

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

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

Version 3
August 20, 2018

Our File: #631

ADMIN 1000 (Rev. 1 78)
SF-05006-01

STATE OF MINNESOTA

DEPARTMENT: ATTORNEY GENERAL

Office Memorandum

TO : MARK W. SEETIN
Commissioner of Agriculture

DATE: 9/24/80

Attn: JON K. MURPHY
SAAG

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: Rules as Approved In the Matter of the Proposed Adoption of the Rules of the Department of Agriculture Governing the Disposal of Refuse From Transport Involved in Foreign Commerce (AGR 190, 191 and 192)

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.

JSA/bw
Encl.
cc: Duane Harves
Susan Robertson

Our File: 63

Permanent Rule X

Temporary Rule _____

RULES REVIEW CHECKLIST

DATE RULES RECEIVED 9/11 (9/21) DUE DATE 10/1

Resubmitted and Received _____

a. Returned to Agency w/o Filing w/Secretary of State _____
b. Approved 9/23 Date Sent Back to Agency 9/24

---

1. Rules as Adopted ✓ — See also Our File 554 - same rule was rejected by AG - 11.14.79.
2. Rules as Proposed ✓ see #10-SR.
3. Certificate of Board's Authorizing Resolution, where applicable N/A
4. Order for Hearing ✓
5. Notice of Hearing ? 2/22/80 submitted as published in SR - see #10 below
   Sufficiency ✓
6. Secretary of State's List see attachment to 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 ✓ 1.15.80
10. Publication in State Register ✓
    At least 30 days prior to hearing ✓ 1.14.80
11. Statement of Need and Evidence ✓
12. Hearing Examiner's Report ✓
13. Agency's Findings of Fact ✓
14. Certificate of Board's Resolution Adopting Rules, where applicable N/A
15. Order Adopting ✓ incorporated in #13 - F. of F.
16. Report of Chief Hearing Examiner ✓ see attached memo to agency Re discretionary language ✓
17. Order Approving Incorporation by Reference, where applicable ✓
18. Certificate of Compliance with Rulemaking Procedures ✓ note attachment
19. Copy of Notice of Intent to Solicit Outside Opinion, where applicable N/A
20. Petition by Public, where applicable N/A

AG Copy

EXHIBIT XII

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO THE RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING THE DISPOSAL OF REFUSE FROM TRANSPORT INVOLVED IN FOREIGN COMMERCE (CHAPTER 10: AGR 190-212)	)))))	AGENCY FINDING OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

See also CHE memo attached to CHE order -

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

The Report of the Hearing Examiner was issued on August 17, 1979. The Hearing Examiner recommended that the proposed rules be approved and adopted. The Department subsequently adopted the rules on September 29, 1979, and submitted the appropriate documents to the Chief Hearing Examiner for review pursuant to Minn. Stat. Sec. 15.052, Subd. 4. The Chief Hearing Examiner found that the adopted rules were not substantially different from those proposed at the public hearings and that the Department of Agriculture had met all the requirements of Minn. Stat. 15.0412, Subd. 4. The report was issued on October 9, 1979.

The Department then submitted the rules as adopted to the Attorney General for review as required by Minn. Stat. 15.0412, Subd. 4. On November 14, 1979, the Attorney General advised the Department that the rules were not approved. The Attorney General found that the Department had not published the complete text of the proposed rule amendments, including all of the repealed provisions of the existent rules, in either the April 9, 1979 or the June 11, 1979, editions of the State Register.

The Department subsequently initiated the rule-making procedure once again in this matter. The complete text of the rule amendments, along with the proper notification, were submitted to the State Register. The matter came on for hearing before Harry Seymour Crump, duly appointed Hearing Examiner, Office of Hearing Examiners of the State of Minnesota, on Friday, February 22, 1980, at 9:30 A.M. in the Administration Building, Room 116A, 50 Sherburne Avenue, Saint Paul, 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 having reviewed the Hearing Examiner's Report, dated April 10, 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, the Minnesota Department of Agriculture makes the following:

FINDINGS OF FACT

1. That the Department of Agriculture has complied with all procedural requirements regarding notification and submission of required documents. The report of the Hearing Examiner states that "Due, timely and adequate notice of the hearing was properly served and published by the Department. All substantive and procedural requirements of law or rule have been fulfilled."

