

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File # 554

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 10/25/79 DUE DATE 11/14/79

Joannie 11/4.

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State 11-14-79

b. Approved _____ Date Sent Back to Agency _____

- -

1. Rules as Adopted ✓

2. Rules as Proposed ✓ Changes to Proposed Rules ✓

3. Certificate of Board's Authorizing Resolution, where applicable N/A

4. Order for Hearing ✓

5. Notice of Hearing ✓
   Sufficiency ✓

5A. Additional Notice of Hearing ✓ Sufficiency ?

6. Secretary of State's List ✓ (one copy only)

6A " for 5A ✓

7. Certificate of Acquisition of Secretary of State's List ✓

7A " ✓

8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓

8A. " ✓

9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓

9A

10. Publication in State Register ✓
    At least 30 days prior to hearing ✓

10A " ✓

11. Statement of Need and Evidence ✓ 30 days ✓

11A " , Supplemental ✓

12. Hearing Examiner's Report ✓

13. Agency's Findings of Fact ✓ incorporated into Order Adopting -

14. Certificate of Board's Resolution Adopting Rules, where applicable N/A

15. Order Adopting ✓

16. Report of Chief Hearing Examiner ✓

17. Order Approving Incorporation by Reference, where applicable N/A

18. Certificate of Compliance with Rulemaking Procedures ✓ 1 copy only

19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable ✓

20. Petition by Public, where applicable N/A

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing the Disposal of Refuse from Transport Involved in Foreign Commerce.

REPORT OF HEARING EXAMINER

The above-entitled matter came duly on for hearing before Howard L. Kaibel, Jr., Hearing Examiner, on the 15th day of May, 1979, in the Conference Room of the Department of Transportation, District Transportation Building, 1123 Mesaba Avenue, Duluth, Minnesota, at approximately 1:00 p.m. Additional hearings were conducted on May 16 in the Office of Hearing Examiners' Hearing Room, Saint Paul, Minnesota, and July 12, 1979, in the Jury Lounge of the St. Louis County Courthouse, Duluth, Minnesota.

The Department was represented by the following staff: Robert Flaskerd, Director of Plant Industry; Arthur Mason, Plant Health Specialist, Senior; Gary Kuyava, Plant Health Specialist; and Randall Young, Director of Planning. Peder Hong, Special Assistant Attorney General, provided legal advice and assistance to the Department at the hearing. Robert C. Maki, Halverson, Watters, Bye and Downs, Ltd., 700 Providence Building, Duluth, Minnesota 55802, appeared on behalf of the Seaway Port Authority of Duluth.

The hearing continued until all individuals or associations and other interested groups present at the hearing had an opportunity to present evidence, make statements and question Department witnesses. Approximately 15 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 22, 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 Agency's presentation.

2. On April 9, 1979 and June 11, 1979, a Notice of Hearing and a copy of the proposed rules were published at 3 State Register 1847 and 3 State Register 2166.

3. On April 6, 1979 and June 8, 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 10, 1979 and June 15, 1979, the Department filed the following documents:

(a) The Order 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 1585 (February 19, 1979).
(h) The names of Department personnel who will represent the Agency 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 July 19, 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. 18.48, 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 and the Supplementary Statement of Need and Reasonableness submitted by the Department. The rules provide generally for the removal and destruction of garbage and packaging from ships and aircraft to prevent the introduction into the state of insects and other pests dangerous to vegetation. They provide for more frequent removal of garbage and liberalize methods of destruction. At the request of the Duluth Port Authority and others attending the first hearing, the Department redrafted the proposed rule to resolve the concerns expressed by persons attending that hearing. They then

scheduled an additional hearing after due and proper notice. The revised rule received no criticism at or after the reconvened July hearing. It is specifically found to be needed and reasonable. The Department has documented this by an affirmative presentation of facts. The Department also demonstrated that the rule is authorized by statute and is not preempted by federal jurisdiction.

CONCLUSIONS

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

2. All relevant legal and procedural requirements of statute and rule have been complied with.

3. The Department has documented its statutory authority to adopt the proposed rule.

4. The Department has demonstrated the need for and reasonableness of its proposed rule as hereinafter recommended for adoption with an affirmative presentation of facts.

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That the proposed rule of the Department of Agriculture be approved and adopted.

Dated: August 17, 1979.

HOWARD L. KAIBEL, JR.
Hearing Examiner

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ATTORNEY GENERAL

TO : MARK W. SEETIN
Commissioner of Agriculture

DATE: November 14, 1979

Attn: PEDER HONG

FROM : JOANNE E. HINDERAKER JEH
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing the Disposal of Refuse From Transport Involved in Foreign Commerce

The rules in the above-captioned matter have not been approved by this office for the following reason:

Contrary to Minn. Stat. § 15.0411 Subd. 3 and Minn. Stat. § 15.0412 Subd. 4, the Department did not publish the complete text of the proposed rule amendments, including all of the repealed provisions of the existent rules, in the April 9, 1979 or the June 11, 1979 edition of the State Register. The file in this matter is hereby returned to you. Copies of the relevant documents have been retained by this office.

Please contact me if you have any questions in this regard.

JEH/bw
cc: Duane Harves
Marshall Whitlock

COST OF THIS COPY PAID BY MINNESOTA TAXPAYERS

ADMIN 1000 (Rev. 1/78)
SF-00006-01

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Lee Sheehy
Special Assistant
Attorney General
Room G-25, Administration Building

DATE: October 22, 1979

FROM : Peder Hong
Special Assistant
Attorney General

PHONE: 296-0415

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing the Disposal of Refuse from Transport Involved in Foreign Commerce

Enclosed for your statutory review are the rules as adopted in the above matter together with our original entire file and one copy or more of each item in the original file.

PH/cjs
Enclosures
cc: Jerry Heil

RECEIVED
OCT 25 1979
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

PROPOSED RULES

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

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

Public Hearings on Agency Rules

June 18-25, 1979

Date	Agency & Rule Matter	Time & Place
June 20	Public Service Commission Gas & Electric Utilities' Access to Customer Premises Hearing Examiner: Harry Semour Crump	9:30 a.m., Large Hearing Rm., 7th Floor, American Center Bldg., 160 E. Kellogg Blvd., St. Paul, MN
June 21	Energy Agency Rescheduled Hearing on Rules Relating to Establishing Materials, Installation & Labeling Standards for Thermal Insulation Products Hearing Examiner: Allan W. Klein	9:00 a.m., Rm. A, Capitol Square Bldg., 550 Cedar St., St. Paul, MN
June 22	Health Department Rules Relating to Food, Beverages and Lodging Establishments, License Fees, Clean Indoor Air & Swimming Pools Hearing Examiner: Natalie Gaull	9:30 a.m., Rm. 105, Dept. of Health Bldg., 717 Delaware St., Minneapolis, MN

Department of Agriculture

Proposed Rules Governing the Disposal of Refuse from Transport Involved in Foreign Commerce

Notice of Additional Hearing

Notice is hereby given that an additional public hearing in the above-entitled matter will be held in the Jury Lounge, Saint Louis County Courthouse, Duluth, Minnesota on July 12, 1979 at 2:00 p.m. and continuing until all persons have had an opportunity to be heard. This hearing is a continuation of public hearings heard in this matter on May 15, 1979 in Duluth, Minnesota and on May 16, 1979 in Saint Paul, Minnesota.

This hearing is for the purpose of receiving testimony on proposed changes to the Rules as Proposed published at *State Register*, Volume 3, Number 40, p. 1847, April 9, 1979 (3 S.R. 1847). These proposed changes, if adopted, would require the refuse on transport involved in foreign



This artist's rendition of an emigrant train leaving St. Paul Union Depot was published in *Harper's Weekly*, September 13, 1886. (Courtesy of the Minnesota Historical Society)

commerce within the territorial limits of Minnesota be maintained in tight containers with vermin proof covers. The proposed changes would also require that refuse aboard transport involved in foreign commerce be removed upon docking or landing, every three days thereafter while docked or landed in Minnesota, and immediately before departure from Minnesota.

Copies of these proposed changes to the Rules as Proposed are now available and one free copy may be obtained by writing to the Minnesota Department of Agriculture, 420 State Office Building, Saint Paul, Minnesota 55155. 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 Minn. Stat. §§ 18.44-18.61. A supplement to the "Statement of Need and Reasonableness" explaining why the department feels the proposed changes are necessary and outlining the testimony they will be introducing, will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available for public inspection.

May 29, 1979

Mark W. Seetin
Commissioner

The amendments shown below incorporate those amendments proposed at *State Register*, Volume 3, Number 40, p. 1847, April 9, 1979, as well as changes proposed subsequent to that publication of Proposed Amendments and Notice of Hearing.

Amendments as Proposed

3 MCAR § 1.0190 General.

A. Purpose and authority. It is the purpose of these rules contained herein to carry out and enforce the provisions of the Plant Pest Act, Minn. Stat. §§ 18.44 to 18.61. These rules relate to the disposal and handling of refuse and dunnage of foreign origin at Minnesota ports of entry in a prescribed manner to prevent the entry and dissemination of plant pests.

B. Definitions. For purposes of these rules, the following definitions and those in Minn. Stat. § 18.46 shall apply:

1. "Approved sewage system" means any sewage system approved by the commissioner upon his determination that the system is designed and operated in such a manner as to prevent the dissemination of plant pest.

2. "Dunnage" means structural wood products in any form used to secure cargo in any manner.

