

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File 588

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 4/17 DUE DATE 5/7 - 5/26

Resubmitted and Received 5/16

a. Returned to Agency w/o Filing w/Secretary of State 5/19
b. Approved 5/19 Date Sent Back to Agency 5/19

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1. Rules as Adopted ✓
2. Rules as Proposed ✓
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓
5. Notice of Hearing ✓ 1.10.90
   Sufficiency ✓
6. Secretary of State's List? see memo attached to #18 - Cert. of Compliance (one copy only)
7. Certificate of Acquisition of Secretary of State's List ✓
8. Secretary of State's Certification of Delivery of Secretary of State's List to Agency ✓
9. Affidavit of Mailing ✓
   At least 30 days prior to hearing ✓
10. Publication in State Register ✓
    At least 30 days prior to hearing ✓
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓ incorporated in #15 - 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 ✓
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N/A
20. Petition by Public, where applicable N/A

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

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

Office Memorandum

TO : Joanne E. Hinderaker
Special Assistant Attorney General

DATE: May 15, 1980

FROM : Gerald Heil, Director GH
Division of Planning

PHONE: 296-1486

SUBJECT: Proposed Adoption of Rules of the Department of Agriculture Governing Sanitation and Reforestation Grants and Wood Utilization, and Disposal System Grants (3 MCAR 1.0112-1.0113)

Pursuant to our discussions, I am hereby resubmitting the above-mentioned rules for the review required by M.S. 15.0412, Subd. 4. I have enclosed the following documents:

1) One copy of a memorandum to the Chief Hearing Examiner regarding the Revised Rules and Agency Findings;

2) One copy of a memorandum from the Chief Hearing Examiner regarding his review of the Revised Rules and Agency Finding of Fact and Order Adopting rules;

3) Three copies of the rules proposed for adoption; and

4) Three copies of the Revised Order Adopting the Rules and Agency Finding of Fact.

Please call if you need additional information.

GH:dw

Enclosure

cc: Richard Haskett, Shade Tree Director
Peder Hong, Special Assistant Attorney General

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

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

Office Memorandum

TO : Duane R. Harves
Chief Hearing Examiner
Office of Hearing Examiners

DATE: May 9, 1980

FROM : Gerald Heil, Director GH
Division of Planning

PHONE: 296-1486

SUBJECT: Resubmission of Rules Governing the Shade Tree Program (AGR 80-001-JL)

The Department proposes to adopt the above-mentioned rules which were previously proposed for adoption and submitted to your office for review regarding substantial changes on March 20, 1980. The Department had proposed, subsequent to the public hearing, what was in its judgement insubstantial changes. The rules were returned with the finding that the rules proposed for adoption were not substantially different from those proposed at the public hearing.

The Department then submitted the rules to the Attorney General for review and approval. The rules were not approved. The Attorney General concluded that the rule changes proposed by the Department subsequent to the public hearing were not based upon any testimony at the hearing or on recommendations made by the Hearing Examiner. I have attached the memorandum from the Attorney General's Office explaining the reasons for rejecting the proposed rules.

The Department is withdrawing the proposed amendments that the Attorney General found to be unacceptable. Consequently, the rules are being resubmitted for your review.

The Department proposes the following changes in the rules as proposed for adoption:

(1) In paragraph 3 MCAR 1.0112 B (page 3) of the rules proposed for adoption, the last sentence was stricken from the existent rule. The amendment was proposed subsequent to public hearing. The Department, having reviewed the findings of the Attorney General, proposes to withdraw the proposed amendment. The effect is of no change from the rules as they were initially proposed (at public hearing).

(2) In 3 MCAR 1.0112 B. 3. (page 3), the words "advice and counsel" were stricken and the words "the recommendations" were added to the existent rule. After reviewing the findings of the Attorney General, the Department proposes to withdraw the proposed amendment. The effect is of no change from the existent rule.

(3) The words "development and" are proposed to be added to 3 MCAR 1.0112 C. 1. b. (9) (page 5). The addition of these words will add uniformity between the latter rule and a similar reference in 3 MCAR 1.0112 A. 2. c. (page 3). The effect is of a change in the existent rule.

The Department proposes to adopt the above-mentioned rules. Enclosed is one copy of each of the following documents:

Exhibit I:	Memorandum From the Attorney General
Exhibit II:	Revised Order Adopting Rules and Agency Finding of Fact
Exhibit III:	Rules as Proposed for Public Hearing
Exhibit IV:	Rules as Proposed for Adoption

GH:dw

Enclosure

cc: Jon Lunde, Hearing Examiner
Office of Hearing Examiners

Dick Haskett, Director
Shade Tree Program

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT OFFICE OF HEARING EXAMINERS

Office Memorandum

TO : GERALD HEIL, Director
Division of Planning
Department of Agriculture

DATE: May 15, 1980

FROM : DUANE R. HARVES
Chief Hearing Examiner

PHONE: 6-8100

SUBJECT: SHADE TREE PROGRAM RULES
OUR FILE: AGR-80-001-JL

I am in receipt of your May 9, 1980, memorandum and attachments which were hand-delivered to me on May 15, 1980, and have completed my review of the submitted materials.

Based upon this review, the opinion expressed by me in my Order dated March 31, 1980, would not change and this memorandum may be considered as a reaffirmation of that March 31, 1980, Order.

DRH:sh
cc: Joanne Hinderaker
Sue Robertson

Our File 588

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : MARK W. SEETIN
Commissioner of Agriculture

DATE: May 19, 1980

Attn: PEDER HONG

FROM : Joanne E. Hinderaker JEH
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: Rules as Approved In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing Sanitation and Reforestation Grants and Wood Utilization, and Disposal System Grants (3 MCAR 1.0112-1.0113).

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

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

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

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

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

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

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

JEH:mb

Enclosure

cc: Duane Harves
Susan Robertson

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

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MARK W. SEETIN
Commissioner of Agriculture

DATE: April 30, 1980

Attn: Peder Hong

FROM : JOANNE E. HINDERAKER
Special Assistant
Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Department of Agriculture Governing Sanitation and Reforestation Grants and Wood Utilization, and Disposal System Grants (3 MCAR 1.0112-1.0113).

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

In the first paragraph of 3 MCAR 1.0112 B. (pg 3) of the Adopted Rules the last sentence which reads "Extensions shall be granted for good cause shown." was stricken from the existent rule. Furthermore, in 3 MCAR 1.0112 B. 3 (pg. 3) the words "advice and counsel" were stricken and the words "the recommendations" were added to the existent rule. It appears that these changes were not contained in the proposed rules but were made subsequent to the hearing. Based upon the record presented to this office these changes do not appear to be based on any testimony at the hearing or on any recommendation made by the Hearing Examiner in his Report. The Department has not discussed the changes in its Findings or any other post-hearing document.

If the record does contain support for these changes please advise me and resubmit the rules and the record which I am returning to you herewith. Without any such support the changes are improper.

Furthermore, while it is not a fatal defect, I note that the words "development and" were added to the 3 MCAR 1.0112 A.2.c. (pg. 3) regarding the reforestation advisory committee but were not added to a corresponding reference in 3 MCAR 1.0112 C.1.b. (9) (pg. 5). The addition of these words to the latter rule would provide uniformity.

Upon consideration of the issues raised in this memorandum and after any further action taken by the Department in regard to these rules, the file may be resubmitted to this office with three (3) copies of the rules as amended and three copies of a revised order adopting rules. Copies of the other pertinent documents in the file have been retained by this office.

I also wish to advise you that the Chief Hearing Examiner requests the resubmission of rules that are changed subsequent to his review. Therefore I suggest that you submit the rules to Mr. Duane Harves prior to resubmission to this office.

Please contact me if you have any questions regarding this matter.

JEH/bw
cc: Duane Harves
Susan Robertson

EXHIBIT IV

Department of Agriculture

Shade Tree Program

Adopted Rules Governing Sanitation and Reforestation Grants and Wood Utilization, and Disposal System Grants (3 MCAR 1.0112-1.0113)

The rules proposed and published at State Register, Volume 4, Number 22, pp. 889-893, December 3, 1979 (4 S.R. 889) are now adopted, with the following amendments:

Rules as Adopted

3 MCAR 1.0112 Grants-in-aid to municipalities for sanitation and reforestation program. The commissioner may, in the name of the state and within the limits of appropriations provided, make grants-in-aid to a municipality with an approved disease control program for the partial funding of municipal sanitation and reforestation programs. One grant shall be made for all eligible sanitation and reforestation costs.

A. Sanitation and reforestation grants.

1. Sanitation. Grants to any municipality for sanitation shall not exceed fifty (50) percent of the municipality's total cost for sanitation approved by the commissioner. The total cost may include any amounts paid for sanitation by special assessments, ad valorem taxes, federal grants, or other funds. A municipality may assess to the abutting property not more than fifty (50) percent of the expense of treating with an approved method or removing diseased shade trees located on street terraces or boulevards to that abutting property.

Grants shall not be made to a municipality if the total cost of tree removal has been incurred solely by the individual property owner and the municipality has not reduced the cost ~~of~~ to the property owner via direct subsidy or reduced special assessment. The only amount that may be included in the municipality's total cost for purposes of computing the above described reimbursement is the reduction of the cost to the property owner. Provision is made for municipalities with population of less than 1,000 pursuant to Minn. Stat. 18.023, subd. 3c, as amended.

2. Reforestation. Grants to any municipality for reforestation shall not exceed fifty (50) percent of the cost to the municipality for reforestation on public property. ~~The~~ Grants ~~for these trees~~ shall not exceed fifty (50) dollars per tree planted.

a. Reforestation grants to any county with an approved disease control program may include ninety (90) percent of the cost of planting the first fifty (50) trees on public lands in a town not defined as a municipality of less than 1,000 population, upon the town's application to the county and county's designation of the town as a disease control area. The grant for these fifty (50) trees shall not exceed sixty (60) dollars per tree planted.

b. Reforestation grants to towns and home rule charter or statutory cities with an approved disease control program which are defined as municipalities in the act and are less than 4,000 in population may include ninety (90) percent of the cost of planting the first fifty (50) trees on public lands. The grant for these fifty (50) trees shall not exceed sixty (60) dollars per tree planted.

c. Any municipality as ~~defined in this act~~ that receives a grant for reforestation shall ~~appoint up to~~ have appointed seven (7) residents of the municipality or designate an existing municipal board or committee to serve as a reforestation advisory committee to advise the municipality in the development and administration of the reforestation program.

B. Program eligibility. Any municipality is eligible to receive sanitation and reforestation grants upon submitting to the commissioner by November 15 a completed program application form provided by the commissioner, and upon receiving notice of an approved disease control program designation. Extensions shall be granted for good cause shown.

1. The program application shall serve as the basis for approving the municipality's shade tree disease control program.

2. Approval shall be granted only upon the municipality's agreement to conduct its sanitation program in conformance with these rules and disease control practices designated by the commissioner upon the recommendation of the Shade Tree Advisory Committee.

3. Approval shall only be granted upon the municipality's agreement to conduct its reforestation program in a manner consistent with advice and counsel given the commissioner by the Minnesota Agricultural Extension Service.

4. Program approval may be revoked upon a determination by the commissioner that the municipality has failed to conduct its sanitation and reforestation program in conformance with the standards set forth in this rule. Such a determination or disapproval of a municipal program or control area may be appealed by the municipality and upon request, a hearing pursuant to Minn. Stat. ch. 15 shall be granted.