2. That the Department has demonstrated its statutory authority to adopt the proposed rules.

3. That the proposed rules were previously recommended for adoption by the Hearing Examiner. The Chief Hearing Examiner found that the adopted rules did not differ substantially from the proposed rules. The rules were not approved by the Attorney General because of a procedural error by the Department. See our File 554.

4. That the Department has demonstrated the need for and the reasonableness of the proposed rules and deletions.

5. That the Department adopts the Hearing Examiner's Report of April 10th, 1980, with the exceptions noted below.

6. That the Department, in a post-hearing submittal, amended sections 1.0192 B.4, 1.0192 C.2.b. and c., 1.0192 C.2.d. and 1.0192 D. subsequent to comments made by the Hearing Examiner at the public hearing. The amendments were made subsequent to findings by the Hearing Examiner that the rules lacked stated standards or criteria to guide the the exercise of discretionary authority. The specific amendments were:

Section 1.0192 B. 4. was amended as follows:

> If the above methods are not available or practical, any other manner ~~approved by the commissioner that would~~ sufficient to eliminate all pest risks.

Section 1.0192 C. 2. b. was amended as follows:

> Fumigation by chemicals and treatment schedules ~~deemed necessary by the commissioner~~ sufficient to eliminate the pest risk.

Section 1.0192 C. 2. c. was amended as follows:

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

Section 1.0192 C. 2. d. was amended as follows:

> Steam sterilization in a manner ~~approved by the commissioner~~ sufficient to eliminate the pest risk.

Section 1.0192 D. was amended as follows:

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

The Hearing Examiner found that the amendments were unreasonable to give adequate notice and direction to those affected by the proposed rules. The Department disagrees. It should be noted that those affected by the rules do not find them onerous or vague, judging from the lack of public comment. The rules, as they are now written, have gone through four public hearings and several revisions. The Department has had no indication from those affected that would substantiate the finding of the Hearing Examiner. The Department disagrees with the finding for the following additional reasons.

The Hearing Examiner found that the above-referenced sections did not provide adequate operational standards. However, the Department finds that the word "sufficient" provides a basis upon which discretionary authority can be exercised. The word itself carries a criteria of efficaciousness of producing the desired result. Federal rules and regulations recognize similar language as an adequate standard or criteria upon which to guide the administration of similar rules. For example, the Code of Federal Regulations, Title 7, Chapter III, Part 330 - Federal Plant Pest Regulations, states the following (emphasis added):

(c) The Plant Protection and Quarantine Programs and Veterinary Services, Animal and Plant Health Inspection Service, will cooperate with other Federal, State and local agencies responsible for enforcing other statutes and regulations governing disposal of garbage to the end that such disposal *shall be adequate* to prevent the dissemination of plant pests and livestock or poultry diseases and comply with applicable laws for environmental protection (Federal Register, Vol. 39, No. 174 - Friday, September 6, 1974).

The Department finds that such language provides an adequate standard by which to carry out its responsibilities. Moreover, the staff that carries out these functions are selected with appropriate training in the biological sciences. Some measure of administrative discretion must be left with these people to deal with the problems they encounter.

The Hearing Examiner found that the above-referenced sections gave the Commissioner "unfettered authority". The Department does not reach a similar finding. In both instances of disposal methodology, the Commissioner would exercise his authority only when normal and customary methods were not available (3 MCAR 1.0192 B. and 3 MCAR 1.0192 C.). The rules state that the prescribed methods shall be used for treatment and disposal unless those methods are not available. It is only in these instances that discretionary authority can be exercised.

The Department feels that the Commissioner must retain discretionary authority due to the nature of the matter involved. The plant pests discovered may be unknown and hence the public interest demands that sufficient authority exist to act immediately and decisively. This possibility challenges the assumption that standards or criteria can be prescribed in advance to deal with exceptional cases. The Department disagrees with this assumption; the Department finds that it must retain flexible discretionary authority to make judgements as to what is sufficient treatment to meet the risk of plant pests.