3. "Refuse" means all material derived in whole or in part from the fruits, vegetables, meats, or other plant or animal (including poultry) material which is carried aboard any vehicle involved in foreign commerce.

4. "Transport involved in foreign commerce" means any ship or aircraft arriving in Minnesota from any point outside the borders of the United States and Canada.

5. "Vehicle" means any conveyance used to transport refuse and/or dunnage from any transport involved in foreign commerce in Minnesota.

6. "Vermin" means any animal life, except plant pests as defined in Minn. Stat. § 18.46, subd. 13.

3 MCAR § 1.0191 Agri 190 Registration.

A. ~~(a)~~ Every person who engages in the business of removing or disposing of refuse and/or dunnage from ~~vessels~~ transport involved in foreign commerce shall register annually with the commissioner ~~of agriculture~~, and shall furnish such information as may be required to demonstrate compliance with the certification requirements set forth in these rules.

B. ~~(b) In conjunction with the registration a~~An ~~annual~~ inspection ~~will~~ shall be made of ~~the incinerator, incinerator site and refuse collection~~ equipment utilized in the removal, transportation and disposal of refuse and/or dunnage by ~~a member of the Minnesota Department of Agriculture~~ the commissioner before certificate is granted. ~~; and.~~ ~~i~~If all the requirements are satisfied a certificate of approval ~~will~~ shall be issued by the commissioner. This certificate must be ~~incinerator site and~~ retained by the certificate holder.

C. ~~I~~if at any time ~~during the year~~ the requirements of these rules ~~regulations~~ are not met, after notice and hearing pursuant to Minn. Stat. ch. 15, the certificate ~~may~~ shall be revoked. The commissioner may, when it is deemed that the continued operation of certificate holder poses an imminent threat of plant pest dissemination, suspend the certificate until the commissioner has issued an order on the certificate revocation.

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."

~~(c) This section shall not apply to municipalities or any subdivisions the state.~~

3 MCAR § 1.0192 Operating standards. ~~Agr 191 Disposal facilities and procedures.~~

A. Refuse handling.

~~(a)~~ ~~Refuse shall be transported directly into an incinerator for immediate incineration. In no event shall refuse be stored in the incinerator for a period longer than 24 hours.~~

1. All transports involved in foreign commerce shall immediately upon arrival have all refuse removed and disposed of in a manner pursuant to these rules. No refuse shall accumulate for more than three (3) days on board such transports involved in foreign commerce unless authorized in writing to do so by the commissioner because the commissioner determines that no method for proper disposal is available pursuant to 3 MCAR § 1.192 D.

All refuse shall be removed from transports involved in foreign commerce in a manner pursuant to these rules immediately before departure from the state.

2. Until removed, refuse shall be retained in tight containers with vermin proof covers.

3. Refuse shall be delivered at least daily to the disposal facility. In no case shall refuse be held in a vehicle for longer than 12 hours or overnight.

4. Refuse removed from transports involved in foreign commerce shall not be removed from the confines of the State's borders until the refuse has been reduced to ash or sterilized in accordance with these rules.

5. Refuse shall be handled at all times in a manner which prevents spillage. Any refuse spilled shall be picked up and placed within the vehicle and/or disposal facility immediately. The site of the spillage shall be cleaned so as to assure that the site is pest free.

6. ~~(a)~~ Containers used for unloading and transporting refuse from transport involved in foreign commerce shall be leakproof and shall have adequate vermin proof covers.

7. ~~(b)~~ Vehicles used for transporting refuse shall be leakproof and ~~the bed or body~~ the refuse shall be ~~enclosed~~ completely covered with a tarpaulin or other covering tightly secured when it is used to prevent spillage and prevent vermin entry. Covering is not required when the refuse is contained in tight containers with vermin proof covers or in closed plastic bags so as to contain the materials in the vehicle until ultimate disposal.

B. Approved refuse disposal.

~~(c) Refuse disposal shall be by means of incineration only. Incinerators shall be equipped with a power type burner of at least 150,000 BTU capacity and shall be so constructed and operated as to completely reduce refuse to ash.~~

1. The following methods shall be used for refuse disposal:

a. Incineration, providing the incinerator is capable of reducing its contents completely to ash in a 24 hour period. No refuse residue shall be removed from an incinerator for disposal unless it has been reduced to ash or slag.

b. Sterilization by live steam, cooking, or boiling at a temperature of no less than 212 degrees F (100 degrees C) for 30 minutes.

c. Grinding into an approved sewage system.

d. Any other manner approved by the commissioner that would eliminate all pest risks.

C. Dunnage disposal.

1. No pest risk. If dunnage involved in foreign commerce arriving within the borders of Minnesota is inspected and found apparently free from plant pests, it shall be released by the commissioner and need not be disposed of pursuant to these rules.

2. Pest risk. If evidence of plant pests is found, all of the dunnage material involved shall be treated in a manner prescribed.

a. Complete incineration or open burning in compliance with Minnesota Air Pollution Control rules.

b. Fumigation by chemicals and treatment schedules deemed necessary by the commissioner to eliminate the pest risk.

c. Spraying or dusting with proper chemical concentrations deemed necessary by the commissioner to eliminate the pest risk and in conformance with 3 MCAR § 1.0338.

d. Steam sterilization in a manner approved by the commissioner to eliminate the pest risk.

D. If the commissioner determines that the preceding methods of disposal are not available, the refuse and/or

dunnage shall be required to remain on the transport involved in foreign commerce until an alternative means of disposal has been approved by the commissioner as complying with the purposes of these rules.

E. Any financial responsibility to accomplish any treatment of dunnage and/or refuse shall belong to those responsible for delivering the dunnage and/or refuse to Minnesota.

~~Agr 192 Definitions~~

~~(a) "Refuse" means any waste material containing any plant or animal material which is carried aboard any vessel.~~

~~(b) "Vessel" means any water carrier used for transporting cargo or passengers in commerce on public water comprising all that part of Lake Superior and the waters extending therefrom up to the point where T. H. #23 crosses the St. Louis River which are situated within the territorial boundary of the State of Minnesota.~~

~~(c) "Dunnage" includes lumber in any form and any other material used aboard a vessel to secure cargo in any manner.~~

Department of Natural Resources

Proposed Rules for Designation, Classification, and Management of the Cannon River from Faribault to the Mississippi River, as a Component of the State's Wild and Scenic River System

Notice of Hearing

Notice is hereby given that public hearings will be held on the above-captioned matter at:

8 p.m. July 17, 1979 at the Red Wing City Library (Footroom), 225 Broadway, Red Wing, Minnesota.

8 p.m. July 18, 1979 at the Dakota County Government Center Board Room 1560 Highway 55, Hastings, Minnesota.

8 p.m. July 19, 1979 at the Faribault Junior High School Auditorium, 315 Northwest Fourth Avenue, Faribault, Minnesota.

The hearing shall continue until all representatives of associations and other interested or affected persons or groups have had an opportunity to be heard concerning the above-mentioned matter by submitting oral or written data, statements, or arguments.

The hearing examiner will be Allan Klein from the Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104 (612-296-8100). The hearing is a rule-making proceeding, conducted according to Minn. Stat. §§ 15.0411-15.0417, 15.051, and 15.052, and the rules for rule-making, which are 9 MCAR §§ 2.101-2.199.

Twenty-five days prior to the hearing a Statement of Need and Reasonableness will be available for review at the agency 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 agency 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.

After the public hearing, written material may be submitted and recorded in the hearing record for five working days, or for a longer period not to exceed 20 calendar days if so ordered by the hearing examiner.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available after which date the agency may not take any final action on the rules for a period of 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 Agency. 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 agency (in the case of the agency's submission or resubmission to the Attorney General).

The proposed management plan relates to the following matters:

Reasons for including the Cannon River in the Minnesota Wild, Scenic and Recreational Rivers System.

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

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

Department of Agriculture

Proposed Rules Governing the Disposal of Refuse from Transport Involved in Foreign Commerce

Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Conference Room, District Transportation Building, 1123 Mesaba Avenue, Duluth, Minnesota on May 15, 1979 at 1:00 p.m. and in the Hearing Room, Office of Hearing Examiners, 1745 University Avenue, Saint Paul, Minnesota on May 16, 1979 at 1:00 p.m., and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Howard Kaibel, Jr., Office of Hearing Examiners, 1745 University Avenue, Room 300, Saint Paul, Minnesota 55104, phone (612) 296-6910 either before the hearing or after the hearing until the record is closed. The record will remain open for five working days after the public hearings end or for a longer period not to exceed 20 days if ordered by the Hearing Examiner.

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

The proposed rules, if adopted, would allow for additional methods of acceptable disposal of refuse and dunnage. Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Department of Agriculture, 420 State Office Building, Saint Paul, Minnesota 55155. 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 Minn. Stat. §§ 18.44-18.61. A Statement of Need explaining why the department feels the proposed rules are necessary and a Statement of Evidence outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of 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 agency. 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 agency (in the case of the agency's submission or resubmission to the Attorney General).

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 communication or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250.00 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250.00 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be di-

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rected to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

March 21, 1979

Rollin M. Dennistoun
Deputy Commissioner of Agriculture

for Mark W. Seetin
Commissioner of Agriculture

Rules as Proposed

Chapter 10: Disposal of Refuse from Transport Involved in Foreign Commerce Disposal ~~of Refuse from Vessels at Minnesota Ports on Lake Superior Waters~~

3 MCAR § 1.190 General.

A. Purpose and authority. It is the purpose of these rules contained herein to carry out and enforce the provisions of the Plant Pest Act, Minn. Stat §§ 18.44 to 18.61. These rules relate to the disposal of refuse and dunnage of foreign origin at Minnesota ports of entry in a prescribed manner to prevent the entry and dissemination of plant pests.

