

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File 54[illegible]

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 9-27-79 Temporary Rule _____

Resubmitted and Received 11-1-79 / —(11-21-79)

DUE DATE 10-17-79/11-11-79(12-1-79)

a. Returned to Agency w/o filing w/Secy of State 10-17-79
b. Approved 11-30-79 Date Sent Back to Agency 11-30-79

- -

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 ✓ ✓ (need 1 extra copy OK)
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 ? Order is deficient ✓ —
14. Report of Chief Hearing Examiner ✓
    (i) Finding of No Substantial Change ✓
    (ii) Permission to Incorporate by Reference, where applicable n/a
15. Certificate of Compliance with Rulemaking Procedures ✓
16. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓ (need 1 extra copy OK
17. Petition by Public, where applicable n/a

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Attorney General
Natural Resources

TO : JOANNE E. HINDERAKER
Special Assistant Attorney General

DATE: 10-31-79

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

Bill

PHONE:

SUBJECT: Rules for Lake Improvement Districts:
Your Letter of October 17.

Your point A. The 30-day provision of Minn. Stat. § 378.43 subd. 2 is directory, not mandatory. I find no Minnesota case which goes contrary to that conclusion. The latest decision is Heller v. Wolner, 269 N.W. 2d 31 (Minn. 1978). See N.W. Digest or Minn. Digest Statutes key 227, and Dun. Dig. § 8954. The county board can hold the hearing more than 30 days after verification of the petition. 6 MCAR § 1.5064 B. 5. spells out carefully when the county board would be justified in so doing. The rule does not give the board power it does not already have. Rather, it provides "guidelines, criteria and standards" for the use of that power, as authorized by Minn. Stat. § 378.47, subd. 2.

Your point B. We agree with you as regards the second paragraph of 6 MCAR § 1.5065 C. The rule is returned to you with the paragraph stricken. As to the first paragraph, it is like one your office approved in the Dam Safety rules - 6 MCAR § 1.5034 A. It is a rather standard disclaimer, I believe.

Let me know in what form you will approve the rule. You don't need a substantial change letter from the chief hearing examiner, do you?

AWC-dm

41

DNR 536 - Ed Phen
Ag Dike

RECEIVED
NOV 1 1979
ADMINISTRATIVE AGENCIES

C. LIMITED STATE LIABILITIES

The establishment of a lake improvement district shall not impose any liability upon the State of Minnesota, its officers, employees, agents, or consultants, for any damage or injury to any persons or property resulting from the activities of the lake improvement district.

D. RIGHTS OF LAKE IMPROVEMENT DISTRICTS

Nothing in these rules shall be construed to deprive any lake improvement district of such recourse to the courts as it may be entitled to under the laws of this State.

E. INSPECTIONS

The Commissioner shall be given prompt access to and inspection of all records, structures, facilities, and operations at all reasonable times as may be necessary to monitor compliance with the terms of existing permits and to insure protection of the public health, safety, and welfare. The Commissioner's inspections shall not relieve the lake improvement district from the full responsibility of providing adequate inspection and supervision for all programs and projects undertaken by the district.

F. COMPLIANCE WITH OTHER LAWS AND WATER MANAGEMENT POLICIES

Lake improvement districts shall conform to federal, state, regional, and local laws, rules, and fish and wildlife, water, and related land management policies. Lake improvement districts shall obtain all necessary permits, as required by law, prior to implementing district purposes and programs.

G. COMPLIANCE BY PRE-EXISTING LAKE IMPROVEMENT DISTRICTS

1. Within one year following promulgation of these rules and regulations,

C. LIMITED STATE LIABILITIES

The establishment of a lake improvement district shall not impose any liability upon the State of Minnesota, its officers, employees, agents, or consultants, for any damage or injury to any persons or property resulting from the activities of the lake improvement district.

No action shall be brought against the State, the Commissioner or the Agency for the recovery of damages caused by the partial or total failure of any undertaking or project constructed by a lake improvement district.

D. RIGHTS OF LAKE IMPROVEMENT DISTRICTS

Nothing in these rules shall be construed to deprive any lake improvement district of such recourse to the courts as it may be entitled to under the laws of this State.

E. INSPECTIONS

The Commissioner shall be given prompt access to and inspection of all records, structures, facilities, and operations at all reasonable times as may be necessary to monitor compliance with the terms of existing permits and to insure protection of the public health, safety, and welfare. The Commissioner's inspections shall not relieve the lake improvement district from the full responsibility of providing adequate inspection and supervision for all programs and projects undertaken by the district.

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G. COMPLIANCE BY PRE-EXISTING LAKE IMPROVEMENT DISTRICTS

1. Within one year following promulgation of these rules and regulations,

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

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

DATE: October 17, 1979

FROM : JOANNE E. HINDERAKER JEH
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Adoption of Proposed Rules Containing Standards and Criteria for Establishment of Lake Improvement Districts by Counties and Cities.

The rules in the above-captioned matter have not been approved by this office and are being returned to you with the remainder of the record files for the following reasons:

As you know, Minn. Stat. § 378.41 Subd. 1 states that the Commissioner of Natural Resources shall coordinate and supervise a local-state program for the establishment of lake improvement districts (hereinafter "district" or "districts") by counties and cities based on state guidelines and regulations. Furthermore, Minn. Stat. § 378.41 Subd. 2, states that "The Commissioner of Natural Resources, before April 1, 1979, shall promulgate rules pursuant to Chapter 15 which provide guidelines, criteria and standards for establishment of lake improvement districts by counties and cities." It is this subdivision which details the scope of the Department's rulemaking in regard to lake improvement districts.

It is this office's position that the Department may have exceeded the statutory authority conferred in Minn. Stat. § 378.41 Subd. 2 in two rules:

A. 6 MCAR § 1.5064 B. 5 states that the county board may continue or postpone a public hearing beyond the 30-day requirement of Minn. Stat. § 378.43 Subd. 2. While such an extension may be reasonable in certain circumstances it is this office's position that by the alteration of a statutory time period in this rule the Department appears to have exceeded its statutory grant of rulemaking authority. This office is aware, however, that in specific cases courts have interpreted similar statutory requirements to be directory rather than mandatory. The Department may wish to address this distinction in a response to this memorandum.

B. In 6 MCAR § 1.5065 C. the Department's rule appears to grant the State of Minnesota immunity from all suits and legal liability relating to the activities of districts. In this office's opinion, sovreign immunity may not be granted by rule, and again the Department appears to have exceeded its statutory authority in this regard.

As there appears to be nothing in the files submitted to this office relating to these concerns, this office will entertain a memorandum from the Department's legal counsel on the issues of statutory authority raised above, before reaching a final decision on this point. I request that any written argument on this point be submitted to our office no later than October 31, 1979. If this date is not a convenient one please contact me to arrange a mutually agreeable deadline. If you decide not to submit a memorandum to this office please notify me of your decision.

Upon consideration of the issues raised in this memorandum and any subsequent action taken by the Department on these rules, this file may be resubmitted to this office with three (3) copies of the rules as amended and of the other documents requested herein. Copies of the other pertinent documents in the file have been retained by this office. Please contact me if you have any questions regarding this memorandum.

JEH/bw
Encl.
cc: Marshall Whitlock
Duane Harves
Melvin Goldberg

Our File: #544

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

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

DATE: November 5, 1979

FROM : JOANNE E. HINDERAKER JEH
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Adoption of Proposed Rules Containing Standards and Criteria for Establishment of Lake Improvement Districts by Counties and Cities

This memorandum is in response to your memo of October 31, 1979. This office finds your argument in regard to 6 MCAR § 1.5064 B. 5. reasonable, and in accordance with case law. The rule will be approved by this office.

In regard to the Department's striking of the second paragraph of 6 MCAR § 1.5065 C., I request that the Department provide me with an amended Order Adopting Rules, specifically ordering the severance of that provision. The Chief Hearing Examiner requests the resubmission of any rules that are changed subsequent to his review. Therefore, this office suggests that you resubmit the rules to Mr. Duane Harves. Hence, the record file and the rules are being returned to you with this memorandum.

After the Chief Hearing Examiner's review is completed, this file may by resubmitted to this office with three (3) copies of the rules as amended. Copies of the other pertinent documents in the file have been retained by this office. Please contact me if you have any questions regarding these rules.

JEH/lh
Encl.
cc: Marshall Whitlock
Duane Harves

Department of Natural Resources
Division of Waters

Working copy

Rules for Establishment of Lake Improvement Districts

6 MCAR § 1.5060

A. PURPOSE

In order to provide for the orderly establishment of lake improvement districts in a manner that will preserve and protect the lakes of Minnesota and increase and enhance the use and enjoyment of these lakes, the Commissioner of Natural Resources does hereby provide guidelines, criteria, and standards for establishment of lake improvement districts by counties, cities, and towns, as authorized by Minn. Stat. §§ 378.41 - 378.56 and 459.20 in furtherance of the policies declared in Minn. Statutes.

B. SCOPE

These rules establish minimum guidelines, criteria, and requirements relating to:

1. Procedures by which proposed lake improvement districts shall be reviewed prior to establishment.

2. Standards and criteria which all proposed lake improvement districts shall meet before establishment, modification, or termination.

C. JURISDICTION

These rules shall apply to all existing and proposed lake improvement districts.

These rules shall not apply to lake conservation districts established by special legislation of the Minnesota State Legislature.

D. DEFINITIONS

For the purpose of these regulations, certain terms or words used herein

shall be interpreted as follows: The word "shall" is mandatory, not permissive.

"Agency" means the Minnesota Pollution Control Agency.

"Commissioner" means the Commissioner of the Department of Natural Resources or his authorized representative.

"Direct drainage basin" means that portion of a lake's total watershed which is not drained to an upstream water basin, as defined herein. The determination of size and physical limits of a lake's direct drainage basin shall be made by the Commissioner.

"District boundaries" means, for the purpose of these rules, the territorial boundaries of a lake improvement district. All lands and waters within the direct drainage basin, as defined herein, shall be included within the district boundaries, except those exclusions for which written approval is obtained from the Commissioner. The boundaries shall include a sufficient amount of the lake's watershed and related land to develop and implement feasible solutions to the problems the district intends to address. The boundaries shall also include all lands and waters which can reasonably be considered adversely affected by the proposed programs, plans or actions of the lake improvement district.

"Lake" means, for the purpose of these rules, any public water basin identified and classified in the shoreland management ordinances of the local county or municipal unit of government.

"Lake improvement district" means a district formed around a lake in accordance with Minn. Stat. Ch. 378. A lake improvement district is a local unit of government established by resolution of appropriate county boards and/or city governing bodies, or by the Commissioner, for the implementation of defined lake management projects and for the assessment of the costs thereof.

"Natural hydrologic boundaries" means the boundaries of a lake's direct drainage basin, as defined herein.

"Resident" means a person eighteen years of age or older who meets the residency requirements of Minn. Stat. §§ 201.26.

"Resident owner" means a Minnesota resident who is the owner of land or the contract purchaser of land within the boundaries of a lake improvement district.

"Water basin" means an enclosed basin normally partly or completely filled with water. The water basin may have inlet and outlet streams, it may have only an inlet or outlet, or it may be completely enclosed.

"Watershed" means the entire surface drainage area that contributes water to a lake.

E. SEVERABILITY

The provisions of these rules shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision, or any other part.

6 MCAR § 1.5061 GOALS FOR LAKE IMPROVEMENT DISTRICTS

Proposals for the establishment of lake improvement districts shall be evaluated according to the degree to which they promote the following goals:

1. Lake protection and rehabilitation.

2. Protection and enhancement of environmental values by preventing degradation of fish and wildlife habitat, surface and ground water quality, natural beauty and unique scientific values, recreation values, and the quality of life generally.

3. Preservation of the public rights in the public waters of the state and to provide the public use of the lake consistent with the preservation of environmental values.