The Department also does not feel specific, prescribed criteria take full cognizance of ever shifting technologies, the introduction of new treatment methods and/or chemicals and the variation of quantity, type and infestation of material to be treated. The notion of standards or criteria implies routine and sameness. The Department disagrees with this assumption and maintains that adequate standards to guide the exercise of discretionary authority exist. Such authority is intrinsic to the administration of any law. If a party feels aggrieved by the actions of the Department, legal redress through the contested case hearings or the courts are a proper way of determining sufficiency of actions.

The Department finds that discretionary authority, as it is in the rules, is reasonable and necessary and has a clear statutory basis. The legislative authority contained in M.S. 18.48, grants the Commissioner the authority to take any measures necessary to eliminate or alleviate the situation if a dangerous plant pest infestation or infection threatens plants in any area within the state.

> If a dangerous plant pest infestation or infection threatens plants of any area within the state, the commissioner or his employees shall have the power to take any measures necessary to eliminate or alleviate the danger. (M.S. 18.48, Subd. 1.)
>
> The commissioner may promulgate a quarantine to restrict or prohibit the transportation of plants or other materials capable of carrying plant pests into or through any part of the state. (M.S. 18.48, Subd. 3.)

The legislature intended to give the Commissioner flexible authority to act. Based upon the above, the Department finds that the proposed amendments adequately deal with the questions of discretionary authority and lack of standards and criteria.

7. The Hearing Examiner made additional comments in his report. He found that the term "alternative means of disposal has been approved by the commissioner" has not been set forth clearly in the rules. Unless the prior proposed provisions were amended, the Hearing Examiner felt that the provisions of 1.0192 D. were without substance. The Department does not agree and does not intend to amend Section 1.0192 D. The phrase "alternative means of disposal" is clarified by the phrase "as complying with the purpose of these rules". It would be redundant to add further clarifying language since the purpose, to prevent the introduction and dissemination of plant pests, is explained elsewhere in the rules. The Department, for reasons stated above, finds that it would have great difficulty specifying alternative means of disposal without knowing the nature of what is to be disposed.

8. The Hearing Examiner found that Section 1.0192 B. 1. gave the Commissioner unfettered discretion. He suggested the proposed rule be cross-referenced to standards within the rule. These are several issues raised by this provision. The discretion contained in the phrase "approved by the commissioner" was intended by the Department. The Department has made a conscious decision not to specify procedures in these rules so that it, in fact, had the flexibility to act under a variety of circumstances to accomplish the purposes of the Plant Pest Act. The nature of the activity is such that administrative flexibility is a pre-requisite to accomplishing the stated purpose of these rules and the Plant Pest Act. The Department finds that the provision is adequate to accomplish the purposes of the Plant Pest Act.

9. The Hearing Examiner found the use of the term "such information as may be required" in Section 1.0191 A. to be unreasonable without some specification of what information will be required. The specification of information is a procedural matter. Certificates currently are granted after written application. Subsequently, an inspection is made to determine if the equipment used is adequate to meet the operating standards of these rules. Therefore, the Department finds that the phrase "such information as may be required" is limited by the ensuing phrase "to demonstrate compliance with the certification requirements set forth in these rules". However, to avoid confusion, the Department proposes the following unsubstantive amendment to 3 MCAR 1.0191 A.:

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

10. The Department agrees that a typographical error was made in 1.0191 B. The letter "a" is hereby inserted between "before" and "certificate". The amended provision reads as follows:

> B. An annual inspection shall be made of equipment utilized in the removal, transportation and disposal of refuse and/or dunnage by the commissioner before a certificate is granted.