B. Definitions. For purposes of these rules, the following definitions and those in Minn. Stat. § 18.46 shall apply:

1. "Approved sewage system" means any sewage system approved by the commissioner upon his determination that the system is designed and operated in such a manner as to prevent the dissemination of plant pest.

2. "Dunnage" means structural wood products in any form used to secure cargo in any manner.

3. "Refuse" means all waste material derived in whole or in part from the fruits, vegetables, meats, or other plant or animal (including poultry) material which is carried aboard any vehicle involved in foreign commerce.

4. "Transport involved in foreign commerce" means any ship or aircraft transporting or any container carrying cargo and/or passengers into Minnesota from any point of origin outside the borders of the United States and Canada.

5. "Vehicle" means any conveyance used to transport refuse and/or dunnage from any vehicle involved in foreign commerce in Minnesota.

6. "Vermin" means any animal life, except plant pests as defined in Minn. Stat. § 18.46, subd. 13.

3 MCAR § 1.191 ~~Agri 190~~ Registration.

A. ~~(a)~~ Every person who engages in the business of removing or disposing of refuse and/or dunnage from ~~vessels~~ transport involved in foreign commerce shall register annually with the commissioner ~~of agriculture~~, and shall furnish such information as may be required to demonstrate compliance with the certification requirements set forth in these rules.

B. ~~(b) In conjunction with the registration an annual~~ An inspection ~~will~~ shall be made of ~~the incinerator, incinerator site and refuse collection~~ equipment utilized in the removal, transportation and disposal of refuse and/or dunnage by ~~a member of the Minnesota Department of Agriculture~~ the commissioner before certificate is granted. ~~, and,~~ If all the requirements are satisfied a certificate of approval ~~will~~ shall be issued by the commissioner. This certificate must be ~~incinerator site and~~ retained by the certificate holder.

C. If at any time ~~during the year~~ the requirements of these rules ~~regulations~~ are not met, after notice and hearing pursuant to Minn. Stat. ch. 15, the certificate ~~may~~ shall be revoked. The commissioner may, when it is deemed that the continued operation of certificate holder poses an imminent threat of plant pest dissemination, suspend the certificate until the commissioner has issued an order on the certificate revocation.

~~(c) This section shall not apply to municipalities or any subdivisions of the state.~~

~~**Agr 191 Disposal facilities and procedures.**~~

3 MCAR § 1.192 Operating Standards.

A. Refuse handling.

1. Refuse shall be delivered at least daily to the disposal facility. In no case shall refuse be held in a vehicle for longer than 12 hours or overnight.

2. Refuse collected in or transported into the State of Minnesota shall not be removed from the confines of the State's borders until the refuse has been reduced to ash or sterilized in accordance with these rules.

3. Refuse shall be handled at all times in a manner which prevents spillage. Any refuse spilled shall be picked up and placed within the vehicle and/or disposal facility immediately. The site of the spillage shall be cleaned so as to assure that the site is pest free.

4. ~~(a)~~ Containers used for unloading and transporting

refuse from transport involved in foreign commerce shall be leakproof and shall have adequate vermin proof covers.

5. ~~(b)~~ Vehicles used for transporting refuse shall be leakproof and ~~the bed or body~~ the refuse shall be ~~enclosed or~~ completely covered with a tarpaulin or other covering tightly secured when it is used to prevent spillage and prevent vermin entry. Covering is not required when the refuse is contained in tight containers with vermin proof covers or in closed plastic bags so as to contain the materials in the vehicle until ultimate disposal.

B. Approved refuse disposal.

~~(c) Refuse disposal shall be by means of incineration only. Incinerators shall be equipped with a power type burner of at least 150,000 BTU capacity and shall be so constructed and operated as to completely reduce refuse to ash.~~

The following method shall be used for refuse disposal: Incineration, providing the incinerator is capable of reducing its contents completely to ash in a 24 hour period. No refuse residue shall be removed from an incinerator for disposal unless it has been reduced to ash or slag.

c. Dunnage disposal.

1. No pest risk. If dunnage involved in foreign commerce arriving within the boards of Minnesota is inspected and found apparently free from plant pests, it shall be released by the commissioner and need not be disposed of pursuant to these rules.

2. Pest risk. If evidence of plant pests is found, all of the dunnage material involved shall be treated in a manner prescribed.

a. Complete incineration or open burning in compliance with Minnesota Air Pollution Control rules.

b. Fumigation by chemicals and treatment schedules deemed necessary by the commissioner to eliminate the pest risk.

c. Spraying or dusting with proper chemical concentrations deemed necessary by the commissioner to eliminate the pest risk and in conformance with 3 MCAR § 1.0338.

d. Steam Sterilization in a manner approved by the commissioner to eliminate the pest risk.

e. Disposal by any other manner approved by the commissioner to eliminate the plant pest risk.

D. If the commissioner determines that the preceding methods of disposal are not available, the refuse and/or dunnage shall be required to remain on the transport involved in foreign commerce until an alternative means of disposal has been approved by the commissioner as complying with the purpose of these rules.

E. Any financial responsibility to accomplish any treatment of dunnage and/or refuse shall belong to those responsible for delivering the dunnage and/or refuse to Minnesota.

~~**Agr 192 Definitions.**~~

~~(a) "Refuse" means any waste material containing any plant or animal material which is carried aboard any vessel.~~

~~(b) "Vessel" means any water carrier used for transporting cargo or passengers in commerce on public waters comprising all that part of Lake Superior and the waters extending therefrom up to the point where T. H. #23 crosses the St. Louis River which are situated within the territorial boundry of the State of Minnesota.~~

~~(c) "Dunnage" includes lumber in any form and any other material used aboard a vessel to secure cargo in any manner.~~

Department of Commerce Insurance Division

Proposed Rules Governing Minimum Anticipated Loss Ratios for Accident and Health Insurance Policies

Order for Hearing

It is hereby ordered that a public hearing on the above-captioned rules be held in the hearing room at 500 Metro Square Building, Seventh and Robert Streets, Saint Paul, Minnesota, on May 16, 1979, commencing at 9:30 a.m.,

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."

Ex 6

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

RECEIVED
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OFFICE OF HEARING EXAMINERS

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF AGRICULTURE) GOVERNING THE DISPOSAL OF REFUSE FROM TRANSPORT INVOLVED IN FOREIGN COMMERCE

SUPPLEMENT TO STATEMENT OF NEED AND REASONABLENESS

3 MCAR 1.0190 General.

A. Purpose and Authority. It is the purpose of these rules contained herein to carry out and enforce the provisions of the Plant Pest Act, Minn. Stat. secs. 18.44 to 18.61. These rules relate to the disposal and handling of refuse and dunnage of foreign origin at Minnesota ports of entry in a prescribed manner to prevent the entry and dissemination of plant pests.

...It is necessary and reasonable to add the words "and handling" to clarify the intent of the section since the rules relate to both disposal and handling of refuse and dunnage.

B. Definitions. For purposes of these rules, the following definitions and those in Minn. Stat. sec. 18.46 shall apply:

1. "Approved sewage system" means any sewage system approved by the commissioner upon his determination that the system is designed and operated in such a manner as to prevent the dissemination of plant pest.

2. "Dunnage" means structural wood products in any form used to secure cargo in any manner.

3. "Refuse" means all material derived in whole or in part from the fruits, vegetables, meats, or other plant or animal (including poultry) material which is carried aboard any vehicle involved in foreign commerce.

4. "Transport involved in foreign commerce" means any ship or aircraft arriving in Minnesota from any point outside the borders of the United States and Canada.

Additions to existing language found in Rules Agr 190 through 192 are indicated by underline and deletions by ~~strikeout~~.

...It is necessary to change the wording to "arriving in Minnesota" to clarify what ship or aircraft the rules are concerned with. The refuse and dunnage as defined in the rules are of concern regardless of the cargo.

5. "Vehicle" means any conveyance used to transport refuse and/or dunnage from any transport involved in foreign commerce in Minnesota.

...It is necessary to change the word vehicle to transport to identify the item as defined in 3 MCAR 1.0190 General, B.4. This was an editing error in the original proposed rules.

6. "Vermin" means any animal life, except plant pests as defined in Minn. Stat. sec. 18.46, subd. 13.

3 MCAR 1.0191 ~~Agr-190~~ Registration.

A. ~~(a)~~ Every person who engages in the business of removing or disposing of refuse and/or dunnage from ~~vessels~~ transport involved in foreign commerce shall register annually with the commissioner ~~of-agriculture~~, and shall furnish such information as may be required to demonstrate compliance with the certification requirements set forth in these rules.

B. ~~(b) In-conjunction-with-the-registration-a~~ An annual inspection ~~will~~ shall be made of ~~the-incinerator,-incinerator-site-and-refuse collection~~ equipment utilized in the removal, transportation and disposal of refuse and/or dunnage by ~~a-member-of-the-Minnesota Department-of-Agriculture~~ the commissioner before certificate is granted. ~~,-and,-i~~If all the requirements are satisfied a certificate of approval ~~will~~ shall be issued by the commissioner. This certificate must be ~~incinerator-site-and~~ retained by the certificate holder.

