed.

NR 56 — SNOWMOBILE EDUCATION & TRAINING PROGRAMS

(a) Snowmobile education and training programs will be administered by the Snowmobile Safety Coordinator, Department of Natural Resources.

(b) Training programs will be conducted in each county for the purpose of qualifying persons 12 years of age or older, but less than 18, for a snowmobile safety certificate.

(c) The course content will include the following: machine nomenclature, control familiarization, machine safety features, operating procedures, snowmobile and highway laws and regulations, loading and towing procedures, snowmobile code of ethics, safety hazards of operation, including possible hearing damage, environmental consequences of snowmobile use, and performance and written tests.

(d) The fee for enrollment in a training program class is $2.00, payable in advance. A student who fails to pass may take the class over when available, without additional fee. Persons age 18 or over, or age 11, may be admitted to a class to the extent facilities permit upon payment of the $2.00 fee.

(e) Upon successful completion of the training program by a student, the instructor will submit the name, address,

and d[redacted]f birth of the student to the snowmobile safety coordi[redacted]r who will issue to the student, on behalf of the Commissioner, a snowmobile safety certificate. A duplicate certificate will be issued if the original is lost or destroyed, upon application and payment of $2.00. No snowmobile safety certificate shall be issued to any person less than 12 years of age except to his or her parents or guardian, to be held by such parent or guardian until the person's twelfth birthday.

(f) Each snowmobile safety certificate issued shall show on its face the birthdate of the person to whom it was issued. No person less than 14 years of age or any other person 14 years of age but less than 18 years of age who does not possess a snowmobile safety certificate may make a direct crossing of a street or highway at any time.

(g) PROCEDURES FOR REVOCATION OF SNOWMOBILE SAFETY CERTIFICATES.

(1) When the judge of a juvenile court, or any of its duly authorized agents shall determine that any person, while less than 18 years of age, has violated the provisions of sections 84.81 to 84.88, or any other state or local law or ordinance regulating the operation of snowmobiles, the judge, or duly authorized agent, shall immediately report such a determination to the Commissioner on the form prescribed. The judge, or duly authorized agent, may indicate upon the form prescribed his recommendation as to whether or not the person's snowmobile safety certificate should be suspended and the length of such suspension, if any.

(2) A person under 18 years of age shall surrender his snowmobile safety certificate to the judge, or his duly authorized agent, in all cases when such judge, or his agent, recommends the suspension of such certificate. The snowmobile safety certificate shall be transmitted to the Commissioner in all cases where suspension thereof is recommended and where such recommended period of suspension exceeds 15 days.

(3) The Commissioner shall retain possession of snowmobile safety certificates which he suspends during the period of the suspension, all other certificates shall be returned immediately upon a determination that they will not be suspended.

NR 57 – REQUIRED EQUIPMENT

(a) No snowmobile shall be operated upon public lands, waters, streets or highways unless it is equipped as follows:

(1) At least one head lamp having a minimum candlepower of sufficient intensity to reveal persons and vehicles at a distance of at least 100 feet ahead during hours of darkness under normal atmospheric conditions. Such head lamp shall be so aimed that glaring rays are not projected into the eyes of an oncoming snowmobile operator.

(2) At least one red tail lamp, having a minimum candlepower of sufficient intensity to exhibit a red light plainly visible from a distance of 500 feet to the rear during hours of darkness, under normal atmospheric conditions.

(3) Reflector material of a minimum area of 16 square inches mounted on each side forward of the handle bars.

Reflector material shall have at least the minimum i[redacted]ity values as prescribed in Table II of federal specificatio[redacted]L-S-300A, dated January 1, 1970. Registration numbers, the manufacturer's trade name, or other decorative material, if meeting minimum reflectorization standards, may be included in computing the required 16 square-inch area.

(4) Brakes adequate to control the movement of, and to stop and to hold the snowmobile track under normal conditions of operation.

(5) "Street or highway" means the entire width between boundary lines or any way or place when any part thereof is open to the use of the public, as a matter of right, for the purpose of vehicular traffic.

(b) Any sled, trailer or other device being towed by a snowmobile during the hours of darkness under normal atmospheric conditions shall be equipped as follows:

(1) Unobstructed and visible reflector material shall be mounted on each side and at the rear of the sled, trailer or vehicle.

(2) The Reflector material required herein shall have at least the minimum intensity values set forth in NR 57 (a) (3) or it shall be in accordance with Reflex Reflectors, SAE J594E.

(c) All snowmobiles made after June 30, 1972, and sold in Minnesota shall bear the maker's permanent identification number so placed and of such size as follows:

(1) Be stamped into the right outside vertical surface of the track tunnel in an area within 12 inches of the rearmost edge of the track tunnel, or other approved location.

(2) Have a height of numerals and letters of not less than ¼ inch.

(3) Have a depth of embossing of not less than 0.010 inch.

(4) Be readable without moving any part of the vehicle.

(5) Each snowmobile so manufactured shall bear an individual number which is not duplicated by that maker at any time within the succeeding ten (10) years.

(d) All snowmobiles made after June 30, 1972, and sold in Minnesota, shall be designed and made to provide an area on which to affix the snowmobile registration number at the following location and of the following dimensions:

(1) A clear area shall be provided on each side of the cowling or pan with the minimum size of 3½ inches vertical x 11 inches horizontal.

(2) It shall be a minimum of 12 inches from the ground when the machine is resting on a hard surface.

(e) Mufflers

(1) No person shall operate a snowmobile unless it is equipped with a muffler as required by law and these rules except that snowmobiles may be operated in organized events as authorized by Minn. Stat. 84.871, without such a muffler.

(2) No snowmobile manufactured on or after June 30, 1970, and before February 1, 1972, for sale in Minnesota, except snowmobiles designed for competition purposes only, shall be sold, or offered for sale, unless it is equipped with a muffler that limits engine noise to not more than 86 decibels on the A scale at 50 feet.

(3) No snowmobile manufactured on or after February 1, 1972, for sale in Minnesota, except snowmobiles designed for competition purposes only, shall be sold, or offered for sale, unless it is equipped with a muffler that limits engine noise to not more than 82 decibels on the A scale at 50 feet.

(4) **(aa)** No snowmobile manufactured on or after April 1, 1975, for sale in Minnesota, except a snowmobile designed for competition purposes only, shall be sold, or offered for sale, unless it is so equipped that overall noise emission does not exceed 78 decibels on the A scale at 50 feet.

(bb) No snowmobile manufactured on or after July 1, 1979, for sale in Minnesota, except a snowmobile designed for competition purposes only, shall be sold or offered for sale, unless it is so equipped that overall noise emission does not exceed 73 decibels on the A scale at 50 feet.

(cc) At a time when the state of the art of noise control technology permits, and after promulgation of a regulation in the manner prescribed by law, the standard for snowmobile noise shall not exceed 60 decibels on the A scale at 50 feet.

(5) Noise levels established herein shall be determined according to SAE Recommended Practice J192 entitled "Exterior Sound Levels for Snowmobiles."

(6) No snowmobile or snowmobile muffler shall be sold or offered for sale in Minnesota unless its maker shall have previously furnished the Commissioner with a certificate of compliance certifying that all such snowmobiles or mufflers made by that maker meet or exceed the applicable noise level restrictions established by these rules. Snowmobiles or snowmobile mufflers intended for competition purposes only shall be exempt from this rule provided a separate placard identifying that such snowmobile is not so equipped is conspicuously and permanently affixed thereto.

(7) Except for organized events as authorized by Minn. Stat. 84.871, no snowmobile shall be modified by any person in any manner that shall amplify or otherwise increase total engine noise above that emitted by the snowmobile as originally equipped, regardless of date of manufacture.

NR 58 — PENALTIES

Any person who shall violate any of the provisions of these regulations shall be guilty of a misdemeanor and be punished by a fine of not more than $300, or by imprisonment for not more than 90 days, or both.

NR 59 — REPEAL

Conservation Regulations 51-59 relating to snowmobiles are hereby repealed.

G 8 0 3

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Amendment of Rules of the Department of Natural Resources Governing Snowmobiles.

FINDINGS OF THE COMMISSIONER

I have read the report of the hearing examiner and reviewed the record. Aside from the issue of statutory authority, I concur with his findings and recommendation. (There are two typographical errors in the first full paragraph on page 8 of the examiner's report. The "73" should be "78" and "property" should be "properly".)

This agency has regulated overall snowmobile noise emission levels since 1972. Four times since then the legislature has amended the snowmobile laws (Minn. Stat. §§ 84.81 - 84.89). See Laws of Minnesota 1973, chapter 202, Laws '73 c. 701; Laws '74, ch. 51, Laws '74, ch. 239 (There were also two Revisor's amendments: Laws '73, ch. 123, Art. V, sect. 7; Laws '76, ch. 2, sect. 48). Neither in those laws or in any of its seven gatherings since 1972, has the legislature signalled that the agency is violating its charge.

Mr. Schwartzbauer's letter to the hearing examiner points out how dumb it would be to regulate just the muffler component of overall snowmobile noise. The case cited by the examiner which most closely fits this situation, stands for a position opposite to that of the examiner. It says

> [T]he policy as well as the letter of a statute . . . is a guide to the construction thereof, and the process fails of its true function if a literal reading results in emasculation or deletion of a provision which a less literal reading would preserve.

Lowry v. City of Mankato, 231 Minn 108, 42 N.W. 2d 553 (1950).

Dated: July 11, 1979.

JOSEPH N. ALEXANDER
Commissioner
Department of Natural Resources

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed
Amendment of Rules of the
Department of Natural Resources
Governing Snowmobiles

ORDER
ADOPTING
RULE

IT IS ORDERED, based on my findings in the above-entitled matter, that the proposed amendments, modified as recommended by the hearing examiner (except as to his concern about statutory authority) are adopted.

Dated July 10, 1979.

JOSEPH N. ALEXANDER
Commissioner
Department of Natural Resources

DNR - 1

RECEIVED
APR 6 19[illegible]
OFFICE OF HEARING
EXAMINERS

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF THE PROPOSED AMENDMENT
OF RULES OF THE DEPARTMENT OF NATURAL RESOURCES ORDER FOR HEARING
GOVERNING SNOWMOBILES.

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Minnesota Historical Building, Weyerhaeuser Room, 690 Cedar Street, St. Paul, Minnesota, on May 2, 1979, commencing at 10:00 A. M., and continuing 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.

Joseph N. Alexander
Commissioner

Date: 19 Mar 79

DNR-2

Department of Natural Resources

Proposed Amendment Governing Snowmobiles

Notice of Hearing

RECEIVED
APR 6 19
OFFICE OF HEARING EXAMINERS

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Weyerhaeuser Room of the Minnesota Historical Building, 690 Cedar Street, St. Paul, Minnesota, on May , 1979, at 10:00 A. M. and continuing until all persons have had an opportunity to be heard.

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. Written material may be submitted and recorded in the hearing record for 5 working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

The rules are authorized by Minn. Stat. § 584.86.

The proposed rules, if adopted, would repeal the requirement that snowmobiles made after July 1, 1979, will emit no more than 73 decibels of noise when measured at full-throttle acceleration at 50 feet from the machine. The applicable noise limit will be 78 decibels, which has been in effect since April 1, 1975.

The proposed rules would require each manufacturer to certify compliance with the proposed noise level by conspicuously attaching to each snowmobile a label showing that the machine conforms to standards set by the Snowmobile Safety Certification Committee; or by submitting a letter to the Commissioner showing an evaluation of the noise levels by a competent independent testing laboratory.

The proposed rules also provide that any manufacturer, who certifies that a new snowmobile can meet the proposed 78 sound level imposed by these

rules, shall be guilty of a misdemeanor for each machine so certified which does not meet the applicable sound level limitation.