4. Ensuring local involvement in the project and a commitment to future lake management.

5. Conformity with federal, state, regional and local laws, rules and water and related land management policies.

6. Fair and objective resolution of conflicts between competing lake related interests in and around the district.

6 MCAR § 1.5062 TYPES OF LAKE IMPROVEMENTS ELIGIBLE FOR THE CREATION OF A LAKE IMPROVEMENT DISTRICT

1. Studying the sources of and solutions to lake problems.

2. Preserving and improving water quality by means of:

(a) Water and related land management, excluding land use zoning authority.

(b) Inlake water treatment.

3. Sedimentation and siltation control.

4. Shoreline erosion control.

5. Aquatic nuisance control.

6. Preserving and improving fish and wildlife habitat.

7. Preserving and improving recreational potential of the lake.

8. Any other purposes approved by the county board pursuant to Minn. Stat. §§ 378.51, Subd. 3.

6 MCAR § 1.5063 CRITERIA AND STANDARDS FOR ESTABLISHMENT

Proposals for the establishment of lake improvement districts shall be evaluated based on the extent to which they demonstrate the following:

1. LOCAL NEED FOR DISTRICT. The proposal shall demonstrate the need for the district and why another unit of government with similar powers, or a voluntary lake association, can not or will not satisfactorily accomplish the district's proposed purposes.

2. APPROPRIATENESS OF PROPOSED BOUNDARIES. The proposed boundaries shall be consistent with district boundaries as defined in 6 MCAR § 1.5060D. The proposed boundaries shall include all lands and waters within the lake's direct drainage basin, unless justification is provided for including a lesser

area and approved in writing by the Commissioner. The proposed boundaries shall include a sufficient amount of the lake's watershed and related land to develop and implement feasible solutions to the identified problems. The proposed boundaries shall include those lands and waters which can reasonably be considered adversely affected by the proposed actions of the district. The proposed boundaries shall be delineated so as to provide appropriate public representation and the equitable distribution of benefits and levying of costs.

3. APPROPRIATENESS OF PROPOSED PURPOSES. The proposed purposes shall be consistent with existing state, federal, regional and local laws, policies, objectives, and plans pertaining to water and related land management, fish and wildlife habitat, surface and ground water quality, natural beauty and unique scientific values, economic and recreation values, and the quality of life. The proposed purposes shall be consistent with the public rights in the public waters of the state. When a district is proposed for the purpose of conducting a feasibility study of the sources of and solutions to lake problems, the proposal shall demonstrate an understanding that subsequent lake restoration measures may require modification of the districts' boundaries and statement of purposes, pursuant to 6 MCAR 1.5065A. and Minn. Stat. 378.55.

4. TECHNICAL FEASIBILITY OF PROPOSED PLANS AND PROGRAMS. The proposal shall demonstrate the technical feasibility of the proposed plans and programs, or provide for the determination of technical feasibility.

5. ADEQUACY OF PROPOSED MEANS OF FINANCING. The proposal shall demonstrate capability of raising sufficient funds to meet district purposes, to ensure continuity of district operations, and to meet the requirements of these rules and regulations.

6. ADEQUACY OF PROCEDURES FOR PLANNING, DECISION-MAKING, AND PUBLIC INVOLVEMENT. The proposal shall assure consideration of the interests of concerned citizens both within and outside the boundaries of the proposed district. The proposal shall include the identification of varying and often conflicting

interests regarding water and related land management in and around the proposed district, and procedures to assure the consideration of such diverse interests so that decisions are made in the best overall interests of fairness and public health, safety and welfare.

7. PUBLIC ACCESS. The proposed plan shall provide for public access when adequate public access consistent with size of the lake, the extent of public interest in using the lake, and the combined uses of the lake, is unavailable. Service charges may not be imposed on the use of a public access if other units of government cost share the acquistion, development or maintenance of the public access.

8. ADEQUACY OF LONG RANGE MONITORING OF THE ENVIRONMENTAL EFFECTS OF DISTRICT PROGRAMS. The proposal plan shall demonstrate an understanding of potential environmental effects of the proposed district plans and programs, and provide for a long range monitoring of such effects.

9. COORDINATION WITH OTHER SPECIAL PURPOSE DISTRICTS. The proposal shall demonstrate how the proposed district programs will be coordinated with existing special purpose districts formed for water and related land management. Examples of such units of government are watershed districts, sanitary districts, drainage and conservancy districts, lake conservation districts and soil and water conservation districts. Lake improvement districts shall not be established where a special purpose unit of government for water and related land management exists which can implement the purposes of the proposed lake improvement district, unless written approval is acquired from such unit of government or from the Commissioner. The proposal should demonstrate efforts in good faith to resolve at the local level any conflicts between an existing special purpose district and the proposed lake improvement district.

6 MCAR 1.5064, CREATION OF A LAKE IMPROVEMENT DISTRICT.

378.43 .42

A. Petition or County Board Document Requirements:

A county board document proposing the creation of, or a petition to create a lake improvement district shall contain the following elements:

1. A written statement of lake problems and objectives.

2. The proposed type or types of water and related land resource management programs to be undertaken by the proposed district. This shall include a detailed statement of intended studies, management programs, remedial actions, and construction projects.

3. A statement of the means by which the programs will be financed.

4. A map showing the boundaries of the proposed lake improvement district. The map shall show the number and location of permanent homes and seasonal dwellings in the district. The scale of the map, and basic geographical information, such as range, township, and section numbers, shall be clearly indicated on the map.

5. The number of directors proposed for the district.

6. Copies of local ordinances which regulate use of the lake or any public access.

7. Any information indicating the degree of local interest and commitment to future management.

8. The identification of any lands and waters which may be adversely affected by the implementation of district purposes, and a preliminary assessment of these adverse effects.

9. A statement outlining the adequacy and ownership of public accessess, including public lands and beaches.

10. An estimate of the total equalized valuation of the property within the district.

11. Any other information demonstrating accordance with the criteria and standards for establishment as contained in 6 MCAR 1.5063.

B. Procedural Requirements

1. Initial Submittal of Petition or Resolution to County Board, the Commissioner, and the Agency for:

a. Creation by Petition. No later than five days after the

official filing of a petition for the establishment of a lake improvement district with the county board, the citizens or organization sponsoring the petition shall provide a certified copy of the petition to the Commissioner and the Agency. This is necessary in order to facilitate preliminary review of the proposed district boundaries prior to the notification of the public hearing.

b. Creation by Resolution. At least 40 days prior to the public hearing, the county board shall provide a certified copy of the document containing the information required by 6 MCAR 1.5064 to the Commissioner and the Agency. This is necessary to facilitate preliminary review of the proposed district boundaries prior to notification of the public hearing.

2. Notification of the Public Hearing. At least 21 days prior to the public hearing, the county board shall give notice of the public hearing to the Commissioner and the Agency, and make a reasonable attempt to notify every resident and every resident owner within the proposed district of the pending resolution or petition and the public hearing. A reasonable attempt to notify shall consist of mailing notice to the last known address of each landowner within the proposed district, publication of notice in two successive issues of a newspaper widely circulated in the proposed district, and posting notice in public buildings and several leading commercial establishments in or near the proposed district, as appropriate and reasonable. All local and regional units of government, special purpose districts, and development commissions within and adjacent to the boundaries of the proposed district shall be given notice of the public hearing. All corporations and utilities owning real estate or corporate property within the proposed district shall be given notice of the public hearing.

As part of the notification procedure, a statement shall accompany the notice setting forth the following:

a. A description of the proposed purposes, programs, funding and boundaries of the proposed district, and the name proposed for the district.

b. The time and place of the public hearing.

c. The following paragraph shall be included:

"The establishment of the proposed lake improvement district requires review by the Commissioner of Natural Resources and the approval of the (as appropriate) county board(s) (and/or city governing body). Concerned citizens may submit evidence at a public hearing to be held prior to the passage of any resolution establishing the proposed lake improvement district. Concerned citizens may also submit evidence and opinions to the Commissioner of Natural Resources. A copy of the petition (or document, as appropriate) for the establishment of the lake improvement district is available for public review at the (as appropriate) county courthouse (or other appropriate public building; give address and telephone number where interested citizens can review the document)."

If the establishment of the lake improvement district is proposed by the county board pursuant to 6 MCAR 1.5064B. 1b. and Minn. Stat. §§ 378.42, the following paragraph shall be included in the notice of the public hearing:

"Citizens may call for a referendum on the question of whether or not to establish a lake improvement district by filing a petition requesting such a referendum. The petition shall be signed by twenty-five percent of the land owners within the territory of the proposed district, who are Minnesota residents. Upon receipt of such a petition prior to the effective date of creation of the district, the county board shall hold the creation in abeyance pending the referendum vote of all qualified voters residing within the boundaries of the proposed district."

3. Public Review of Petition or Resolution. The county board shall make the petition or document containing the information required by 6 MCAR §§ 1.5064 available for review by concerned citizens, at the county courthouse or other appropriate public building.

4. Review by the Commissioner and the Agency. Upon receipt of a copy of the petition or document by the Commissioner, he shall:

a. Review the petition or document and any evidence presented by the Agency or concerned citizens pertaining to the establishment of the proposed district. This review shall include an evaluation of the statement of district purposes and its relation to existing laws, rules and regulations, units of government, water and related land management programs and policies. The proposed district boundaries shall be examined to assess their consistency with these rules. When one or more of the stated purposes of the proposed district relate to pollution control, this review shall be conducted with the assistance of the Agency.

b. Prepare an advisory report stating his findings as to whether the proposed lake improvement district should be established. The Commissioner shall set forth in his report any matters pertaining to the district which should be further investigated and evaluated. If the Commissioner determines that the establishment of the proposed district is not in the public interest, he shall so report the specific reasons and inadequacies. The Commissioner may request additional time for review of the proposed district in such cases where additional time can be shown to be necessary for proper evaluation. The Commissioner's report may contain reports by the Agency.

5. The county board may grant requests by citizens, the Commissioner, or the Agency for postponement or continuance of the public hearing to a time more than 30 days after receipt of the petition and verification of the signatures thereon. Such requests may be granted if the county board determines that the additional time requested is appropriate and reasonable in order for the requesting organization or citizens to adequately prepare for the public hearing, and consistent with the goals of promptness and fairness in the proceedings.

6. The Commissioner's advisory report shall be publicly read into the record at the public hearing.

7. The Commissioner may modify his findings based on evidence presented during and subsequent to the public hearing.

8. No sooner than 10 days but within 30 days following the holding of the public hearing, the county board shall formally convene to approve or disapprove the establishment of the proposed lake improvement district. At least 10 working days notice shall be given to the Commissioner of the time and place where the board will formally convene for this purpose. If the Commissioner or his representative does not appear, any modifications of the Commissioner's advisory report shall be publicly read into the record.

6 MCAR 1.5065 GENERAL PROVISIONS

A. MODIFICATION

1. No program, remedial action, project or change of district boundaries which is not specified in the resolution creating a lake improvement district may be undertaken, except by modifying the appropriate items listed in 6 MCAR §§ 1.5064A. 1-5.

2. For an established district, any of the items listed in 6 MCAR §§ 1.5064A. 1-5 may be modified by petition to or resolution by the county board, in the same manner that a district is created.

B. LEGAL RESPONSIBILITIES AND LIABILITIES OF LAKE IMPROVEMENT DISTRICTS

1. Nothing in these rules shall be construed to relieve a lake improvement district of the legal duties, obligations, or liabilities incident to the programs, plans or actions of the district.

2. The lake improvement district shall assume all legal risks and liabilities, including those for damages or any injury to persons or property, arising from the construction, operation, maintenance, alteration, or abandonment of its programs, plans or actions.

3. In the event of termination of the district, or failure of the district to meet its obligations, these responsibilities and liabilities shall fall upon the unit or units of government which established the lake improvement district.

Amended Page

C. LIMITED STATE LIABILITIES

The establishment of a lake improvement district shall not impose any liability upon the State of Minnesota, its officers, employees, agents, or consultants, for any damage or injury to any persons or property resulting from the activities of the lake improvement district.

D. RIGHTS OF LAKE IMPROVEMENT DISTRICTS

Nothing in these rules shall be construed to deprive any lake improvement district of such recourse to the courts as it may be entitled to under the laws of this State.