C. ~~I~~if at any time ~~during-the-year~~ the requirements of these rules ~~regulations~~ are not met, after notice and hearing pursuant to Minn. Stat. ch. 15, the certificate ~~may~~ shall be revoked. The commissioner may, when it is deemed that the continued operation of certificate holder poses an imminent threat of plant pest dissemination, suspend the certificate until the commissioner has issued an order on the certificate revocation.

~~(c)--This-section-shall-not-apply-to-municipalities-or-any subdivisions-the-state.~~

~~Agr-191-Disposal-facilities-and-procedures.~~

3 MCAR 1.0192 Operating Standards.

Refuse Handling:

~~(d)--Refuse-shall-be-transported-directly-into-an-incinerator for-immediate-incineration.--In-no-event-shall-refuse-be-stored in-the-incinerator-for-a-period-longer-than-24-hours.~~

1. All transports involved in foreign commerce shall immediately upon arrival have all refuse removed and disposed of in a manner pursuant to these rules. No refuse shall accumulate for more than three (3) days on board such transports involved in foreign commerce unless authorized in writing to do so by the commissioner because the commissioner determines that no method for proper disposal is available pursuant to 3 MCAR 1.0192 D.

...It is necessary and reasonable to add this section to the rules to prevent pest risk by the prompt removal of refuse that accumulated on the transport involved in foreign commerce while en route to Minnesota. Since refuse accumulates in port and can provide a pest risk by repeated opening and closing of containers it is necessary to remove this refuse within the reasonable period of 3 day intervals. It is also necessary and reasonable to provide for an exception to the rule if the situation should arise when there is no method for proper disposal available.

All refuse shall be removed from transports involved in foreign commerce in a manner pursuant to these rules immediately before departure from the state.

...It is necessary and reasonable to add this wording to prevent accumulated refuse from being transported to areas near our state where a pest risk would still be present to Minnesota.

2. Until removed, refuse shall be retained in tight containers with vermin proof covers.

...It is necessary and reasonable to require refuse to be secure on a transport involved in foreign commerce while in Minnesota to prevent a pest risk.

3. Refuse shall be delivered at least daily to the disposal facility. In no case shall refuse be held in a vehicle for longer than 12 hours or overnight.

...Section 3 MCAR 1.0192 A. 1-3 is consistant with the city of Superior, Wisconsin regulations.

4. Refuse removed from transports involved in foreign commerce shall not be removed from the confines of the State's borders until the refuse has been reduced to ash or sterilized in accordance with these rules.

~~(e)--The-immediate-incinerator-premises-where-refuse-is han[redacted]d-shall-be-paved-with-an-impervi[redacted]-material.--Once-a-week the-immediate-area-around-the-incinerator-will-be-given-a-chemical treatment-using-materials-recommended-by-a-member-of-the-Minnesota department-of-agriculture-and-under-his-supervision.--Excess-water shall-not-be-permitted-to-drain-off-the-premises.--An-adequate-catch-basin-around-the-incinerator-shall-be-provided.~~

5. ~~(g)~~ Refuse shall be handled at all times in a manner which will prevent spillage. Any refuse spilled shall be picked up and placed within the vehicle and/or disposal facility immediately. The sit of the spillage shall be cleaned so as to assure that the site is pest free.

6. ~~(a)~~ Containers used for unloading and transporting refuse from transport involved in foreign commerce shall be leakproof and shall have adequate vermin proof covers.

7. ~~(b)~~ Vehicles used for transporting refuse shall be leak-proof and ~~the-bed-or-body~~ the refuse shall be ~~enclosed~~ completely or covered with a tarpaulin or other covering tightly secured when ~~in-use~~ it is used to prevent spillage and prevent vermin entry. Covering is not required when the refuse is contained in tight containers with vermin proof covers or in closed plastic bags so as to contain the materials in the vehicle until ultimate disposal.

B. Approved Refuse Disposal:

~~(c) Refuse-disposal-shall-be-by-means-of-incineration only.--Incinerators-shall-be-equipped-with-a-power-type-burner-of-at least-150,000-BTU-capacity-and-shall-be-so-constructed-and-operated as to-completely-reduce-refuse-to-ash.~~

1. The following methods shall be used for refuse disposal:

a. Incineration, providing the incinerator is capable of reducing its contents completely to ash in a 24 hour period. ~~(h)~~ No refuse residue shall be removed from an incinerator for disposal unless it has been reduced to ash or slag.

b. Sterilization by live steam, cooking, or boiling at a temperature of no less than 212 degrees F (100 degrees C) for 30 minutes.

c. Grinding into an approved sewage system.

d. Any other manner approved by the commissioner that would eliminate all pest risks.

...Section 3 MCAR 1.0192 B.1. b-d. was inadvertently omitted in the original copy of the rules sent with the first notice of hearing. It did appear in the State Register and was in the rules as proposed at the previous hearings.

C. Dunnage Disposal:

~~(i)--All dunnage removed from a vessel must be incinerated if in the opinion--of a member of the Minnesota department of agriculture a plant pest risk exists.~~

1. No pest risk. If dunnage involved in foreign commerce arriving within the borders of Minnesota is inspected and found apparently free from plant pests, it shall be released by the commissioner and need not be disposed of pursuant to these rules.

2. Pest risk. If evidence of plant pests is found, all of the dunnage material involved shall be treated in a manner prescribed.

a. Complete incineration or open burning in compliance with Minnesota Air Pollution Control rules.

b. Fumigation by chemicals and treatment schedules deemed necessary by the commissioner to eliminate the pest risk.

c. Spraying or dusting with proper chemical concentrations deemed necessary by the commissioner to eliminate the pest risk and in conformance with 3 MCAR 1.0338.

d. Steam sterilization in a manner approved by the commissioner to eliminate the pest risk.

D. If the commissioner determines that the preceding methods of disposal are not available, the refuse and/or dunnage shall be required to remain on the transport involved in foreign commerce until an alternative means of disposal has been approved by the commissioner as complying with the purpose of these rules.

E. Any financial responsibility to accomplish any treatment of dunnage and/or refuse shall belong to those responsible for delivering the dunnage and/or refuse to Minnesota.

~~Agr 192 Definitions~~

~~(a)--"Refuse"-means-any-waste-material-containing-any plant-or-animal-material-which-is-carried-aboard-any-vessel.~~

~~(b)--"Vessel"-means-any-water-carrier-used-for-trans-porting-cargo-or-passengers-in-commerce-on-public-water-comprising-all that-part-of-Lake-Superior-and-the-waters-extending-therefrom-up-to the-point-where-T.-H.-#23-crosses-the-St.-Louis-River-which-are situated-within-the-territorial-boundry-of-the-State-of-Minnesota.~~

~~(c)--"Dunnage"-includes-lumber-in-any-form-and-any-other material-used-aboard-a-vessel-to-secure-cargo-in-any-manner.~~

MINNESOTA DEPARTMENT OF AGRICULTURE

DATE: 6/15/79

Mark W. Seetin

Mark Seetin
Commissioner

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING THE DISPOSAL OF REFUSE FROM TRANSPORT INVOLVED IN FOREIGN COMMERCE	STATEMENT OF NEED AND REASONABLENESS

The above captioned rules are amendments and changes to existing rules of the Department of Agriculture, Chapter 10: AGR 190-212.

The authority to adopt these rules arises from the Minn. Stat. § 18.44 to 18.61 relating to the disposal of refuse and dunnage of foreign origin at Minnesota ports of entry. This refuse and dunnage must be disposed of in a prescribed manner to prevent the entry and dissemination of plant pests.

The Department will be represented by the following staff: Robert Flaskerd, Director of Plant Industry; Arthur Mason, Plant Health Specialist, Sr.; Gary Kuyava, Plant Health Specialist; and Randall Young, Director of Planning. Legal Counsel will be provided by Peder Hong, Special Attorney General.

The Department will call no outside witnesses to testify.

The rules are presented in sections and portions of sections followed by explanations of the reasons and justifications of proposed changes.

Rules as Proposed

DISPOSAL OF REFUSE FROM

~~VESSELS-AT-MINNESOTA-PORTS-ON-LAKE-SUPERIOR-WATERS~~

TRANSPORT INVOLVED IN FOREIGN COMMERCE

3 MCAR 1.190 General.

A. Purpose and Authority. It is the purpose of these rules contained herein to carry out and enforce the provisions of the Plant Pest Act, Minn. Stat. secs. 18.44 to 18.61. These rules relate to the disposal of refuse and dunnage of foreign origin at Minnesota ports of entry in a prescribed manner to prevent the entry and dissemination of plant pests.

...This section of 3 MCAR 1.190 sets forth the authority under the provisions of the Minnesota Plant Pest Act through which these rules may be promulgated. The reason for these rules are stated for reference by authorities and readers of the rules.

B. Definitions. For purposes of these rules, the following definitions and those in Minn. Stat. sec. 18.46 shall apply:

1. "Approved sewage system" means any sewage system approved by the commissioner upon his determination that the system is designed and operated in such a manner as to prevent the dissemination of plant pests.

...This proposed definition is necessary to allow for the disposal of regulated refuse in the absence of appropriate incineration facilities to prevent the dissemination of any plant pest. Although any sewage system may be environmentally acceptable, it is necessary and reasonable that the commissioner determine that the sewage system used will effectively destroy any plant pest.

2. "Dunnage" means structural wood products in any form used to secure cargo in any manner.