5. Sanitation and reforestation grants may be terminated upon municipality's failure to maintain an approved shade tree disease control program and upon evidence that proper record-keeping and documentation has not been maintained.

C. Program application. To receive a sanitation and reforestation grant, a municipality shall submit to the commissioner by November 15 a completed program application form provided by the commissioner.

1. A municipality's program application shall include, but not be limited to the following information:

a. An inventory of shade trees within the municipality's disease control area and an estimate of the distribution of these shade trees between public and private lands;

b. A complete description of the municipality's sanitation and reforestation programs which shall include:

(1) The method and schedule of diseased trees surveys;

(2) The extent of disease control tree trimming activities;

(3) The policies for removal of trees on public lands;

(4) The policies for removal of trees on private lands;

(5) The method and location of disposal tree wastes;

(6) The policies for planting new shade trees, including:

(a) The source of nursery stock, if known;

(b) Species planted;

(c) Type of stock planted;

(d) Distribution of species; and,

(e) Other revelant information;

(7) The methods of financing sanitation and reforestation programs, including:

(a) The use of funds derived from general tax levies;

(b) Special assessments;

(c) Federal funds;

(d) Other sources of funding; and,

(8) A complete description of the municipality's subsidy program, if any.

(9) The name or names of the person or persons or committee appointed by the municipality to advise the municipality in the development and administration of the reforestation program.

c. A statement of planned expenditures for the sanitation and reforestation program for the calendar year.

d. A copy of the local ordinances and resolutions authorizing the local shade tree program.

e. Other information deemed necessary and relevant by the commissioner.

2. Except for the first fifty (50) trees for towns and cities as set forth in 3. below, grants for sanitation and reforestation shall be fifty (50) percent of the applicant's planned expenditures for sanitation and reforestation, unless fifty (50) percent of the total planned expenditures for all applicants exceeds the funds designated for sanitation and reforestation grants; in which case, grants shall be a pro rata allocation among the eligible applicants. ~~Such~~ Reforestation grants shall not exceed fifty (50) dollars per tree planted.

3. Grants for planting the first fifty (50) trees on public lands in eligible towns and cities may be ninety (90) percent of the town's or city's planned expenditures for planting those trees, providing the availability of sufficient funding. The grant for these fifty (50) trees shall not exceed sixty (60) dollars per tree planted.

3 MCAR 1.0113 Grants-in-aid for wood utilization and disposal systems.

A. The commissioner shall within the monies appropriated, make grants-in-aid to eligible applicants for the cost of facilities, equipment, and systems for the disposal or utilization of diseased shade trees. Such grants-in-aid shall be made to:

1. Any home rule charter or statutory city.

2. Any special purpose park and recreation board organized under a charter of a city of the first class;

3. Any non-profit corporation serving a city of the first class; or,

4. Any county.

B. Such grants shall be made with the following provisions:

1. The city (cities) or county has an approved shade tree disease control program as described in the act or these rules;

2. Grants-in-aid may be less than but shall not exceed fifty (50) percent of the cost of such facility, equipment, or system;

3. Grants-in-aid shall not be made for costs of operating such facility, equipment, or system;

4. Grants-in-aid for site acquisitions shall be made only for land used in the actual operational site;

5. Grants-in-aid shall not be made by the commissioner until he receives certified evidence of the actual cost of the equipment or site; and,

C. Criteria for administration of grants-in-aid.

1. Grants-in-aid to eligible applicants shall be made by the commissioner provided that such wood disposal utilization system meets the following criteria:

a. It aids in the control of shade tree diseases;

b. It aids in the recovery of material or energy from wood.

c. It is located to accomplish the above with maximum efficiency and use of available facilities;

d. It is available to all parties, public and private;

e. It is able to render wood pest-risk free within five (5) days of delivery to the site unless an extension of time has been granted by the commissioner based on existing circumstances of the disposal/utilization site;

f. It includes adequate manpower to operate and service equipment; and,

g. It provides for proper handling and the timely removal of processed wood from the site.

2. In addition to the general criteria under C. 1. above, the commissioner, as appropriate, may consider other specific criteria including the following in evaluating grant payment requests:

a. Sites for wood disposal systems:

(1) Shall be selected on the basis of anticipated volumes of wood and/or the need for a wood disposal system;

(2) Shall be accessible by roadways that permit year-round truck traffic;

(3) Shall have adequate storage areas for both processed wood and equipment;

(4) Shall have protective enclosures, adequate control, and supervision to prevent entry of unwanted materials and unauthorized persons;

(5) Shall be in compliance with all applicable Federal and State statutes, rules and regulations; and,

(6) Shall be in conformance with regional solid waste management plans and requirements.

b. Equipment for wood disposal systems:

(1) Shall, where feasible, be portable so that it can be used for servicing more than one site;

(2) Shall be stationary only when the anticipated volume over a five-year period will fully utilize the facility;

(3) Shall be capable of processing large-diameter logs; and,

(4) Shall include auxiliary units and equipment necessary to the operation of the system.

3. Requests for grant-in-aid payments shall be made on forms provided by the commissioner. Contingent upon the availability of funds, the timeliness of applications and other administrative considerations, the commissioner may set deadlines for consideration of requests which shall be published in the State Register at least thirty (30) days prior to the deadline. Requests for payments shall include the following:

a. An itemized list of the applicant's proposed expenditures for qualifying equipment and/or site, and the total amount of these expenditures; and,

b. Additional documents or other information deemed relevant by the commissioner.

4. Records.

a. Applicants receiving grants-in-aid under this rule shall keep detailed records concerning the operation of the wood disposal and utilization system and shall make these records available to the commissioner at any reasonable time. Such records shall include:

(1) Hours of operation;

(2) Clientele served;

(3) Volume of wood handled; and,

(4) Other information deemed necessary and relevant by the commissioner.

b. A yearly report containing a summation of these records shall be made to the commissioner by December 1.

APPROVED AS TO FORM AND LEGALITY

MAY 19 1980, 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY Joanne Hinderaker
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAY 19 1980
Joan Anderson Growe
Secretary of State
1:55 PM

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING SANITATION AND REFORESTATION GRANTS AND WOOD UTILIZATION, AND DISPOSAL SYSTEM GRANTS (3 MCAR 1.0112-1.0113)	REVISED AGENCY FINDING OF FACT AND ORDER ADOPTING RULES

The above-entitled matter came on for hearings before Jon L. Lunde, duly appointed Hearing Examiner, Office of Hearing Examiners of the State of Minnesota, on Thursday, January 10, 1980, at 10:00 a.m. at the Regional Law Enforcement Center Building, Front and Liberty Streets, Mankato, Minnesota, and on Friday, January 11, 1980, at 9:00 a.m. in the Administration Building, Room 116A, 50 Sherburne Avenue, St. Paul, Minnesota, and on Friday, January 11, 1980, at 3:00 p.m. at the Stearns County Courthouse, Courthouse Square, St. Cloud, 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.

Members of the Department of Agriculture (hereinafter referred to as Department) panel included: Gerald Heil, Director of Planning; Jane Meyer, Director of Shade Tree Program; and Paul Scherman, Shade Tree Program Specialist. Darryl L. Anderson, Assistant Commissioner, appeared on behalf of the Department at the hearing scheduled in St. Paul, and both Ms. Meyer and Mr. Scherman appeared at the St. Cloud hearing.

On February 19, 1980, the Report of the Hearing Examiner was issued in this matter. On March 19, 1980, the Commissioner issued his Order

Adopting Rules and Agency Finding of Fact. On March 31, 1980, the Report of the Chief Hearing Examiner found no substantial change. Thereafter, these rules as originally adopted were submitted for review by the Attorney General. The Office of the Attorney General advised the Department that changes to the rules made subsequent to the public hearing "do not appear to be based on any testimony at the hearing or on any recommendation made by the Hearing Examiner in his Report". The rules were not approved for those reasons.

This Revised Agency Finding of Fact and Order Adopting Rules revises the original Agency Finding of Fact and Order Adopting Rules for the sole purpose of adopting revised rules relating to the administration of sanitation and reforestation and wood utilization and disposal grants in light of the determination of the Attorney General. Based upon the records and proceedings, the Department makes the following:

FINDINGS OF FACT

1. That the Department gave due, timely and adequate legal notice of the hearing.

2. That the Department documented its statutory authority to promulgate the proposed rules.

3. That the Department fulfilled all relevant, substantive and procedural requirements of law or rule.

4. That the Department has adopted the Hearing Examiner's Report dated February 19, 1980.

5. That the Department has withdrawn all amendments proposed subsequent to public hearings that were not based upon public testimony or the recommendation of the Hearing Examiner, except for grammatical or stylistic changes.

CONCLUSIONS

1. That any of the foregoing Findings that are more properly denominated Conclusions are hereby adopted as such.

2. That the Department has complied with all relevant legal and procedural requirements.

3. That the Department has documentated its statutory authority to adopt the rules hereinafter proposed for adoption.

4. That the Department has documented the need and reasonableness of the proposed rules with an affirmative presentation of facts.

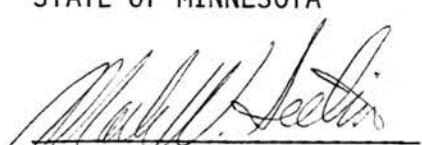
ORDER ADOPTING REVISED RULES

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all the testimony, having considered all the evidence adduced, and upon the records, files and proceedings herein, and applicable statutory standards and criteria, in regard to said rules, and having confirmed the need for the above captioned rules and the reasonableness thereof.

NOW, THEREFORE, IT IS ORDERED that the rules identified as 3 MCAR 1.0112 and 3 MCAR 1.0113, attached hereto, are adopted this 14th day of May, 1980, pursuant to authority vested in me by Minn. Stat. Secs. 15.0412 and 18.023, Subd. 2.

IT IS FURTHER ORDERED that the Department give proper notice to all persons who have requested to be informed when the hearing record is submitted to the Attorney General.

STATE OF MINNESOTA



Mark W. Seetin
Commissioner of Agriculture

EXHIBIT # 2

Amendments as Proposed

§ 1.0112 Grants-in-aid to municipalities for sanitation and reforestation program. The commissioner may, in the name of the state and within the limits of appropriations provided, make grants-in-aid to a municipality with an approved disease control program for the partial funding of municipal sanitation and reforestation programs. One grant shall be made for all eligible sanitation and reforestation costs.

A. Sanitation and reforestation grants

~~A~~ 1. Sanitation ~~grants~~. Grants to any municipality for sanitation shall not exceed ~~forty-five~~ fifty (~~45~~ 50) percent of the municipality's total cost for sanitation approved by the commissioner. The total cost may include any amounts paid for sanitation by special assessments, ad valorem taxes, federal grants, or other funds. A municipality may assess to the abutting property not more than fifty (50) percent of the expense of treating with an approved method or removing diseased shade trees located on street terraces or boulevards to that abutting property.

Grants shall not be made to a municipality if the total cost of tree removal has been incurred solely by the individual property owner and the municipality has not reduced the cost of the property owner via direct subsidy

or reduced special assessment. The only amount that may be included in the municipality's total cost for purposes of computing the above described reimbursement is the reduction of the cost to the property owner. Provision is made for municipalities with population of less than 1,000 pursuant to Minn. Stat. § 18.023, subd. 3c, as amended.