E. INSPECTIONS

The Commissioner shall be given prompt access to and inspection of all records, structures, facilities, and operations at all reasonable times as may be necessary to monitor compliance with the terms of existing permits and to insure protection of the public health, safety, and welfare. The Commissioner's inspections shall not relieve the lake improvement district from the full responsibility of providing adequate inspection and supervision for all programs and projects undertaken by the district.

F. COMPLIANCE WITH OTHER LAWS AND WATER MANAGEMENT POLICIES

Lake improvement districts shall conform to federal, state, regional, and local laws, rules, and fish and wildlife, water, and related land management policies. Lake improvement districts shall obtain all necessary permits, as required by law, prior to implementing district purposes and programs.

G. COMPLIANCE BY PRE-EXISTING LAKE IMPROVEMENT DISTRICTS

1. Within one year following promulgation of these rules and regulations,

lake improvement districts in existence prior to the promulgation of these rules shall submit to their county board and to the Commissioner a certified copy of a document containing the information required by 6 MCAR 1.5064. This document shall also contain a report on the past and current activities and financial condition of the district.

2. The Commissioner shall review the document and prepare an advisory report stating his findings as to whether the district is consistent with these rules and regulations. The report may contain such recommendations as the Commissioner determines is necessary to bring the district into compliance with these rules and regulations.

3. Within 60 days following the official filing of the Commissioner's report with the county board, the board shall formally convene to consider the report. The county board shall give 10 working days notice to the Commissioner of the time and place where it will convene to consider his report. If the Commissioner or his representative does not appear, the report shall be publicly read into the record.

APPROVED AS TO FORM AND LEGALITY

NOV 30 1979, 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Joanne Hinderaker
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
NOV 30 1979
Joan Anderson Growe
Secretary of State

1:30 p.m.

ADMIN 1050 (Rev. 1/78)

Our File # 544

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Joseph N. Alexander
Commissioner
Department of Natural Resources

DATE: November 30, 1979

Attn: A.W. Clapp, III

FROM : Joanne E. Hinderaker JEH
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: Rules as Approved In the Matter of the Adoption of Proposed Rules Containing Standards and Criteria for Establishment of Lake Improvement Districts by Counties and Cities

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.

JEH:mb

Enclosure
cc: Duane Harves
Marshall Whitlock

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of
Rules for Lake
Improvement Districts

AMENDED ORDER
ADOPTING RULE

- - - - - - - - - - - - -

In reviewing the rule I adopted by order dated September 14, 1979 the Office of the Attorney General has determined that the second paragraph 6 MCAR § 1.5065 C. exceeds my statutory authority.

NOW THEREFORE IT IS ORDERED that the rule I adopt not contain that paragraph.

Dated November 13, 1979.

Joseph N. Alexander

JOSEPH N. ALEXANDER
Commissioner
Department of Natural Resources

DNR-79-016-HK

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF THE ADOPTION OF PROPOSED RULES CONTAINING STANDARDS AND CRITERIA FOR ESTABLISHMENT OF LAKE IMPROVEMENT DISTRICTS BY COUNTIES AND CITIES.	SUPPLEMENTAL REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, on September 11, 1979, the Department of Natural Resources submitted the above-entitled rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. § 15.052, Subd. 4, and 9 MCAR § 2.110; and

WHEREAS, on September 11, 1979, the Chief Hearing Examiner issued his report finding that the rules as proposed to be adopted were not substantially different from those proposed at the public hearing and that the Department of Natural Resources had met all requirements of Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Department of Natural Resources subsequently submitted the rules and the record of the proceedings to the Attorney General for his review as to form and legality pursuant to Minn. Stat. § 15.0412, Subd. 4; and

WHEREAS, the Attorney General recommended to the Department of Natural Resources that certain of the rules be amended; and

WHEREAS, the Department of Natural Resources has now resubmitted the rules to the Chief Hearing Examiner for his review; and

WHEREAS, the Chief Hearing Examiner finds that the changes made in the rules do not make the rules substantially different from those proposed at the public hearing.

NOW, THEREFORE, upon receipt of this report, the Department of Natural Resources has the responsibility of resubmitting 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 resubmitted to the Attorney General, and publishing in the State Register, all pursuant to Minn. Stat. § 15.0412, Subd. 4.

Dated this 16th day of November, 1979.

DUANE R. HARVES
Chief Hearing Examiner

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

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

DATE: October 17, 1979

FROM : JOANNE E. HINDERAKER
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Adoption of Proposed Rules Containing Standards and Criteria for Establishment of Lake Improvement Districts by Counties and Cities.

The rules in the above-captioned matter have not been approved by this office and are being returned to you for the following reasons: with the remainder of the record files

As you know, Minn. Stat. § 378.41 Subd. 1 states that the Commissioner of Natural Resources shall coordinate and supervise a local-state program for the establishment of lake improvement districts (hereinafter "district" or "districts") by counties and cities based on state guidelines and regulations. Furthermore, Minn. Stat. § 378.41 Subd. 2, states that "The Commissioner of Natural Resources, before April 1, 1979, shall promulgate rules pursuant to Chapter 15 which provide guidelines, criteria and standards for establishment of lake improvement districts by counties and cities." It is this subdivision which details the scope of the Department's rulemaking in regard to lake improvement districts.

It is this office's position that the Department may have exceeded the statutory authority conferred in Minn. Stat. § 378.41 Subd. 2 in two rules:

A. 6 MCAR § 1.5064 B. 5 states that the county board may continue or postpone a public hearing beyond the 30-day requirement of Minn. Stat. § 378.43 Subd. 2. While such an extension may be reasonable in certain circumstances it is this office's position that by the alteration of a statutory time period in this rule the Department appears to have exceeded its statutory grant of rulemaking authority. This office is aware, however, that in specific cases courts have interpreted similar statutory requirements to be directory rather than mandatory. The Department may wish to address this distinction in a response to this memorandum.

B. In 6 MCAR § 1.5065 C. the Department's rule appears to grant the State of Minnesota immunity from all suits and legal liability relating to the activities of districts. In this office's opinion, sovreign immunity may not be granted by rule, and again the Department appears to have exceeded its statutory authority in this regard. This office also believes that this rule may in certain instances conflict with Minn. Stat. § 3.736 regarding Tort Claims and Minn. Stat. § 3.751 regarding Contract Claims against the State.

As there appears to be nothing in the files submitted to this office relating to these concerns, this office will entertain a memorandum from the Department's legal counsel on the issues of statutory authority raised above, before reaching a final decision on this point. I request that any written argument on this point be submitted to our office no later than October 31, 1979. If this date is not a convenient one please contact me to arrange a mutually agreeable deadline. If you decide not to submit a memorandum to this office please notify me of your decision.

Upon consideration of the issues raised in this memorandum and any subsequent action taken by the Department on these rules, this file may be resubmitted to this office with three (3) copies of the rules as amended and of the other documents requested herein. Copies of the other pertinent documents in the file have been retained by this office. Please contact me if you have any questions regarding this memorandum.

JEH/bw
Encl.
cc: Marshall Whitlock
Duane Harves
Melvin Goldberg

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

PROPOSED RULES

FOR ESTABLISHMENT OF LAKE IMPROVEMENT DISTRICTS

MARCH 20, 1979

Department of Natural Resources
Division of Waters
Proposed Rules for Establishment of Lake Improvement Districts

6 MCAR § 1.5060

A. PURPOSE

In order to provide for the orderly establishment of lake improvement districts in a manner that will preserve and protect the lakes of Minnesota and increase and enhance the use and enjoyment of these lakes, the Commissioner of Natural Resources does hereby provide guidelines, criteria, and standards for establishment of lake improvement districts by counties, cities, and towns, as authorized by Minn. Stat. §§ 378.41 - 378.56 and 459.20 in furtherance of the policies declared in Minn. Statutes.

B. SCOPE

These rules establish minimum guidelines, criteria, and requirements relating to:

1. Procedures by which proposed lake improvement districts shall be reviewed prior to establishment.

2. Standards and criteria which all proposed lake improvement districts shall meet before establishment, modification, or termination.

C. JURISDICTION

These rules shall apply to all existing and proposed lake improvement districts.

These rules shall not apply to lake conservation districts established by special legislation of the Minnesota State Legislature.

D. DEFINITIONS

For the purpose of these regulations, certain terms or words used herein

shall be interpreted as follows: The word "shall" is mandatory, not permissive.

"Agency" means the Minnesota Pollution Control Agency.

"Commissioner" means the Commissioner of the Department of Natural Resources or his authorized representative.

"Direct drainage basin" means that portion of a lake's total watershed which is not drained to an upstream water basin, as defined herein. The determination of size and physical limits of a lake's direct drainage basin shall be made by the Commissioner.

"District boundaries" means, for the purpose of these rules, the territorial boundaries of a lake improvement district. All lands and waters within the direct drainage basin, as defined herein, shall be included within the district boundaries, except those exclusions for which written approval is obtained from the Commissioner. The boundaries shall include a sufficient amount of the lake's watershed and related land to develop and implement feasible solutions to the problems the district intends to address. The boundaries shall also include all lands and waters which can reasonably be considered adversely affected by the proposed programs, plans or actions of the lake improvement district.

"Lake" means, for the purpose of these rules, any public water basin identified and classified in the shoreland management ordinances of the local county or municipal unit of government.

"Lake improvement district" means a district formed around a lake in accordance with Minn. Stat. Ch. 378. A lake improvement district is a local unit of government established by resolution of appropriate county boards and/or city governing bodies, or by the Commissioner, for the implementation of defined lake management projects and for the assessment of the costs thereof.

"Natural hydrologic boundaries" means the boundaries of a lake's direct drainage basin, as defined herein.

"Resident" means a person eighteen years of age or older who meets the residency requirements of Minn. Stat. §§ 201.26.

"Resident owner" means a Minnesota resident who is the owner of land or the contract purchaser of land within the boundaries of a lake improvement district.

"Water basin" means an enclosed basin normally partly or completely filled with water. The water basin may have inlet and outlet streams, it may have only an inlet or outlet, or it may be completely enclosed.

"Watercourse" means any channel which has definable beds and banks capable of conducting confined runoff from adjacent lands.

"Watershed" means the entire surface drainage area that contributes water to a lake.

E. SEVERABILITY

The provisions of these rules shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision, or any other part.

6 MCAR § 1.5061 GOALS FOR LAKE IMPROVEMENT DISTRICTS

Proposals for the establishment of lake improvement districts shall be evaluated according to the degree to which they promote the following goals:

1. Lake protection and rehabilitation.

2. Protection and enhancement of environmental values by preventing degradation of fish and wildlife habitat, surface and ground water quality, natural beauty and unique scientific values, recreation values, and the quality of life generally.

3. Preservation of the public rights in the public waters of the state and to provide the public use of the lake consistent with the preservation of environmental values.

4. Ensuring local involvement in the project and a commitment to future lake management.

5. Conformity with federal, state, regional and local laws, rules and water and related land management policies.

6. Fair and objective resolution of conflicts between competing lake related interests in and around the district.

6 MCAR § 1.5062 TYPES OF LAKE IMPROVEMENTS ELIGIBLE FOR THE CREATION OF A LAKE IMPROVEMENT DISTRICT

1. Studying the sources of and solutions to lake problems.

2. Preserving and improving water quality by means of:

(a) Water and related land management, excluding land use zoning authority.

(b) Inlake water treatment.

3. Sedimentation and siltation control.

4. Shoreline erosion control.

5. Aquatic nuisance control.

6. Preserving and improving fish and wildlife habitat.

7. Preserving and improving recreational potential of the lake.

8. Any other purposes approved by the county board pursuant to Minn. Stat. §§ 378.51, Subd. 3.

6 MCAR § 1.5063 CRITERIA AND STANDARDS FOR ESTABLISHMENT

Proposals for the establishment of lake improvement districts shall be evaluated based on the extent to which they demonstrate the following:

1. LOCAL NEED FOR DISTRICT. The proposal shall demonstrate the need for the district and why another unit of government with similar powers, or a voluntary lake association, can not or will not satisfactorily accomplish the district's proposed purposes.