3. "Refuse" means all waste material derived in whole or in part from the fruits, vegetables, meats, or other plant or animal (including poultry) material which is carried aboard any vehicle involved in foreign commerce.

4. "Transport involved in foreign commerce" means any ship or aircraft transporting or any container carrying cargo and/or passengers into Minnesota from any point of origin outside the borders of the United States and Canada.

...The proposed definition is necessary and reasonable to expand the rules to include aircraft as well as ships involved in foreign commerce. Refuse and/or dunnage of foreign origin arriving by aircraft can provide the entry and dissemination of a plant pest. The number of aircraft arriving from foreign countries has increased substantially and presents a threat of pest introduction. Canada is specifically excluded from the rules since refuse and dunnage from that country does not present a plant pest risk to Minnesota.

5. "Vehicle" means any conveyance used to transport refuse and/or dunnage from any vehicle involved in foreign commerce in Minnesota.

6. "Vermin" means any animal life, except plant pests as defined in Minn. Stat. sec. 18.46, subd. 13.

...This section presents the definitions of terms as used in these rules. The definitions and references to them are necessary to clarify the understanding and operational portions of the rules.

3 MCAR 1.191 Agr-~~190~~ Registration.

A. ~~(a)~~ Every person who engages in the business of removing or disposing of refuse and/or dunnage from ~~vessels~~ transport involved in foreign commerce shall register annually with the commissioner ~~of agriculture~~, and shall furnish such information as may be required to demonstrate compliance with the certification requirements set forth in these rules.

B. ~~(b) In conjunction with the registration~~ aAn annual inspection ~~will~~ shall be made of ~~the incinerator, incinerator site and refuse collection~~ equipment utilized in the removal, transportation and disposal of refuse and/or dunnage by ~~a member of the Minnesota Department of Agriculture~~ the commissioner before certification is granted. ~~, and,~~ iIf all the requirements are satisfied, a certificate of approval ~~will~~ shall be issued by the commissioner. This certificate must be ~~posted at incinerator site and~~ retained by the certificate holder.

...The wording changes clarify the intent of the rules. Each year an inspection shall be made of stationary and mobile equipment to ascertain that the equipment can handle pest risk material in such a manner as to prevent the escape of a plant pest. It is necessary and reasonable to propose this broadening of the rules to allow for the disposal of refuse and/or dunnage by methods other than incineration.

There is no need for a certificate to be posted at the incinerator site because so few are issued. Certificate renewals can be monitored without posting. Retention of the certificate is for the convenience of any other agency.

C. If at any time ~~during the year~~ the requirements of these rules ~~regulations~~ are not met, after notice and hearing pursuant to Minn. Stat. ch. 15, the certificate ~~may~~ shall be revoked. The commissioner may, when it is deemed that the continued operation of certificate holder poses an imminent threat of plant pest dissemination, suspend the certificate until the commissioner has issued an order on the certificate revocation.

~~(c) This section shall not apply to municipalities or any subdivisions of the state.~~

...The term "during the year" is removed as being redundant since registration is done annually as stated in 3 MCAR 1.191 A. Notice and hearing provisions are added in compliance with Minn. Stat. ch. 15 which is necessary and reasonable to insure due process.

The proposed rules provide the commissioner with immediate procedures of action to be taken in the event of a violation of the rules by a certificate holder. It is necessary to have a reasonable and prompt course of action to avoid delays that would allow for the escape of a plant pest.

The wording referring to municipalities or any subdivisions of the state is no longer considered reasonable or necessary because the rules as proposed applies to them.

~~Agr 191 Disposal Facilities and Procedures~~

3 MCAR 1.192 Operating Standards.

A. Refuse Handling:

~~(d) Refuse shall be transported directly into an incinerator for immediate incineration. In no event shall refuse be stored in the incinerator for a period longer than 24 hours.~~

1. Refuse shall be delivered at least daily to the disposal facility. In no case shall refuse be held in a vehicle for longer than 12 hours or overnight.

...A repeal of the wording in this section is proposed to add wording that would clarify the intent of the rules. The original wording suggests that the storage of refuse in an incinerator for up to 24 hours is acceptable but storage over a longer period of time is not.

The proposed wording addition is necessary and reasonable to emphasize the importance of prompt disposal. The longer refuse remains untreated the greater the plant pest risk. The additional wording is necessary and reasonable to provide for the safeguards of prompt disposal to prevent a pest risk.

2. Refuse collected in or transported into the State of Minnesota shall not be removed from the confines of the State's borders until the refuse has been reduced to ash or sterilized in accordance with these rules.

...This addition to the rules is necessary and reasonable to prevent the movement of a pest risk to an adjacent state or country out of the jurisdiction of the Minnesota Plant Pest Laws where the escape of a plant pest would present a threat to Minnesota.

~~(e)--The-immediate-incinerator-premises-where-refuse-is-handled-shall be-paved-with-an-impervious-material.--Once-a-week-the-immediate-area-around the-incinerator-will-be-given-a-chemical-treatment-using-materials-recommended by-a-member-of-the-Minnesota-department-of-agriculture-and-under-his-supervision. Excess-water-shall-not-be-permitted-to-drain-off-the-premises.--An-adequate catch-basin-around-the-incinerator-shall-be-provided.~~

...The repeal of this section is proposed since the conditions and chemical treatment as stated are unnecessary in reducing or eliminating a plant pest risk. Chemical treatment as worded would have no useful purpose in preventing a pest introduction.

3. ~~(g)~~ Refuse shall be handled at all times in a manner which will prevent spillage. Any refuse spilled shall be picked up and placed within the vehicle and/or disposal facility immediately. The site of the spillage shall be cleaned so as to assure that the site is pest free.

~~(f)--Vehicles-and-containers-used-to-transport-refuse-shall-be-cleaned after-each-day's-use-and-shall-be-subjected-to-live-steam-at-least-weekly.~~

...This section of 3 MCAR 1.192 is intended to provide specific direction to those persons who will be handling refuse to prevent the accidental introduction of a plant pest. The deletion of d, e, and f is proposed to be restated for clarification.

1. The prompt disposal of refuse is necessary to reduce the risk of a plant pest escape.

2. To prevent the moving of refuse to another area where any plant pest could still provide a threat.

3. To prevent the escape of a plant pest from accidental spillage.

4. ~~(a)~~ Containers used for unloading and transporting refuse from transport involved in foreign commerce shall be leakproof and shall have adequate vermin proof covers.

...The wording change is necessary to identify which refuse containers are regulated. It is also necessary and reasonable to require these containers to be vermin proof to prevent the dissemination of a plant pest by vermin.

5. ~~(b)~~ Vehicles used for transporting refuse shall be leakproof and ~~the bed or body~~ the refuse shall be ~~enclosed~~ completely ~~or~~ covered with a tarpaulin or other covering tightly secured when ~~in use.~~ it is used to prevent spillage and prevent vermin entry. Covering is not required when the refuse is contained in tight containers with vermin proof covers or in closed plastic bags so as to contain the materials in the vehicle until ultimate disposal.

...The proposed deletion of the wording "bed or body" is necessary and reasonable since it is unimportant to the rules, the refuse is the plant pest risk and must be covered.

The addition to the rules is reasonable in providing flexibility yet assuring that refuse is secure. If the refuse has been secured in tight containers then any additional covering is unnecessary.

B. Approved Refuse Disposal:

~~(c)--Refuse disposal shall be by means of incineration only.--Incinerators shall be equipped with a power type burner of at least 150,000 BTU capacity and shall be so constructed and operated as to completely reduce refuse to ash.~~

...This proposed deletion is reasonable since the intent of the rules focuses on the disposal of refuse in a manner that will prevent a pest risk and not any one particular method of disposal. It may be possible to use an incinerator with less than 150,000 BTU or some other disposal method that will result in a saving of energy.

1. The following methods shall be used for refuse disposal:

a. Incineration, providing the incinerator is capable of reducing its contents completely to ash in a 24 hour period. ~~(h)~~ No refuse residue shall be removed from an incinerator for disposal unless it has been reduced to ash or slag.

...This section is intended to provide for any kind of incineration provided that the refuse can be reduced to ash in a 24 hour period. This is necessary to assure the prompt elimination of any plant pest to reduce the risk in a reasonable length of time.

b. Sterilization by live steam, cooking, or boiling at a temperature of no less than 212 degrees F (100 degrees C) for 30 minutes.

c. Grinding into an approved sewage system.

d. Any other manner approved by the commissioner that would eliminate all pest risks.

...b through d provide for methods of disposal other than incineration that would prevent any pest risk and specifies these methods. This is necessary to allow for a reasonable amount of flexibility in the handling of refuse while preserving the intent of the rules.

C. Dunnage Disposal:

~~(i)--All dunnage removed from a vessel must be incinerated if in the opinion of a member of the Minnesota department of agriculture a plant pest risk exists.~~

...It is necessary to propose the deletion of the wording in this section to provide wording that will identify what dunnage must be regulated and provide other means of disposal of this dunnage.

1. No pest risk. If dunnage involved in foreign commerce arriving within the border of Minnesota is inspected and found apparently free from plant pests, it shall be released by the commissioner and need not be disposed of pursuant to these rules.

...The addition of the wording in this section is necessary and reasonable to identify what dunnage is not to be regulated. If there is not a pest risk, it would be reasonable to require disposal pursuant to these rules.