11. The Department disagrees with the findings of the Hearing Examiner regarding Section 1.0191 C. The word "deemed" implies a standard, criteria or procedure. The Department does find that the word "deemed" should be clarified and proposes to amend this section as follows:

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

The Department does not find that this provision ought to be made mandatory. The intent of the provision is to provide discretionary authority for emergency situations. The non-mandatory word "may" allows for remedial measures to be taken to allow the operator(s) the opportunity to demonstrate compliance with the purposes of the Plant Pest Act as well as to protect the public interest. If the provision was made mandatory, revocation would be automatic. Such a provision precludes administrative discretion and does not sufficiently protect the public interest. For example, the public interest would not be best served by revoking the certificate of the only available holder and thereby allow refuse and/or dunnage to collect in an uncontrolled manner. The Department finds that amending the provisions to make it mandatory would limit administrative discretion and might well create hazardous conditions that the Plant Pest Act was meant to mitigate. Federal rules and regulations allow similar discretion. Authority is granted to take remedial or immediate action, whichever course will best protect the public interest or safety.

12. The Department finds the suggestion of the Hearing Examiner regarding referencing of approved methods to be reasonable and helpful. Therefore, the Department proposes the following amendments:

3 MCAR 1.0190 B. 2. "Dunnage" means structural wood products in any form used to secure cargo in any manner. Standards and criteria for handling and disposing of dunnage are contained in 3 MCAR 1.0192.

3 MCAR 1.0190 B. 3. "Refuse" means all material derived in whole or in part from the fruits, vegetables, meats, or other plant or animal (including poultry) material which is carried aboard any vehicle involved in foreign commerce. Standards and criteria for handling and disposing refuse are contained in 3 MCAR 1.0192.

CONCLUSIONS

1. That due, timely and adequate notice of the hearing was properly served and published by the Department. All substantive and procedural requirements of law or rule have been fulfilled.

2. That the Department has demonstrated its statutory authority to adopt the proposed rules.

3. That the Department has demonstrated the need for and the reasonableness of the proposed rules as herein after proposed for adoption in this order with an affirmative presentation of facts.

4. That the flexible authority contained in the rules is necessary to accomplish the purposes of the Plant Pest Act.

ORDER ADOPTING RULES

After affording all 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 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,

NOW, THEREFORE, IT IS ORDERED that the rules identified as 3 MCAR 1.0190, 1.0191, and 1.0192, attached hereto, are adopted this 28th day of July, 1980, pursuant to the authority vested in me by Minn. Stat. Secs. 15.0412 and 18.48, 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

HG. COPY

EXHIBIT I

underlinings indicate changes from Rules As Proposed

Department of Agriculture

Plant Industry Division

Adopted Rules of the Department of Agriculture Governing Disposal of Refuse From Transport Involved in Foreign Commerce (3 MCAR 1.0190-1.0192)

The rules proposed and published at State Register, Volume 4, Number 28, pp. 1125-1128, January 14, 1980 (4 S.R. 1125) are now adopted, with the following amendments:

Rules as Adopted

3 MCAR 1.0190 General.

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

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

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

modifies provide basis/standards for approval

HE discretion

2. "Dunnage" means structural wood products in any form used to secure cargo in any manner. Standards and criteria for handling and disposing of dunnage are contained in 3 MCAR 1.0192.

HE p. 3 FoF 12

3. "Refuse" means all material derived in whole or in part from the fruits, vegetables, meats, or other plant or animal (including poultry) material which is carried aboard any vehicle involved in foreign commerce. Standards and criteria for handling and disposing of refuse are contained in 3 MCAR 1.0192.

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

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

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

3 MCAR 1.0191 Registration.

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

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

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

3 MCAR 1.0192 Operating Standards.

A. Refuse Handling:

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

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

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

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

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

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

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

B. Approved refuse disposal. The following methods shall be used for refuse disposal:

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

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

3. Grinding into an approved sewage system.

4. <u>If the above methods are not available or practical, any</u> Any other manner ~~approved by the commissioner that would~~ <u>sufficient to</u> eliminate all pest risks.