~~B~~ 2. Reforestation ~~grants~~. Grants to any municipality for reforestation shall not exceed ~~either~~ fifty (50) percent of the cost to the municipality for reforestation~~;~~ . ~~or forty (40) dollars multiplied by the number of trees planted on public lands pursuant to the reforestation programs, whichever is less.~~ The grant for these trees shall not exceed fifty (50) dollars per tree.

~~1.--Reforestation grants to a municipality shall be limited in any calendar year to grants for not more than the number of trees removed from public lands in the sanitation program in the previous calendar year except during the first year of an approved disease control program.--During the first year of an approved disease control program, there shall be no restriction upon the number of trees for which grants may be made.~~

~~2~~ a. Reforestation grants to any county with an approved disease control program may include ninety (90) percent of the cost of planting the first fifty (50) trees on public lands in a town not defined as a municipality

of less than 1,000 population, upon the town's application to the county and county's designation of the town as a disease control area. The grant for these fifty (50) trees shall not exceed sixty (60) dollars per tree.

~~3~~ b. Reforestation grants to towns and home rule charter or statutory cities with an approved disease control program which are defined as municipalities in the act and are less than ~~1,000~~ 4,000 in population may include ninety (90) percent of the cost of planting the first fifty (50) trees on public lands. The grant for these fifty (50) trees shall not exceed sixty (60) dollars.

c. Any municipality as defined in this act that receives a grant for reforestation shall appoint up to seven (7) residents of the municipality or designate an existing municipal board or committee to serve as a reforestation advisory committee to advise the municipality in the administration of the reforestation program.

~~C~~ B. Program eligibility. Any municipality is eligible to receive sanitation and reforestation grants upon submitting to the commissioner by November 15 a completed program application form provided by the commissioner, and upon receiving notice of an approved disease control program designation. Extensions shall be granted for good cause shown.

1. The program application shall serve as the basis for approving the municipality's shade tree disease control

program.

2. Approval shall be granted only upon the municipality's agreement to conduct its sanitation program in conformance with these rules and disease control practices designated by the commissioner upon the recommendation of the Shade Tree Advisory Committee.

3. Approval shall only be granted upon the municipality's agreement to conduct its reforestation program in a manner consistent with advise and counsel given the commissioner by the Minnesota Agricultural Extension Service.

4. Program approval may be revoked upon a determination by the commissioner that the municipality has failed to conduct its sanitation and reforestation program in conformance with the standards set forth in this rule. Such a determination or disapproval of a municipal program or control area may be appealed by the municipality and upon request, a hearing pursuant to Minn. Stat. ch. 15 shall be granted.

5. Sanitation and reforestation grants may be terminated upon municipality's failure to maintain an approved shade tree disease control program and upon evidence that proper record-keeping and documentation has not been maintained.

~~D~~ C. Program application. To receive a sanitation and reforestation grant, a municipality shall submit to the commissioner by November 15 a completed program application form provided by the commissioner.

1. A municipality's program application shall include, but not be limited to the following information:

a. An inventory of shade trees within the municipality's disease control area and an estimate of the distribution of these shade trees between public and private lands;

b. A complete description of the municipality's sanitation and reforestation programs which shall include:

(1) The method and schedule of diseased trees surveys;

(2) The extent of disease control tree trimming activities;

(3) The policies for removal of trees on public lands;

(4) The policies for removal of trees on private lands;

(5) The method and location of disposal tree wastes;

(6) The policies for planting new shade trees, including:

(a) The source of nursery stock, if known;

(b) Species planted;

(c) Type of stock planted;

(d) Distribution of species; and,

(e) Other revelant information;

(7) The methods of financing sanitation and reforestation programs, including:

(a) The use of funds derived from general tax levies;

(b) Special assessments;

(c) Federal funds;

(e) Other sources of funding; and,

(8) A complete description of the municipality's subsidy program, if any.

(9) The name or names of the person or persons or committee appointed by the municipality to advise the municipality in the administration of the reforestation program.

c. A statement of planned expenditures for the sanitation and reforestation program for the calendar year.

d. A copy of the local ordinances and resolutions authorizing the local shade tree program.

e. Other information deemed necessary and relevant by the commissioner.

~~8.--Grants-for-sanitation-shall-be-forty-five (45)-percent-of-the-applicant's-planned-expenditures-for sanitation,-unless-forty-five-(45)-percent-of-the-total planned-expenditures-for-all-applicants-exceeds-the-funds designated-for-sanitation-grants;-in-which-case,-grants shall-be-a-pro-rata-allocation-among-the-eligible-applicants.~~

~~3~~2. Except for the first fifty (50) trees for towns and cities as set forth in ~~4~~3. below, grants for sanitation and reforestation shall be fifty (50) percent of the applicant's planned expenditures for sanitation and reforestation, unless fifty (50) percent of the total planned expenditures for all applicants exceeds the funds designated for sanitation and reforestation grants; in which case, grants shall be a pro rata allocation among the eligible applicants. Such grants shall not exceed fifty (50) dollars per tree.

~~4~~3. Grants for ~~reforestation~~ planting the first fifty (50) trees on public lands in eligible towns and cities ~~shall~~ may be ninety (90) percent of the town's or city's planned expenditures for planting ~~the first fifty (50) trees on public lands~~ those trees, providing the availability of sufficient funding. The grant for these fifty (50) trees shall not exceed sixty (60) dollars per tree.

§ 1.0113 Grants-in-aid for wood utilization and disposal systems

A. The commissioner shall within the monies appropriated, make grants-in-aid to eligible applicants for the cost of facilities, equipment, and systems for the disposal or utilization of diseased shade trees. Such grants-in-aid shall be made to:

1. Any home rule charter or statutory city~~, of more than 40,000 population in the metropolitan area or a combination of such cities with a combined population of 40,000 under a joint powers agreement pursuant to Minn. Stat. § 471.59 (1976);~~

~~2. Any home rule charter or statutory city of more than 20,000 population outside the metropolitan area or a combination of such cities with a combined population of 20,000 under a joint powers agreement pursuant to Minn. Stat. § 471.59 as amended;~~

~~3~~ 2. Any special purpose park and recreation board organized under a charter of a city of the first class;

~~4~~ 3. Any non-profit corporation serving a city of the first class; or,

~~5~~ 4. Any county.

B. Such grants shall be made with the following provisions:

1. The city (cities) or county has an approved shade tree disease control program as described in the act or these rules;

2. Grants-in-aid may be less than but shall not exceed fifty (50) percent of the cost of such facility, equipment, or system;

3. Grants-in-aid shall not be made for costs of operating such facility, equipment, or system;

4. Grants-in-aid for site acquisitions shall be made only for land used in the actual operational site;

5. Grants-in-aid shall not be made by the commissioner until he receives certified evidence of the actual cost of the equipment or site; and,

C. Criteria for administration of grants-in-aid:

1. Grants-in-aid to eligible applicants shall be made by the commissioner provided that such wood disposal utilization system meets the following critera:

a. It aids in the control of shade tree diseases;

b. It aids in the recovery of material or energy from wood.

c. It is located to accomplish the above with maximum efficiency

and use of available facilities;

d. It is available to all parties, public and private;

e. It is able to render wood pest-risk free within five (5) days of delivery to the site unless an extension of time has been granted by the commissioner based on existing circumstances of the disposal/utilization site;

f. It includes adequate manpower to operate and service equipment; and,

g. It provides for proper handling and the timely removal of processed wood from the site.

2. In addition to the general criteria under C. 1. above, the commissioner, as appropriate, may consider other specific criteria including the following in evaluating grant payment requests:

a. Sites for wood disposal systems:

(1) Shall be selected on the basis of anticipated volumes of wood and/or the need for a wood disposal system;

(2) Shall be accessible by roadways that permit year-round truck traffic;

(3) Shall have adequate storage areas for both processed wood and equipment;

(4) Shall have protective enclosures, adequate control, and super-

vision to prevent entry of unwanted materials and unauthorized persons;

(5) Shall be in compliance with all applicable Federal and State statutes, rules and regulations; and,

(6) Shall be in conformance with regional solid waste management plans and requirements.

b. Equipment for wood disposal systems:

(1) Shall, where feasible, be portable so that it can be used for servicing more than one site;

(2) Shall be stationary only when the anticipated volume over a five-year period will fully utilize the facility;

(3) Shall be capable of processing large-diameter logs; and,

(4) Shall include auxiliary units and equipment necessary to the operation of the system.

3. Requests for grant-in-aid payments shall be made on forms provided by the commissioner. Contingent upon the availability of funds, the timeliness of applications and other administrative considerations, the commissioner may set deadlines for consideration of requests which shall be published in the State Register at least thirty (30) days prior to the deadline. Requests for payments shall include the following:

a. An itemized list of the applicant's proposed expenditures for qualifying equipment and/or site, and the total amount of these expenditures;

and,

b. Additional documents or other information deemed relevant by the commissioner.

4. Records.

a. Applicants receiving grants-in-aid under this rule shall keep detailed records concerning the operation of the wood disposal and utilization system and shall make these records available to the commissioner at any reasonable time. Such records shall include:

(1) Hours of operation;

(2) Clientele served;

(3) Volume of wood handled; and,

(4) Other information deemed necessary and relevant by the commissioner.

b. A yearly report containing a summation of these records shall be made to the commissioner by December 1.

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

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

Office Memorandum

TO : Joanne E. Hinderaker
Special Assistant Attorney General

DATE: April 16, 1980

FROM : Gerald Heil, Director
Division of Planning

PHONE: 6-1486

SUBJECT: Proposed Adoption of Rules Governing Sanitation and Reforestation Grants and Wood Utilization, and Disposal System Grants (3 MCAR 1.0112 and 1.0113)

The above-mentioned rules are being forwarded for review pursuant to Minn. Stat. 15.0412, Subd. 4. Please note that the Department is not submitting a copy of the Secretary of State's List. This fact is noted on the Statement of Compliance with the Manual of Rule Making Procedures. An explanation is attached to the Compliance Statement.

If you have any questions, please call me.

GH:dw

Enclosure

original EXHIBIT # 12

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING SANITATION AND REFORESTATION GRANTS AND WOOD UTILIZATION, AND DISPOSAL SYSTEM GRANTS (3 MCAR 1.0112-1.0113)	ORDER ADOPTING RULES AND AGENCY FINDING OF FACT

The above-entitled matter came on for hearings before Jon L. Lunde, duly appointed Hearing Examiner, Office of Hearing Examiners of the State of Minnesota, on Thursday, January 10, 1980, at 10:00 a.m. at the Regional Law Enforcement Center Building, Front and Liberty Streets, Mankato, Minnesota, and on Friday, January 11, 1980, at 9:00 a.m. in the Administration Building, Room 116A, 50 Sherburne Avenue, St. Paul, Minnesota, and on Friday, January 11, 1980, at 3:00 p.m. at the Stearns County Courthouse, Courthouse Square, St. Cloud, 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 heard all the testimony, having considered all the evidence adduced, and upon the records, files and proceedings herein, and applicable statutory standards and criteria, in regard to said rules, and by having adopted the Hearing Examiner's Report, dated February 19, 1980, and having confirmed the need for the above-captioned rules and the reasonableness thereof, and since at least five working days have elapsed since receipt of the report of the Hearing Examiner, and since no written or verbal comments were received regarding the rules

proposed herein,

NOW, THERFORE, IT IS ORDERED that the rules identified as 3 MCAR 1.0112 and 3 MCAR 1.0113, attached hereto, are adopted this 19th day of March, 1980, pursuant to authority vested in me by Minn. Stat. Secs. 15.0412 and 18.023, Subd. 2.