Under Minn. Stat. § 10A.01, subd. 11(1978), a lobbyist must register with the State Ethical Practices Board within five (5) days after he commences lobbying. According to the statute, "lobbyist" means any individual engaged for pay or other consideration or authorized by another individual or association to spend money who spends more than five hours of any month or more than $250 not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. "Lobbyist" does not include any: public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity; party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action; individual in the course of selling goods or services to be paid for by public funds; news media or their employees or agents acting in the ordinary course of business of publishing or broadcasting news items, editorials or other comments or paid advertisements which directly or indirectly urge official action; paid expert witness whose testimony is requested either by the body before which he is appearing or one of the parties to a proceeding, but only to the extent of preparing or delivering testimony; or stockholder of a family farm corporation as defined in Minn. Stat §§ 500.24, subd. 1, who does not spend over $250, excluding travel expenses, in any year in communicating with public officials.

Questions regarding lobbying should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota, 55155; telephone (612)296-1720.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of 5 working days. Any person may request notification of the date on which the hearing record has been submitted to the Attorney General by the Agency. If you desire to be notified you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report) or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of the Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing, justifying both the need for and the reasonableness of the proposed rule(s). Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

One free copy of the proposed amendments may be obtained by writing to Department of Natural Resources, Office of Regulatory Services, Box 6, Centennial Office Building, Saint Paul, Minnesota, 55155. Additional copies will be available at the door on the date of the hearing.

Department of Natural Resources

Office of Regulatory Services

RECEIVED
APR 6 19
OFFICE OF HEARING
EXAMINERS

Proposed Amendments Governing Snowmobile Noise Emission Standards.

6 MCAR 1.0057 E. 4.a.

No snowmobile manufactured on or after April 1, 1975, ~~for sale~~ in Minnesota, except a snowmobile designed for competition purposes only, shall be sold, ~~or~~ offered for sale, or operated unless it is so equipped ~~that overall noise emission does not exceed~~ and has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 78 decibels on the A scale at 50 feet.

~~6 MCAR 1.0057 E. 4.b.~~

~~No snowmobile manufactured on or after July 1, 1979, for sale in Minnesota, except a snowmobile designed for competition purposes only, shall be sold or offered for sale, unless it is so equipped that overall noise emission does not exceed 73 decibels on the A scale at 50 feet.~~

~~6 MCAR 1.0057 E. 4.c.~~

~~At a time when the state of the art of noise control technology permits, and after promulgation of a regulation in the manner prescribed by law, the standard for snowmobile noise shall not exceed 60 decibels on the A scale at 50 feet.~~

6 MCAR 1.0057 E. 5.

~~Noise levels established herein shall be determined according to SAE Recommended Practice J192 entitled "Exterior Sound Levels for Snowmobiles."~~

In certifying that a new snowmobile complies with the noise limitation requirements of this rule, a manufacturer shall make such a certification based on measurements made in accordance with the SAE Recommended Practice J192(a), as amended or with such other standards for measurement of sound level as the department may adopt.

6 MCAR 1.0057 E.6

No snowmobile ~~or snowmobile muffler~~ shall be sold or offered for sale in Minnesota unless its maker shall have previously furnished the Commissioner with a certificate of compliance certifying that all such snowmobiles ~~or mufflers~~ made by that maker meet or exceed the applicable noise level restrictions established by these rules. The certification of compliance required in the foregoing shall be in the form of either a "Snowmobile Safety Certification Committee" label conspicuously attached to the machine showing certification by the Snowmobile Safety and Certification Committee, Inc., or a letter with test results showing an evaluation of the noise levels by a competent independent testing laboratory. Snowmobiles ~~or snowmobile mufflers~~ intended for competition purposes only shall be exempt from this rule provided a separate placard identifying that such snowmobile is not so equipped is conspicuously and permanently affixed thereto.

6 MCAR 1.0057 E.7

Except for organized events as authorized by Minn. Stat. 84.871, no snowmobile shall be modified by any person in any manner that shall amplify or otherwise increase total engine noise level above that emitted by the snowmobile as originally equipped, regardless of date of manufacture.

6 MCAR 1.0058 ~~PENALTIES~~

(A) Any person who shall violate any of the provisions of these regulations shall be guilty of a misdemeanor, and be punished by a fine of not more than ~~$300, or by imprisonment for not more than 90 days, or both~~.

(B) A manufacturer who certifies that a new snowmobile can meet the sound level limitations imposed by these rules shall be subject to the penalty provisions of subsection (a) for each machine so certified which does not meet the applicable sound level limitation.

~~6 NCIR 1.0059~~

~~Conservation Regulations 51-59 relating to snowmobiles are hereby~~

~~repealed.~~

DNR

RECEIVED
APR 6 1979
OFFICE OF HEARING EXAMINERS

STATE OF MINNESOTA
COUNTY OF RAMSEY

CERTIFICATE

In the matter of the Proposed Adoption
of Rules of Regulatory Services Division
Governing Snowmobile Noise Emission Standards

I hereby certify that the attached 588 labels 3 sheets constitute the complete list of persons, associations, and other interested groups who as of 1 o'clock P .M, this 23rd day of Mar., 1979, have requested pursuant to M.S. 1976, 15.0412, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State
Joan Anderson Growe

By Kathy Hyelsi

DNR-7

RECEIVED
APR 6 19
OFFICE OF HEARING EXAMINERS

AFFIDAVIT OF MAILING

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF NATURAL RESOURCES) AFFIDAVIT OF MAILING
GOVERNING Snowmobiles

Stacey DeKalb, being first duly sworn, deposes and says:

That on the 26th day of March, 1979, at the City of St. Paul, County of Ramsey, State of Minnesota, I served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof on the attached certificate of the Secretary of State.

Stacey DeKalb

Subscribed and sworn to before me this
26th day of March 19,79.
Karen L. Singer

KAREN L. SINGER
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES MAY 15, 1984

Department of Natural Resources

Adopted Amendments to the Rules Governing Snowmobiles

6 MCAR 1.0057 E. 4.a. No snomobile manufactured on or after April 1, 1979, ~~for sale in Minnesota~~, except a snowmobile designed for competition purposes only, shall be sold, ~~or~~ offered for sale, or operated in Minnesota unless it is so equipped ~~that overall noise emission does not exceed~~ and has been certified by the manufacturer to conform to a sound level limitation of not more than 78 decibels on the A scale at 50 feet as originally equipped.

~~6 MCAR 1.0057 E. 4.b. No snowmobile manufactured on or after July 1, 1979, for sale in Minnesota, except a snowmobile designed for competition purposes only, shall be sold or offered for sale, unless it is so equipped that overall noise emission does not exceed 73 decibels on the A scale at 50 feet.~~

~~6 MCAR 1.0057 E. 4.c. At a time when the state of the art of noise control technology permits, and after promulgation of a regulation in the manner prescribed by law, the standard for snowmobile noise shall not exceed 60 decibels on the A scale at 50 feet.~~

6 MCAR 1.0057 E. 5. ~~Noise-levels-established-herein-shall-be determined-according-to-SAW-Recommended-Practice-J192-entitled "Exterior-Sound-Levels-for-Snowmobiles."~~

In certifying that a new snowmobile complies with the noise limitation requirements of this rule, a manufacturer shall make such a certification based on measurements made in accordance with the SAE Recommended Practice J192(a).

6 MCAR 1.0057 F.6. No snowmobile ~~or snowmobile muffler~~ shall be sold or offered for sale in Minnesota unless its maker shall have previously furnished the Commissioner with a certificate of compliance certifying that all such snowmobiles ~~or mufflers~~ made by that maker meet or exceed the applicable noise level restrictions established by these rules. The certification of compliance required in the foregoing shall be in the form of a "Snowmobile Safety Certification Committee" label conspicuously attached to the machine showing certification by the Snowmobile Safety and Certification Committee, Inc. Snowmobiles ~~or snowmobile mufflers~~ intended for competition purposes only shall be exempt from this rule provided a separate placard identifying that such snowmobile is not so equipped is conspicuously and permanently affixed thereto.

6 MCAR 1.0057 E.7. Except for organized events as authorized by Minn. Stat. 84.871, no snowmobile shall be modified by any

person in any manner that shall amplify or otherwise increase total ~~engine~~ noise level above that emitted by the snowmobile as originally equipped, regardless of date of manufacture.

6 MCAR 1.0058 PENALTIES.

(A) Any person who shall violate any of the provisions of these regulations shall be guilty of a misdemeanor ~~and be punished by a fine of not more than $300, or by imprisonment for not more than 98 days, or both.~~

(B) A manufacturer who certifies that a new snowmobile can meet the sound level limitations imposed by these rules shall be subject to the penalty provisions of subsection (a) for each machine so certified which does not meet the applicable sound level limitation.

~~6 MCAR 1.0059. Conservation Regulations 51-59 relating to snowmobiles are hereby repealed.~~

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Amendment of Rules of the Department of Natural Resources Governing Snowmobiles.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Myron S. Greenberg, duly appointed Hearing Examiner, on May 2, 1979, at the Minnesota Historical Building, 690 Cedar Street, Saint Paul, Minnesota.

This was a rules hearing pursuant to Minn. Stat. Ch. 15, held to determine whether a proposed amendment to an existing rule should be adopted.

Representing the Minnesota Department of Natural Resources (hereinafter "Department" or "DNR") were Theresa Bailey-Morrow, Director, Office of Regulations, and A. William Clapp, III, Special Assistant Attorney General.

Fifteen members of the public and industry representatives appeared and signed the register at the hearing. The hearing continued until all persons had an opportunity to be heard. The record remained open until May 22, 1979, for the submission of comments. Four such comments were received.

Pursuant to Minn. Stat. Sec. 15.0412, subd. 4, this Report shall be available to all affected persons for review for at least five working days before the Department takes any final action on the proposed amendments.

Thereafter, the Department shall, if it proposes to adopt the amendment as originally proposed or otherwise amended, submit a copy of the Order Adopting Rules, a copy of any additional Department findings, a copy of the Rules as originally proposed, and a copy of the Rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. Sec. 15.052, subd. 4. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. Sec. 15.0412 within ten calendar days. The Department will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

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

FINDINGS OF FACT

1. On March 19, 1979, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.

2. On April 2, 1979, a Notice of Hearing and a copy of the proposed rules were published at 3 State Register 1814.

3. On March 26, 1979, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On April 6, 1979, the Department filed the following documents:

(a) The Order for Hearing.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt and the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list.
(e) The Secretary of State's Certificate.
(f) The Statement of Need and Reasonableness.
(g) The names of Department personnel who will represent the DNR at the hearing together with the names of any other witnesses solicited by the Department to appear on its behalf.

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

Description of the Proposed Amendment and Statutory Authority

5. The most significant result of the proposed amendments is to eliminate a future standard of 73 dB(A) and maintain 78 dB(A) as the maximum noise level emitted by snowmobiles in Minnesota when measured at full throttle at 50 feet. Other rule changes affect the means of showing certification of compliance with noise standards and expand penalty provisions for certification of machines which do not meet the sound level standards.

6. In its Notice of Hearing, the Department cites as its authority to promulgate and amend the instant rules Minn. Stat. Sec. 584.86. No reference to any other statute is made in the Statement of Need or in testimony proffered during the hearing. (See, DNR Exs. 2, 3 and 8) No such statute exists.

7. Upon independent search, the Examiner notes that Minn. Stat. Sec. 84.86 does give the Commissioner of Natural Resources certain rulemaking authority. Absent from the list of subject matters which may be addressed in rules adopted by the Commissioner is snowmobile sound emission limitations. This fault is much more significant than failure to cite the proper statutory authority.