2. Pest risk. If evidence of plant pests is found, all of the dunnage material involved shall be treated in a manner prescribed.

a. Complete incineration or open burning in compliance with Minnesota Air Pollution Control rules.

b. Fumigation by chemicals and treatment schedules deemed necessary by the commissioner to eliminate the pest risk.

c. Spraying or dusting with proper chemical concentrations deemed necessary by the commissioner to eliminate the pest risk and in conformance with 3 MCAR 1.0338.

d. Steam sterilization in a manner approved by the commissioner to eliminate the pest risk.

e. Disposal by any other manner approved by the commissioner to eliminate the plant pest risk.

...It is necessary and reasonable to add Section 2. a through e to identify what dunnage is a pest risk and to provide methods of disposal of this material. Dunnage is distinctly different from refuse and must be handled accordingly. Other methods of disposal should be available to provide flexibility in the system. Subpart e. is added to grant the commissioner the discretionary authorities to provide for methods of pest risk dunnage disposal not identified in the rules. He may recommend the disposal of pest risk dunnage in any way that would eliminate any recognized plant pest risk. It is necessary to provide for this in the event of an unanticipated emergency situation resulting in a plant pest risk from dunnage in which other means of disposal are not available.

D. If the commissioner determines that the preceding methods of disposal are not available, the refuse and/or dunnage shall be required to remain on the transport involved in foreign commerce until an alternative means of disposal has been approved by the commissioner as complying with the purpose of these rules.

...This section is needed to provide for an alternate course of action to be taken to protect the State from any plant pest risk should appropriate disposal methods be unavailable. It is also necessary and reasonable to prevent the halting of commerce while still allowing for other means of disposal.

E. Any financial responsibility to accomplish any treatment of dunnage and/or refuse shall belong to those responsible for delivering the dunnage and/or refuse to Minnesota.

...This section is necessary and reasonable to place the burden of financial responsibility on those persons responsible for delivering the dunnage and/or refuse and profiting from such commerce rather than on the general public.

~~Agr-192-Definitions~~

~~(a)--"Refuse"-means-any-waste-material-containing-any-plant-or-animal material-which-is-carried-aboard-any-vessel.~~

~~(b)--"Vessel"-means-any-water-carrier-used-for-transporting-cargo-or-passengers-in-commerce-on-public-waters-comprising-all-that-part-of-Lake Superior-and-the-waters-extending-therefrom-up-to-the-point-where-T.-H.-#23 crosses-the-St.-Louis-River-which-are-situated-within-the-territorial- boundary of-the-State-of-Minnesota.~~

~~(c)--"Dunnage"-includes-lumber-in-any-form-and-any-other-material-used aboard-a-vessel-to-secure-cargo-in-any-manner.~~

...Deletion of these lines is necessary to provide for proposed definitions that are more appropriate to the proposed rules.

Date 3/13/79

Rollin M. Dennistoun, Ph.D.
Deputy Commissioner
for
Mark Seetin
Commissioner

Adopted Rules
Working Copy

Department of Agriculture

Plant Industry Division

Adopted Rules for Disposal of Refuse From Transport Involved in Foreign Commerce

The rules proposed and published at State Register, Volume 3, Number 40, pp. 1847-1849, April 9, 1979 (3 S.R. 1847) and published again, with subsequent ammendments, at State Register, Volume 3, Number 49, pp. 2166-2169, June 11, 1979, (3 S.R. 2166) are now adopted, with the following ammendments to the rules as published on June 11, 1979:

Rules as Adopted

3 MCAR 1.0190 General.

A. Purpose and Authority. It is the purpose of these rules contained herein to carry out and enforce the provisions of the Plant Pest Act, Minn. Stat. secs. 18.44 to 18.61. These rules relate to the disposal and handling of refuse and dunnage of foreign origin at Minnesota ports of entry in a prescribed manner to prevent the entry and dissemination of plant pests.

B. Definitions. For purposes of these rules, the following definitions and those in Minn. Stat. sec. 18.46 shall apply:

1. "Approved sewage system" means any sewage system approved by the Commissioner upon his determination that the system is designed and operated in such a manner as to prevent the dissemination of plant pests.

2. "Dunnage" means structural wood products in any form used to secure cargo in any manner.

3. "Refuse" means all material derived in whole or in part from the fruits, vegetables, meats, or other plant or animal (including poultry) material which is carried aboard any vehicle involved in foreign commerce.

4. "Transport involved in foreign commerce" means any ship or aircraft arriving in Minnesota from any point outside the borders of the United States and Canada.

5. "Vehicle" means any conveyance used to transport refuse and/or dunnage from any transport involved in foreign commerce in Minnesota.

6. "Vermin" means any animal life, except plant pests as defined in Minn. Stat. sec. 18.46, subd. 13.

3 MCAR 1.0191 Registration.

A. Every person who engages in the business of removing or disposing of refuse and/or dunnage from transport involved in foreign commerce shall register annually with the Commissioner and shall furnish such information as may be required to demonstrate compliance with the certification requirements set forth in these rules.

B. An annual inspection shall be made of equipment utilized in the removal, transportation and disposal of refuse and/or dunnage by the Commissioner before certificate is granted. If all the requirements are satisfied a certificate of approval shall be issued by the Commissioner. This certificate must be retained by the certificate holder.

C. If at any time the requirements of these rules are not met, after notice and hearing pursuant to Minn. Stat. ch. 15, the certificate shall be revoked. The Commissioner may, when it is deemed that the continued operation of certificate holder poses an imminent threat of plant pest dissemination, suspend the certificate until the Commissioner has issued an order on the certificate revocation.

3 MCAR 1.0192 Operating Standards.

A. Refuse Handling:

1. All transports involved in foreign commerce shall immediately upon arrival have all refuse removed and disposed of in a manner pursuant to these rules. No refuse shall accumulate for more than three (3) days on board such transports involved in foreign commerce unless authorized in writing to do so by the Commissioner because the Commissioner determines that no method for proper disposal is available pursuant to 3 MCAR 1.0192 D. All refuse shall be removed from transports involved in foreign commerce in a manner pursuant to these rules immediately before departure from the state.

2. Until removed, refuse shall be retained in tight containers with vermin proof covers.

3. Refuse shall be delivered at least daily to the disposal facility. In no case shall refuse be held in a vehicle for longer than 12 hours or overnight.

4. Refuse removed from transports involved in foreign commerce shall not be removed from the confines of the State's borders until the refuse has been reduced to ash or sterilized in accordance with these rules.

5. Refuse shall be handled at all times in a manner which will prevent spillage. Any refuse spilled shall be picked up and placed within the vehicle and/or disposal facility immediately. The site of the spillage shall be cleaned so as to assure that the site is pest free.

6. Containers used for unloading and transporting refuse from transport involved in foreign commerce shall be leakproof and shall have adequate vermin proof covers.

7. Vehicles used for transporting refuse shall be leakproof and the refuse shall be completely covered with a tarpaulin or other covering tightly secured when it is used to prevent spillage and prevent vermin entry. Covering is not required when the refuse is contained in tight containers with vermin proof covers or in closed plastic bags so as to contain the materials in the vehicle until ultimate disposal.

B. Approved Refuse Disposal:

1. The following methods shall be used for refuse disposal:

a. Incineration, providing the incinerator is capable of reducing its contents completely to ash in a 24 hour period. No refuse residue shall be removed from an incinerator for disposal unless it has been reduced to ash or slag.

b. Sterilization by live steam, cooking, or boiling at a temperature of no less than 212 degrees F (100 degrees C) for 30 minutes.

c. Grinding into an approved sewage system.

d. Any other manner approved by the Commissioner that would eliminate all pest risks.

C. Dunnage Disposal:

1. No pest risk. If dunnage involved in foreign commerce arriving within the borders of Minnesota is inspected and found apparently free from plant pests, it shall be released by the Commissioner and need not be disposed of pursuant to these rules.

2. Pest risk. If evidence of plant pests is found, all of the dunnage material involved shall be treated in a manner prescribed.

a. Complete incineration or open burning in compliance with Minnesota Air Pollution Control rules.

b. Fumigation by chemicals and treatment schedules deemed necessary by the Commissioner to eliminate the pest risk.

c. Spraying or dusting with proper chemical concentrations deemed necessary by the Commissioner to eliminate the pest risk and in conformance with 3 MCAR 1.0338.

d. Steam sterilization in a manner approved by the Commissioner to eliminate the pest risk.

D. If the Commissioner determines that the preceding methods of disposal are not available, the refuse and/or dunnage shall be required to remain on the transport involved in foreign commerce until an alternative means of disposal has been approved by the Commissioner as complying with the purpose of these rules.

E. Any financial responsibility to accomplish any treatment of dunnage and/or refuse shall belong to those responsible for delivering the dunnage and/or refuse to Minnesota.

Subd. 5. A nursery: A nursery is any place where nursery stock is grown for sale or distribution.

Subd. 6. A nurseryman: A nurseryman is any person who owns, leases, manages, or is in charge of a nursery.

Subd. 7. Nursery inspector: A nursery inspector is one who has been assigned the duties of nursery inspection by the commissioner.

Subd. 8. A person: A person includes a corporation, company, society, association, partnership, or any individual or combination of individuals or any political subdivision or school district of the state.

Subd. 9. A dealer: A dealer is any person who obtains nursery stock for the purpose of sale or distribution and includes any person who sells and distributes for more than one nurseryman. If a person purchases more than half of the nursery stock offered for sale at his sales location during the current certificate year, he shall be considered a dealer rather than a nurseryman for the purposes of determining his proper fee schedule.