2. APPROPRIATENESS OF PROPOSED BOUNDARIES. The proposed boundaries shall be consistent with district boundaries as defined in 6 MCAR § 1.5060D. The proposed boundaries shall include all lands and waters within the lake's direct drainage basin, unless justification is provided for including a lesser

area and approved in writing by the Commissioner. The proposed boundaries shall include a sufficient amount of the lake's watershed and related land to develop and implement feasible solutions to the identified problems. The proposed boundaries shall include those lands and waters which can reasonably be considered adversely affected by the proposed actions of the district. The proposed boundaries shall be delineated so as to provide appropriate public representation and the equitable distribution of benefits and levying of costs.

3. APPROPRIATENESS OF PROPOSED PURPOSES. The proposed purposes shall be consistent with existing state, federal, regional and local laws, policies, objectives, and plans pertaining to water and related land management, fish and wildlife habitat, surface and ground water quality, natural beauty and unique scientific values, economic and recreation values, and the quality of life. The proposed purposes shall be consistent with the public rights in the public waters of the state. When a district is proposed for the purpose of conducting a feasibility study of the sources of and solutions to lake problems, the proposal shall demonstrate an understanding that subsequent lake restoration measures may require modification of the districts' boundaries and statement of purposes, pursuant to 6 MCAR 1.5065A. and Minn. Stat. 378.55.

4. TECHNICAL FEASIBILITY OF PROPOSED PLANS AND PROGRAMS. The proposal shall demonstrate the technical feasibility of the proposed plans and programs, or provide for the determination of technical feasibility.

5. ADEQUACY OF PROPOSED MEANS OF FINANCING. The proposal shall demonstrate capability of raising sufficient funds to meet district purposes, to ensure continuity of district operations, and to meet the requirements of these rules and regulations.

6. ADEQUACY OF PROCEDURES FOR PLANNING, DECISION-MAKING, AND PUBLIC INVOLVEMENT. The proposal shall assure consideration of the interests of concerned citizens both within and outside the boundaries of the proposed district. The proposal shall include the identification of varying and often conflicting

interests regarding water and related land management and around the proposed district, and procedures to assure the consideration of such diverse interests so that decisions are made in the best overall interests of fairness and public health, safety and welfare.

7. PUBLIC ACCESS. The proposed plan shall provide for public access consistent with the size of the lake, the extent of public interest in using the lake, and combined beneficial uses of the lake. If service charges are to be imposed on the use of public accesses, the cost schedule for such charges shall be specified.

8. ADEQUACY OF LONG RANGE MONITORING OF THE ENVIRONMENTAL EFFECTS OF DISTRICT PROGRAMS. The proposal plan shall demonstrate an understanding of potential environmental effects of the proposed district plans and programs, and provide for long range monitoring of such effects.

9. COORDINATION WITH OTHER SPECIAL PURPOSE DISTRICTS. The proposal shall demonstrate how the proposed district programs will be coordinated with existing special purpose districts formed for water and related land management. Examples of such units of government are watershed districts, sanitary districts, drainage and conservancy districts, lake conservation districts and soil and water conservation districts. Lake improvement districts shall not be established where a special purpose unit of government for water and related land management exists which can implement the purposes of the proposed lake improvement district, unless written approval is acquired from such unit of government and from the Commissioner. Any conflict arising between an existing special purpose district and the proposed lake improvement district shall be resolved at the local level.

6 MCAR 1.5064 CREATION OF A LAKE IMPROVEMENT DISTRICT

A. Petition or Resolution Requirements

A county board resolution creating, or a petition to create a lake improvement district shall contain the following elements:

1. A written statement of lake problems and objectives.

2. The proposed type or types of water and related land resource management programs to be undertaken by the proposed district. This shall include a detailed statement of intended studies, management programs, remedial actions, and construction projects.

3. A statement of the means by which the programs will be financed.

4. A map showing the boundaries of the proposed lake improvement district. The map shall show the number and location of permanent homes and seasonal dwellings in the district. The scale of the map, and basic geographical information, such as range, township, and section numbers, shall be clearly indicated on the map.

5. The number of directors proposed for the district.

6. Copies of local ordinances which regulate use of the lake or any public access.

7. Any information indicating the degree of local interest and commitment to future management.

8. The identification of any lands and waters which may be adversely affected by the implementation of district purposes, and a preliminary assessment of these adverse effects.

9. A statement outlining the adequacy and ownership of public accesses, including public lands and beaches.

10. An estimate of the total equalized valuation of the property within the district.

11. Any other information demonstrating accordance with the criteria and standards for establishment as contained in 6 MCAR 1.5063.

B. Procedural Requirements

1. Initial Submittal of Petition or Resolution to County Board, the Commissioner, and the Agency for:

a. Creation by Petition. No later than five days after the official filing of a petition for the establishment of a lake improvement district with the county board, the citizens or organization sponsoring the petition shall provide a certified copy of the petition to the Commissioner and the Agency. This is necessary in order to facilitate preliminary review of the petition prior to the notification of the public hearing.

b. Creation by Resolution. At least 40 days prior to the public hearing, the county board shall provide a certified copy of the document containing the information required by 6 MCAR 1.5064 to the Commissioner and the Agency. This is necessary to facilitate preliminary review of the proposed district boundaries prior to notification of the public hearing.

2. Notification of the Public Hearing. At least 21 days prior to the public hearing, the county board shall give notice of the public hearing to the Commissioner and the Agency, and make a reasonable attempt to notify every resident and every resident owner within the proposed district of the pending resolution or petition and the public hearing. A reasonable attempt to notify shall consist of mailing notice to the last known address of each landowner within the proposed district, publication of notice in two successive issues of a newspaper widely circulated in the proposed district, and posting notice in public buildings and several leading commercial establishments in or near the proposed district, as appropriate and reasonable. All local and regional units of government, special purpose districts, and development commissions within and adjacent to the boundaries of the proposed district shall be given notice of the public hearing.

As part of the notification procedure, a statement shall accompany the notice setting forth the following:

a. A description of the proposed purposes, programs, funding and boundaries of the proposed district, and the name proposed for the district.

b. The time and place of the public hearing.

c. The following paragraph shall be included:

"The establishment of the proposed lake improvement district requires review by the Commissioner of Natural Resources and the approval of the (as appropriate) county board(s) (and/or city governing body). Concerned citizens may submit evidence at a public hearing to be held prior to the passage of any resolution establishing the proposed lake improvement district. Concerned citizens may also submit evidence and opinions to the Commissioner of Natural Resources. A copy of the petition (or document, as appropriate) for the establishment of the lake improvement district is available for public review at the (as appropriate) county courthouse (or other appropriate public building; give address and telephone number where interested citizens can review the document)."

If the establishment of the lake improvement district is proposed by the county board pursuant to 6 MCAR 1.5064B. 1b. and Minn. Stat. §§ 378.42, the following paragraph shall be included in the notice of the public hearing:

"Citizens may call for a referendum on the question of whether or not to establish a lake improvement district by filing a petition requesting such a referendum. The petition shall be signed by twenty-five percent of the land owners within the territory of the proposed district, who are Minnesota residents. Upon receipt of such a petition prior to the effective date of creation of the district, the county board shall hold the creation in abeyance pending the referendum vote of all qualified voters residing within the boundaries of the proposed district."

3. Public Review of Petition or Resolution. The county board shall make the petition or document containing the information required by 6 MCAR § 1.5064 available for review by concerned citizens, at the county courthouse or other appropriate public building.

4. Review by the Commissioner and the Agency. Upon receipt of a copy of the petition or document by the Commissioner, he shall:

a. Revi[redacted] the petition or document and a[redacted] evidence presented by the Agency or concerned citizens pertaining to the establishment of the proposed district. This review shall include an evaluation of the statement of district purposes and its relation to existing laws, rules and regulations, units of government, water and related land management programs and policies. The proposed district boundaries shall be examined to assess their consistency with these rules. When one or more of the stated purposes of the proposed district relate to pollution control, this review shall be conducted with the assistance of the Agency.

b. Prepare an advisory report stating his findings as to whether the proposed lake improvement district should be established. The Commissioner shall set forth in his report any matters pertaining to the district which should be further investigated and evaluated. If the Commissioner determines that the establishment of the proposed district is not in the public interest, he shall so report the specific reasons and inadequacies. The Commissioner may request additional time for review of the proposed district in such cases where additional time can be shown to be necessary for proper evaluation. The Commissioner's report may contain reports by the Agency.

5. The county board may grant requests by citizens, the Commissioner, or the Agency for postponement or continuance of the public hearing to a time more than 30 days after receipt of the petition and verification of the signatures thereon. Such requests may be granted if the county board determines that the additional time requested is appropriate and reasonable in order for the requesting organization or citizens to adequately prepare for the public hearing, and consistent with the goals of promptness and fairness in the proceedings.

6. The Commissioner's advisory report shall be publicly read into the record at the public hearing.

7. The Commissioner may modify his findings based on evidence presented during and subsequent to the public hearing.

8. No sooner than 10 days but within 30 days following the holding of the public hearing, the county board shall formally convene to approve or disapprove the establishment of the proposed lake improvement district. At least 10 working days notice shall be given to the Commissioner of the time and place where the board will formally convene for this purpose. If the Commissioner or his representative does not appear, any modifications of the Commissioner's advisory report shall be publicly read into the record.

6 MCAR 1.5065 GENERAL PROVISIONS

A. MODIFICATION

1. No program, remedial action, project or change of district boundaries which is not specified in the resolution creating a lake improvement district may be undertaken, except by modifying the appropriate items listed in 6 MCAR § 1.5064A. 1-5.

2. For an established district, any of the items listed in 6 MCAR § 1.5064A. 1-5 may be modified by petition to or resolution by the county board, in the same manner that a district is created.

B. LEGAL RESPONSIBILITIES AND LIABILITIES OF LAKE IMPROVEMENT DISTRICTS

1. Nothing in these rules shall be construed to relieve a lake improvement district of the legal duties, obligations, or liabilities incident to the programs, plans or actions of the district.

2. The lake improvement district shall assume all legal risks and liabilities, including those for damages or any injury to persons or property, arising from the construction, operation, maintenance, alteration, or abandonment of its programs, plans or actions.

3. In the event of termination of the district, or failure of the district to meet its obligations, these responsibilities and liabilities shall fall upon the unit or units of government which established the lake improvement district.

C. LIMITED STATE LIABILITIES

The establishment of a lake improvement district shall not impose any liability upon the State of Minnesota, its officers, employees, agents, or consultants, for any damage or injury to any persons or property resulting from the activities of the lake improvement district.

No action shall be brought against the State, the Commissioner or the Agency for the recovery of damages caused by the partial or total failure of any undertaking or project constructed by a lake improvement district.

D. RIGHTS OF LAKE IMPROVEMENT DISTRICTS

Nothing in these rules shall be construed to deprive any lake improvement district of such recourse to the courts as it may be entitled to under the laws of this State.

E. INSPECTIONS

The Commissioner shall be given prompt access to and inspection of all records, plants, structures, facilities, and operations at all reasonable times as may be necessary to monitor compliance with the terms of existing permits and to insure protection of the public health, safety, and welfare. The Commissioner's inspections shall not relieve the lake improvement district from the full responsibility of providing adequate inspection and supervision for all programs and projects undertaken by the district.

F. COMPLIANCE WITH OTHER LAWS AND WATER MANAGEMENT POLICIES

Lake improvement districts shall conform to federal, state, regional, and local laws, rules, and fish and wildlife, water, and related land management policies. Lake improvement districts shall obtain all necessary permits, as required by law, prior to implementing district purposes and programs.

G. COMPLIANCE BY PRE-EXISTING LAKE IMPROVEMENT DISTRICTS

1. Within one year following promulgation of these rules and regulations,

lake improvement dist[redacted]cts in existence prior to the p[redacted]mulgation of these rules shall submit to their county board and to the Commissioner a certified copy of a document containing the information required by 6 MCAR 1.5064. This document shall also contain a report on the past and current activities and financial condition of the district.