Minn. Stat. Sec. 84.86, subd. 1(5) authorizes rules establishing "specifications relating to snowmobile mufflers." Part E. of 6 MCAR Sec. 1.0057 does deal with snowmobile mufflers, according to its heading. The subject rules, however, purport to establish "snowmobile noise emission standards" and do not deal with mufflers. All references to snowmobile mufflers, in fact, are deleted from the subject rules by the proposed amendments. (See, proposed amendments to 6 MCAR Sec. 1.0057 E.6.)

The obvious (and stated) purpose of the proposed amendments is to establish the general maximum noise level which a snowmobile emits--from whatever source on the machine and as mitigated by whatever devices or

engineering achieves that level. The Department's authority to adopt rules, however, appears to be limited in this instance to those areas specified by the statute, one of which deals with mufflers. Any attempt to limit snowmobile noise, therefore, must be related to regulation of muffler specifications or fail as beyond statutory authority.

Part of the problem regarding the authority for these rules arises from the specificity with which the Legislature has limited the areas of rulemaking. Had the Legislature specified only "specifications relating to snowmobile mufflers," it might be possible (with one eye closed) to extend that to noise muffling devices, in general. But the Legislature went further; it specified in Minn. Stat. Sec. 84.871 exactly what snowmobile mufflers are to do and restates the mandate that, "No person shall have for sale, sell or offer for sale on any new snowmobile any muffler that fails to comply with the specifications required by the rules and regulations of the commissioner after the effective date of the rules and regulations."

The limitation of the Department's authority to deal with general noise emission standards is reinforced by the specific grant of authority to Minnesota's Pollution Control Agency to "adopt, amend and rescind regulations and standards having the force of law . . . for the prevention, abatement, or control of noise pollution . . . . Without limitation, regulations or standards may relate to sources or emissions of noise or noise pollution . . . or to any other matter relevant to the prevention, abatement or control of noise pollution." (Emphasis added; Minn. Stat. Sec. 116.07, subd. 4) The PCA thus appears to have responsibility for overall noise levels from whatever source, including snowmobiles; the DNR, on the other hand, is responsible for specifications of snowmobile mufflers.

Without getting into an extensive discussion of case law dealing with statutory authority, the Examiner notes that recent cases of the State Supreme Court caution strictness and conservatism is construing laws giving rulemaking authority. See, Minnesota-Dakota Retail Hardware Association, et al., v. Minnesota, ____ Minn. ____, ____ N.W.2d ____ (1979); State, by Spannaus v. Lloyd A. Fry Roofing Co., 310 Minn. 528, 246 N.W.2d 696 (1976). The Legislature itself has directed that:

> When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.

Minn. Stat. Sec. 645.16. Thus, even if it could be strongly argued that the Legislature intended the DNR to regulate snowmobile noise emissions in general, the clear and unambiguous words of the statute limit such regulation to snowmobile muffler specifications.

Some argument may be made that all of 6 MCAR Sec. 1.0057 E. deals with mufflers, as evidenced by the heading of that rule section. It is clear from a review of the proposed amendments, however, that they do not purport to be limited to muffler specifications; rather, they address general snowmobile emission standards whether controlled, modulated or baffled by mufflers, insulation, engineering technology or any other means.

Finally, the Examiner notes an approach taken by another Hearing Examiner to a similar problem involving statutory authority. Hearing Examiner George A. Beck, in considering proposed rules of the State Board of Education found:

> It should first be noted that Chapter 15 does not explicitly state whether or not an agency must re-establish in a rule proceeding its statutory authority for an existing rule when it seeks to amend the rule which has been presumably validly adopted at some time in the past, at least where the amendment does not in effect create a new rule, but merely modifies the original rule. Minn. Stat. Sec. 15.052, subd. 3, requires the hearing examiner to make a report in which he is to take notice of the degree to which the agency has documented its statutory authority to take the proposed action. The definition of rule at Minn. Stat. Sec. 15.0411, subd. 3, includes also the amendment thereof. There is, of course, always the possibility that a person may attack the statutory authority for a rule by a petition to district court for a declaratory judgment pursuant to Minn. Stat. Sec. 15.0416 and Sec. 15.0417. It may well be that technically an agency is not required to re-establish its statutory authority in a rule amendment proceeding unless its rule amendment sufficiently alters the existing rule so as to require a new judgment to be made as to whether or not the resulting rule would exceed the agency's statutory authority. In the context of this rule proceeding, this would mean that the agency must show that it has authority to establish a more flexible formula, but would not have to show or re-establish its statutory authority to promulgate a rule dealing with de facto segregation. The remedy of a person seeking to challenge the latter authority would necessarily be a district court action.

(Docket No. EDU-78-009-GB, Finding 12) Although the undersigned does not agree with the approach quoted above, it is a legitimate argument favoring the existence of statutory authority to take the proposed action.

On June 18, 1979, at the Hearing Examiner's request, counsel for most participants in the hearing met with the Examiner to discuss the question of statutory authority noted herein. All participants were provided with a draft of this Finding at least four days prior to the meeting. This Finding reflects, to some degree, information and arguments presented on both sides of the question. A greater exposition of arguments favoring the existence of statutory authority--or, at least, the propriety of the rules and proposed amendments--is attached hereto and made a part hereof in the form of memoranda received from Messrs. Schwartzbauer and Clapp. A review of the cases mentioned in the last sentence of Mr. Clapp's memorandum, in the Examiner's opinion, tends to support the position indicated by this Finding rather than the position advocated by Mr. Clapp. (See particularly, Fuller v. City of Mankato, 1957, 248 Minn. 342, 80 N.W.2d 9, Lahr v. City of St. Cloud, 1956, 246 Minn. 489, 76 N.W.2d 119 and State, ex rel. Bergin v. Washburn, 1947, 224 Minn. 269, 28 N.W.2d 652; contra, Lowry v. City of Mankato, 1950, 231 Minn. 108, 42 N.W.2d 553.)

By the terms of Minn. Stat. Sec. 15.052, subd. 3, the Examiner is to take notice "of the degree to which the agency has (1) documented its statutory authority to take the proposed action . . . ." Because no questions were raised about the Department's authority and because these rules

have previously "passed muster" before various review bodies, no particular attention was given to the issue (other than to cite the authorizing statute in the Notice of Hearing). The Examiner does not find fault with the "degree" to which the Department documented its authority; it should be clear from this Finding, however, that the Examiner has serious reservations about whether the cited authority actually authorizes the Department to take the proposed action.

Other specific problems related to statutory authority are discussed in Finding 10, below.

8. The rule which was the object of most comments and evidence is 6 MCAR Sec. 1.0057 E.4.a. (Reference hereafter to proposed rules will be abbreviated from, e.g., 6 MCAR Sec. 1.0057 E.4.a. to 57 E.4.a.) As currently in force, that rule requires snowmobiles to be "so equipped that overall noise emission does not exceed 78" dB(A) until July 1, 1979, and thereafter not to exceed 73 dB(A). (The term "dB(A)" stands for "decibels on the A scale". Unless otherwise specified, it should be understood to to refer to a measurement taken at 50 feet away from the sound source.) The proposed amendment would establish 78 dB(A) as the final standard without requiring future modifications to further reduce noise emissions.

In support of the proposed amendment, evidence was submitted by testimony and exhibit to establish that:

(1) 78 dB(A) is not harmful to humans or wildlife.

(2) 78 dB(A) is the practical and feasible standard by which snowmobile noise should be limited.

(3) 73 dB(A) is unnecessarily restrictive--practically and economically.

Although a brief presentation was made by Ms. Bailey-Morrow on behalf of the DNR, the Department's major affirmative presentation of facts in support of the rules was made by the International Snowmobile Industry Association (hereinafter "ISIA").

A study by Dr. Andres Soom shows minimal impact on deer and rabbits from snowmobiles operating at levels of 78 dB(A) or more. (ISIA Ex. 10) Even the Bolt, Beranek and Newman study relied on by opponents to the amendment recognizes no significant harm to wildlife caused by snowmobile noise. (See, Sierra Ex. 1, pp. 13-14) There is no doubt that wildlife may shift away from areas of human intrusion, particularly when that area becomes more noisy than without such intrusion. But no evidence exists in the record to establish significant harm or disruption to wildlife. In fact, testimony by representatives of Minnesota USA (a snowmobilers group) indicates that wildlife such as deer are barely disturbed by snowmobiles operating in compliance with current noise emission standards.

The record does not show the 78 dB(A) standard to be harmful to humans. Comparisons of snowmobile noise levels to those permitted for worker exposure

by standards established pursuant to the Occupational Safety and Health Act (OSHA) are inapposite because the latter are related to constant or frequent exposure in a work-required situation while the former are associated with infrequent exposure in a voluntary, recreational setting.

The industry has made good faith efforts to reduce and limit sound emissions from snowmobiles. As noted generally in testimony by industry witnesses during the instant hearing, and specifically by Mr. Roger Worth in his testimony during the 1977 hearings:

> The industry has worked exceedingly hard to decrease the sound emissions from snowmobiles to the current levels and very significant progress has been made. To accomplish these results, major design changes have been made in the snowmobiles. Mufflers have been redesigned and improved; new carburetors designed; totally new engines developed and tooled; air intake systems developed and acoustical insulation installed in many critical areas.

(ISIA Ex. 12A; see also, ISIA Ex. 18, Enclosure 3, September 28, 1978 letter from Bombardier regarding Oregon's proposed 75 dB(A) standard.)

In actual operation, furthermore, a snowmobile equipped to meet the 78 dB(A) standard will not emit noise at that level. Rather, it would emit noise at a somewhat lower level due to operation of the vehicle at less than full throttle. Perception of the snowmobile noise would be lessened even further because of natural sound barriers such as berms. (See, testimony of Robin Harrison; see also, testimony of Mortimer Doyle.)

From an economic standpoint, the record establishes that 73 dB(A) standard would be impractical. The costs associated with the manufacture and sale of a snowmobile model which can meet the overall noise emission standard of 73 dB(A) would not be acceptable in the marketplace. It is clear that current technology does not allow for production of a snowmobile which meets the 73 dB(A) standard at an attractive, competitive cost. (See, testimony of Messrs. Michalek, Dwyer, Vaughan, Schmitt, Carlson and Perrault.) The difference between retail prices for current models and the price which would likely be charged for a 73 dB(A) model is substantial, according to spokesmen for the manufacturers. (See, ISIA Ex. 19)

Those same cost estimates indicate that it would be uneconomical--or at least, competitively disadvantageous--to produce a snowmobile solely for the Minnesota market. No testimony was advanced as to whether it would be uneconomical to produce a machine acceptable to all states with a noise emission standard of less than 78 dB(A).

Other economic consequences of a more stringent standard than 78 dB(A) would likely include loss of millions of dollars ($167,000,000, according to Mr. Doyle) spent by snowmobilers related to the activity, as well as the revenues realized by the state from sales tax, registration fees and state fuel taxes. The impact of diminished snowmobile sales and activity would be particularly acute in resort and recreation areas of the state, such as Brainerd, where snowmobiling has provided greatly expanded winter employment opportunities. (See, testimony of Sherman Kavanaugh and Alan Gunsbury) Further, the business of those involved in snowmobile sales and service would likely be impaired.