Subd. 10. An agent: An agent is any person who sells or offers for sale nursery stock under the partial or full control of a nurseryman or a dealer.

Subd. 11. Greenhouse: A greenhouse is an enclosure of glass or similar material, which is ordinarily used to maintain suitable conditions under which plants may be grown.

Subd. 12. A greenhouse operator: A greenhouse operator means any person who operates a commercial greenhouse.

Subd. 13. Plant pests: Plant pests shall include any form of plant or animal life, including any disease producing organism dangerous to plants of the state. Alternate hosts of any plant disease are included in this definition.

Subd. 14. Commissioner: Commissioner means the commissioner of agriculture.

Subd. 15. Tag: A tag is a label which has been approved by the commissioner for use in the transportation or sale of nursery stock.

Subd. 16. Private places: Private places shall be deemed to include every place except a private home.

[*1959 c 35 s 3; 1961 c 113 s 1; 1973 c 550 s 1*]

18.47 COMMISSIONER TO EMPLOY ENTOMOLOGISTS. The commissioner may employ entomologists and such other employees as are necessary to carry out the provisions of the plant pest act who shall be classified civil service employees.

[*1959 c 35 s 4*]

18.48 AUTHORITY. Subdivision 1. **Entry and inspection.** The commissioner or his employees may enter and inspect any public and private place which might harbor plant pests and may require that the owner destroy or treat plant pests, plants or other material. Should the owner fail to properly comply with a directive of the commissioner or his employee within a given period of time, the commissioner may have any necessary work done at the owner's expense. If the owner does not reimburse the commissioner for such expense within a time period to be specified by the commissioner, the expense is a charge upon the county as provided in subdivision 4. If a dangerous plant pest infestation or infection threatens plants of any area within the state, the commissioner or his employees shall have the power to take any measures necessary to eliminate or alleviate the danger. The commissioner has the authority to collect fees as may be required by the plant pest act. The commissioner may issue and enforce a written or printed "stop-sale" order to the owner or custodian of any nursery stock if fees required by the plant pest act are not paid. The commissioner's order shall direct that the nursery stock shall be held at a designated place until the required fees have been paid and the nursery stock is released in writing by the commissioner. However, the owner or custodian has the right to appeal from such order to a court of competent jurisdiction in the county or city where the nursery stock is found, praying for a judgment as to the justification of the order, and for the discharge of the nursery stock from the order prohibiting the sale in accordance with the findings of the court. The provisions of this section shall not be construed as limiting the right of the enforcement officer to proceed as authorized by other provisions of the plant pest act. The commissioner shall release the nursery stock held under any stop-sale order when the required fees have been paid and upon payment of all rea-

COST OF THIS COPY PAID BY MINNESOTA TAXPAYERS

sonable costs and expenses incurred in connection with such order. The commissioner or his employees may not be held liable for the deterioration of nursery stock during the period for which it is held pursuant to a stop-sale order.

Subd. 2. **Rules and regulations.** The commissioner may make reasonable rules and regulations, after a public hearing, in the manner provided by law, to properly carry out purposes of sections 18.44 to 18.61 and acts amendatory thereof, including but not limited to rules and regulations in regard to labeling and the maintenance of viability and vigor of nursery stock.

Subd. 3. **Quarantines.** The commissioner may promulgate a quarantine to restrict or prohibit the transportation of plants or other materials capable of carrying plant pests into or through any part of the state.

Subd. 4. **Collection of charges for work done for owner.** Should the commissioner be caused any expense in conjunction with carrying out any of the provisions of subdivision 1 for which he is not reimbursed by the owner of the land, such expense is hereby made a legal charge against the county in which the land is located. After such expense is incurred, the commissioner shall file verified and itemized statements of the cost of all service rendered with the county auditor of the county in which the land is located, who shall immediately issue proper warrants to the persons named therein, for the amount specified. The amount of such expense is a lien in favor of the county against the land involved and shall be certified to by the county auditor and entered by him on his tax books as a tax upon such lands and shall be collected as other real estate taxes are collected. The amount of such expenses, when collected, shall be used to reimburse the county in this regard.

[*1959 c 35 s 5; Ex1961 c 63 s 1; 1963 c 114 s 1,2*]

18.49 INSPECTION REQUIRED. Subdivision 1. It shall be unlawful for any person to sell or offer for sale any nursery stock which has not within the preceding 12 months been officially inspected and found apparently free from plant pests.

Subd. 2. It is unlawful for a person to sell or distribute nursery stock to a dealer or nurseryman who does not have a valid certificate of inspection or dealer's certificate.

[*1959 c 35 s 6; Ex1961 c 63 s 2*]

18.50 THE SALE OF VIABLE NURSERY STOCK. All nursery stock and related plant products sold or offered for sale shall be in a sound, healthy condition and shall be stored and displayed under conditions which will maintain their vigor. Said stock which is dead or so seriously weakened by drying, excessive heat or cold, or any other condition that, in the judgment of the nursery inspector, it will be unable to grow with normal vigor when given reasonable care, shall not be sold or offered for sale.

[*1959 c 35 s 7*]

18.51 CERTIFICATE OF INSPECTION. Subdivision 1. **Certificate required.** Each person who operates as a nurseryman shall obtain a certificate of inspection from the commissioner. Said certificate shall be obtained before he offers nursery stock for sale or distribution. Each certificate shall expire on November 15 of each year.

Subd. 2. **Fees; penalty.** Each nurseryman shall be required to pay an annual fee before the commissioner shall issue a certificate of inspection. This fee shall be based on the area of all of his nurseries as follows:

Nurseries:	
(1) 1/2 acre or less	$15 per nurseryman
(2) Over 1/2 acre to and including 2 acres	$25 per nurseryman
(3) Over 2 acres to and including 5 acres	$50 per nurseryman
(4) Over 5 acres to and including 10 acres	$70 per nurseryman

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Agriculture Plant Industry Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Seed Potato Certification

Notice is hereby given that the Minnesota Department of Agriculture has begun consideration of proposed amending rules governing the Seed Potato Certification program. Minn. Rules Agr. 121-135 presently govern this matter.

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

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

Written statements of information and comment may be addressed to:

Robert Flaskerd, Director
Plant Industry
670 State Office Building
Saint Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the phone at (612) 296-3347, and in person at the above address.

All statements of information and comment must be received by March 30, 1979. Any written material received by the Department shall become part of the hearing record.

The proposed amendments, if adopted, would include a Red Tag grade on Foundation Seed classification; delete language no longer applicable and clarify language for easier interpretation.

February 8, 1979

Mark W. Seetin, Commissioner
Department of Agriculture

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing the Disposal of Refuse and Dunnage of Foreign Origin from Vessels at Minnesota Ports on Lake Superior Waters

Notice is hereby given that the Minnesota Department of Agriculture has begun consideration of amending rules governing the disposal of refuse and dunnage of foreign origin from vessels at Minnesota ports on Lake Superior waters. Minn. Rules Agr. 190-212 presently govern this matter.

In order to adequately determine the nature and utility of such amendments to the rules the Department of Agriculture hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed amendments to the rules.

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

Written statements of information and comment may be addressed to:

Robert Flaskerd, Director
Plant Industry Division
670 State Office Building
Saint Paul, Minnesota 55155

Oral statements of information and comment will be received during regular business hours over the phone at (612) 296-3347, and in person at the above address.

All statements of information and comment must be received by March 2, 1979. Any written material received by the Department shall become part of the hearing record.

The proposed amendments, if adopted, would allow for additional methods of acceptable disposal of refuse and dunnage.

February 9, 1979

Mark W. Seetin, Commissioner
Department of Agriculture

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

STATEMENT OF COMPLIANCE WITH

MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Peder Hong, do hereby declare that I have examined the proposed rules and all related documents and that, based on them and my personal familiarity with the applicable procedures, the Manual of Rule Making Procedures has been followed. Any exceptions are noted below.

Peder Hong

Special Assistant Attorney General

Dated: 10-17-79

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING THE DISPOSAL OF REFUSE FROM TRANSPORT INVOLVED IN FOREIGN COMMERCE	ORDER ADOPTING RULES

The above-entitled matter came on for hearings before Howard L. Kaibel, Jr., Office of Hearing Examiners of the State of Minnesota on the 15th day of May, 1979, in the Conference Room of the District Transportation Building, Duluth, Minnesota, at 1:00 P.M.. Additional hearings were conducted on the 16th day of May, 1979, in the Office of Hearing Examiner's Hearing Room, Saint Paul, Minnesota, and on the 12th day of July, 1979, in the Jury Lounge of the St. Louis County Courthouse, Duluth, Minnesota, after proper notice required by M.S. Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose and notice was published in the State Register.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having considered all the evidence and testimony adduced, and upon the records, files and proceedings herein, in regard to said rules, and hereby having adopted the Hearing Examiner's Report, dated August 17, 1979, and having confirmed the need for the above captioned rule and the reasonableness, and applicable statutary standards and criteria relating to the here adopted rules,

NOW, THEREFORE, IT IS ORDERED that the rules identified as 3 MCAR 1.0190, 3 MCAR 1.0191 and 3 MCAR 1.0192 attached hereto, are adopted this 21st day of September, 1979, pursuant to authority vested in me by Minn. Stat. Secs. 15.0412 and 18.48, subd. 2.