IT IS FURTHER ORDERED that the Department give proper notice to all persons who have requested to be informed when the hearing record is submitted to the Attorney General.

STATE OF MINNESOTA

Mark W. Seetin
Commissioner of Agriculture

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

AFFIDAVIT OF SERVICE

Eileen A. Gaiovnik, being first duly sworn, deposes and says that on the 20th day of February, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of the Hearing Examiner, AGR-80-001-JL

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat. § 16.54 (1974), a true and correct copy thereof on the individual named below.

Eileen A. Gaiovnik

Subscribed and sworn to before me this

20th day of February, 1980.

Susan C. Wojcik

SUSAN C. WOJCIK
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Commission Expires April 26, 1986

Mr. Darryl L. Anderson
Assistant Commissioner
Department of Agriculture
4th Floor, State Office Building
St. Paul, Minnesota - 55155

AGR-80-001-JL

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF AGRICULTURE

In the Matter of Proposed Amendments to Rules of the Department of Agriculture governing sanitation and reforestation grants and wood utilization and disposal system grants. (3 MCAR §§ 1.0112 and 1.0113)

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Jon L. Lunde, duly appointed Hearing Examiner, on Thursday, January 10, 1980 at 10:00 a.m. at the Regional Law Enforcement Center Building, Basement Meeting Room, Front and Liberty Streets, Mankato, Minnesota, and on Friday, January 11, 1980, at 9:00 a.m. in the Administration Building, Room 116A, 50 Sherburne Avenue, St. Paul, Minnesota, and on Friday, January 11, 1980, at 3:00 p.m. at the Stearns County Courthouse, Courthouse Square, St. Cloud, Minnesota pursuant to a Notice of Hearing dated November 16, 1979.

Gerald Heil, Director, Division of Planning, Jane Meyer, Director, Shade Tree Program, and Paul Scherman, Shade Tree Program Specialist, appeared on behalf of the Department of Agriculture (hereinafter the "Department") at the hearings in Mankato and St. Paul. In addition, Darryl L. Anderson, Assistant Commissioner, Administration and Grants Management, appeared on behalf of the Department at the hearing scheduled in St. Paul, and both Ms. Meyer and Mr. Scherman appeared at the St. Cloud hearing.

A total of seven persons appeared at the three scheduled hearings and six of them signed the hearing register. Each of the hearings continued until all persons present had had an opportunity to be heard. The record remained open for 20 calendar days following the close of the last hearing in St. Cloud, through January 31, 1980, for the submission of written comments from interested persons. Two written comments were received by the Hearing Examiner prior to the scheduled hearing dates, but no public comments were received subsequent to the hearings while the record remained open.

Pursuant to Minn. Stat. § 15.0412, subd. 4 (1978), this Report shall be available for review to all affected individuals upon request for at least five working days before the Department takes any final action on the proposed rules. 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. § 15.052, subd. 4 (1978). 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. § 15.0412 (1978) 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 files, records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On November 7, 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 Monday, December 3, 1979, a Notice of Hearing and a copy of the proposed rules were published at 4 State Register 889-893.

3. On November 30, 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 December 12, 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) The names of Departmental 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. The Department did not seek outside opinions in amending the rules and no notice of such solicitation was therefore published in the State Register.

5. The record remained open through January 31, 1980 for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

Statutory Authority

6. The Department cited Laws of Minnesota 1979, Chapter 257, as authority for the proposed amendments under consideration herein. That law (hereinafter "Chapter 257"), amending Minn. Stat. § 18.023 (1978), modified the definition of "reforestation" to include the "planting of any species of tree", removed some population requirements for grants-in-aid to cities, authorized the Commissioner of Agriculture to adopt temporary rules for the administration of grants, combined sanitation and reforestation grants into one grant program, increased the grant amounts available per tree, provided for municipal reforestation advisory committees, provided for tax levies and placed a ceiling on grants to municipalities within the metropolitan area. These amendments required changes in the departmental rules which were rendered inconsistent or incomplete by their adoption.

7. The Department is required to adopt rules pertaining to shade tree disease control and the administration of grants authorized under Minn. Stat. § 18.023(3a) (1978). Broad rulemaking authority is specifically granted in § 18.023, subds. 2 and 3b which provide, in part, as follows:

Commissioner to adopt rules. The commissioner shall adopt and may amend rules relating to shade tree disease control in any municipality, as defined in subdivision 1. The rules shall prescribe control measures to be used to prevent the spread of shade tree diseases and shall include the following: (a) A definition of shade tree, (b) qualifications for tree inspectors, (c) methods of identifying diseased shade trees, (d) procedures for giving reasonable notice of inspection of private real property, (e) measures for the removal of any shade tree which may contribute to the spread of shade tree disease, and for reforestation of disease control areas, (f) approved methods of treatment of shade trees, (g) criteria for priority designation areas in an approved disease control program, and (h) any other matters determined necessary by the commissioner to prevent the spread of shade tree disease and enforce the provisions of this section. . . .

* * *

The commissioner shall promulgate rules, including temporary rules, for the administration of grants authorized by this subdivision. The rules shall establish and contain as a minimum:

(1) Procedures for grant applications;

(2) Conditions and procedures for the administration of grants;

(3) Criteria of eligiblilty for grants including, but not limited to, those specified in this subdivision; and

(4) Such other matters as the commissioner may find necessary to the proper administration of the grant program.

Proposed Amendments

8. As a result of an epidemic of Dutch elm and oak wilt diseases, the Legislature enacted Minn. Stat. § 18.023 (1974) providing for the identification, treatment and removal of diseased shade trees, specifying certain subsidies, levies and assessments therefor, and authorizing the Commissioner of Agriculture to adopt rules pursuant to Chapter 15. Subsequent amendments expanded the scope of governmental action in the areas of sanitation and reforestation programs, wood destruction programs and wood utilization programs and required additional rulemaking by the Commissioner in the administration of grants. The Department adopted rules implementing the shade tree disease control measures and the grants, as required. The rules are codified as 3 MCAR § 1.0109-1.0113 (1978). Further amendments to these rules were required by the adoption of Chapter 257 and each of the proposed amendments is within the authority of the Commissioner of the Department of Agriculture.

These rules were originally adopted as temporary rules on July 9, 1979 and published at 4 S.R. 6. In spite of public familiarity with the proposed amendments, none were objected to at any of the three scheduled hearings and only two modifications were suggested.

9. The Department proposes to amend the introductory paragraph to § 1.0112 to provide that "One grant shall be made for all eligible sanitation and reforestation costs." This is a necessary and reasonable amendment to the grant-in-aid provisions because such a combination of these programs is mandated by Chapter 257, § 2. To reflect the combination of these two programs, subsection A. was broadened to include both types of grants instead of dealing with them separately as the previous rule had done. This required some renumbering of § 1.0112.

10. Former § 1.0112 A., as amended, (proposed § 1.0112 A.1.), provides that municipal sanitation grants shall not exceed 50% of the municipalities total approved costs. The Department raised the maximum eligible reimbursement rates from 45 to 50% to reflect the higher rate authorized by Chapter 257, § 2.

At the hearings, the Department proposed to amend the second paragraph of proposed § 1.0112 A.1., the first sentence thereof, by deleting the phrase "of the property owner" and substituting the phrase "to the property owner." This is an appropriate grammatical correction.

11. Former § 1.0112 B, as amended, (proposed § 1.0112 A.2.), provides that municipal reforestation grants shall not exceed $50 per tree. The Department raised the reimbursement rate from not more than $40 per tree to not more than $50 per tree to reflect the higher rate authorized by Chapter 257, § 2.

The Department proposes to add the words "on public property" to the first sentence of proposed § 1.0112 A.2. to clarify the type of grants to which the limitation applies. This is a necessary clarifying change in the proposed language.

12. The Department proposes to repeal former § 1.0112 B.1. which limited municipal reforestation grants (other than during its first year of operations) to grants for not more than the number of trees removed from public lands in the previous calendar year. Repeal of this section is consistent with the legislative repeal of an almost identical provision by Chapter 257, § 2. Since the law no longer limits the number of trees eligible for reimbursement to the number removed in the previous year, this section is properly being repealed.

13. Former § 1.0112 B.2., as amended, (proposed § 1.0112 A.2.a.), provides that a county reforestation grant for the planting of trees on public lands in certain towns may not exceed $60 per tree for the first 50 trees plants. Prior to the adoption of Chapter 257, § 2, there had been no dollar restriction on the amount of a county grant per tree, and the $60-limitation in the proposed amendment was necessitated by the adoption of Chapter 257.

14. Former § 1.0112 B.3., as amended, (proposed § 1.0112 A.2.b.), provides tnat reforestation grants to towns and home rule charter or statutory cities of less than 4,000 inhabitants, for the planting of trees on public lands, may not exceed $60 per tree for the first 50 trees planted. Prior to the adoption of Chapter 257, § 2, reforestation grants were authorized to towns of less than 1,000 population and there was no limitation on the amount of the grant per tree. Since Chapter 257 authorized a grant to additional municipalities of less than 4,000 inhabitants and placed a $60-limitation on grants for the first 50 trees, the Department's amendment to its rules reflecting the changes made by the Legislature is necessary and reasonable.

The Department's amendment as originally proposed read as follows:

> b.~~3.~~ Reforestation grants to towns and home rule charter or statutory cities with an approved disease control program which are defined as municipalities in the act and are less than ~~1,000~~ 4,000 in population may include ninety (90) percent of the cost of planting the first fifty (50) trees on public lands. The grant for these fifty (50) trees shall not exceed sixty (60) dollars. [Underlining indicates additions and strike-outs indicate deletions.]

At the hearing, the Department proposed to amend the last sentence of this section to read as follows:

> The grant for these fifty (50) trees shall not exceed sixty (60) dollars per tree.

This clarification of the Department's proposed amendment is necessary to reflect the limitation contained in Chapter 257.

15. Proposed § 1.0112 A.2.c., adding all new material, provides as follows:

> c. Any municipality as defined in this act that receives a grant for reforestation shall appoint up to seven (7) residents of the municipality or designate an existing municipal board or committee to serve as a reforestation advisory committee to advise the municipality in the administration of the reforestation program.

This language closely paraphrases the statutory language in Chapter 257, § 2, requiring such an advisory structure. The language "as defined in this act" could be eliminated from the proposed rule because only those municipalities within the meaning of the Act are eligible for reforestation grants in the first place.