Much emphasis was given to methods of controlling the impact of snowmobile noise under the general rubric of "land use planning." For example, it is recognized by the ISIA that the 78 dB(A) standard might have a significant impact on residential community noise levels, but that problem has been palliated by means of local restrictive ordinances as well as the establishment of recreational areas and trails set aside for snowmobile use. (See, e.g., testimony of Dr. Soom and Mr. Harrison)

The fact that complaints about snowmobile noise have diminished to a minimal number each year is significant. It may well be that 78 dB(A) is too loud for most people's comfort, but non-noise emission controls have apparently isolated snowmobile use to areas where those bothered by the sound are not impacted or affected to the extent that generates complaints. (Testimony by Mr. Doyle) Though its effect may be significant, land management is not a substitute control or palliative for snowmobile noise. Land use planning can help minimize snowmobile noise detectability and thereby minimize any associated nuisance quality. That land management activities result in less complaints about noise, however, is only incidental to the question about what is a reasonable and proper snowmobile noise emission and how such emissions should be controlled.

The Examiner is impressed by the support which the amendment received from the Minnesota Pollution Control Agency. (See, testimony of Alfonso Perez) The PCA's general review of the technology, economics, need and impacts of the industry and the activity indicates that the 78 dB(A) noise emission standard is reasonable.

The arguments presented by opponents of the 78 dB(A) standard are, generally, without merit. The Bolt, Berenak and Newman study relied on heavily by the Sierra Club was properly discounted by the DNR as an after-the-fact justification for the 73 dB(A) standard adopted by the Department early in its experience of regulating snowmobiles. (Testimony of Ms. Bailey-Morrow; see also, ISIA Ex. 4, p. 13)

There is no factual support for claims by Mr. John Hanson that areas frequented by snowmobiles emitting 78 dB(A) suffer decreased land values. There is no indication that land values are affected at all, and no claim that a 73 dB(A) standard could have less effect on such values than a 78 dB(A) standard if there was an effect. Similarly, no evidence was proffered to support the contentions that non-snowmobile recreation is diminished or depressed by a 78 dB(A) standard versus a 73 dB(A) standard.

The Sierra Club points to two or three states which have snowmobile regulations which are as restrictive or more restrictive than the existing Minnesota rules. That is pointed out (a) to indicate the economic viability of building machines to meet the more restrictive noise standards

and (b) to show that Minnesota is not alone in the wisdom of its regulation.* Clearly the overwhelming number of states who do regulate snowmobile noise provide wisdom contrary to that of any standard below 78 dB(A) and also indicates that the market for the product does not warrant manufacture of the vehicle in order to penetrate every jurisdiction.

For the reasons set forth herein, the proposed amendment establishing 73 dB(A) as the standard for sale and operation of snowmobiles in Minnesota is found to be reasonable and necessary. Accordingly, existing rule sections 57 E.4.b. and c. are unnecessary and property repealed.

9. In addition to the amendment regarding the noise emission standard, other changes are proposed for 57 E.4.a. That section would be changed to make the rules applicable to all snowmobiles operated in Minnesota as well as those sold or offered for sale in the state. Such change eliminates unfair application of rules to those who may purchase and wish to use vehicles not conforming to Minnesota's snowmobile noise standards outside of Minnesota. The provision is both reasonable and necessary for uniform applicability of the rules.

Placement of the phrase "in Minnesota" to reflect that the rule applies to all snowmobiles in the state, not just those manufactured here, is a proper and reasonable change to provide clarity as to the rule's general applicability.

Another amendment which was supplemented at hearing would limit the manufacturer's certification of a snowmobile's conformity to the sound level limitations to the vehicle's performance "as originally equipped on the date of its manufacture". The justification for this change is apparently that the manufacturer cannot be held responsible for noise emanating from a machine after it is out of the manufacturer's control. If that is the intent of the amendment, then it should be so reflected. As the language is now proposed (including the additional material suggested at hearing) the rule may be narrowly construed to require that the machine be able to meet the 78 dB(A) standard only on the day it is manufactured.

"Being able to conform to a sound level limitation" is not the same as conforming to or meeting that limitation. Certifying the conformity to a standard as of the manufacture date further vitiates the rule's effectiveness--both in the absolute and as related to the normal operation of snowmobiles. If the rule is, as claimed, intended to govern snowmobile noise emission standards for the general operation of such machines, then it falls short by virtue of the proposed amendment.

---

* Vermont's snowmobile noise emission standard, contrary to the assertion of the Sierra Club, is not 73 dB(A) as measured at full throttle at 50 feet according to SAE 192(a), but as measured at 15 MPH according to SAE 1161--a similar standard to that which must be met by Minnesota snowmobiles. (See, Sierra Ex. 2 and letter of 4 May 1979 to the Hearing Examiner from Sergeant Robert A. Crossman, Special Services Supervisor, Vermont Department of Public Safety.)

As it currently reads, the standard is absolute: machines must be "so equipped that overall noise emission does not exceed" a fixed level. As proposed, the standard is weak: machines must only be capable of meeting the standard, and then only on the day they come off the assembly line. There is no justification for such emasculation of the rule and the Examiner finds it unreasonable and unsupported by an affirmative presentation of facts.

10. The intent of 57 E.5., as proposed by amendment, is to ensure uniformity in measurement and certification of the noise emission level. (See, Statement of Need and testimony of Ms. Bailey-Morrow) For that purpose, it is both reasonable and necessary.

The standard of measurement specified in the rule, SAE Recommended Practice J192(a) is an accepted industry standard by which all snowmobile manufacturers and certification authorities have abided and continue to use. No objection was voiced to this amendment or the standard it references.

The problems with the proposed amendment are legal in nature rather than technical. First, the rule incorporates by reference a standard which is less than 3,000 words in length and which would require less than five pages of publication in the State Register. Such practice is specifically prohibited by Minn. Stat. Sec. 15.0412, subd. 4. (Whether or not this particular incorporation by reference is prohibited may be reviewed by the Attorney General, because the existing rule--adopted before the statute prohibiting such incorporation by reference--does refer to essentially the same procedure.)

Secondly, use of the phrase "as amended" (referring to the SAE 192(a) procedure) constitutes a delegation of power by the DNR to a body not authorized by the Legislature, i.e., the Society of Automotive Engineers. By changing its Recommended Practice SAE 192(a), that body could and would, in effect, be changing the Department's rule. See, Wallace v. Commissioner of Taxation, 1971, 289 Minn. 220, 184 N.W.2d 588 and State v. King, 1977, ____ Minn. ____, 257 N.W.2d 693.

Finally, the phrase "or with such other standards for measurement of sound level as the department may adopt" is either ambiguous or meaningless. The ambiguity arises from the erroneous implication that the rule may not, in fact, require use of the stated measurement standard for certification. It is meaningless because any standard other than that currently specified would be subject to a formal rulemaking hearing in order to be applicable and enforceable. (See, in general, Minn. Stat. Sec. 15.0412)

11. One of the two main changes proposed for 57 E.6. is the deletion of references to snowmobile mufflers. The Department indicates that such change would enhance the clarity of the rule. The Department does not want the rule to require certification of compliance with noise level restrictions for mufflers "because [the Department] never intended that that occur; and it doesn't occur; and muffler manufacturers don't certify

their mufflers as generating any particular sound level." (Statement by William Clapp; see also, testimony of Ms. Bailey-Morrow) Assuming that the DNR's rulemaking authority extends to the setting of general noise emission standards for snowmobiles, such change would be reasonable and an appropriate clarification of the rule; if the authority of the DNR is limited to regulating specifications of snowmobile mufflers, as discussed in Finding 7, above, the deletions would be inappropriate and unreasonable because they would put the rule beyond the Department's statutory authority for regulation.

The other amendment to Rule 57 E.6. is the addition of a sentence establishing the form of certification of compliance with noise emission levels by use of a uniform label. This process of certification by label is supported as adequate to guarantee compliance with the noise emission level and protect the public's interest. (See, testimony of Michael Erlich) The use of labels showing certification would also be convenient for snowmobile users and potential purchasers and might also be a method to control (either restrict or permit) the use of snowmobiles which meet emission standards in various areas of the state, i.e., so machines with low noise emissions might be allowed in more areas than machines with higher noise emissions. (Testimony of Mr. Perez)

Part of the second amendment allows an alternative form of certification by "a letter with test results showing an evaluation of the noise levels by a competent, independent testing laboratory." It is very questionable whether this alternative is either necessary or reasonable. It will likely cause confusion for some snowmobiles to have a conspicuous label attesting to certification of noise level emissions while other machines, equally well-equipped and certified, are not so labeled. The alternative is also vague as to what should happen to the letter with the test results: should it be sent to the manufacturer, the dealer or the consumer? who is responsible for the letter distribution? should it accompany each snowmobile so certified? There being no specific support in the record for the alternative method of certification, the language quoted in this paragraph is found to be unnecessary and unreasonable.

12. As indicated by the Statement of Need, Rule 57 E.7. "is amended to change the language to reflect amplification or modifications of noise levels instead of total engine noise." This change stands or falls by the same reasoning as the change in 57 E.6. deleting references to snowmobile mufflers. If the Department's rulemaking authority extends to total snowmobile noise emissions, the change is reasonable and necessary; if that authority is limited to mufflers, the amendment is unreasonable and the rule should remain as it currently is in force.

13. The amendment to Rule 58 A., the deletion of language specifying the type of penalty to be incurred for violation of the rules, is a reasonable and necessary "housekeeping" change. Such penalties need not be specified in the rule because they are stated in Minn. Stat. Ch. 609, which is itself occasionally changed.

The addition of Paragraph B. to Rule 58 specifically subjects manufacturers to the penalty provisions of the rules. This amendment is reasonable to provide "the teeth" necessary to enforce the provisions of the rules relating to certification against those most readily equipped to police the certification system and most likely to realize benefit from lax enforcement of such system. The addition of the paragraph also provides additional assurance that the noise emission levels which are to be certified will be met by the manufacturers.

14. The deletion of Rule 59 is reasonable and necessary as a "housekeeping" change: The regulations referred to in that rule no longer exist and the rule is, therefore, outdated.

Based upon the foregoing, the Examiner makes the following:

CONCLUSIONS

1. The Department of Natural Resources and the Office of Hearing Examiners duly acquired and have jurisdiction in the instant matter.

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

3. The Department has failed to demonstrate its statutory authority to adopt the proposed amendments.

4. Except as noted in the Findings, the Department has demonstrated that the proposed amendments are reasonable and necessary.

Based on the foregoing, the Examiner makes the following:

RECOMMENDATIONS

1. That the Department seek legislative clarification and remedy for its statutory authority to take the proposed action or, in the alternative, that some clarification of the Department's rulemaking authority be obtained through the courts of this State, and

2. That, upon clarification or remedy of the problem involving statutory authority, the rules be amended as proposed except as modified pursuant to the Findings contained in this Report.

Dated: June 22, 1979.

Myron S. Greenberg

MYRON S. GREENBERG
State Hearing Examiner

DNR-3

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

STATEMENT OF NEED AND REASONABLENESS

RECEIVED
APR 6 19[illegible]
OFFICE OF HEARING EXAMINERS

PROPOSED RULES GOVERNING SNOWMOBILE NOISE EMISSION STANDARDS

6 MCAR § 1.0057 E.4

On June 8, 1977, the Department of Natural Resources held a public hearing to propose an amendment to Minnesota Regulations NR 57(e)(4)(bb), which set a 73 dB(A) sound level effective July 1, 1977.

At that hearing, the Department sought to postpone the July 1, 1977, effective date of the 73 dB(A) limit. In the interim, the Commissioner of Natural Resources agreed to undertake further study in order to determine an appropriate, firm date for beginning the 73 dB(A) requirement or such other requirements as he deemed appropriate. After the Commissioner had made the study, his recommendations were to be subject to public hearings before the Regulation was further amended. The department was granted two years to study the snowmobile noise problem and to amend the Regulation.