STATE OF MINNESOTA

Mark W. Seetin
Commissioner of Agriculture

STATE OF MINNESOTA

OFFICE OF HEARING EXAMINERS

ROOM 300 – 1745 UNIVERSITY AVENUE
ST. PAUL, MINNESOTA 55104
(612) 296-6910

October 9, 1979

OCT 9 1979

Mr. Gerald Heil, Director
Division of Planning
Department of Agriculture
563 State Office Building
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing the Disposal of Refuse from Transport Involved in Foreign Commerce.
AGR-79-005-HK

Dear Mr. Heil:

Enclosed is the Report of the Chief Hearing Examiner on the issue of substantial change in the above-referenced matter, pursuant to Minn. Stat. § 15.052, subd. 4.

Yours very truly,

DUANE R. HARVES
Chief Hearing Examiner

sh
Enc.

AGR-79-005-HK

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING THE DISPOSAL OF REFUSE FROM TRANSPORT INVOLVED IN FOREIGN COMMERCE.	REPORT OF THE CHIEF HEARING EXAMINER

WHEREAS, hearings were held on May 15, 1979, and July 12, 1979, before Howard L. Kaibel, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.052, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Department of Agriculture on August 17, 1979; and

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

WHEREAS, the Department of Agriculture 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 hearings and that the Department of Agriculture has met all requirements of Minn. Stat. § 15.0412, subd. 4.

NOW, THEREFORE, upon receipt of this Report, the Department of Agriculture 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 9th day
of October, 1979.

Duane R. Harves

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING THE DISPOSAL OF REFUSE FROM TRANSPORT INVOLVED IN FOREIGN COMMERCE	NOTICE OF ADDITIONAL HEARING

Notice is hereby given that an additional public hearing in the above-entitled matter will be held in the Jury Lounge, Saint Louis County Courthouse, Duluth, Minnesota on July 12, 1979 at 2:00 p.m. and continuing until all persons have had an opportunity to be heard. This hearing is a continuation of public hearings heard in this matter on May 15, 1979 in Duluth, Minnesota and on May 16, 1979 in Saint Paul, Minnesota.

This hearing is for the purpose of receiving testmony on proposed changes to the Rules as Proposed published at 3 State Register 1847 (April 9, 1979). These proposed changes, if adopted, would require the refuse on transport involved in foreign commerce within the territorial limits of Minnesota be maintained in tight containers with vermin proof covers. The proposed changes would also require that refuse aboard transport involved in foreign commerce be removed upon docking or landing, every three days thereafter while docked or landed in Minnesota, and immediately before departure from Minnesota.

Copies of these proposed changes to the Rules as Proposed are now available and one free copy may be obtained by writing to the Minnesota Department of Agriculture, 420 State Office Building, Saint Paul, Minnesota 55155. 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 Minn. Stat. secs. 18.44-18.61. A supplement to the "Statement of Need and Reasonableness" explaining why the department feels the proposed changes are necessary and outlining the testimony they will be introducing, will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

State of Minnesota

Mark W. Seetin

Mark W. Seetin
Commissioner of Agriculture

Date: May 29, 1979

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE) AFFIDAVIT OF MAILING
GOVERNING DISPOSAL OF REFUSE)

Sandy Fenton being first duly sworn, deposes and says:

That on the 6th day of April, 1979, in the City of St. Paul, County of Ramsey, State of Minnesota, she 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, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Sandy Fenton

Subscribed and sworn to before me this
6th day of April 1979
Notary Public, Joan LeDuc
Ramsey County, Minnesota
My Commission expires .

JOAN LeDUC
Notary Public, Ramsey Co., Mn.
MY COMMISSION EXPIRES
August 14, 1981

RECEIVED
APR 7 0 1979
OFFICE OF HEARING
EXAMINER

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)	CERTIFICATE OF DELIVERY
OF RULES OF THE DEPARTMENT OF AGRICULTURE)	SECRETARY OF
GOVERNING DISPOSAL OF REFUSE)	STATE LIST

I hereby certify that the attached 589 labels 5 sheets constitute the complete list of persons, associations, and other interested groups who as of 9:30 o'clock AM., this 5th day of April, 1979, have requested pursuant to Minn. Stat. 15.0412 (1977 Supp.), 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 Joan Scott

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

RECEIVED
APR 30 1979
OFFICE OF HEARING
EXAMINER

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE)
GOVERNING DISPOSAL OF REFUSE)

AFFIDAVIT OF RECEIPT OF
THE SECRETARY
OF STATE'S LIST

Sandy Fenton being duly sworn on oath deposes and says:

1) That she is an employee of the Department of Agriculture of the State of Minnesota.

2) That on the 5th day of April, 1979, she went to the Secretary of State's Office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. 15.0412 (1977 Supp.)

3) That on the 5th day of April, 1979, in response to the above request, the Secretary of State provided her with such a list, a copy of which is attahced hereto and incorporated by reference.

Further affiant sayeth not.

Sandy Fenton

Subscribed and sworn to before me this
5th day of April, 1979

Notary Public, Joan LeDuc
Ramsey County, Minnesota

JOAN LeDUC
Notary Public, Ramsey Co., Mn.
MY COMMISSION EXPIRES
AUGUST 8 1981

My Commission Expires _____.

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING THE DISPOSAL OF REFUSE FROM TRANSPORT INVOLVED IN FOREIGN COMMERCE	))))	AFFIDAVIT OF MAILING

Joyce Y. Petsch being first duly sworn, deposes and says:

That on the 8th day of June, 1979, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Additional Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Joyce Y. Petsch

Subscribed and sworn to before me this
8th day of June 1979
Notary Public, Ramsey
Joan LeDuc County, Minnesota
My Commission Expires

Notary Public, Ramsey Co., Mn.
MY COMMISSION EXPIRES
August 14, 1981

Ex 3

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)	
OF RULES OF THE DEPARTMENT OF AGRICULTURE)	CERTIFICATE OF DELIVERY
GOVERNING THE DISPOSAL OF REFUSE FROM)	SECRETARY
TRANSPORT INVOLVED IN FOREIGN COMMERCE)	OF STATE LIST

I hereby certify that the attached 584 labels one 5 sheets constitute the complete list of persons, associations, and other interested groups who as of 10:30 o'clock Am., this 7th day of June, 1979, have requested pursuant to Minn. Stat. 15.0412 (1977 Supp.), 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

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)	
OF RULES OF THE DEPARTMENT OF AGRICULTURE)	AFFIDAVIT OF RECEIPT OF
GOVERNING THE DISPOSAL OF REFUSE FROM)	THE SECRETARY
TRANSPORT INVOLVED IN FOREIGN COMMERCE)	OF STATE'S LIST

Randall D. Young being duly sworn on oath deposes and says:

1) That he is an employee of the Department of Agriculture of the State of Minnesota.

2) That on the 5th day of June, 1979, he went to the Secretary of State's Office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. 15.0412 (1977 Supp.).

3) That on the 7th day of June, 1979, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

Randall D. Young

Subscribed and sworn to before me this
7th day of June, 1979
Notary Public, Joan Ledue
Ramsey County, Minnesota
My Commission expires

JOAN LEDUE
Notary Public, Ramsey Co., Mn.
MY COMMISSION EXPIRES
August 14, 1981

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE)
GOVERNING THE DISPOSAL OF REFUSE FROM)
TRANSPORT INVOLVED IN FOREIGN COMMERCE)

NOTICE OF HEARING

NOTICE IS HEREBY GIVEN that a public hearing in the above-entitled matter will be held in the Conference Room, District Transportation Building, 1123 Mesaba Avenue, Duluth, Minnesota on May 15, 1979 at 1:00 p.m. and in the Hearing Room, Office of Hearing Examiner, 1745 University Avenue, Saint Paul, Minnesota on May 16, 1979 at 1:00 p.m., and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Howard Kaibel, Jr., Office of Hearing Examiners, 1745 University Avenue, Room 300, Saint Paul, Minnesota 55104, phone (612) 296-6910 either before the hearing or after the hearing until the record is closed. The record will remain open for five working days after the public hearings end or for a longer period not to exceed 20 days if ordered by the Hearing Examiner.

NOTICE IS HEREBY GIVEN that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rule/rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

The proposed rules, if adopted, would allow for additional methods of acceptable disposal of refuse and dunnage. Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Department of Agriculture, 420 State Office Building, Saint Paul, Minnesota 55155. 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 Minn. Stat. Secs. 18.44-18.61. A "statement of need" explaining why the department feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing, will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

NOTICE: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of 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 agency. 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 agency (in the case of the agency's submission or resubmission to the Attorney General).

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 communication or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250.00 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250.00 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone 612-296-5615.

STATE OF MINNESOTA

Rollin M. Dennistoun
Deputy Commissioner of Agriculture

for Mark W. Seetin
Commissioner of Agriculture

Date: March 21, 1979

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION)
OF RULES OF THE DEPARTMENT OF AGRICULTURE)
GOVERNING THE DISPOSAL OF REFUSE FROM) ORDER FOR HEARING
TRANSPORT INVOVLED IN FOREIGN COMMERCE)

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Conference Room, District Transportation Building, 1123 Mesaba Avenue, Duluth, Minnesota on May 15, 1979 at 1:00 p.m., and in the Hearing Room, Office of Hearing Examiner, 1745 University Avenue, Saint Paul, Minnesota on May 16, 1979 at 1:00 p.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, representatives of associations, and other interested groups who have registered their names with the Secretary of State for that prupose.

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

STATE OF MINNESOTA

Rollin M. Dennistoun
Deputy Commissioner of Agriculture

for Mark W. Seetin
Commissioner of Agriculture

Date: March 21, 1979