Mark Wurdeman, Urban Forestry Specialist with the Minnesota Department of Natural Resources, appeared at the Mankato hearing to suggest that the reforestation advisory committee be legally constituted by ordinance and have additional detailed responsibilities specified in the Department's rule. He suggested the following amendment:

> Any municipality as defined in this act that receives a grant for reforestation shall appoint a legally constituted tree body of up to seven (7) residents of the municipality, or designate an existing municipal board or committee to serve as a tree body, to advise the municipality in the development and administration of the comprehensive city forestry program.
>
> It shall be the responsibility of the Board to study, investigate, and advise for maintenance, planting, replanting, removal or dispositon of trees and shrubs in parks, along the streets and in other public areas. The Board, when requested, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work. The Board shall submit findings and recommendations to the City Council for approval of planting, replanting and disposition of trees and shrubs in parks and along streets and other public areas. The Board may appoint a State Certified tree inspector.

Several communities like Cloquet from which Mr. Wurdeman's proposed language was taken have legally constituted tree bodies, and Barbara J. Stephan, Supervisor, Urban and Community Forestry Division of the Minnesota Department of Natural Resources, submitted a sample city tree ordinance creating a tree body. Both representatives of the Department of Natural Resources felt that a legally constituted tree board could have a variety of duties and responsibilities and should not be limited to an advisory capacity. They felt that this would guarantee efficient use of grant monies and be generally beneficial to the communities involved.

Ms. Meyer felt that the committee authorized by Chapter 257 should be limited to an advisory capacity as required by Chapter 257 and that it would be inconsistent with legislative intent to require such a committee to engage in anything other than reforestation programs. The Department noted that Chapter

257, which authorizes a "reforestation" advisory committee does not mention sanitation at all and does not, therefore, deal with tree removal and other functions contemplated in Mr. Wurdeman's proposed amendments. However, Ms. Meyer recognized that the function of the advisory committee could be clarified and she proposed to amend subsection A.2.c. to read as follows:

> c. Any municipality as defined in this act that receives a grant for reforestation shall appoint up to seven (7) residents of the municipality or designate an existing municipal board or committee to serve as a reforestation advisory committee to advise the municipality in the development and administration of the reforestation program.

16. Former § 1.0112 D.1.b., as amended, (proposed § 1.0112 C.1.b.), requires that a municipality submit, as part of its application to the Department, a complete description of its sanitation and reforestation programs including:

> "(9) The name or names of the person or persons or committee appointed by the municipality to advise the municipality in the administration of the reforestation program."

This requirement was added to the previous rule in order to comply with Chapter 257 which requires the appointmen or designation of such a committee, as was previously discussed. Definition of the committee so appointed, as part of the application process, is a reasonable requirement within the Department's informed discretion.

17. The Department proposes to repeal former § 1.0112 D.2. which limits sanitation grants to 45% of the applicant's planned expenditures because the maximum reimbursement rate for sanitation grants was increased to 50% by Chapter 257, § 2.

18. Former § 1.0112 D.3., as amended (proposed § 1.0112 C.2.), provides that sanitation and reforestation grants both, and not just reforestation grants, be limited to 50% of the applicant's planned expenditures in those areas. Placing the 50% limitation to these grants is consistent with the requirements of Chapter 257 as noted in Finding No. 17.

In the event that appropriations are insufficient to fund 50% of all eligible municipal expenditures, the rule provides for a pro rata allocation among eligible applicants based on their total planned expenditures. This is a reasonable and equitable solution for distributing available monies to municipalities for shade tree disease control purposes.

The rule also limits reforestation and sanitation grants to no more than $50 per tree. Chapter 257 itself does not limit sanitation grants to $50 per tree but only limits reforestation grants to that amount. The Department did not explain the need or reasonableness for so limiting sanitation grants in the rule, and sanitation grants should not, therefore, be so limited. In fact, the Department may not have intended to limit sanitation grants to the $50 per tree amount (see the last sentence of its explanation for amending this section in the Statement of Need and Reasonableness.). The last sentence of the proposed rule should, therefor, be amended to read as follows:

> Such reforestation grants shall not exceed fifty (50) dollars per tree.

Complied with

This will clarify the meaning of the rule and avoid unnecessary uncertainty.

19. Former § 1.0112 D.4., as amended (proposed § 1.0112 C.3.), specifies that grants for planting the first 50 trees on public lands in eligible towns

and cities may be 90% of its planned planting costs but limits the costs per tree to $60. These limitations are all consistent with the requirements of Chapter 257.

20. The amendments to § 1.0113, deleting certain language no longer applicable, specifies which entities qualify for wood utilization and disposal system grants-in-aid. The amendments remove population requirements that were deleted by Chapter 257 and clarify existing law. Mr. Wurdeman suggested that § 1.0113 A. be amended to provide that such grants-in-aid be made available not only for the disposal or utilization of diseased shade trees but also for the disposal and utilization of hazardous and over-mature shade trees. His comments in that respect were not within the scope of the hearing and the section he recommended be amended was not under consideration by the Department or the Hearing Examiner. However, the Department did note that the purpose of the shade tree disease control program was to deal primarily with Dutch elm diseased and oak wilt diseased trees only and that that should be the primary focus of the Department. The Hearing Examiner concurs in their judgment on this matter.

Based on the foregoing Findings of Fact, the Hearing Examiner makes the following

CONCLUSIONS

1. The Department gave due, timely and adequate legal notice of the hearing.

2. Pursuant to Minn. Stat. § 15.052, subd. 3 (1978), it is the duty of the Hearing Examiner to: ". . . (4) make a report on each proposed agency action . . . taking notice of the degree to which the agency has (i) documented its statutory authority to take the proposed action; (ii) fulfilled all relevant, substantive and procedural requirements of law or rule, and (iii) demonstrated the need for and reasonableness of its proposed action with an affirmative presentation of facts".

3. The Department has documented its statutory authority to promulgate the proposed rules.

4. The Department has fulfilled all relevant, substantive and procedural requirements of law or rule.

5. With the exceptions noted in the Findings, the Department has demonstrated the need for and reasonableness of the proposed rules.

Based upon the foregoing Conclusions, the Hearing Examiner makes the following:

RECOMMENDATION

That the proposed rules be modified as suggested in the Findings and that as so modified they be adopted.

Dated this 19th day of February, 1980.

JON L. LUNDE
Hearing Examiner

AGR-80-001-JL

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF AGRICULTURE

IN THE MATTER OF PROPOSED AMENDMENTS)
TO RULES OF THE DEPARTMENT OF AGRICULTURE) ORDER OF THE
GOVERNING SANITATION AND REFORESTATION) CHIEF HEARING EXAMINER
GRANTS AND WOOD UTILIZATION AND DISPOSAL)
SYSTEM GRANTS (3 MCAR §§ 1.0112 AND 1.0113))

WHEREAS, hearings were held on January 10 and 11, 1980, before Jon L. Lunde, a Hearing Examiner of the State Office of Hearing Examiners, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of the Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Department of Agriculture (hereinafter "Department") on February 19, 1980; and

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

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

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

NOW, THEREFORE, upon receipt of this Order, the Department 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 31st day
of March, 1980.

DUANE R. HARVES
Chief Hearing Examiner

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF THE RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING SANITATION AND REFORESTATION GRANTS AND WOOD UTILIZATION, AND DISPOSAL SYSTEM GRANTS (3 MCAR 1.0112 AND 1.0113)	)))))	STATEMENT OF COMPLIANCE WITH THE 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: April 16, 1980

* The Department is not submitting a copy of the Secretary of State's List. An explanation is contained in the attached memorandum.

SF-00006-01

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

Office Memorandum

TO : Peder Hong
Special Assistant Attorney General

DATE: 04/14/80

FROM : Gerald Heil, Director GH
Planning Division

PHONE: 296-7686

SUBJECT: Shade Tree Rules

The proposed ammendments to the Shade Tree Rules have completed the entire rule promulgation process except for the final review by the Attorney General. The rules are now ready for submission for such review. However, one procedural mistake has been made during the process.

Through an inadvertent oversight on my part, the Department does not have the list of persons to whom the Notice of Hearing was sent. As you are aware, the Secretary of State provides each Department with a general and specific mailing list. The general mailing list comes to us on gummed labels which are then used in sending the Notice of Hearing to the individuals on the list. I neglected to copy the gummed labels. Consequently, there is no list to submit to the Attorney General's Office as required by rule, except for the specific mailing list which is being submitted. All affidavits, however, are in order and are included in the materials.

I assure you that this oversight will not reoccur in the future. I suggest that this memorandum be attached to the Certificate of Compliance with the Manual of Rule Making Procedures and be noted as an exception. If you have any questions, please call me.

GH:cs

EXHIBIT # 9

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED)
ADOPTION OF RULES OF THE DEPART-)
MENT OF AGRICULTURE GOVERNING)
THE SHADE TREE PROGRAM)

STATEMENT OF NEED
AND REASONABLENESS

The above captioned rules are amendments to existing rules of the Department of Agriculture, 3MCAR §§ 1.0109 through 1.0113. These proposed rules amend the existing rules 3MCAR §§ 1.0112 A-D and 1.0113 on sanitation and reforestation grants and wood utilization and disposal system grants.

The need to amend these rules arises from Laws of Minnesota, 1979, ch. 257, subd. 3a, which directs the Commissioner of Agriculture to adopt rules describing the administration of the grants authorized by this subdivision. These rules shall establish and contain as a minimum: (1) procedures for grant applications; (2) conditions and procedures for the administration of grants; (3) criteria of eligibility for grants including, but not limited to, those specified in this subdivision; and (4) such other matters as the Commissioner may find necessary to the proper administration of the grant program. The law combines the sanitation and reforestation grant programs, provides for a higher reimbursement rate, encourages local reforestation programs, and broadens eligibility for wood utilization and disposal grants.

The Department will call no outside witnesses to testify.

The Department will be represented by the following staff: Gerald Heil, Director of Planning, Paul Scherman, Shade Tree Program, and Peder Hong, Special Assistant Attorney General.

The Department will not introduce any documentary evidence.

INTRODUCTION

Laws of Minnesota, 1979, ch. 257 made several changes in the sanitation, reforestation, and wood disposal and utilization grant programs and required the Commissioner of Agriculture to promulgate rules to implement these changes. The purpose of these rules is to interpret the law consistent with the legislative intent behind its passage. In so doing, every attempt has been made to create a mechanism that is equitable, reasonable, and predictable for all affected parties. It should be noted that these rules must be read and interpreted in conjunction with Laws of Minnesota, 1979, ch. 257. The Department has attempted to avoid duplication of statutory language except in cases where such statutory language is necessary to identify and clarify the contents of the rule.

RULE JUSTIFICATION

The format used in preparing this Statement of Need and Reasonableness is to state each section of the rule followed by an explanation of the intent of the rule, the need for the rule, and the reasonableness of the rule.

3 MCAR § 1.0112 Grants-in-aid to municipalities for sanitation and reforestation program. The commissioner may, in the name of the state and within the limits of appropriations provided, make grants-in-aid to a municipality with an approved disease control program for the partial funding of municipal sanitation and reforestation programs. One grant shall be made for all eligible sanitation and reforestation costs.

...This section of 3 MCAR § 1.0112 specifies that the sanitation and reforestation grant programs have been combined and that, unlike the previous two years, only one grant will be made for both types of activities. This change is mandated in law.

A. Sanitation and reforestation grants.

1. ~~A.~~ Sanitation ~~grants.~~ Grants to any municipality for sanitation shall not exceed ~~forty five~~ fifty (~~45~~ 50) percent of the municipality's total cost for sanitation approved by the commissioner. The total cost may include any amounts paid for sanitation by special assessments, ad valorem taxes, federal grants, or other funds. A municipality may assess to the abutting property not more than fifty (50) percent of the expense of treating with an approved method or removing diseased shade trees located on street terraces or boulevards to that abutting property.