The Department has now concluded its study and is ready to present at a public hearing on May 2, 1979, the proposed amendments and justification necessary to repeal the requirement that snowmobiles made after July 1, 1979, will emit no more than 73 decibels of noise when measured at full-throttle acceleration at 50 feet. The proposed noise limit will be 78 decibels, which has been in effect since April 1, 1975.

To support the proposed amendment, evidence will be presented by the department and its witnesses to show that the 73 dB(A) standard was an arbitrary standard, having no basis in research and scientific data; that the impact of a 78 dB(A) vs. a 73 dB(A) standard has a negligible environmental impact; that the economic impact on the State's economy and the

snowmobile industry, given a ± decibel differential, would be costly and not justified in light of present data; that the experience of other states similarly situated have supported the 78 dB(A) sound level; that a justifiable need for a 73 dB(A) standard has not been demonstrated by any group(s) opposing the amendment.

The Department intends to call as witnesses on its behalf the International Snowmobile Industry Association, the U. S. Testing Laboratory, the Minnesota Pollution Control Agency and the Minnesota United Snowmobilers Association. The Department will receive for the record any other testimony on its behalf from interested parties and groups.

The International Snowmobile Industry Association will focus on the history of the industry and the economic impact of the pending 73 dB(A) standard.

The U. S. Testing Laboratory will testify as to testing methods and procedures used in certifying new snowmobile models and compare the International Snowmobile Industry Association's certification rating with other industries.

The Minnesota Pollution Control Agency will testify as to the negligible impact of 78 dB(A) vs 73 dB(A) on the environment.

The Minnesota United Snowmobilers Association representing the users of snowmobiles will testify to the recreational and other valid uses of the snowmobile.

The Department will also submit as evidence, letters from other states with laws and regulations governing snowmobiles detailing their experiences with the 78 dB(A) standard.

6 MCAR s 1.0057 E.4.a. is amended to add an additional requirement that no snowmobile manufactured after April 1, 1975, shall be sold, offered for sale, or operated unless it adheres to a sound level of 78 decibels on the A scale

at 50 feet. This provision is added to prevent snowmobiles of louder decibels from being brought into the state from other areas having a higher rating than a 78 dB(A).

6 MCAR § 1.0057 E.5. is amended to assure that a uniform standard is used to certify the noise level.

6 MCAR § 1.0057 E.6. is amended to require that the certification of compliance be in the form of a label or a letter showing certification by the Snowmobile Safety and Certification Committee or by a competent independent testing laboratory.

6 MCAR § 1.0057 E.7. is amended to change the language to reflect amplification or modifications of noise levels instead of total engine noise.

6 MCAR § 1.0058 expands the penalty provisions to include manufacturers. A manufacturer who certifies that a new snowmobile can meet the sound level limitations imposed by these rules shall be guilty of a misdemeanor for each machine so certified which does not meet the applicable sound level limitation.

R-79-014-MG

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF THE PROPOSED)
AMENDMENT OF RULES OF THE)
DEPARTMENT OF NATURAL RESOURCES)
GOVERNING SNOWMOBILES.)

REPORT OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on May 2, 1979, before Myron S. Greenberg, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Report of the Hearing Examiner made pursuant to Minn. Stat. § 15.052, Subd. 3, was issued to the Department of Natural Resources on June 22, 1979; and

WHEREAS, the Department of Natural Resources has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Department of Natural Resources has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and 9 MCAR § 2.110; and

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

NOW, THEREFORE, upon receipt of this Report, the Department of Natural Resources has the responsibility of submitting the complete hearing record and the rules as adopted by the Department to the Attorney General, notifying all persons who requested to be informed that the hearing record has been submitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 16th day
of July, 1979.

DUANE R. HARVES
Chief Hearing Examiner



Photo By:
T. Arnold Bolz

Sierra Club

300 Roanoke Building
Minneapolis, Minnesota 55402
(612) 339-9501
July 30, 1979

Mr. Lee Sheehy
Office of the Attorney General
Room G25
State Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

RECEIVED
JUL 31 1979
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Re: Proposed Rule 6 MCAR § 1.0057
Governing Snowmobile Noise
Emission Standards

Dear Lee:

As we discussed by telephone on July 30, 1979, I am enclosing the Sierra Club's brief in opposition to proposed Rule 6 MCAR § 1.0057 governing snowmobile noise emission standards. The proposed amendments to that rule were adopted by the Department of Natural Resources (DNR) and submitted to the Attorney General's office for approval or disapproval pursuant to Chapter 3, Rule 305, of the Rules and Regulations of the Attorney General. Pursuant to Rule 305, the Sierra Club is submitting the enclosed brief urging the Attorney General to disapprove the DNR's proposed amendments.

The Sierra Club concurs with the Hearing Examiner in concluding that the amendments exceed the DNR's rulemaking authority. As the Hearing Examiner's Report and our brief explain in more detail, the Minnesota Pollution Control Agency (PCA), not the DNR, has the responsibility for overall snowmobile noise emission standards. The PCA, with its expertise and experience in noise control, is clearly better qualified than the DNR to regulate snowmobile noise. The legislative grant of such authority to the PCA, therefore, will be undermined unless the DNR's amendments are disapproved.

Sincerely,

Diane Hollern

Diane Hollern

DH:jm
Enc.
cc: Jeffrey A. Hanson
Stephen J. Snyder
John Waldron
Michael Persillin
William Clapp

TO: THE OFFICE OF THE ATTORNEY GENERAL, STATE OF MINNESOTA.

In the Matter of the Proposed Amendment of Rules of the Department of Natural Resources Governing Snowmobiles.	)))))	BRIEF IN OPPOSITION TO PROPOSED RULE 6 MCAR § 1.0057 GOVERNING SNOW-MOBILE NOISE EMISSION STANDARDS

INTRODUCTION

The above-entitled matter involves the proposal of the Minnesota Department of Natural Resources (hereinafter referred to as "DNR") for amendments to Rule 6 MCAR § 1.0057 governing snowmobile noise emission standards within the State of Minnesota. The proposed rule amendments involve, inter alia, the repeal of the requirement that snowmobiles made after July 1, 1979, will emit no more than 73 dB(A) of noise when measured at full-throttle acceleration at 50 feet from the machine. The amended noise limit would be 78 dB(A). The proposal would also make certain certification requirements on the part of the manufacturers of snowmobiles, and would provide criminal penalties for machines not meeting certified specifications.

On May 2, 1979, the matter came on for a hearing before Myron S. Greenberg, duly appointed Hearing Examiner. The hearing was conducted pursuant to Minn. Stat. Ch. 15, and was held to determine whether the proposed amendments should be adopted. Although the Hearing Examiner found that certain portions of the proposed snowmobile noise rules were reasonable and necessary, he concluded that the DNR had failed to demonstrate its statutory authority to adopt the proposed amendments. A copy of the Report of the Hearing Examiner dated June 22, 1979, is attached to this brief as Exhibit A.

The Sierra Club strongly opposes any amendment to Minnesota's snowmobile noise rules which would repeal the present 73 dB(A) standard. As we argued at the May 2, 1979 hearing, the DNR has failed to prove that increasing the noise level to 78 dB(A) is reasonable or necessary, and we therefore disagree with the Hearing Examiner's conclusions on that issue. The evidence presented at the recent hearing, and in all of the hearings on snowmobile noise since 1972, supports the adoption of lower noise levels, not the repeal of the 73 dB(A) requirement. As the record demonstrates, excessive snowmobile noise disturbs and annoys the non-snowmobiling public, has a serious adverse impact on the environment, particularly on wildlife, and poses health risks to the snowmobile users themselves. Such evidence, we contend, was not fully considered by the Hearing Examiner. Similarly, the Hearing Examiner failed to give proper weight to the undisputed evidence that technology currently exists to produce quieter snowmobiles. Although the availability of technology to reduce noise emissions was conceded by everyone, including the DNR, nevertheless, the DNR proposed increasing the allowable snowmobile noise in Minnesota rather than advocating a phase-in of lower noise requirements or any other reasonable solution to the problem. DNR failed to present sufficient evidence to justify repeal of the 73 dB(A) standard, and therefore the record does not support the Hearing Examiner's conclusion "that the proposed amendments are reasonable and necessary."

Although the Sierra Club opposes the 78 dB(A) amendments, this brief specifically addresses another issue considered by the Hearing Examiner -- whether the DNR has statutory authority to adopt the proposed amendments. On that issue, we agree with the Hearing Examiner's conclusion that the DNR has failed to demonstrate its statutory authority. The Sierra Club therefore recom-

mends that the Attorney General disapprove the proposed amendments on the ground that they "exceed . . . the statutory authority conferred" upon the DNR. Chapter 3, Rule 305 (b)(2)(aa), Rules and Regulations of the Attorney General.

ARGUMENT

I.

The DNR's Authority to Promulgate Snowmobile Noise Emission Standards is Expressly Limited by Statute to Specifications Relating to Snowmobile Mufflers.

As the Hearing Examiner noted in his Report, Minn. Stat. § 84.86 authorizes the DNR to promulgate certain rules and regulations regarding snowmobiles. Under that section, the DNR is authorized to regulate snowmobile registration, various specified uses, uniform signs, programs of infomation and safety education, and accident reports "[w]ith a view of achieving maximum use of snowmobiles consistent with protection of the environment. . . ." Minn. Stat. Ann. § 84.86(1). Subdivision (1)(5) of that statute also authorizes the DNR to promulgate "specifications relating to snowmobile mufflers . . . ."

The DNR's proposed amendments to 6 MCAR § 1.0057, however, specify general noise emission standards for snowmobiles and are not limited to muffler specifications. In fact, as the Hearing Examiner found, "[a]ll references to snowmobile mufflers ... are deleted from the subject rules by the proposed amendments." Report of the Hearing Examiner, p. 2.

> The obvious (and stated) purposed of the proposed amendments is to establish the general maximum noise level which a snowmobile emits -- from whatever source on the machine and as mitigated by whatever devices or engineering achieves that level. The Department's authority to adopt rules, however, appears to be limited in this instance to those areas specified by the statute, one of which deals with mufflers. Any attempt to limit snowmobile noise, therefore, must be related to regulation of muffler specifications or fail as beyond statutory authority. Id. at pp. 2-3.

The Sierra Club contends, as did the Hearing Examiner, that the DNR's proposed amendments are not limited to the regulation of muffler specifications and are thus without authority under the Minnesota statutes.

Further indication of the Legislature's specific expression of this limitation is contained in Minn. Stat. § 84.871, which provides minimum standards for and exceptions to muffler regulation, and makes unlawful the sale of snowmobiles having mufflers that fail to comply with the DNR regulations:

> 84.871 MUFFLERS. Except as provided in this section, every snowmobile shall be equipped at all times with a muffler in good working order which blends the exhaust noise into the overall snowmobile noise and is in constant operation to prevent excessive or unusual noise. The exhaust system shall not emit or produce a sharp popping or crackling sound. This section does not apply to organized races or similar competitive events held on (1) private lands, with the permission of the owner, lessee, or custodian of the land; (2) public lands and water under the jurisdiction of the commission of natural resources, with the commissioner's permission; or (3) other public lands with the consent of the public agency owning the land. No person shall have for sale, sell, or offer for sale on any new snowmobile any muffler that fails to comply with the specifications required by the rules and regulations of the commissioner after the effective date of the rule and regulations. Minn. Stat. Ann §84.871.

The authority conferred upon the DNR to regulate snowmobile noise is thus clear and unambiguous. For the DNR to regulate <u>overall</u> noise emissions from snowmobiles would raise serious statutory questions. As the Hearing Examiner explained in his Report:

> Part of the problem regarding the authority for these rules arises from the specificity with which the Legislature has limited the areas of rulemaking. Had the Legislature specified only "specifications relating to snowmobile mufflers", it might be possible (with one eye closed) to extend that to noise muffling devices, in general. But the Legislature went further; it specified in Minn.