2. The Commissioner shall review the document and prepare an advisory report stating his findings as to whether the district is consistent with these rules and regulations. The report may contain such recommendations as the Commissioner determines is necessary to bring the district into compliance with these rules and regulations.

3. Within 60 days following the official filing of the Commissioner's report with the county board, the board shall formally convene to consider the report. The county board shall give 10 working days notice to the Commissioner of the time and place where it will convene to consider his report. If the Commissioner or his representative does not appear, the report shall be publicly read into the record.

E. The property to be improved with grant funds shall be reasonably efficient with respect to energy consumption. Where the property is not reasonably efficient with respect to energy consumption, rehabilitation funds shall be used to the extent necessary to increase such efficiency. Energy saving features shall include, but not be limited to, installation or upgrading of ceiling, wall, floor, and duct installation, storm windows and doors, and caulking and weather stripping. Energy saving features shall be consistent with the energy standards promulgated as part of the State Building Code but such improvements need not bring the housing into full compliance with such energy standards.

12 MCAR § 3.066 Eligible improvements. Improvements made with Home Improvement Grant funds shall satisfy the following requirements:

A. Each improvement shall be a permanent general improvement. Permanent general improvements shall include additions, alterations, renovations, or repairs upon or in connection with existing structures, which correct defects or deficiencies in the property affecting directly the safety, habitability, or energy usage of the property. Permanent general improvements shall be economically viable in terms of a determination that

1. the structure will have a reasonable life expectancy after the improvement is made, and

2. the structure will be reasonably livable, safe, and habitable after the improvement is made.

Permanent general improvements shall not include materials, fixtures, or landscaping of a type of quality exceeding that customarily used in the locality for decent, safe, and sanitary properties of the same general type as the property to be improved.

B. Each improvement shall be made in compliance with all applicable health, fire prevention, building, and housing codes and standards; provided, however, that no application for a Home Improvement Grant shall be denied solely because the improvements will not bring such property into full compliance with all such codes and standards.

C. Home Improvement Grant funds shall not be used for the payment, wholly or in part, of assessments for public improvements; provided, however, that such funds may be used for that portion of improvements located on the property which will bring an individual water supply system or a sewage disposal system (including septic systems) into compliance with local, state, or federal environmental and sanitary standards.

D. All contracts covering all or any portion of an improvement shall contain an Agency approved warranty of workmanship and materials.

E. No grant funds shall be used for the purpose of refinancing or paying off existing indebtedness. All such funds shall be used to finance improvements begun after application for such funds has been approved.

F. For mobile homes taxed as personal property or not permanently affixed to real property eligible improvements shall be limited to the following:

1. Improvements which bring the property into compliance with current standards for energy efficiency, fire safety and anchoring systems.

2. Improvements to remedy imminent safety hazards, or accessibility modifications, but only upon prior written approval by the Agency.

3. Other permanent general improvements, but only upon prior written approval by the Agency and a determination that after completion of such improvements the mobile home will comply with the standards set forth in Paragraph 1.

Department of Natural Resources

Proposed Rules Containing Standards and Criteria for Establishment of Lake Improvement Districts by Counties and Cities

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 17, 1979, at 10:00 a.m. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted as provided by Minn. Stat. §§ 15.0411 through 15.051 and § 15.052 and as provided by the rules for rule-making of the Office of Hearing Examiners.

All representatives of associations or other interested groups and interested or affected persons will have an opportunity to be heard concerning the adoption of the proposed rules. Statements may be made orally and written materials may be submitted at the hearing. Statements or briefs may be submitted without personally appearing at the

hearing. In addition, written materials may be submitted by mail to:

Howard Kaibel
1745 University Avenue
St. Paul, Minnesota 55105
Telephone: (612) 296-8107

either before the hearing or within 5 days after the close of the hearing, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

The proposed rules, if adopted, would officially establish standards and criteria for establishment of lake improvement districts by counties and cities for lakes located within their boundaries. The proposed rules, if adopted, would officially establish minimum guidelines, criteria, and requirements relating to procedures by which proposed lake improvement districts shall be reviewed prior to establishment, and standards and criteria which all proposed lake improvement districts shall meet before establishment, modification, or termination.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Department of Natural Resources, Division of Waters, 444 Lafayette Road, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. The department's authority to promulgate the proposed rules is contained in Laws of Minnesota, 1978, ch. 378, § 41, subd. 2. Twenty-five days prior to the hearing a statement of need and reasonableness will be available for review at the department and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the department at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available after which date the department may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the department. If you desire to be so 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 department (in the case of the department's submission or resubmission to the Attorney General).

Under Minn. Stat. 10A.01, subd. 11 (1978), a lobbyist must register wtih 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 (5) 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 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. "Lobbyist" does not include any: (a) public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity; (b) 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; (c) individual in the course of selling goods or services to be paid for by public funds; (d) 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; (e) 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 (f) stockholder of a family farm corporation as defined in § 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.

Rules as Proposed

6 MCAR § 1.5060 General Provisions (All New Material)

A. Purpose.

In order to provide for the orderly establishment of lake improvement districts in a manner that will preserve and protect the lakes of Minnesota and increase and enhance the use and enjoyment of these lakes, the Commissioner of Natural Resources does hereby provide guidelines,

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."

criteria, and standards for establishment of lake improvement districts by counties, cities, and towns, as authorized by Minn. Stat. §§ 378.41-378.56 and 459.20 in furtherance of the policies declared in Minn. Statutes.

B. Scope.

These rules establish minimum guidelines, criteria, and requirements relating to:

1. Procedures by which proposed lake improvement districts shall be reviewed prior to establishment.

2. Standards and criteria which all proposed lake improvement districts shall meet before establishment, modfication, or termination.

C. Jurisdiction.

These rules shall apply to all existing and proposed lake improvement districts.

These rules shall not apply to lake conservation districts established by special legislation of the Minnesota State Legislature.

D. Definitions.

For the purpose of these regulations, certain terms or words used herein shall be interpreted as follows: The word "shall" is mandatory, not permissive.

"Agency" means the Minnesota Pollution Control Agency.

"Commissioner" means the Commissioner of the Department of Natural Resources or his authorized representative.

"Direct drainage basin" means that portion of a lake's total watershed which is not drained to an upstream water basin, as defined herein. The determination of size and physical limits of a lake's direct drainage basin shall be made by the Commissioner.

"District boundaries" means, for the purpose of these rules, the territorial boundaries of a lake improvement district. All lands and waters within the direct drainage basin, as defined herein, shall be included within the district boundaries, except those exclusions for which written approval is obtained from the Commissioner. The boundaries shall include a sufficient amount of the lake's watershed and related land to develop and implement feasible solutions to the problems the district intends to address. The boundaries shall also include all lands and waters which can reasonably be considered adversely affected by the proposed programs, plans or actions of the lake improvement district.

"Lake" means, for the purpose of these rules, any public water basin identified and classified in the shoreland management ordinances of the local county or municipal unit of government.

"Lake improvement district" means a district formed around a lake in accordance with Minn. Stat. ch. 378. A lake improvement district is a local unit of government established by resolution of appropriate county boards and/or city governing bodies, or by the Commissioner, for the implementation of defined lake management projects and for the assessment of the costs thereof.

"Natural hydrologic boundaries" means the boundaries of a lake's direct drainage basin, as defined herein.

"Resident" means a person eighteen years of age or older who meets the residency requirements of Minn. Stat. §§ 201.26.

"Resident owner" means a Minnesota resident who is the owner of land or the contract purchaser of land within the boundaries of a lake improvement district.

"Water basin" means an enclosed basin normally partly or completely filled with water. The water basin may have inlet and outlet streams, it may have only an inlet or outlet, or it may be completely enclosed.

"Watercourse" means any channel which has definable beds and banks capable of conducting confined runoff from adjacent lands.

"Watershed" means the entire surface drainage area that contributes water to a lake.

E. Severability.

The provisions of these rules shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision, or any other part.

6 MCAR § 1.5061 Goals for Lake Improvement Districts.

Proposals for the establishment of lake improvement districts shall be evaluated according to the degree to which they promote the following goals:

1. Lake protection and rehabilitation.

2. Protection and enhancement of environmental values by preventing degradation of fish and wildlife habitat, surface and ground water quality, natural beauty and unique scientific values, recreation values, and the quality of life generally.

3. Preservation of the public rights in the public waters of the state and to provide the public use of the lake consistent with the preservation of environmental values.

4. Ensuring local involvement in the project and a commitment to future lake management.

5. Conformity with federal, state, regional and local laws, rules and water and related land management policies.

6. Fair and objective resolution of conflicts between competing lake related interests in and around the district.

6 MCAR § 1.5062 Types of Lake Improvements Eligible for the Creation of a Lake Improvement District.

1. Studying the sources of and solutions to lake problems.

2. Preserving and improving water quality by means of:

(a) Water and related land management, excluding land use zoning authority.

(b) Inlake water treatment.

3. Sedimentation and siltation control.

4. Shoreline erosion control.

5. Aquatic nuisance control.

6. Preserving and improving fish and wildlife habitat.

7. Preserving and improving recreational potential of the lake.

8. Any other purposes approved by the county board pursuant to Minn. Stat. §§ 378.51, subd. 3.

6 MCAR § 1.5063 Criteria and Standards for Establishment.

Proposals for the establishment of lake improvement districts shall be evaluated based on the extent to which they demonstrate the following:

1. Local need for district. The proposal shall demonstrate the need for the district and why another unit of government with similar powers, or a voluntary lake association, can not or will not satisfactorily accomplish the district's proposed purposes.

2. Appropriateness of proposed boundaries. The proposed boundaries shall be consistent with district boundaries as defined in 6 MCAR § 1.5060 D. The proposed boundaries shall include all lands and waters within the lake's direct drainage basin, unless justification is provided for including a lesser area and approved in writing by the Commissioner. The proposed boundaries shall include a sufficient amount of the lake's watershed and related land to develop and implement feasible solutions to the identified problems. The proposed boundaries shall include those lands and waters which can reasonably be considered adversely affected by the proposed actions of the district. The proposed boundaries shall be delineated so as to provide appropriate public representation and the equitable distribution of benefits and levying of costs.

3. Appropriateness of proposed purposes. The proposed purposes shall be consistent with existing state, federal, regional and local laws, policies, objectives, and plans pertaining to water and related land management, fish and wildlife habitat, surface and ground water quality, natural beauty and unique scientific values, economic and recreation values, and the quality of life. The proposed purposes shall be consistent with the public rights in the public waters of the state. When a district is proposed for the purpose of conducting a feasibility study of the sources of and solutions to lake problems, the proposal shall demonstrate an understanding that subsequent lake restoration measures may require modification of the districts' boundaries and statement of purposes, pursuant to 6 MCAR 1.5065 A. and Minn. Stat. 378.55.

4. Technical feasibility of proposed plans and programs. The proposal shall demonstrate the technical feasibility of the proposed plans and programs, or provide for the determination of technical feasibility.

5. Adequacy of proposed means of financing. The proposal shall demonstrate capability of raising sufficient funds to meet district purposes, to ensure continuity of district operations, and to meet the requirements of these rules and regulations.

6. Adequacy of procedures for planning, decision-making, and public involvement. The proposal shall assure consideration of the interests of concerned citizens both within and outside the boundaries of the proposed district. The proposal shall include the identification of varying and often conflicting interests regarding water and related land management in and around the proposed district, and procedures to assure the consideration of such diverse interests so

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."

that decisions are made in the best overall interests of fairness and public health, safety and welfare.

7. Public access. The proposed plan shall provide for public access consistent with the size of the lake, the extent of public interest in using the lake, and combined beneficial uses of the lake. If service charges are to be imposed on the use of public accesses, the cost schedule for such charges shall be specified.

8. Adequacy of long range monitoring of the environmental effects of district programs. The proposal plan shall demonstrate an understanding of potential environmental effects of the proposed district plans and programs, and provide for long range monitoring of such effects.