Grants shall not be made to a municipality if the total cost of tree removal has been incurred solely by the individual property owner and the municipality has not reduced the cost of the property owner via direct subsidy or reduced special assessment. The only amount that may be included in the municipality's total cost for purposes of computing the above described reimbursement is the reduction of the cost to the property owner. Provision is made for municipalities with population of less than 1,000 pursuant to Minn. Stat. § 18.023, subd. 3c, as amended.

...This section raises the maximum eligible reimbursement rate from 45% to 50% of eligible sanitation costs, as mandated in law.

2. ~~B.~~ Reforestation ~~grants.~~ Grants to any municipality for reforestation shall not exceed ~~either~~ fifty (50) percent of the cost to the municipality for reforestation~~;~~. ~~or forty (40) dollars multiplied by the number of trees planted on public lands pursuant to the reforestation programs, whichever is less.~~ The grant for these trees shall not exceed fifty (50) dollars per tree.

...The maximum eligible reimbursement rate for eligible reforestation costs was raised from 45% to 50% by law. The law also provided that the grant for each eligible tree planted could not exceed $50. Previously, the maximum amount per tree was $40.

~~1. Reforestation grants to a municipality shall be limited in any calendar year to grants for not more than the number of trees removed from public lands in the sanitation program in the previous calendar year except during the first year of an approved disease control program. During the first year of an approved disease control program, there shall be no restriction upon the number of trees for which grants may be made~~.

...This language is removed from the rules because the law no longer limits the number of trees eligible for reimbursement to the number removed in the year previous. The exception for the first year of an approved disease control program was also removed by the law.

a.~~2~~. Reforestation grants to any county with an approved disease control program may include ninety (90) percent of the cost of planting the first fifty (50) trees on public lands in a town not defined as a municipality of less than 1,000 population, upon the town's application to the county and county's designation of the town as a disease control area. The grant for these fifty (50) trees shall not exceed sixty (60) dollars per tree.

...The new language in this section provides a ceiling on the amount of the grant per tree ($60) of the first 50 trees planted on public lands in a town as described in this section. Previously, there had been no dollar restriction on the amount of the grant per tree. This dollar restriction is stipulated in the law.

b.~~3~~. Reforestation grants to towns and home rule charter or statutory cities with an approved disease control program which are defined as municipalities in the act and are less than ~~1,000~~ 4,000 in population may include ninety (90) percent of the cost of planting the first fifty (50) trees on public lands. The grant for these fifty (50) trees shall not exceed sixty (60) dollars.

...This section enables home rule charter and statutory cities with populations of less than 4000 to receive a reforestation grant that may include 90% of the cost of the first 50 trees planted on public property. The law further provided that the grant per tree could not exceed $60. In the past, this special provision was limited to towns of less than 1000 in population and there was no dollar ceiling on the amount of the grant per tree.

c. Any municipality as defined in this act that receives a grant for reforestation shall appoint up to seven (7) residents of the municipality or designate an existing municipal board or committee to serve as a reforestation advisory committee to advise the municipality in the administration of the reforestation program.

...The provisions of this section are as specified in the law.

B. ~~C.~~ Program eligibility. Any municipality is eligible to receive sanitation and reforestation grants upon submitting to the commissioner by November 15 a completed program application form provided by the commissioner, and upon receiving notice of an approved disease control program designation. Extensions shall be granted for good cause shown.

1. The program application shall serve as the basis for approving the municipality's shade tree disease control program.

2. Approval shall be granted only upon the municipality's agreement to conduct its sanitation program in conformance with these rules and disease control practices designated by the commissioner upon the recommendation of the Shade Tree Advisory Committee.

3. Approval shall only be granted upon the municipality's agreement to conduct its reforestation program in a manner consistent with advice and counsel given the commissioner by the Minnesota Agricultural Extension Service.

4. Program approval may be revoked upon a determination by the commissioner that the municipality has failed to conduct its sanitation and reforestation program in conformance with the standards set forth in this rule. Such a determination or disapproval of a municipal program or control area may be appealed by the municipality and upon request, a hearing pursuant to Minn. Stat. ch. 15 shall be granted.

5. Sanitation and reforestation grants may be terminated upon municipality's failure to maintain an approved shade tree disease control program and upon evidence that proper record-keeping and documentation has not been maintained.

C. B. Program application. To receive a sanitation and reforestation grant, a municipality shall submit to the commissioner by November 15 a completed program application form provided by the commissioner.

1. A municipality's program application shall include, but not be limited to the following information:

a. An inventory of shade trees within the municipality's disease control area and an estimate of the distribution of these shade trees between public and private lands;

b. A complete description of the municipality's sanitation and reforestation programs which shall include:

(1) The method and schedule of diseased trees surveys;
(2) The extent of disease control tree trimming activities;
(3) The policies for removal of trees on public lands;
(4) The policies for removal of trees on private lands;
(5) The method and location of disposal tree wastes;
(6) The policies for planting new shade trees, including:

(a) The source of nursery stock, if known;

(b) Species planted;

(c) Type of stock planted;

(d) Distribution of species; and,

(e) Other relevant information;

(7) The methods of financing sanitation and reforestation programs, including:

(a) The use of funds derived from general tax levies;

(b) Special assessments;

(c) Federal funds;

(d) Other sources of funding; and,

(8) A complete description of the municipality's subsidy program, if any.

(9) The name or names of the person or persons or committee appointed by the municipality to advise the municipality in the administration of the reforestation program.

c. A statement of planned expenditures for the sanitation and reforestation program for the calendar year.

d. A copy of the local ordinances and resolutions authorizing the local shade tree program.

e. Other information deemed necessary and relevant by the commissioner.

...This section stipulates what information shall be included in a municipality's application for a sanitation and reforestation grant. The only change is that the municipality must include the name or names of the person or persons or committee that will serve as a reforestation advisory committee to the municipality.

~~2. Grants for sanitation shall be forty-five (45) percent of the applicant's planned expenditures for sanitation, unless forty-five (45) percent of the total planned expenditures for all applicants exceeds the funds designated for sanitation grants; in which case, grants shall be a pro-rata allocation among the eligible applicants~~.

...This language is removed because the law has changed the maximum reimbursement rate from 45% to 50%, as explained below.

2. ~~3.~~ Except for the first fifty (50) trees for towns and cities as set forth in 3. ~~4.~~ below, grants for sanitation and reforestation shall be fifty (50) percent of the applicant's planned expenditures for sanitation and reforestation, unless fifty (50) percent of the total planned expenditures for all applicants exceeds the funds designated for sanitation and reforestation grants; in which case, grants shall be a pro-rata allocation among the eligible applicants. Such grants shall not exceed fifty (50) dollars per tree.

...The law specifies that grants for sanitation and reforestation may not exceed 50% of the municipality's planned expenditures, but they may be less. The actual reimbursement rate is calculated by dividing the available appropriation by the total sanitation and reforestation expenditures for all eligible municipalities that submitted applications. This method of calculating the reimbursement rate is necessary and reasonable because the appropriation available each calendar year is predetermined by law. Depending on the budgets submitted, the available appropriation may not be sufficient to reimburse all

municipalities at the 50% level. Therefore, since the appropriation is fixed, the reimbursement rate will increase or decrease as total budgets increase or decrease. In no event will the grant for eligible reforestation costs exceed $50 per tree, however.

3. ~~4.~~ Grants for ~~reforestation~~ planting the first fifty (50) trees on public lands in eligible towns and cities ~~shall~~ may be ninety (90) percent of the town's or city's planned expenditures for planting ~~the first fifty (50) trees on public lands~~ those trees, providing the availability of sufficient funding. The grant for these fifty (50) trees shall not exceed sixty (60) dollars per tree.

...The provisions of this section are as specified in the law.

3 MCAR § 1.0113 Grants-in-aid for wood utilization and disposal systems.

A. The commissioner shall within the monies appropriated, make grants-in-aid to eligible applicants for the cost of facilities, equipment, and systems for the disposal or utilization of diseased shade trees. Such grants-in-aid shall be made to:

1. Any home rule charter or statutory city. ~~of more than 40,000 population in the metropolitan area or a combination of such cities with a combined population of 40,000 under a joint powers agreement pursuant to Minn. Stat. § 471.59 (1976);~~

~~2. Any home rule charter or statutory city of more than 20,000 population outside the metropolitan area or a combination of such cities with a combined population of 20,000 under a joint powers agreement pursuant to Minn. Stat. § 471.59 as amended;~~

2. ~~3.~~ Any special purpose park and recreation board organized under a charter of a city of the first class;

3. ~~4.~~ Any non-profit corporation serving a city of the first class; or,

4. ~~5.~~ Any county.

...This section identifies the legal entities eligible to receive such grants. The law removed all population requirements. The provisions of this section are as provided in the law. The only other changes proposed are housekeeping in nature.

B. Such grants shall be made with the following provisions:

1. The city (cities) or county has an approved shade tree disease control program as described in the act or these rules;

2. Grants-in-aid may be less than but shall not exceed fifty (50) percent of the cost of such facility, equipment, or system;

3. Grants-in-aid shall not be made for costs of operating such facility, equipment, or system;

4. Grants-in-aid for site acquisitions shall be made only for land used in the actual operational site;

5. Grants-in-aid shall not be made by the commissioner until he receives certified evidence of the actual cost of the equipment or site; and,

C. Criteria for administration of grants-in-aid.

1. Grants-in-aid to eligible applicants shall be made by the commissioner provided that such wood disposal utilization system meets the following criteria:

a. It aids in the control of shade tree diseases;

b. It aids in the recovery of material or energy from wood.

c. It is located to accomplish the above with maximum efficiency and use of available facilities;

d. It is available to all parties, public and private;

e. It is able to render wood pest-risk free within five (5) days of delivery to the site unless an extension of time has been granted by the commissioner based on existing circumstances of the disposal/utilization site;

f. It includes adequate manpower to operate and service equipment; and,

g. It provides for proper handling and the timely removal of processed wood from the site.

2. In addition to the general criteria under C.1. above, the commissioner, as appropriate, may consider other specific criteria including the following in evaluating grant payment requests:

a. Sites for wood disposal systems:

(1) Shall be selected on the basis of anticipated volumes of wood and/or the need for a wood disposal system;

(2) Shall be accessible by roadways that permit year-round truck traffic;

(3) Shall have adequate storage areas for both processed wood and equipment;

(4) Shall have protective enclosures, adequate control, and supervision to prevent entry of unwanted materials and unauthorized persons;

(5) Shall be in compliance with all applicable Federal and State statutes, rules and regulations; and,

(6) Shall be in conformance with regional solid waste management plans and requirements.

b. Equipment for wood disposal systems:

(1) Shall, where feasible, be portable so that it can be used for servicing more than one site;

(2) Shall be stationary only when the anticipated volume over a five-year period will fully utilize the facility;

(3) Shall be capable of processing large-diameter logs; and,

(4) Shall include auxiliary units and equipment necessary to the operation of the system.