> Stat. Sec. 84.871 exactly what snowmobile mufflers are to do and restate the mandate that, "No person shall have for sale, sell or offer for sale on any new snowmobile any muffler that fails to comply with the specifications required by the rules and regulations of the commissioner after the effective date of the rules and regulations." Report of the Hearing Examiner, p.3.

Such a clear expression of statutory authority should not be disregarded by the Attorney General in determining whether to approve the DNR's proposed amendments. In construing the legislative intent, the Hearing Examiner noted:

> The Legislature itself has directed that:
>
> > When the words of law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.
>
> Minn. Stat. Sec. 645.16. Thus, even if it could be strongly argued that the Legislature intended the DNR to regulate snowmobile noise emissions in general, the clear and unambiguous words of the statute limit such regulation to snowmobile muffler specifications. Report of the Hearing Examiner, p. 3.

As recognized by the Hearing Examiner, the construction of statutes providing authority to administrative agencies has been a matter of particular scrutiny by the Minnesota Supreme Court. The Court has made clear that it will strictly construe such statutes to extend agency authority only to those matters expressed by the Legislature:

> . . . Courts cannot properly aid the agency by construing the statute to confer upon it implicit authority, when to do so would contravene the legislature's apparently deliberate failure to explicitly grant it such authority.
> State, by Spannaus v. Lloyd A. Fry Roofing Co., 310 Minn. 528, 246 N.W.2d 696, 700 fn.6 (1976).

Accord, Minnesota-Dakota Retail Hardware Association v. Minnesota, _____ Minn. _____, _____ N.W.2d _____, (Finance and

Commerce, May 11, 1979, at 414). (See Report of the Hearing Examiner, p.3, which relied on the above-cited cases.) The principle is stated similarly in Griswold v. Ramsey County, 242 Minn. 529, 534, 65 N.W.2d 647, 651 (1954), wherein the Court held:

> Where a statute speaks with clarity in limiting its application to specifically enumerated subjects its application may not be extended to other subjects by a process of construction since construction lies only in the domain of ambiguity.

In the instant matter, the statute has spoken with clarity in limiting its application to snowmobile mufflers only, and therefore its application may not be extended to the subject of overall snowmobile noise through the process of construction. The language in § 84.871 requiring that a snowmobile be equipped with a muffler "which blends the exhaust noise into the overall snowmobile noise" can hardly be read as extending to the DNR authority to regulate the overall noise of snowmobiles. Rather the language means precisely what it states: mufflers must blend engine-exhaust noise into overall snowmobile noise. In proposing rules that set standards for overall snowmobile noise, the DNR has violated the express statutory limitations of its rule-making authority.

II.

The Pollution Control Agency Has Specific Authority to Regulate Overall Snowmobile Noise.

Another factor noted by the Hearing Examiner on the statutory authority question was the regulatory power of Minnesota's Pollution Control Agency (hereinafter referred to as the "PCA"). As the Hearing Examiner reasoned:

> The limitation of the Department's authority to deal with general noise emission standards is reinforced by the specific grant of authority to Minnesota's Pollution Control Agency to "adopt, amend and rescind regulations and

> standards having the force of law . . . for the prevention, abatement, or control of noise pollution . . . . Without limitation, regulations or standards may relate to sources or emissions of noise or noise pollution . . . or to any other matter relevant to the prevention, abatement or control of noise pollution." (Emphasis added; Minn. Stat. Sec. 116.07, subd. 4.) The PCA thus appears to have responsibility for overall noise levels from whatever source, including snowmobiles; the DNR, on the other hand, is responsible for specifications of snowmobile mufflers. Report of the Hearing Examiner, p.3.

Even assuming, by a strained interpretation, that Minn. Stat. § 84.86(1) could be construed to give the DNR authority to adopt snowmobile noise regulations with a broader scope than snowmobile mufflers, this implied or general authority must give way to the specific grant of authority given by the Legislature to the PCA under Minn. Stat § 116.07(4). It is axiomatic that where there are potential conflicts of authority between government agencies, the statute granting specific authority must pre-empt conflicting authority which may be implied, but is not specified, by statute. This principle of construction was stated in Fuller v. City of Mankato, 248 Minn. 342, 347, 80 N.W.2d 9, 13 (1956):

> Where general and specific provisions of the law are in conflict, it has frequently been held that the specific and not the general controls.
> (Cited with approval in the Report of the Hearing Examiner, p.4.)

Thus, if any ambiguity exists in the language of Minn. Stat. § 84.86, that ambiguity must be resolved in favor of the PCA by denying the DNR the authority to regulate overall noise emission from snowmobiles.

III.

The Intention of the Legislature in Enacting Minn. Stat. § 84.86 Was to Limit the Regulatory Authority of DNR to Snowmobile Mufflers.

Because the statutes which apply to DNR's attempt to promulgate

rules governing overall snowmobile emission noise standards are clear and unambiguous, it is the Sierra Club's position that further statutory construction is unnecessary. It also becomes unnecessary to apply the factors provided under Minn. Stat. § 645.16 for the construction of laws which are not explicit. However, even if the statutes bearing on this matter are presumed to be ambiguous, application of Section 645.16 demonstrates that the grant of authority to the DNR should not extend to overall snowmobile noise regulation.

Minn. Stat. § 645.16 provides, in part:

> When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters:
>
> (1) The occasion and necessity for the law;
> (2) The circumstances under which it was enacted;
> (3) The mischief to be remedied;
> (4) The object to be attained;
> (5) The former law, if any, including other laws upon the same or similar subjects;
> (6) The consequences of a particular interpretation;
> (7) The contemporaneous legislative history; and
> (8) Legislative and administrative interpretations of the statute.

The following is an analysis of those factors as they apply to the amendments proposed by the DNR:

(1) and (2) In 1969, when the statutes relating to snowmobile mufflers were enacted, a serious problem did exist regarding noise from snowmobiles. Many snowmobiles had no mufflers at all. Under such circumstances, it is logical that the Legislature would perceive that most of the problem involved muffler regulation, since engine noise is a major component of the overall vehicle noise. This does not mean, however, that the Legislature intended to grant the DNR authority to regulate overall snowmobile noise. The Legislature was acting cautiously in granting rulemaking authority and was careful to limit this authority to muffler regulation.

(3) and (4) The mischief to be remedied was the excessive noise of snowmobiles. Since engine and exhaust noise was the largest component of the problem, and since the greatest abuse at the time was inadequate muffler equipment, regulation of mufflers was thought to be the solution for the problem. Only authority in this specific area was intended.

(6) Any other interpretation of the statute than that reached by the Hearing Examiner would greatly expand the authority of the DNR into areas it was not intended to reach. To grant the DNR authority to regulate overall snowmobile noise would place that agency in the arena of noise control which has been specifically delegated to the PCA. See Minn. Stat. § 116.07 (4) and discussion under Part II, supra.

Limitation of such regulatory authority to the PCA is clearly consistent with the legislative intent. The DNR, with primary responsibility for the maximum utilization of resources rather than environmental concerns, is not the appropriate agency to be regulating snowmobile noise. The PCA, on the other hand, with substantial expertise and experience in noise control, is better qualified than the DNR to promulgate standards for the overall noise emissions of snowmobiles. Unless the DNR's proposed amendments are disapproved by the Attorney General, the legislative grant of authority to the PCA will be undermined.

(7) and (8) Until the proposed amendments were submitted, the DNR had not operated in the area of overall noise control of snowmobiles. Prior versions the DNR's snowmobile regulations have been concerned, in whole or in part, with mufflers. The proposed amendments represent the first time that all references to snowmobile mufflers have been deleted. By the proposed amendments, therefore, the DNR is trying for the first time to take jurisdiction over the entire area of noise control.

Since 1969, the Legislature has made several amendments and additions to the DNR's power to regulate the areas of snowmobile use. However, the limitation of authority to regulate snowmobile mufflers has remained unchanged. The Legislative history does not indicate any intention on the part of the Legislature to "acquiesce" in the interpretation that the Commissioner of the DNR has taken with its proposed rules under 6 MCAR § 1.0057. Moreover, the Minnesota Supreme Court has made it clear that the regulations of a state adminstrative body are not controlling if they extend the statute or modify its provisions. Lahr v. City of St. Cloud, 246 Minn. 489, 76 N.W.2d 119, 122 (1956); Mattson v. Flynn, 216 Minn. 354, 13 N.W.2d 11 (1944).

CONCLUSION

For the reasons set forth herein, the Attorney General should affirm the conclusions under Finding (7) of the Report of the Hearing Examiner and disapprove of the DNR's proposed rules governing snowmobile emission noise standards.

Dated: July 30, 1979.

Respectfully submitted,

THE SIERRA CLUB

By 

Diane Hollern
Jeffrey A. Hanson
Stephen J. Snyder
300 Roanoke Building
Minneapolis, MN 55402
Telephone: (612) 339-9501

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Proposed Amendment of Rules of the Department of Natural Resources Governing Snowmobiles.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Myron S. Greenberg, duly appointed Hearing Examiner, on May 2, 1979, at the Minnesota Historical Building, 690 Cedar Street, Saint Paul, Minnesota.

This was a rules hearing pursuant to Minn. Stat. Ch. 15, held to determine whether a proposed amendment to an existing rule should be adopted.

Representing the Minnesota Department of Natural Resources (hereinafter "Department" or "DNR") were Theresa Bailey-Morrow, Director, Office of Regulations, and A. William Clapp, III, Special Assistant Attorney General.

Fifteen members of the public and industry representatives appeared and signed the register at the hearing. The hearing continued until all persons had an opportunity to be heard. The record remained open until May 22, 1979, for the submission of comments. Four such comments were received.

Pursuant to Minn. Stat. Sec. 15.0412, subd. 4, this Report shall be available to all affected persons for review for at least five working days before the Department takes any final action on the proposed amendments.

Thereafter, the Department shall, if it proposes to adopt the amendment as originally proposed or otherwise amended, submit a copy of the Order Adopting Rules, a copy of any additional Department findings, a copy of the Rules as originally proposed, and a copy of the Rules as adopted to the Chief Hearing Examiner for review pursuant to Minn. Stat. Sec. 15.052, subd. 4. The submission to the Chief Hearing Examiner shall precede review by the Attorney General. The Chief Hearing Examiner shall complete his review and submit his report to the Department on the issues of substantial changes in the rule and compliance with Minn. Stat. Sec. 15.0412 within ten calendar days. The Department will be responsible for filing the rules with the Attorney General and for notifying persons who have indicated that they wish to be notified of such filing.

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

FINDINGS OF FACT

1. On March 19, 1979, the Department filed the following documents with the Chief Hearing Examiner:

(a) A copy of the proposed rules.
(b) The Order for Hearing proposed to be issued.
(c) The Notice of Hearing proposed to be issued.

EXHIBIT "A"

2. On April 2, 1979, a Notice of Hearing and a copy of the proposed rules were published at 3 State Register 1814.

3. On March 26, 1979, the Department mailed the Notice of Hearing to all persons and associations who had registered their names with the Secretary of State for the purpose of receiving such notice.

4. On April 6, 1979, the Department filed the following documents:

(a) The Order for Hearing.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt and the Secretary of State's list.
(d) The Affidavit of Mailing the Notice to all persons on the Secretary of State's list.
(e) The Secretary of State's Certificate.
(f) The Statement of Need and Reasonableness.
(g) The names of Department personnel who will represent the DNR at the hearing together with the names of any other witnesses solicited by the Department to appear on its behalf.