C. Dunnage Disposal:

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

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

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

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

HE p2,3 FofF 6

HE unwar

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

HE p. 2,3 FofF 6

HE unwar

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

HE unwar

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

HE p.2,3 FofF 6

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

APPROVED AS TO FORM AND LEGALITY
SEP 23 1980
_____ 19____
WARREN SPANNAUS, ATTORNEY GENERAL
BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
SEP 23 1980
Joan Anderson Growe
Secretary of State
3:30 PM

EXHIBIT II+IV

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.

Department of Agriculture Plant Industry Division

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

Notice of Hearing

A public hearing concerning the proposed amendments to the rule will be held at the Administration Building, Room 116A, 50 Sherburne Avenue, St. Paul, Minnesota, on February 22, 1980, commencing at 9:00 a.m., and continuing until all persons have had an opportunity to be heard. The proposed amendments may be modified as a result of the hearing process. The amendments will be similar to those amendments proposed at public hearings, on this same matter, that were held on May 15, 1979, May 16, 1979 and July 12, 1979. The proposed amendments are identical to those proposed at the July 12, 1979, public hearing. If you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

Following the department's presentation at the hearing, all interested or affected persons may 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 Harry S. Crump, Hearing Examiner, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104, (612) 296-8111, 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 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. The department intends to present only a short 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. Copies may be obtained from the Office of Hearing Examiners at a minimal charge. Additional copies will be available at the hearing.

The proposed amendments, if adopted, would allow for additional methods of acceptable disposal of refuse and dunnage. The rules are expanded to include aircraft as well as ships involved in foreign commerce. They would also require refuse involved on transport involved in foreign commerce within the territorial limits of Minnesota be maintained in tight containers with vermin proof covers. The proposed changes would also require that refuse aboard transport involved in foreign commerce be removed upon docking or landing, every three days thereafter while docked or landed in Minnesota, and immediately before departure from Minnesota.

The department's authority to promulgate the proposed amendments is contained in Minn. Stat. §§ 18.44-18.61.

Copies of the proposed amendments are now available and at least one free copy may be obtained by writing Robert Flaskerd, Director of Plant Industry, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota, 55107, telephone (612) 296-3347. Additional copies will be available at the hearing. If you have any questions on the content of the proposed amendments, contact Mr. Flaskerd.

Any person may request notification of the date on which the hearing examiner's report will be available, after which date the Department may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted or resubmitted to the Attorney General by the 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 Department, in the case of the Department'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

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."

commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11, as amended 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 statutute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota, 55155 telephone (612) 296-5615.

December 14, 1979

Mark W. Seetin
Commissioner of Agriculture

Amendments as Proposed

[All of the existing rule Agr 191 is deleted. However, parts (a), (b), (g) and (h) of this rule are incorporated into the proposed 3 MCAR § 1.0192, subds. A. and B., as new material. It was felt such editing of the material would prevent confusion and misunderstanding on the part of the reader. Agr 191 (a) is incorporated into 3 MCAR § 1.0192 A.6.; Agr 191 (b) is incorporated into 3 MCAR § 1.0192 A.7.; Agr 191 (g) is incorporated into 3 MCAR § 1.0192 A.5., and Agr 191 (h) is incorporated into 3 MCAR § 1.0192 B.1.a.]

Chapter Ten: 3 MCAR §§ 1.190-1.212 ~~AGR 190-212~~

3 MCAR § 1.0190 General.

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

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

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

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

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

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

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

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

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

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

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

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

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

~~**Agr 191 Disposal Facilities and Procedures**~~

~~(a) Containers used for unloading and transporting refuse shall be leakproof and shall have adequate covers.~~

~~(b) Vehicles used for transporting refuse shall be leakproof and the bed or body shall be enclosed or covered with a tarpaulin tightly secured when in use.~~

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

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

~~(e) The immediate incinerator premises where refuse is handled shall be paved with an impervious~~

~~material. Once a week the immediate area around the incinerator will be given a chemical treatment using materials recommended by a member of the Minnesota department of agriculture and under his supervision. Excess water shall not be permitted to drain off the premises. An adequate catch basin around the incinerator shall be provided.~~

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

~~(g) Refuse shall be handled at all times in a manner which will prevent spillage.~~

~~(h) No refuse residue shall be removed from an incinerator for disposal unless it has been reduced to ash or slag.~~

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

3 MCAR § 1.0192 Operating standards.

A. Refuse handling.

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

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

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

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

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

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

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

B. Approved refuse disposal. The following methods shall be used for refuse disposal:

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

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

3. Grinding into an approved sewage system.

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

C. Dunnage disposal.

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

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

a. Complete incineration or open burning in compliance with Minnesota air pollution control rules.