3. Requests for grant-in-aid payments shall be made on forms provided by the commissioner. Contingent upon the availability of funds, the timeliness of applications and other administrative considerations, the commissioner may set deadlines for consideration of requests which shall be published in the State Register at least thirty (30) days prior to the deadline. Requests for payments shall include the following:

a. An itemized list of the applicant's proposed expenditures for qualifying equipment and/or site, and the total amount of these expenditures; and,

b. Additional documents or other information deemed relevant by the commissioner.

4. Records.

a. Applicants receiving grants-in-aid under this rule shall keep detailed records concerning the operation of the wood disposal and utilization system and shall make these records available to the commissioner at any reasonable time. Such records shall include:

(1) Hours of operation;

(2) Clientele served;

(3) Volume of wood handled; and,

(4) Other information deemed necessary and relevant by the commissioner.

b. A yearly report containing a summation of these records shall be made to the commissioner by December 1.

...No changes were made in the remainder of 3 MCAR § 1.0113.

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF)
AMENDMENTS TO THE RULES OF THE DEPARTMENT)
OF AGRICULTURE GOVERNING SANITATION AND) AFFIDAVIT OF MAILING
REFORESTATION GRANTS AND WOOD UTILIZATION,)
AND DISPOSAL SYSTEM GRANTS (3 MCAR Sec.)
1.0112 AND 1.0113))

Joyce Walkosz being first duly sworn, deposes and says:

That on the 30th day of November 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 Walkosz

Subscribed and sworn to before me this
30th day of November 1979
Notary Public, Ramsey
County, Minnesota
My Commission expires May 6, 1983.

Janet E. Gruening

JANET E. GRUENING
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires May 6, 1983.

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO THE RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING SANITATION AND REFORESTATION GRANTS AND WOOD UTILIZATION, AND DISPOSAL SYSTEM GRANTS (3 MCAR Sec. 1.0112 AND 1.0113)	AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Gerald F. Heil 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 28th day of November, 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 28th day of November, 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.

Gerald F. Heil

Subscribed and sworn to before me this 28th day of November, 1979

Notary Public Janet E. Gruening Ramsey County, Minnesota

My Commission expires May 6, 1983.

JANET E. GRUENING
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires May 6, 1983.

EXHIBIT # 8

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO THE RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING SANITATION AND REFORESTATION GRANTS AND WOOD UTILIZATION, AND DISPOSAL SYSTEM GRANTS (3 MCAR Sec. 1.0112 AND 1.0113)	)	CERTIFICATE OF DELIVERY SECRETARY OF STATE LIST

I hereby certify that the attached 331 labels 5 sheets constitute the complete list of persons, associations, and other interested groups who as of 9:30 o'clock AM, this 28th day of November, 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 Dennis Peick

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF PROPOSED AMENDMENTS TO RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING SANITATION AND REFORESTATION GRANTS AND WOOD UTILIZATION, AND DISPOSAL SYSTEM GRANTS (3 MCAR Sec. 1.0112 AND 1.0113)	NOTICE OF HEARING

Public hearings concerning the proposed rule will be held at the Regional Law Enforcement Center Building, Basement Meeting Room, Front and Liberty Streets, Mankato, Minnesota, on January 10th, 1980, commencing at 10:00 a.m.; and also in the Administration Building, Room 116A, 50 Sherburne Avenue, Saint Paul, Minnesota, on January 11th, 1980, commencing at 9:00 a.m.; and also at the Stearns County Courthouse, Courthouse Square, St. Cloud, Minnesota, on January 11th, 1980, commencing at 3:00 p.m.. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner, by the proposed rule, you are urged to participate in the rule hearing process.

Following the Agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon L. Lunde, Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-8108, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the

hearing, order that the record be kept open for a longer period of time not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. Sec. 15.0411 - Sec. 15.0417 and Sec. 15.052, and by 9 MCAR Sec. 2.101 - Sec. 2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Department and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include all of the evidence which will be presented by the Department justifying both the need for and the reasonableness of the proposed rule. The Department intends to present only a summary of the Statement of Need and Reasonableness at the hearing but will answer questions raised by interested persons. You are therefore urged to review the Statement of Need and Reasonableness before the hearing. Additional copies will be available at the hearing. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

The proposed rule would modify existing rules governing grants-in-aid to municipalities for sanitation and reforestation activities and wood utilization and disposal systems. The proposed rule, if adopted, would ammend existing rules 3 MCAR Secs. 1.0109 through 1.0113 to bring them into compliance with Minnesota Laws, 1979, Chapter 257. Basically, the proposed rule would change the local share participation costs of the aforementioned grants, made to municipalities to conduct such program activities. The rule also changes the limits of assistance allowed for trees for reforestation

purposes, modifies certain eligibility criteria, and makes other changes regarding the conditions of such grants.

The Department's authority to adopt the proposed rule is contained in Minnesota Laws, 1979, Chapter 257.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Jane Meyer, Administrator, Shade Tree Program, Minnesota Department of Agriculture, 90 West Plato Boulevard, Saint Paul, Minnesota 55107, telephone (612) 296-8580. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule, contact Ms. Meyer.

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.

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. Sec. 10A.01, subd. 11, as ammended by Minn. Laws, 1979, Ch. 59, Sec. 3, as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

November 16, 1979

Mark W. Seetin
Commissioner of Agriculture

Exhibit #3

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING SANITATION AND REFORESTATION GRANTS AND WOOD UTILIZATION, AND DISPOSAL SYSTEM GRANTS	ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Regional Law Enforcement Center Building, Basement Meeting Room, Front and Liberty Streets, Mankato, Minnesota, on January 10th, 1980, commencing at 10:00 a.m., or as soon thereafter as possible, and also in the Administration Building, Room 116A, 50 Sherburne Avenue, Saint Paul, Minnesota, on January 11th, 1980, commencing at 9:00 a.m., or as soon thereafter as possible; and also at the Stearns County Courthouse, Courthouse Square, St. Cloud, Minnesota, on January 11th, 1980, commencing at 3:00 p.m., or as soon thereafter as possible and continuing until all persons have had an apportunity to be heard.

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

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

Mark W. Seetin
Commissioner of Agriculture

DATE: November 5, 1979

Exhibit 4a and 2a

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 December 3-19, 1979

Date	Agency and Rule Matter	Time & Place
Dec. 11	Public Welfare Payment for Abortion Services Under the Medical Assistance Program Hearing Examiner: Natalie L. Gaull	9:00 a.m., State Office Bldg., Rm. 81, Wabasha Street, St. Paul, MN
Dec. 12	Public Safety Certification of Motor Vehicle Insurance Hearing Examiner: Jon L. Lunde	1:00 p.m., Transportation Bldg. Rm. B9, John Ireland Blvd., St. Paul, MN
Dec. 13	Public Welfare Foster Care for Children and Child Protective Services Rule Hearing Examiner: George Beck	9:00 a.m., Centennial Office Bldg., Rm. A, Fourth Floor, 658 Cedar St., St. Paul, MN
Dec. 17	Revenue Dept. Income Tax Energy Credit Hearing Examiner: Jon L. Lunde	9:00 a.m., State Office Bldg., Rm. 83, 435 Park St., St. Paul, MN

Department of Agriculture Shade Tree Program

Proposed Amendments to the Existing Permanent Rules Governing Sanitation and Reforestation Grants and Wood Utilization, and Disposal System Grants (3 MCAR §§ 1.0112-1.0113)

Notice of Hearing

Public hearings concerning the proposed rule will be held at the Regional Law Enforcement Center Building, Basement Meeting Room, Front and Liberty Streets, Mankato, Minnesota, on January 10th, 1980, commencing at 10:00 a.m.; and also in the Administration Building, Room 116A, 50 Sherburne Avenue, Saint Paul, Minnesota, on January 11th, 1980, commencing at 9:00 a.m.; and also at the Stearns County Courthouse, Courthouse Square, St. Cloud, Minnesota, on January 11th, 1980, commencing at 3:00 p.m. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

Following the Agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon L. Lunde, Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, telephone (612) 296-5938, either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period of time not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052; and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Twenty-five days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Department and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include all of the evidence which will be presented by the Department justifying both the need for and the reasonableness of the proposed rule. The Department intends to present only a summary of the Statement of Need and Reasonableness at the hearing but will answer questions raised by interested persons. You are therefore urged to review the Statement of Need and Reasonableness before the hearing. Additional copies will be available at the hearing. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

The proposed rule would modify existing rules governing grants-in-aid to municipalities for sanitation and reforestation

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."

activities and wood utilization and disposal systems. The proposed rule, if adopted, would ammend existing rules 3 MCAR §§ 1.0109 through 1.0113 to bring them into compliance with Minnesota Laws of 1979, ch. 257. Basically, the proposed rule would change the local share participation costs of the aforementioned grants, made to municipalities to conduct such program activities. The rule also changes the limits of assistance allowed for trees for reforestation purposes, modifies certain eligibility criteria, and makes other changes regarding the conditions of such grants.

The Department's authority to adopt the proposed rule is contained in Minnesota Laws of 1979, ch. 257.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Jane Meyer, Administrator, Shade Tree Program, Minnesota Department of Agriculture, 90 West Plato Boulevard, Saint Paul, Minnesota 55107, telephone (612) 296-8580. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule, contact Ms. Meyer.

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.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, as ammended by Laws of 1979, ch. 59, § 3, as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

November 16, 1979

Mark W. Seetin
Commissioner of Agriculture

Amendments as Proposed

3 MCAR § 1.0112 Grants-in-aid to municipalities for sanitation and reforestation program. The commissioner may, in the name of the state and within the limits of appropriations provided, make grants-in-aid to a municipality with an approved disease control program for the partial funding of municipal sanitation and reforestation programs. One grant shall be made for all eligible sanitation and reforestation costs.

A. Sanitation and reforestation grants.

1. ~~A.~~ Sanitation ~~grants~~. Grants to any municipality for sanitation shall not exceed ~~forty-five~~ fifty (~~45~~ 50) percent of the municipality's total cost for sanitation approved by the commissioner. The total cost may include any amounts paid for sanitation by special assessments, ad valorem taxes, federal grants, or other funds. A municipality may assess to the abutting property not more than fifty (50) percent of the expense of treating with an approved method or removing diseased shade trees located on street terraces or boulevards to that abutting property.

Grants shall not be made to a municipality if the total cost of tree removal has been incurred solely by the individual property owner and the municipality has not reduced the cost of the property owner via direct subsidy or reduced special assessment. The only amount that may be included in the municipality's total cost for purposes of computing the above described reimbursement is the reduction of the cost to the property owner. Provision is made for municipalities with population of less than 1,000 pursuant to Minn. Stat. § 18.023, subd. 3c, as amended.

2. ~~B.~~ Reforestation ~~grants~~. Grants to any municipality for reforestation shall not exceed ~~either~~ fifty (50) percent of the cost to the municipality for reforestation~~, or forty (40) dollars multiplied by the number of trees planted on public lands pursuant to the reforestation programs, whichever is less.~~ The grant for these trees shall not exceed fifty (50) dollars per tree.