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

Description of the Proposed Amendment and Statutory Authority

5. The most significant result of the proposed amendments is to eliminate a future standard of 73 dB(A) and maintain 78 dB(A) as the maximum noise level emitted by snowmobiles in Minnesota when measured at full throttle at 50 feet. Other rule changes affect the means of showing certification of compliance with noise standards and expand penalty provisions for certification of machines which do not meet the sound level standards.

6. In its Notice of Hearing, the Department cites as its authority to promulgate and amend the instant rules Minn. Stat. Sec. 584.86. No reference to any other statute is made in the Statement of Need or in testimony proffered during the hearing. (See, DNR Exs. 2, 3 and 8) No such statute exists.

7. Upon independent search, the Examiner notes that Minn. Stat. Sec. 84.86 does give the Commissioner of Natural Resources certain rulemaking authority. Absent from the list of subject matters which may be addressed in rules adopted by the Commissioner is snowmobile sound emission limitations. This fault is much more significant than failure to cite the proper statutory authority.

Minn. Stat. Sec. 84.86, subd. 1(5) authorizes rules establishing "specifications relating to snowmobile mufflers." Part E. of 6 MCAR Sec. 1.0057 does deal with snowmobile mufflers, according to its heading. The subject rules, however, purport to establish "snowmobile noise emission standards" and do not deal with mufflers. All references to snowmobile mufflers, in fact, are deleted from the subject rules by the proposed amendments. (See, proposed amendments to 6 MCAR Sec. 1.0057 [illegible].)

The obvious (and stated) purpose of the proposed amendments is to establish the general maximum noise level which a snowmobile emits--from whatever source on the machine and as mitigated by whatever devices or

engineering achieves that level. The Department's authority to adopt rules, however, appears to be limited in this instance to those areas specified by the statute, one of which deals with mufflers. Any attempt to limit snowmobile noise, therefore, must be related to regulation of muffler specifications or fail as beyond statutory authority.

Part of the problem regarding the authority for these rules arises from the specificity with which the Legislature has limited the areas of rulemaking. Had the Legislature specified only "specifications relating to snowmobile mufflers," it might be possible (with one eye closed) to extend that to noise muffling devices, in general. But the Legislature went further; it specified in Minn. Stat. Sec. 84.871 exactly what snowmobile mufflers are to do and restates the mandate that, "No person shall have for sale, sell or offer for sale on any new snowmobile any muffler that fails to comply with the specifications required by the rules and regulations of the commissioner after the effective date of the rules and regulations."

The limitation of the Department's authority to deal with general noise emission standards is reinforced by the specific grant of authority to Minnesota's Pollution Control Agency to "adopt, amend and rescind regulations and standards having the force of law . . . for the prevention, abatement, or control of noise pollution . . . . Without limitation, regulations or standards may relate to sources or emissions of noise or noise pollution . . . or to any other matter relevant to the prevention, abatement or control of noise pollution." (Emphasis added; Minn. Stat. Sec. 116.07, subd. 4) The PCA thus appears to have responsibility for overall noise levels from whatever source, including snowmobiles; the DNR, on the other hand, is responsible for specifications of snowmobile mufflers.

Without getting into an extensive discussion of case law dealing with statutory authority, the Examiner notes that recent cases of the State Supreme Court caution strictness and conservatism is construing laws giving rulemaking authority. See, Minnesota-Dakota Retail Hardware Association, et al., v. Minnesota, ____ Minn. ____, ____ N.W.2d ____ (1979); State, by Spannaus v. Lloyd A. Fry Roofing Co., 310 Minn. 528, 246 N.W.2d 696 (1976). The Legislature itself has directed that:

> When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.

Minn. Stat. Sec. 645.16. Thus, even if it could be strongly argued that the Legislature intended the DNR to regulate snowmobile noise emissions in general, the clear and unambiguous words of the statute limit such regulation to snowmobile muffler specifications.

Some argument may be made that all of 6 MCAR Sec. 1.0057 E. deals with mufflers, as evidenced by the heading of that rule section. It is clear from a review of the proposed amendments, however, that they do not purport to be limited to muffler specifications; rather, they address general snowmobile emission standards whether controlled, modulated or baffled by mufflers, insulation, engineering technology or any other means.

Finally, the Examiner notes an approach taken by another Hearing Examiner to a similar problem involving statutory authority. Hearing Examiner George A. Beck, in considering proposed rules of the State Board of Education found:

> It should first be noted that Chapter 15 does not explicitly state whether or not an agency must re-establish in a rule proceeding its statutory authority for an existing rule when it seeks to amend the rule which has been presumably validly adopted at some time in the past, at least where the amendment does not in effect create a new rule, but merely modifies the original rule. Minn. Stat. Sec. 15.052, subd. 3, requires the hearing examiner to make a report in which he is to take notice of the degree to which the agency has documented its statutory authority to take the proposed action. The definition of rule at Minn. Stat. Sec. 15.0411, subd. 3, includes also the amendment thereof. There is, of course, always the possibility that a person may attack the statutory authority for a rule by a petition to district court for a declaratory judgment pursuant to Minn. Stat. Sec. 15.0416 and Sec. 15.0417. It may well be that technically an agency is not required to re-establish its statutory authority in a rule amendment proceeding unless its rule amendment sufficiently alters the existing rule so as to require a new judgment to be made as to whether or not the resulting rule would exceed the agency's statutory authority. In the context of this rule proceeding, this would mean that the agency must show that it has authority to establish a more flexible formula, but would not have to show or re-establish its statutory authority to promulgate a rule dealing with de facto segregation. The remedy of a person seeking to challenge the latter authority would necessarily be a district court action.

(Docket No. EDU-78-009-GB, Finding 12) Although the undersigned does not agree with the approach quoted above, it is a legitimate argument favoring the existence of statutory authority to take the proposed action.

On June 18, 1979, at the Hearing Examiner's request, counsel for most participants in the hearing met with the Examiner to discuss the question of statutory authority noted herein. All participants were provided with a draft of this Finding at least four days prior to the meeting. This Finding reflects, to some degree, information and arguments presented on both sides of the question. A greater exposition of arguments favoring the existence of statutory authority--or, at least, the propriety of the rules and proposed amendments--is attached hereto and made a part hereof in the form of memoranda received from Messrs. Schwartzbauer and Clapp. A review of the cases mentioned in the last sentence of Mr. Clapp's memorandum, in the Examiner's opinion, tends to support the position indicated by this Finding rather than the position advocated by Mr. Clapp. (See particularly, Fuller v. City of Mankato, 1957, 248 Minn. 342, 80 N.W.2d 9, Lahr v. City of St. Cloud, 1956, 246 Minn. 489, 76 N.W.2d 119 and State, ex rel. Bergin v. Washburn, 1947, 224 Minn. 269, 28 N.W.2d 652; contra, Lowry v. City of Mankato, 1950, 231 Minn. 108, 42 N.W.2d 553.)

By the terms of Minn. Stat. Sec. 15.052, subd. 3, the Examiner is to take notice "of the degree to which the agency has (1) documented its statutory authority to take the proposed action . . . ." Because no questions were raised about the Department's authority and because these rules

have previously "passed muster" before various review bodies, no particular attention was given to the issue (other than to cite the authorizing statute in the Notice of Hearing). The Examiner does not find fault with the "degree" to which the Department documented its authority; it should be clear from this Finding, however, that the Examiner has serious reservations about whether the cited authority actually authorizes the Department to take the proposed action.

Other specific problems related to statutory authority are discussed in Finding 10, below.

8. The rule which was the object of most comments and evidence is 6 MCAR Sec. 1.0057 E.4.a. (Reference hereafter to proposed rules will be abbreviated from, e.g., 6 MCAR Sec. 1.0057 E.4.a. to 57 E.4.a.) As currently in force, that rule requires snowmobiles to be "so equipped that overall noise emission does not exceed 78" dB(A) until July 1, 1979, and thereafter not to exceed 73 dB(A). (The term "dB(A)" stands for "decibels on the A scale". Unless otherwise specified, it should be understood to to refer to a measurement taken at 50 feet away from the sound source.) The proposed amendment would establish 78 dB(A) as the final standard without requiring future modifications to further reduce noise emissions.

In support of the proposed amendment, evidence was submitted by testimony and exhibit to establish that:

(1) 78 dB(A) is not harmful to humans or wildlife.

(2) 78 dB(A) is the practical and feasible standard by which snowmobile noise should be limited.

(3) 73 dB(A) is unnecessarily restrictive--practically and economically.

Although a brief presentation was made by Ms. Bailey-Morrow on behalf of the DNR, the Department's major affirmative presentation of facts in support of the rules was made by the International Snowmobile Industry Association (hereinafter "ISIA").

A study by Dr. Andres Soom shows minimal impact on deer and rabbits from snowmobiles operating at levels of 78 dB(A) or more. (ISIA Ex. 10) Even the Bolt, Beranek and Newman study relied on by opponents to the amendment recognizes no significant harm to wildlife caused by snowmobile noise. (See, Sierra Ex. 1, pp. 13-14) There is no doubt that wildlife may shift away from areas of human intrusion, particularly when that area becomes more noisy than without such intrusion. But no evidence exists in the record to establish significant harm or disruption to wildlife. In fact, testimony by representatives of Minnesota USA (a snowmobilers group) indicates that wildlife such as deer are barely disturbed by snowmobiles operating in compliance with current noise emission standards.

The record does not show the 78 dB(A) standard to be harmful to humans. Comparisons of snowmobile noise levels to those permitted for worker exposure

by standards established pursuant to the Occupational Safety and Health Act (OSHA) are inapposite because the latter are related to constant or frequent exposure in a work-required situation while the former are associated with infrequent exposure in a voluntary, recreational setting.

The industry has made good faith efforts to reduce and limit sound emissions from snowmobiles. As noted generally in testimony by industry witnesses during the instant hearing, and specifically by Mr. Roger Worth in his testimony during the 1977 hearings:

> The industry has worked exceedingly hard to decrease the sound emissions from snowmobiles to the current levels and very significant progress has been made. To accomplish these results, major design changes have been made in the snowmobiles. Mufflers have been redesigned and improved; new carburetors designed; totally new engines developed and tooled; air intake systems developed and acoustical insulation installed in many critical areas.

(ISIA Ex. 12A; see also, ISIA Ex. 18, Enclosure 3, September 28, 1978 letter from Bombardier regarding Oregon's proposed 75 dB(A) standard.)

In actual operation, furthermore, a snowmobile equipped to meet the 78 dB(A) standard will not emit noise at that level. Rather, it would emit noise at a somewhat lower level due to operation of the vehicle at less than full throttle. Perception of the snowmobile noise would be lessened even further because of natural sound barriers such as berms. (See, testimony of Robin Harrison; see also, testimony of Mortimer Doyle.)

From an economic standpoint, the record establishes that 73 dB(A) standard would be impractical. The costs associated with the manufacture and sale of a snowmobile model which can meet the overall noise emission standard of 73 dB(A) would not be acceptable in the marketplace. It is clear that current technology does not allow for production of a snowmobile which meets the 73 dB(A) standard at an attractive, competitive cost. (See, testimony of Messrs. Michalek, Dwyer, Vaughan, Schmitt, Carlson and Perrault.) The difference between retail prices for current models and the price which would likely be charged for a 73 dB(A) model is substantial, according to spokesmen for the manufacturers. (See, ISIA Ex. 19)

Those same cost estimates indicate that it would be uneconomical--or at least, competitively disadvantageous--to produce a snowmobile solely for the Minnesota market. No testimony was advanced as to whether it would be uneconomical to produce a machine acceptable to all states with a noise emission standard of less than 78 dB(A).