9. Coordination with other special purpose districts. The proposal shall demonstrate how the proposed district programs will be coordinated with existing special purpose districts formed for water and related land management. Examples of such units of government are watershed districts, sanitary districts, drainage and conservancy districts, lake conservation districts and soil and water conservation districts. Lake improvement districts shall not be established where a special purpose unit of government for water and related land management exists which can implement the purposes of the proposed lake improvement district, unless written approval is acquired from such unit of government and from the Commissioner. Any conflict arising between an existing special purpose district and the proposed lake improvement district shall be resolved at the local level.

6 MCAR 1.5064 Creation of a Lake Improvement District.

A. Petition or Resolution Requirements.

A county board resolution creating, or a petition to create a lake improvement district shall contain the following elements:

1. A written statement of lake problems and objectives.

2. The proposed type or types of water and related land resource management programs to be undertaken by the proposed district. This shall include a detailed statement of intended studies, management programs, remedial actions, and construction projects.

3. A statement of the means by which the programs will be financed.

4. A map showing the boundaries of the proposed lake improvement district. The map shall show the number and location of permanent homes and seasonal dwellings in the district. The scale of the map, and basic geographical information, such as range, township, and section numbers, shall be clearly indicated on the map.

5. The number of directors proposed for the district.

6. Copies of local ordinances which regulate use of the lake or any public access.

7. Any information indicating the degree of local interest and commitment to future management.

8. The identification of any lands and waters which may be adversely affected by the implementation of district purposes, and a preliminary assessment of these adverse effects.

9. A statement outlining the adequacy and ownership of public accesses, including public lands and beaches.

10. An estimate of the total equalized valuation of the property within the district.

11. Any other information demonstrating accordance with the criteria and standards for establishment as contained in 6 MCAR 1.5063.

B. Procedural Requirements.

1. Initial submittal of petition or resolution to County Board, the Commissioner, and the Agency for:

a. Creation by petition. No later than five days after the official filing of a petition for the establishment of a lake improvement district with the county board, the citizens or organization sponsoring the petition shall provide a certified copy of the petition to the Commissioner and the Agency. This is necessary in order to facilitate preliminary review of the petition prior to the notification of the public hearing.

b. Creation by resolution. At least 40 days prior to the public hearing, the county board shall provide a certified copy of the document containing the information required by 6 MCAR 1.5064 to the Commissioner and the Agency. This is necessary to facilitate preliminary review of the proposed district boundaries prior to notification of the public hearing.

2. Notification of the public hearing. At least 21 days prior to the public hearing, the county board shall give notice of the public hearing to the Commissioner and the Agency, and make a reasonable attempt to notify every resident and every resident owner within the proposed district of the pending resolution or petition and the public hearing. A reasonable attempt to notify shall consist of mailing notice to the last known address of each landowner within the proposed district, publication of notice in two

successive issues of a newspaper widely circulated in the proposed district, and posting notice in public buildings and several leading commercial establishments in or near the proposed district, as appropriate and reasonable. All local and regional units of government, special purpose districts, and development commissions within and adjacent to the boundaries of the proposed district shall be given notice of the public hearing.

As part of the notification procedure, a statement shall accompany the notice setting forth the following:

a. A description of the proposed purposes, programs, funding and boundaries of the proposed district, and the name proposed for the district.

b. The time and place of the public hearing.

c. The following paragraph shall be included:

"The establishment of the proposed lake improvement district requires review by the Commissioner of Natural Resources and the approval of the (as appropriate) county board(s) (and/or city governing body). Concerned citizens may submit evidence at a public hearing to be held prior to the passage of any resolution establishing the proposed lake improvement district. Concerned citizens may also submit evidence and opinions to the Commissioner of Natural Resources. A copy of the petition (or document, as appropriate) for the establishment of the lake improvement district is available for public review at the (as appropriate) county courthouse (or other appropriate public building: give address and telephone number where interested citizens can review the document)."

If the establishment of the lake improvement district is proposed by the county board pursuant to 6 MCAR 1.5064 B.1.b. and Minn. Stat. §§ 378.42, the following paragraph shall be included in the notice of the public hearing:

"Citizens may call for a referendum on the question of whether or not to establish a lake improvement district by filing a petition requesting such a referendum. The petition shall be signed by twenty-five percent of the land owners within the territory of the proposed district, who are Minnesota residents. Upon receipt of such a petition prior to the effective date of creation of the district, the county board shall hold the creation in abeyance pending the referendum vote of all qualified voters residing within the boundaries of the proposed district."

3. Public review of petition or resolution. The county board shall make the petition or document containing the information required by 6 MCAR § 1.5064 available for review by concerned citizens, at the county courthouse or other appropriate public building.

4. Review by the commissioner and the agency. Upon receipt of a copy of the petition or document by the Commissioner, he shall:

a. Review the petition or document and any evidence presented by the Agency or concerned citizens pertaining to the establishment of the proposed district. This review shall include an evaluation of the statement of district purposes and its relation to existing laws, rules and regulations, units of government, water and related land management programs and policies. The proposed district boundaries shall be examined to assess their consistency with these rules. When one or more of the stated purposes of the proposed district relate to pollution control, this review shall be conducted with the assistance of the Agency.

b. Prepare an advisory report stating his findings as to whether the proposed lake improvement district should be established. The Commissioner shall set forth in his report any matters pertaining to the district which should be further investigated and evaluated. If the Commissioner determines that the establishment of the proposed district is not in the public interest, he shall so report the specific reasons and inadequacies. The Commissioner may request additional time for review of the proposed district in such cases where additional time can be shown to be necessary for the proper evaluation. The Commissioner's report may contain reports by the Agency.

5. The county board may grant requests by citizens, the Commissioner, or the Agency for postponement or continuance of the public hearing to a time more than 30 days after receipt of the petition and verification of the signatures thereon. Such requests may be granted if the county board determines that the additional time requested is appropriate and reasonable in order for the requesting organization or citizens to adequately prepare for the public hearing, and consistent with the goals of promptness and fairness in the proceedings.

6. The Commissioner's advisory report shall be publicly read into the record at the public hearing.

7. The Commissioner may modify his findings based on evidence presented during and subsequent to the public hearing.

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8. No sooner than 10 days but within 30 days following the holding of the public hearing, the county board shall formally convene to approve or disapprove the establishment of the proposed lake improvement district. At least 10 working days notice shall be given to the Commissioner of the time and place where the board will formally convene for this purpose. If the Commissioner or his representative does not appear, any modifications of the Commissioner's advisory report shall be publicly read into the record.

6 MCAR 1.5065 General Provisions.

A. Modification.

1. No program, remedial action, project or change of district boundaries which is not specified in the resolution creating a lake improvement district may be undertaken, except by modifying the appropriate items listed in 6 MCAR § 1.5064 A.1-5.

2. For an established district, any of the items listed in 6 MCAR § 1.5064 A.1-5 may be modified by petition to or resolution by the county board, in the same manner that a district is created.

B. Legal responsibilities and liabilities of lake improvement districts.

1. Nothing in these rules shall be construed to relieve a lake improvement district of the legal duties, obligations, or liabilities incident to the programs, plans or actions of the district.

2. The lake improvement district shall assume all legal risks and liabilities, including those for damages or any injury to persons or property, arising from the construction, operation, maintenance, alteration, or abandonment of its programs, plans or actions.

3. In the event of termination of the district, or failure of the district to meet its obligations, these responsibilities and liabilities shall fall upon the unit or units of government which established the lake improvement district.

C. Limited state liabilities.

The establishment of a lake improvement district shall not impose any liability upon the State of Minnesota, its officers, employees, agents, or consultants, for any damage or injury to any persons or property resulting from the activities of the lake improvement district.

No action shall be brought against the state, the Commissioner or the Agency for the recovery of damages caused by the partial or total failure of any undertaking or project constructed by a lake improvement district.

D. Rights of lake improvement districts.

Nothing in these rules shall be construed to deprive any lake improvement district of such recourse to the courts as it may be entitled to under the laws of this state.

E. Inspections.

The Commissioner shall be given prompt access to and inspection of all records, plants, structures, facilities, and operations at all reasonable times as may be necessary to monitor compliance with the terms of existing permits and to insure protection of the public health, safety, and welfare. The Commissioner's inspections shall not relieve the lake improvement district from the full responsibility of providing adequate inspection and supervision for all programs and projects undertaken by the district.

F. Compliance with other laws and water management policies.

Lake improvement districts shall conform to federal, state, regional, and local laws, rules, and fish and wildlife, water, and related land management policies. Lake improvement districts shall obtain all necessary permits, as required by law, prior to implementing district purposes and programs.

G. Compliance by pre-existing lake improvement districts.

1. Within one year following promulgation of these rules and regulations, lake improvement districts in existence prior to the promulgation of these rules shall submit to their county board and to the Commissioner a certified copy of a document containing the information required by 6 MCAR 1.5064. This document shall also contain a report on the past and current activities and financial condition of the district.

2. The Commissioner shall review the document and prepare an advisory report stating his findings as to whether the district is consistent with these rules and regulations. The report may contain such recommendations as the Commissioner determines is necessary to bring the district into compliance with these rules and regulations.

3. Within 60 days following the official filing of the Commissioner's report with the county board, the board shall formally convene to consider the report. The county board shall give 10 working days notice to the Commissioner of the time and place where it will convene to consider his report. If the Commissioner or his representative does not appear, the report shall be publicly read into the record.

STATE OF MINNESOTA
DEPARTMENT OF NATURAL RESOURCES

RELATING TO PROPOSED RULES NR 5060-5065,
ESTABLISHING STANDARDS AND CRITERIA FOR
ESTABLISHMENT OF LAKE IMPROVEMENT
DISTRICTS BY COUNTIES AND CITIES

STATEMENT
OF
NEED

- - - - - - - - - - - - - - -

The Commissioner of Natural Resources is required by statute to coordinate and supervise a local-state program for the establishment of lake improvement districts, counties and cities for lakes located within their boundaries based on state guidelines and regulations and compatible with all state, regional and local plans where such plans exist. In order to carry out this responsibility the Commissioner is further required, by statute, to adopt rules which provide guidelines, criteria and standards for establishment of lake improvement districts by counties and cities, prior to April 1, 1979.

JUSTIFICATION

Minnesota Statutes 1978, Chapter 378 provides the following statutory requirements:

> "378.31 WATER AND RELATED LAND RESOURCES MANAGEMENT. Subdivision 1. In order to preserve and protect the lakes of the state of Minnesota and to increase and enhance the use and enjoyment of these lakes it is in the public interest that there is established a statewide lake improvement program to: preserve the natural character of lakes and their shoreland environment as feasible and practical; improve the quality of water in lakes; provide for reasonable assurance of water quantity in lakes, where feasible and practicable; and to assure protection of the lakes from the detrimental effects of man's activities and certain natural processes which are detrimental to protection of the lakes.
>
> Subd. 2. The county board of every county shall have the powers set forth in this section with respect to any bodies of water situated wholly or partly within the boundaries of the county and not situated entirely within the boundaries of a single city or lake conservation district established by law. Upon approval by the affected city or lake conservation district, a county board may assume and thereafter exercise the powers set forth in this section with respect to bodies of water lying wholly within that city or lake conservation district. All programs undertaken pursuant to such powers shall be consistent with the statewide water and related land resources plan prepared under the direction of the commissioner of natural resources, and with regional water

and related resources plans. No body of water shall be improved under this section unless the public has access to some portion of the shoreline thereof. The county boards shall have power:

Subd. 3. To acquire, in the name of the county, by gift or purchase or by condemnation under chapter 117, any existing dam or control works that may affect the level of such waters;

Subd. 4. To construct and operate water control structures when approved by the commissioner of natural resources pursuant to section 105.42;

Subd. 5. To undertake projects to change the course, current or cross section of public waters when approved by the commissioner of natural resources pursuant to section 105.42;

Subd. 5a. To improve navigation and to acquire by gift or purchase land, equipment or other facilities for this purpose;

Subd. 6. To contract with a board of managers of any watershed district within the county or the board of supervisors of any soil and water conservation district within the county for improvements under chapters 40 and 112;

Subd. 7. To undertake research to determine the condition and development of the body of water and the water entering it and to transmit these studies to the pollution control agency and other interested authorities; to develop a comprehensive plan to eliminate water pollution; to conduct a program of water improvement and conservation; and to implement the comprehensive plan to eliminate water pollution, provided that construction of any water, sewer, or water and sewer system shall be undertaken in the manner provided by section 444.075 or other applicable laws and not pursuant to this section;

Subd. 8. To receive financial assistance from and join in projects or enter into contracts with federal and state agencies for the study and treatment of pollution problems and demonstration programs related to them;

Subd. 9. To maintain public beaches, public docks and other public facilities for access to the body of water;

Subd. 10. To make cooperative agreements with the United States or state government or any other county or city for the purpose of effecting the provisions of this section.