~~1. Reforestation grants to a municipality shall be limited in any calendar year to grants for not more than the number of trees removed from public lands in the sanitation program in the previous calendar year except during the first year of an approved disease control program. During the first year of an approved disease control program, there shall be no restriction upon the number of trees for which grants may be made.~~

a. ~~2.~~ Reforestation grants to any county with an approved disease control program may include ninety (90) percent of the cost of planting the first fifty (50) trees on public lands in a town not defined as a municipality of less than 1,000 population, upon the town's application to the county and county's designation of the town as a disease control area. The grant for these fifty (50) trees shall not exceed sixty (60) dollars per tree.

b. ~~3.~~ Reforestation grants to towns and home rule charter or statutory cities with an approved disease control program which are defined as municipalities in the act and are less than ~~1,000~~ 4,000 in population may include ninety (90) percent of the cost of planting the first fifty (50) trees on public lands. The grant for these fifty (50) trees shall not exceed sixty (60) dollars.

c. Any municipality as defined in this act that receives a grant for reforestation shall appoint up to seven (7) residents of the municipality or designate an existing municipal board or committee to serve as a reforestation advisory committee to advise the municipality in the administration of the reforestation program.

B. ~~C.~~ Program eligibility. Any municipality is eligible to receive sanitation and reforestation grants upon submitting to the commissioner by November 15 a completed program application form provided by the commissioner, and upon receiving notice of an approved disease control program designation. Extensions shall be granted for good cause shown.

1. The program application shall serve as the basis for approving the municipality's shade tree disease control program.

2. Approval shall be granted only upon the municipality's agreement to conduct its sanitation program in conformance with these rules and disease control practices designated by the commissioner upon the recommendation of the Shade Tree Advisory Committee.

3. Approval shall only be granted upon the municipality's agreement to conduct its reforestation program in a manner consistent with advice and counsel given the commissioner by the Minnesota Agricultural Extension Service.

4. Program approval may be revoked upon a determination by the commissioner that the municipality has failed to conduct its sanitation and reforestation program in conformance with the standards set forth in this rule. Such a determination or disapproval of a municipal program or control area may be appealed by the municipality and upon request, a hearing pursuant to Minn. Stat. ch. 15 shall be granted.

5. Sanitation and reforestation grants may be terminated upon municipality's failure to maintain an approved shade tree disease control program and upon evidence that proper record-keeping and documentation has not been maintained.

C. ~~D.~~ Program application. To receive a sanitation and reforestation grant, a municipality shall submit to the commissioner by November 15 a completed program application form provided by the commissioner.

1. A municipality's program application shall include, but not be limited to the following information:

a. An inventory of shade trees within the municipality's disease control area and an estimate of the distribution of these shade trees between public and private lands;

b. A complete description of the municipality's sanitation and reforestation programs which shall include:

(1) The method and schedule of diseased trees surveys;

(2) The extent of disease control tree trimming activities;

(3) The policies for removal of trees on public lands;

(4) The policies for removal of trees on private lands;

(5) The method and location of disposal tree wastes;

(6) The policies for planting new shade trees, including:

(a) The source of nursery stock, if known;

(b) Species planted;

(c) Type of stock planted;

(d) Distribution of species; and,

(e) Other relevant information;

(7) The methods of financing sanitation and reforestation programs, including:

(a) The use of funds derived from general tax levies;

(b) Special assessments;

(c) Federal funds;

(d) Other sources of funding; and,

(8) A complete description of the municipality's subsidy program, if any.

(9) The name or names of the person or persons or committee appointed by the municipality to advise the municipality in the administration of the reforestation program.

c. A statement of planned expenditures for the sanitation and reforestation program for the calendar year.

d. A copy of the local ordinances and resolutions authorizing the local shade tree program.

e. Other informattion deemed necessary and relevant by the commissioner.

~~2. Grants for sanitation shall be forty-five (45) percent of the applicant's planned expenditures for sanitation, unless forty-five (45) percent of the total planned expendi-~~

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~~tures for all applicants exceeds the funds designated for sanitation grants; in which case, grants shall be a pro-rata allocation among the eligible applicants.~~

2. ~~3.~~ Except for the first fifty (50) trees for towns and cities as set forth in 3. ~~4.~~ below, grants for sanitation and reforestation shall be fifty (50) percent of the applicant's planned expenditures for sanitation and reforestation, unless fifty (50) percent of the total planned expenditures for all applicants exceeds the funds designated for sanitation and reforestation grants; in which case, grants shall be a pro rata allocation among the eligible applicants. Such grants shall not exceed fifty (50) dollars per tree.

3. ~~4.~~ Grants for ~~reforestation~~ planting the first fifty (50) trees on public lands in eligible towns and cities ~~shall~~ may be ninety (90) percent of the town's or city's planned expenditures for planting ~~the first fifty (50) trees on public lands~~ those trees~~.~~, providing the availability of sufficient funding. The grant for these fifty (50) trees shall not exceed sixty (60) dollars per tree.

3 MCAR § 1.0113 Grants-in-aid for wood utilization and disposal systems.

A. The commissioner shall within the monies appropriated, make grants-in-aid to eligible applicants for the cost of facilities, equipment, and systems for the disposal or utilization of diseased shade trees. Such grants-in-aid shall be made to:

1. Any home rule charter or statutory city, ~~of more than 40,000 population in the metropolitan area or a combination of such cities with a combined population of 40,000 under a joint powers agreement pursuant to Minn. Stat. § 471.59 (1976);~~

2. ~~Any home rule charter or statutory city of more than 20,000 population outside the metropolitan area or a combination of such cities with a combined population of 20,000 under a joint powers agreement pursuant to Minn. Stat. § 471.59 as amended;~~

2. ~~3.~~ Any special purpose park and recreation board organized under a charter of a city of the first class;

3. ~~4.~~ Any non-profit corporation serving a city of the first class; or,

4. ~~5.~~ Any county.

B. Such grants shall be made with the following provisions:

1. The city (cities) or county has an approved shade tree disease control program as described in the act or these rules;

2. Grants-in-aid may be less than but shall not exceed fifty (50) percent of the cost of such facility, equipment, or system;

3. Grants-in-aid shall not be made for costs of operating such facility, equipment, or system;

4. Grants-in-aid for site acquisitions shall be made only for land used in the actual operational site;

5. Grants-in-aid shall not be made by the commissioner until he receives certified evidence of the actual cost of the equipment or site; and,

C. Criteria for administration of grants-in-aid.

1. Grants-in-aid to eligible applicants shall be made by the commissioner provided that such wood disposal utilization system meets the following criteria:

a. It aids in the control of shade tree diseases;

b. It aids in the recovery of material or energy from wood.

c. It is located to accomplish the above with maximum efficiency and use of available facilities;

d. It is available to all parties, public and private;

e. It is able to render wood pest-risk free within five (5) days of delivery to the site unless an extension of time has been granted by the commissioner based on existing circumstances of the disposal/utilization site;

f. It includes adequate manpower to operate and service equipment; and,

g. It provides for proper handling and the timely removal of processed wood from the site.

2. In addition to the general criteria under C. 1. above, the commissioner, as appropriate, may consider other specific criteria including the following in evaluating grant payment requests:

a. Sites for wood disposal systems:

(1) Shall be selected on the basis of anticipated volumes of wood and/or the need for a wood disposal system;

(2) Shall be accessible by roadways that permit year-round truck traffic;

(3) Shall have adequate storage areas for both processed wood and equipment;

(4) Shall have protective enclosures, adequate control, and supervision to prevent entry of unwanted materials and unauthorized persons;

(5) Shall be in compliance with all applicable Federal and State statutes, rules and regulations; and,

(6) Shall be in conformance with regional solid waste management plans and requirements.

b. Equipment for wood disposal systems:

(1) Shall, where feasible, be portable so that it can be used for servicing more than one site;

(2) Shall be stationary only when the anticipated volume over a five-year period will fully utilize the facility;

(3) Shall be capable of processing large-diameter logs; and,

(4) Shall include auxiliary units and equipment necessary to the operation of the system.

3. Requests for grant-in-aid payments shall be made on forms provided by the commissioner. Contingent upon the availability of funds, the timeliness of applications and other administrative considerations, the commissioner may set deadlines for consideration of requests which shall be published in the *State Register* at least thirty (30) days prior to the deadline. Requests for payments shall include the following:

a. An itemized list of the applicant's proposed expenditures for qualifying equipment and/or site, and the total amount of these expenditures; and,

b. Additional documents or other information deemed relevant by the commissioner.

4. Records.

a. Applicants receiving grants-in-aid under this rule shall keep detailed records concerning the operation of the wood disposal and utilization system and shall make these records available to the commissioner at any reasonable time. Such records shall include:

(1) Hours of operation;

(2) Clientele served;

(3) Volume of wood handled; and,

(4) Other information deemed necessary and relevant by the commissioner.

b. A yearly report containing a summation of these records shall be made to the commissioner by December 1.

SUPREME COURT

Decisions Filed Friday, November 23, 1979

Compiled by John McCarthy, Clerk

49558/369 Kathleen Jean Wessels vs. Mark Swanson, Appellant. Jackson County.

Although the trial court did not abuse its discretion in its denial of defendant's motion to vacate a default judgment adjudicating him the father of plaintiff's children, affirmance of the order is directed effective 90 days from the filing of this opinion unless within that period of time defendant presents to the trial court evidence described herein to substantiate his denial of paternity.

Remanded for further proceedings. Sheran, C. J.

49809/381 State of Minnesota vs. James Roy Hodges, Appellant. Anoka County.

A sublessee by failing to pay rent when due on commercial property did not thereby forego a reasonable expectation of privacy in the use of his leased property. The fact that the lease authorized the sublessor to enter the property for inspection, did not thereby authorize him to consent to a warrantless search by the police.

Although a search warrant affidavit contained information which was obtained illegally in violation of defendant's Fourth Amendment rights, the exclusionary rule does not require suppression of the evidence seized since there was also lawfully obtained information which gave the police probable cause to search the premises.

Affirmed. Otis, J.

49200/373 State of Minnesota vs. Ronald DeWayne Stevenson, Appellant. Nobles County.

Evidence of defendant's guilt of two separate acts of criminal sexual conduct in the third degree was not, as defendant contends, legally insufficient.

Trial court, in sentencing defendant to two consecutive terms for two separate sex offenses committed by defendant, did not violate Minn. Stat. § 609.035, which bars multiple punishment of a defendant for multiple offenses arising from the same behavioral incident.

Affirmed. Peterson, J.

47695/254 State of Minnesota vs. Dennis Michael Hamilton, Appellant. Scott County.

Because the aggravated sodomy statute under which defendant was convicted, Minn. Stat. § 609.293, subd. 2 (1976), was repealed before final judgment of defendant's case so as to mitigate punishment, the more recent statute is to be applied.

The trial court's denial of defendant's request to cross-examine the complainant concerning her prior sexual conduct did not prejudice defendant's right of confrontation.

The evidence supports the guilty verdicts for criminal sexual conduct in the third degree and aggravated assault.

The sentencing restriction of Minn. Stat. § 609.035 (1978) applies to the convictions for criminal sexual conduct in the third degree and aggravated assault, requiring that the sentence for aggravated assault be vacated.

Affirmed in part and reversed in part. Maxwell, J.

Decision Filed Friday, November 16, 1979

50541/505 State of Minnesota, Appellant, vs. John M. Vangstad. Douglas County.

Held, on this pretrial appeal from an order suppressing evidence in a criminal prosecution the state has not met its burden of demonstrating that the district court erred in suppressing the evidence, and accordingly we affirm.

Affirmed. Sheran, C. J.

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