Other economic consequences of a more stringent standard than 78 dB(A) would likely include loss of millions of dollars ($167,000,000, according to Mr. Doyle) spent by snowmobilers related to the activity, as well as the revenues realized by the state from sales tax, registration fees and state fuel taxes. The impact of diminished snowmobile sales and activity would be particularly acute in resort and recreation areas of the state, such as Brainerd, where snowmobiling has provided greatly expanded winter employment opportunities. (See, testimony of Sherman Kavanaugh and Alan Gunsbury) Further, the business of those involved in snowmobile sales and service would likely be impaired.

Much emphasis was given to methods of controlling the impact of snowmobile noise under the general rubric of "land use planning." For example, it is recognized by the ISIA that the 78 dB(A) standard might have a significant impact on residential community noise levels, but that problem has been palliated by means of local restrictive ordinances as well as the establishment of recreational areas and trails set aside for snowmobile use. (See, e.g., testimony of Dr. Soom and Mr. Harrison)

The fact that complaints about snowmobile noise have diminished to a minimal number each year is significant. It may well be that 78 dB(A) is too loud for most people's comfort, but non-noise emission controls have apparently isolated snowmobile use to areas where those bothered by the sound are not impacted or affected to the extent that generates complaints. (Testimony by Mr. Doyle) Though its effect may be significant, land management is not a substitute control or palliative for snowmobile noise. Land use planning can help minimize snowmobile noise detectability and thereby minimize any associated nuisance quality. That land management activities result in less complaints about noise, however, is only incidental to the question about what is a reasonable and proper snowmobile noise emission and how such emissions should be controlled.

The Examiner is impressed by the support which the amendment received from the Minnesota Pollution Control Agency. (See, testimony of Alfonso Perez) The PCA's general review of the technology, economics, need and impacts of the industry and the activity indicates that the 78 dB(A) noise emission standard is reasonable.

The arguments presented by opponents of the 78 dB(A) standard are, generally, without merit. The Bolt, Berenak and Newman study relied on heavily by the Sierra Club was properly discounted by the DNR as an after-the-fact justification for the 78 dB(A) standard adopted by the Department early in its experience of regulating snowmobiles. (Testimony of Ms. Bailey-Morrow; see also, ISIA Ex. 4, p. 13)

There is no factual support for claims by Mr. John Hanson that areas frequented by snowmobiles emitting 78 dB(A) suffer decreased land values. There is no indication that land values are affected at all, and no claim that a 73 dB(A) standard could have less effect on such values than a 78 dB(A) standard if there was an effect. Similarly, no evidence was proffered to support the contentions that non-snowmobile recreation is diminished or depressed by a 78 dB(A) standard versus a 73 dB(A) standard.

The Sierra Club points to two or three states which have snowmobile regulations which are as restrictive or more restrictive than the existing Minnesota rules. That is pointed out (a) to indicate the economic viability of building machines to meet the more restrictive noise standards

and (b) to show that Minnesota is not alone in the wisdom of its regulation.* Clearly the overwhelming number of states who do regulate snowmobile noise provide wisdom contrary to that of any standard below 78 dB(A) and also indicates that the market for the product does not warrant manufacture of the vehicle in order to penetrate every jurisdiction.

For the reasons set forth herein, the proposed amendment establishing 73 dB(A) as the standard for sale and operation of snowmobiles in Minnesota is found to be reasonable and necessary. Accordingly, existing rule sections 57 E.4.b. and c. are unnecessary and property repealed.

9. In addition to the amendment regarding the noise emission standard, other changes are proposed for 57 E.4.a. That section would be changed to make the rules applicable to all snowmobiles operated in Minnesota as well as those sold or offered for sale in the state. Such change eliminates unfair application of rules to those who may purchase and wish to use vehicles not conforming to Minnesota's snowmobile noise standards outside of Minnesota. The provision is both reasonable and necessary for uniform applicability of the rules.

Placement of the phrase "in Minnesota" to reflect that the rule applies to all snowmobiles in the state, not just those manufactured here, is a proper and reasonable change to provide clarity as to the rule's general applicability.

Another amendment which was supplemented at hearing would limit the manufacturer's certification of a snowmobile's conformity to the sound level limitations to the vehicle's performance "as originally equipped on the date of its manufacture". The justification for this change is apparently that the manufacturer cannot be held responsible for noise emanating from a machine after it is out of the manufacturer's control. If that is the intent of the amendment, then it should be so reflected. As the language is now proposed (including the additional material suggested at hearing) the rule may be narrowly construed to require that the machine be able to meet the 78 dB(A) standard only on the day it is manufactured.

"Being able to conform to a sound level limitation" is not the same as conforming to or meeting that limitation. Certifying the conformity to a standard as of the manufacture date further vitiates the rule's effectiveness--both in the absolute and as related to the normal operation of snowmobiles. If the rule is, as claimed, intended to govern snowmobile noise emission standards for the general operation of such machines, then it falls short by virtue of the proposed amendment.

---

* Vermont's snowmobile noise emission standard, contrary to the assertion of the Sierra Club, is not 73 dB(A) as measured at full throttle at 50 feet according to SAE 192(a), but as measured at 15 MPH according to SAE 1161--a similar standard to that which must be met by Minnesota snowmobiles. (See, Sierra Ex. 2 and letter of 4 May 1979 to the Hearing Examiner from Sergeant Robert A. Crossman, Special Services Supervisor, Vermont Department of Public Safety.)

As it currently reads, the standard is absolute: machines must be "so equipped that overall noise emission does not exceed" a fixed level. As proposed, the standard is weak: machines must only be capable of meeting the standard, and then only on the day they come off the assembly line. There is no justification for such emasculation of the rule and the Examiner finds it unreasonable and unsupported by an affirmative presentation of facts.

10. The intent of 57 E.5., as proposed by amendment, is to ensure uniformity in measurement and certification of the noise emission level. (See, Statement of Need and testimony of Ms. Bailey-Morrow) For that purpose, it is both reasonable and necessary.

The standard of measurement specified in the rule, SAE Recommended Practice J192(a) is an accepted industry standard by which all snowmobile manufacturers and certification authorities have abided and continue to use. No objection was voiced to this amendment or the standard it references.

The problems with the proposed amendment are legal in nature rather than technical. First, the rule incorporates by reference a standard which is less than 3,000 words in length and which would require less than five pages of publication in the State Register. Such practice is specifically prohibited by Minn. Stat. Sec. 15.0412, subd. 4. (Whether or not this particular incorporation by reference is prohibited may be reviewed by the Attorney General, because the existing rule--adopted before the statute prohibiting such incorporation by reference--does refer to essentially the same procedure.)

Secondly, use of the phrase "as amended" (referring to the SAE 192(a) procedure) constitutes a delegation of power by the DNR to a body not authorized by the Legislature, i.e., the Society of Automotive Engineers. By changing its Recommended Practice SAE 192(a), that body could and would, in effect, be changing the Department's rule. See, Wallace v. Commissioner of Taxation, 1971, 289 Minn. 220, 184 N.W.2d 588 and State v. King, 1977, ____ Minn. ____, 257 N.W.2d 693.

Finally, the phrase "or with such other standards for measurement of sound level as the department may adopt" is either ambiguous or meaningless. The ambiguity arises from the erroneous implication that the rule may not, in fact, require use of the stated measurement standard for certification. It is meaningless because any standard other than that currently specified would be subject to a formal rulemaking hearing in order to be applicable and enforceable. (See, in general, Minn. Stat. Sec. 15.0412)

11. One of the two main changes proposed for 57 E.6. is the deletion of references to snowmobile mufflers. The Department indicates that such change would enhance the clarity of the rule. The Department does not want the rule to require certification of compliance with noise level restrictions for mufflers "because [the Department] never intended that that occur; and it doesn't occur; and muffler manufacturers don't certify

their mufflers as generating any particular sound level." (Statement by William Clapp; see also, testimony of Ms. Bailey-Morrow) Assuming that the DNR's rulemaking authority extends to the setting of general noise emission standards for snowmobiles, such change would be reasonable and an appropriate clarification of the rule; if the authority of the DNR is limited to regulating specifications of snowmobile mufflers, as discussed in Finding 7, above, the deletions would be inappropriate and unreasonable because they would put the rule beyond the Department's statutory authority for regulation.

The other amendment to Rule 57 E.6. is the addition of a sentence establishing the form of certification of compliance with noise emission levels by use of a uniform label. This process of certification by label is supported as adequate to guarantee compliance with the noise emission level and protect the public's interest. (See, testimony of Michael Erlich) The use of labels showing certification would also be convenient for snowmobile users and potential purchasers and might also be a method to control (either restrict or permit) the use of snowmobiles which meet emission standards in various areas of the state, i.e., so machines with low noise emissions might be allowed in more areas than machines with higher noise emissions. (Testimony of Mr. Perez)

Part of the second amendment allows an alternative form of certification by "a letter with test results showing an evaluation of the noise levels by a competent, independent testing laboratory." It is very questionable whether this alternative is either necessary or reasonable. It will likely cause confusion for some snowmobiles to have a conspicuous label attesting to certification of noise level emissions while other machines, equally well-equipped and certified, are not so labeled. The alternative is also vague as to what should happen to the letter with the test results: should it be sent to the manufacturer, the dealer or the consumer? who is responsible for the letter distribution? should it accompany each snowmobile so certified? There being no specific support in the record for the alternative method of certification, the language quoted in this paragraph is found to be unnecessary and unreasonable.

12. As indicated by the Statement of Need, Rule 57 E.7. "is amended to change the language to reflect amplification or modifications of noise levels instead of total engine noise." This change stands or falls by the same reasoning as the change in 57 E.6. deleting references to snowmobile mufflers. If the Department's rulemaking authority extends to total snowmobile noise emissions, the change is reasonable and necessary; if that authority is limited to mufflers, the amendment is unreasonable and the rule should remain as it currently is in force.

13. The amendment to Rule 58 A., the deletion of language specifying the type of penalty to be incurred for violation of the rules, is a reasonable and necessary "housekeeping" change. Such penalties need not be specified in the rule because they are stated in Minn. Stat. Ch. 609, which is itself occasionally changed.

The addition of Paragraph B. to Rule 58 specifically subjects manufacturers to the penalty provisions of the rules. This amendment is reasonable to provide "the teeth" necessary to enforce the provisions of the rules relating to certification against those most readily equipped to police the certification system and most likely to realize benefit from lax enforcement of such system. The addition of the paragraph also provides additional assurance that the noise emission levels which are to be certified will be met by the manufacturers.

14. The deletion of Rule 59 is reasonable and necessary as a "housekeeping" change. The regulations referred to in that rule no longer exist and the rule is, therefore, outdated.

Based upon the foregoing, the Examiner makes the following:

CONCLUSIONS

1. The Department of Natural Resources and the Office of Hearing Examiners duly acquired and have jurisdiction in the instant matter.

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

3. The Department has failed to demonstrate its statutory authority to adopt the proposed amendments.

4. Except as noted in the Findings, the Department has demonstrated that the proposed amendments are reasonable and necessary.

Based on the foregoing, the Examiner makes the following:

RECOMMENDATIONS

1. That the Department seek legislative clarification and remedy for its statutory authority to take the proposed action or, in the alternative, that some clarification of the Department's rulemaking authority be obtained through the courts of this State, and

2. That, upon clarification or remedy of the problem involving statutory authority, the rules be amended as proposed except as modified pursuant to the Findings contained in this Report.

Dated: June 22, 1979.

Myron S. Greenberg

MYRON S. GREENBERG
State Hearing Examiner