Subd. 11. To require that any projects to change the course, current or cross section of public waters within unincorporated areas be approved by the county before submitting an application for a permit to the commissioner as required by section 105.42.

378.41 ESTABLISHMENT OF LAKE IMPROVEMENT DISTRICTS. Subdivision 1. In furtherance of the policy declared in section 378.31, the commissioner of natural resources shall coordinate and supervise a local-state program for the establishment of lake improvement districts by counties and cities for lakes located within their

boundaries based on state guidelines and regulations and compatible with all state, regional and local plans where such plans exist.

In administration of this program the commissioner of natural resources shall consult with and obtain advice from other state agencies on those aspects of the program for which the agencies have specific legislative authority including but not limited to the department of health and the pollution control agency.

Subd. 2. The commissioner of natural resources, before April 1, 1979, shall promulgate rules pursuant to chapter 15 which provide guidelines, criteria and standards for establishment of lake improvement districts by counties and cities.

Subd. 3. In order to finance the development and implementation of programs for water and related land resources management pursuant to sections 378.31 to 378.32, the county board of any county may designate areas within the county, including bodies of water and related land areas, as lake improvement districts."

As specified in Minnesota Statutes 1978, Section 378.41, the Commissioner must coordinate a local-state program for the establishment of lake improvement districts by counties and cities and must adopt rules which provide guidelines, criteria and standards for establishment of lake improvement districts by counties and cities. The proposed rules NR 5060-5065 are therefore justified based on statutory mandate.

EXPLANATION

As stated above, Minnesota Statutes Section 378.41 requires that the Commissioner coordinate and supervise a local-state program for the establishment of lake improvement districts by counties and cities, and adopt rules which provide guidelines, criteria and standards for establishment of lake improvement districts by counties and cities. The intent of the proposed rules NR 5060-5065 is to provide the required guidelines, criteria and standards.

In proposing these rules the primary policy of the Commissioner has been to provide for the orderly establishment of lake improvement districts in a manner that will preserve and protect the lakes of Minnesota and increase and enhance the use and enjoyment of these lakes. The rules establish minimum guidelines, criteria and requirements relating to:

1. Procedures by which proposed lake improvement districts shall be reviewed prior to establishment; and

2. Standards and criteria which all proposed lake improvement districts shall meet before establishment, and all existing lake improvement districts shall meet before modification or termination.

The rules require that proposals for establishment of lake improvement districts shall be evaluated on the extent to which they demonstrate the following:

1. Local need for district
2. Appropriateness of proposed boundaries
3. Appropriateness of proposed purposes
4. Technical feasibility of proposed plans and programs
5. Adequacy of proposed means of financing
6. Adequacy of procedures for planning, decision-making and public involvement
7. Public access
8. Adequacy of long range monitoring of the environmental effects of district programs
9. Coordination with other special purpose districts

The rules provide detailed procedures for county and city review of proposals for establishment of new lake improvement districts and review of proposals for modification and termination of existing lake improvement districts. These procedures consist of county and city review of proposals with the assistance of the appropriate local, regional and state agencies, public notification of proposals, the holding of a public hearing on proposals and the formal consideration of proposals. The rules have been written to provide detailed implementation of the procedural framework contained in Minnesota Statutes Sections 378.42, 378.43, 378.46, 378.47, 378.55 and 378.56.

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Adoption of Proposed Rules Containing Standards and Criteria for Establishment of Lake Improvement Districts by Counties and Cities

ORDER FOR HEARING

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 17, 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: 26 Mar 79

Department of Natural Resources

Division of Waters

Rules for Establishment of Lake Improvement Districts

The proposed rules published in State Register Volume 3, Number 40, April 9, 1979, pages 1877-1882, are adopted as proposed, with the following amendments:

In 6 MCAR §§ 1.5060.D, the following deletion:

~~"Watercourse" means any channel which has definable beds and banks capable of conducting confined runoff from adjacent lands.~~

6 MCAR §§ 1.5063.7, is amended as follows:

7. Public access. The proposed plan shall provide for public access when adequate public access consistent with the size of the lake, the extent of public interest in using the lake, and the combined beneficial uses of the lake, is unavailable. ~~If~~ Service charges ~~are to~~ may not be imposed on the use of a public ~~accesses, the cost schedule for such charges shall be specified~~ if other units of government cost share the acquisition, development or maintenance of the public access.

6 MCAR §§ 1.5063.9, is amended as follows:

9. Coordination with other special purpose districts. The proposal shall demonstrate how the proposed district programs will be coordinated with existing special purpose districts formed for water and related land management. Examples of such units of government are watershed districts, sanitary districts, drainage and conservancy districts, lake conservation districts and

soil and water conservation districts. Lake improvement districts shall not be established where a special purpose unit of government for water and related land management exists which can implement the purposes of the proposed lake improvement district, unless written approval is acquired from such unit of government ~~and~~ or from the Commissioner. The proposal should demonstrate efforts in good faith to resolve at the local level any conflicts ~~arising~~ between an existing special purpose district and the proposed lake improvement district ~~shall be resolved at the local level~~.

6 MCAR § 1.5064.A, is amended as follows:

A. Petition or ~~resolution~~ county board document requirements. A county board ~~resolution creating~~ document proposing the creation of, or a petition to create a lake improvement district shall contain the following elements:

1. A written statement of lake problems and objectives.

2. The proposed type or types of water and related land resource management programs to be undertaken by the proposed district. This shall include a detailed statement of intended studies, management programs, remedial actions, and construction projects.

3. A statement of the means by which the programs will be financed.

4. A map showing the boundaries of the proposed lake improvement district. The map shall show the number and location of permanent homes and seasonal dwellings in the district. The scale of the map, and basic geographical information, such

as range, township, and section numbers, shall be clearly indicated on the map.

5. The number of directors proposed for the district.

6. Copies of local ordinances which regulate use of the lake or any public access.

7. Any information indicating the degree of local interest and commitment to future management.

8. The identification of any lands and waters which may be adversely affected by the implementation of district purposes, and a preliminary assessment of these adverse effects.

9. A statement outlining the adequacy and ownership of public accesses, including public lands and beaches.

10. An estimate of the total equalized valuation of the property within the district.

11. Any other information demonstrating accordance with the criteria and standards for establishment as contained in 6 MCAR 1.5063.

6 MCAR 1.5064.B.1.a., is amended as follows:

a. Creation by petition. No later than five days after the official filing of a petition for the establishment of a lake improvement district with the county board, the citizens or organization sponsoring the petition shall provide a certified copy of the petition to the Commissioner and the Agency. This is necessary in order to facilitate preliminary review of the ~~petition~~ proposed district boundaries prior to notification of of the public hearing.

6 MCAR 1.5064.B.2, is amended as follows:

2. Notification of the public hearing. At least 21 days prior to the public hearing, the county board shall give notice of the public hearing to the Commissioner and the Agency, and make a reasonable attempt to notify every resident and every resident owner within the proposed district of the pending resolution or petition and the public hearing. A reasonable attempt to notify shall consist of mailing notice to the last known address of each landowner within the proposed district, publication of notice in two successive issues of a newspaper widely circulated in the proposed district, and posting notice in public buildings and several leading commercial establishments in or near the proposed district, as appropriate and reasonable. All local and regional units of government, special purpose districts, and development commissions within and adjacent to the boundaries of the proposed district shall be given notice of the public hearing. <u>All corporations and utilities owning real estate or corporate property within the proposed district shall be given notice of the public hearing.</u>

(The remainder of 6 MCAR 1.5064.B.2 remains unchanged.)

6 MCAR 1.5065.E, is amended as follows:

E. Inspections. The Commissioner shall be given prompt access to and inspection of all records, ~~plants,~~ structures, facilities, and operations at all reasonable times as may be necessary to monitor compliance with the terms of existing permits and to insure protection of the public health, safety, and welfare. The Commissioner's inspections shall not relieve the lake improvement district from the full responsibility of providing adequate inspection and supervision for all programs and projects undertaken by the district.

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Adoption of Proposed Rules Containing Standards and Criteria for Establishment of Lake Improvement Districts by Counties and Cities.

CERTIFICATE OF COMPLIANCE

I am familiar with the subject rules, and with the proceedings leading to their adoption. Based on that and my knowledge of the laws and rules regarding rule-making, I believe these rules have been properly adopted.

Dated: September 27, 1979.

A. W. CLAPP, III
Special Assistant
Attorney General

STATE REGISTER

STATE OF MINNESOTA

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Hearing Notices

Department of Human Rights, Complainant, vs. First Chicago Data Corporation, James H. Hoffman, Joe Van Der Heyden, Diane Walker Van Der Heyden, Respondents, August 22-23, 1978, 9:00 a.m., Hennepin County Government Center, Room 23C, 300 South Sixth Street, Minneapolis, Minnesota 55487.

Department of Health

Notice of Intent to Solicit Outside Information on Proposed Rules Governing the Construction, Equipment, Maintenance, Operation and Licensing of Nursing Homes and Boarding Care Homes

Notice is hereby given, pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6 (supp. 1977), that the Commissioner of Health will propose, as part of the amendments and rewriting of MHD 44-71, the Rules Relating to the Construction, Equipment, Maintenance, Operation and Licensing of Nursing Homes and Boarding Care Homes (see 1 S.R. 741-742), rules relating to the utilization and employment of nursing assistants in nursing homes. These rules will correspond with the rules being developed by the Department of Education, Division of Vocational-Technical Education implementing the provisions of Minn. Stat. §§ 144A.61-144A.611, which relate to the training of nursing assistants in nursing homes (see 2 S.R. 1936). The authority to promulgate these rules is contained in Minn. Stat. § 144A.08.

All interested parties desiring to submit data, views, opinions, comments or other related information concerning the amendment or revision of these rules should write to or telephone H. Michael Tripple, Assistant Section Chief, Survey and Compliance Section, Minnesota Department of Health, Health Systems Division, 717 Delaware Street Southeast, Minneapolis, Minnesota, 55440, telephone (612) 296-5418. Evidence submitted for consideration should be pertinent to the matter at hand. Written material received by the Department of Health will become part of the hearing record.

Any materials submitted will be reviewed and considered by the Department of Health during the preparation of the proposed rules. Notice of the public hearing on the proposed rules will be published in the *State Register* and given to all interested parties who have registered with the Secretary of State's Office in accordance with the provisions of the Administrative Procedure Act.

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

Warren R. Lawson, M.D.
Commissioner of Health

July 20, 1978

Department of Natural Resources

Notice of Intent to Solicit Outside Information Regarding Proposed Adoption of Rules Governing Guidelines, Criteria and Standards for Establishment of Lake Improvement Districts by Counties and Cities

Notice is hereby given that the Department of Natural Resources is seeking information or opinions from sources outside the agency in preparing to propose the adoption of rules governing guidelines, criteria and standards for estab-

lishment of lake improvement districts by counties and cities. Any interested persons may submit data or views on this subject in writing or orally to:

Peter Collin
Department of Natural Resources
Third Floor, Space Center Building
St. Paul, Minnesota 55101
(612) 296-4800

Any written material received by the agency shall become a part of the hearing record in the event rules governing this subject are promulgated.

Theresa Bailey-Morrow

July 24, 1978

Pollution Control Agency

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendment of Rules for Control of Wastes from Livestock Feedlots, Poultry Lots or Other Animal Lots

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) has begun consideration of proposed revisions to regulations for the control of wastes from livestock feedlots, poultry lots or other animal lots. A draft of the proposed revisions has been prepared by the agency staff, and copies of it may be reviewed at Regional Development Commission Offices or can be obtained by contacting:

Terrence E. Huntrods
Division of Solid Waste
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113

In order to assess the suitability of the draft proposed revisions to rules SW 51-61, the agency hereby requests comments from all interested persons or groups concerning the subject matter of the draft proposal. Written statements of information and comments may be sent to Mr. Huntrods at the above address. Oral statements and comments will be received during regular business hours over the phone at (612) 296-7327 or in person at the above address.

All statements and comments on this proposal must be received by August 31, 1978. Any written material received by the agency or addressed to Mr. Huntrods at the above address will become part of the hearing record.

Should the agency determine that the proposed draft revisions to SW 51-61, or some other revisions to the Regulations for the Control of Wastes from Livestock Feedlots, Poultry Lots or other Animal Lots should be promulgated, further notice of the rule and of the hearings thereon will be given as required by law, including notice in the *State Register*.

Sandra S. Gardebring
Executive Director

Office of the Secretary of State Administration Division

Open Appointment Process: Notice of Openings on State Agencies — Application Procedures

Pursuant to Laws of 1978, ch. 592, the legislature has implemented an Open Appointment Process by which the public is informed of openings on state multi-member agencies (boards, commissions, councils) created by statute and having statewide jurisdiction.

Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul, MN 55155, (612) 296-3266. Contact the Secretary of State for the Open Appointment Process information brochure and specific agency related information. Applications are due on August 18.

Human Services Occupations Advisory Council: One vacancy; public member; open immediately.

State Board of Investment Advisory Council: Two vacancies; experienced in corporate or governmental finance or in general investment matters; open immediately.

Workers' Compensation Advisory Council: One vacancy; labor representative; open immediately.

Department of Natural Resources

IN THE MATTER OF THE PROPOSED
ADOPTION OF RULES OF THE DEPARTMENT
OF NATURAL RESOURCES CONTAINING
STANDARDS AND CRITERIA FOR
ESTABLISHMENT OF LAKE IMPROVEMENT
DISTRICTS BY COUNTIES AND CITIES

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 17, 1979, at 10:00 A.M. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted as provided by Minnesota Statutes Sections 15.0411 through 15.051 and Section 15.052 and as provided by the rules for rule-making of the Office of Hearing Examiners.

All representatives of associations or other interested groups and interested or affected persons will have an opportunity to be heard concerning the adoption of the proposed rules. Statements may be made orally and written materials may be submitted at the hearing. Statements or briefs may be submitted without personally appearing at the hearing. In addition, written materials may be submitted by mail to:

Howard Kaibel
1745 University Avenue
St. Paul, Minnesota 55105
Telephone: (612) 296-8107

either before the hearing or within 5 days after the close of the hearing, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

The proposed rules, if adopted, would officially establish standards and criteria for establishment of lake improvement districts by counties and cities for lakes located within their boundaries. The proposed rules, if adopted, would officially establish minimum guidelines, criteria, and requirements relating to procedures by which proposed lake improvement districts shall be reviewed prior to establishment, and standards and criteria which all proposed lake improvement districts shall meet

before establishment, modification, or termination.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Department of Natural Resources, Division of Waters, 444 Lafayette Road, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. The department's authority to promulgate the proposed rules is contained in Laws of Minnesota 1978, Chapter 378, Section 41, Subdivision 2. Twenty-five days prior to the hearing a statement of need and reasonableness will be available for review at the department and at the Office of Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the department at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available after which date the department may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the department. If you desire to be so 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 department (in the case of the department's submission or resubmission to the Attorney General).

Under Minnesota Statutes 10A.01, Subdivision 11 (1976), 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 (5) 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 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. "Lobbyist" does not include any: (a) public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity; (b) 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; (c) individual in the course of selling goods or services to be paid for by public funds; (d) 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; (e) 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 (f) stockholder of a family farm corporation as defined in § 500.24, Subdivision 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.

RECEIVED
APR 13 1979
ATTORNEY GENERAL
Dept. of Natural Resources

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Adoption of
Proposed Rules Containing Standards
and Criteria for Establishment of
Lake Improvement Districts By
Counties and Cities.

REPORT OF HEARING EXAMINER

The above-entitled matter came duly on for hearing before Howard L. Kaibel, Jr., Hearing Examiner on the 17th day of May, 1979, at the Minnesota Historical Building, Weyerhaeuser Room, 690 Cedar Street, Saint Paul, Minnesota, at 10:00 a.m.

All interested persons, representatives of individuals or associations, and other interested groups present at the hearing had an opportunity to present evidence, make statements and question Department of Natural Resources (hereinafter "Department") witnesses.

Augustus W. Clapp, III, Special Assistant Attorney General, appeared for and on behalf of the Department. Pete Colin, State Lake Hydrologist for the Division of Waters, presented the rules and answered questions.

No transcript of the proceedings has been ordered or prepared and this Report is based on the notes of the Hearing Examiner.

Eleven members of the public attended the hearing.

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

Thereafter, the Department shall, if it proposes to adopt the rules as originally proposed or amended, submit a copy of the Order Adopting Rules, a copy of any additional agency 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 26, 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.
(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Department's presentation.

2. On April 9, 1979, a Notice of Hearing and a copy of the proposed rules were published at 3 State Register 1874.

3. On April 13, 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 20, 1979, the Department filed the following:

(a) The Notice for Hearing and authorizing resolution.
(b) The Notice of Hearing as mailed.
(c) The Affidavit of Receipt of 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 and list.
(f) The Statement of Need and Reasonableness.
(g) All materials received following a Notice of Intent to Solicit Outside Opinion published at 3 State Register 141 (July 31, 1978).
(h) The names of Department personnel who will represent the Department at the hearing together with the names of any other witnesses solicited by the Agency 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.

5. The record remained open through May 24, 1979, for the receipt of written comments and statements.

6. The statutory authority for the promulgation of these rules by the Department is contained in Minn. Stat. Sec. 378.41, subd. 2.

7. A detailed discussion of the need for and reasonableness of each of the provisions of the proposed rule is unnecessary on this record. Such an analysis is contained in the Statement of Need and Reasonableness submitted by the Department. Additionally, the testimony of Mr. Colin went into considerable detail, documenting the need for and reasonableness of each provision and section of the rule. Therefore, except as hereinafter noted with regard to a specific provision, the proposed rule is found to be needed and reasonable and the Department has documented this by an affirmative presentation of facts. The Department also demonstrated that the rule is authorized by statute.

8. All of the comments received at the hearing and the written comments received before the close of the record were supportive of the Department's proposed rule or were inquiries into how they would work. No comments were received which attacked the need for and reasonableness of adoption of the proposed rules and only three comments were received which suggested additions or changes. Most of the provisions and sections were not opposed, and this Report is generally limited to those that were.

The Department Staff was generally deservedly commended by the public for meeting exhaustively with primarily affected organizations and citizens

prior to initiation of this rules hearing and for its willingness to consider repeated revisions to accommodate the concerns expressed by the public at several public information meetings. The Department introduced some further revisions at the hearing which were unopposed and do not appear to be substantial changes.

9. Written comments from Mr. Dyer and Mr. Woodward relating to public accesses appear to have merit, but may be substantial changes. The rules without the changes are needed and reasonable. The Department should consider incorporating the changes at some time in the future in a new rules proceeding after some experience with the operation of the rules as proposed for adoption. This hearing could also consider the suggested revisions proposed by the Metropolitan Council for local government review of district creation, which also appear to constitute substantial changes.

10. No factual documentation has been introduced for the need or reasonableness of the last section of proposed 6 MCAR Sec. 1.5063 (9) which provides that all conflicts between special purpose districts and lake improvement districts "shall be resolved at the local level." The sentence was criticized extensively by the Metropolitan Council. Department Staff indicated at the hearing that it "could consider" deletion of this sentence.

CONCLUSIONS

1. That the Department duly acquired and now has jurisdiction over the within proceeding.

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

3. That the Department has documented its statutory authority to adopt the proposed rules.

4. That, except as noted in Finding 10, the Department has demonstrated the need for and reasonableness of its proposed rules as hereinafter recommended for adoption with an affirmative presentation of facts.

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the proposed rules of the Department of Natural Resources be promulgated, approved and adopted after attention to the modification suggested by the Findings.

Dated: June 25, 1979.

HOWARD L. KAIBEL, JR.
State Hearing Examiner

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 Lake Improvement Districts

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

That on the 13th day of April, 1979, at the City of St. Paul, County of Ramsey, State of Minnesota, I he 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
13th day of April 19,79.

Karen L. Singer

KAREN L. SINGER
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES MAY 18, 1984

STATE OF MINNESOTA
COUNTY OF RAMSEY

CERTIFICATE

In the matter of the Proposed Adoption
of Rules of Waters Division
Governing Lake Improvement Districts

I hereby certify that the attached 588 labels 3 sheets constitute the complete list of persons, associations, and other interested groups who as of 1:30 o'clock P .M, this 27th day of March, 1979, have requested pursuant to M.S. 1974, 13.0412, 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 Donna Scott

AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF THE PROPOSED ADOPTION OF) AFFIDAVIT OF RECEIPT OF
RULES OF THE DEPARTMENT OF NATURAL RESOURCES) THE SECRETARY
GOVERNING Lake Improvement Districts OF STATE'S LIST

Stacey DeKalb, being duly sworn on oath deposes and says:

1) That She is an employee of the Regulatory Services Division of the State of Minnesota.

2) That on the 21st day of March, he went to the Secretary of State's Office for the State of Minnesota and requested a current list of all representatives of associations for other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M. S. 15.0412.

3) That on the 21st day of March, in response to the above request, the Secretary of State provided h__ with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Stacey DeKalb

Subscribed and sworn to before me this
19th day of April, 1979.
Notary Public,
Ramsey County, Minnesota
My commission expires May 16, 1984.
Karen L. Singer

KAREN L. SINGER
NOTARY PUBLIC -- MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES MAY 16, 1984

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF NATURAL RESOURCES

IN THE MATTER OF THE ADOPTION OF PROPOSED RULES CONTAINING STANDARDS AND CRITERIA FOR ESTABLISHMENT OF LAKE IMPROVEMENT DISTRICTS BY COUNTIES AND CITIES.

REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on May 17, 1979, before Howard L. Kaibel, Jr., a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Department of Natural Resources on June 25, 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 11th day
of September, 1979.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Adoption of Proposed Rules Containing Standards and Criteria for Establishment of Lake Improvement Districts By Counties and Cities.

FINDINGS OF THE COMMISSIONER

I have reviewed the hearing record and the Report of the Hearing Examiner. I concur with his Findings and Conclusions and adopt them as my own, except as follows:

1. Regarding Finding 9, I find the change to the public access provision which was recommended by DNR staff to be helpful. Since it is unlawful for this agency to stock fish on lakes lacking free public access, it is appropriate to encourage lake improvement districts to seek money sources other than public access service charges.

2. Regarding Finding 10, it is good to hope that local disputes can be resolved locally. But rather than require it, the rule should simply request it.

Dated: September 14, 1979

JOSEPH N. ALEXANDER, Commissioner
Department of Natural Resources

STATE OF MINNESOTA

DEPARTMENT OF NATURAL RESOURCES

In the Matter of the Adoption of Proposed Rules Containing Standards and Criteria for Establishment of Lake Improvement Districts By Counties and Cities.

ORDER OF THE COMMISSIONER

In accordance with the FINDINGS OF THE COMMISSIONER in this matter, the proposed Rules for Establishment of Lake Improvement Districts (6 MCAR §§ 1.5060-1.5065), amended as recommended by the Findings, is hereby adopted.

Dated: September 14, 1979.

JOSEPH N. ALEXANDER, Commissioner
Department of Natural Resources