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

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

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

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

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

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."

~~Agr 192 Definitions~~

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

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

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

Department of Public Welfare
Social Services Bureau

Proposed Rule Governing Child Day Care Sliding Fee Scales (12 MCAR § 2.163)

Notice of Hearing

A public hearing concerning the proposed rule will be held at the Capitol Square Building, Room A, 550 Cedar Street (between 10th and 11th) St. Paul, Minnesota 55101 on February 19, 1980, commencing at 9:00 a.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 the Hearing Examiner, Natalie Gaull, Office of Hearing Examiners, 1745 University Ave., Rm. 300, St. Paul, Mn. 55104, (612) 296-8114, 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 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 agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifiying both the need for and the reasonableness of the proposed rule. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimum charge.

12 MCAR § 2.163 governs the administration of the experimental child day care sliding fee program, pursuant to Minn. Stat. § 245.84, subd. 2 (Supp. 1979). The purpose of the program is to reduce, according to a sliding fee schedule, the costs of child care for eligible families whose income ranges from 60-70% of the state median income. (The following twenty-two counties have elected to participate in the experimental child day care sliding fee program:

Beltrami	Mower
Blue Earth	Olmsted
Brown	Polk
Carver	Ramsey
Crow Wing	Redwood
Freeborn	Rice
Goodhue	St. Louis
Hennepin	Sherburne
Houston	Todd
Kandiyohi	Washington
McLeod	Winona

Only families residing in these counties will be affected by this rule.)

The formula for establishing the fee schedule is found in the rule at G.2. a.-h. and is as follows:

a. The federal, state and Social Security taxes are computed at the 60%, 70%, 80%, 90%, 100%, 110%, and 115% of the state median income levels (Federal Income Tax Table, Family size 2 - Table D - Unmarried Head of Household Family size 3-10, Table B - Married filing Joint Return and the Minnesota Income Tax Table - tax computed on gross income). The computation of the state and federal taxes includes a child care credit. (The child care credit is determined by using 20% of the estimated annual cost of child care as directed in the Income Tax Tables. Estimated annual cost of child care by family size: 2-$840, 3-$936, 4-$1,080, 5-$1,200, 6-$1,380, 7-$1,500, 8-$1,860, 10-$1,980).

b. The federal, state and Social Security taxes are added together at each income level.

c. The difference in the tax total between the 60% income level and the tax total of each subsequent income level is determined.

d. The difference in the gross annual income at the 60% income level and the gross annual income for each subsequent income level is determined.

e. The difference in the taxes at each income level is subtracted from the difference in income at each level.

f. The net income at the 70% level is multiplied by 75% to determine the annual child care fee. The net income at the subsequent income levels is multiplied by 55% to determine the annual child care fee.

EXHIBIT X

AGR-80-004-HC

STATE OF MINNESOTA
OFFICE OF HEARING EXAMINERS

FOR THE DEPARTMENT OF AGRICULTURE

In the Matter of the Proposed Adoption of Amendments to the Rules of the Department of Agriculture Governing the Disposal of Refuse from Transport Involved in Foreign Commerce (Chapter 10:AGR 190-212).

REPORT OF THE HEARING EXAMINER

See also CHE memo attached to CHE order

The above-entitled matter came on for hearing before Harry Seymour Crump, Hearing Examiner from the State Office of Hearing Examiners, on February 22, 1980, at 9:30 a.m. in the Administration Building, Saint Paul, Minnesota.

This proceeding is a rules hearing pursuant to Minn. Stat. Ch. 15 to determine whether the proposed rules should be adopted.

Appearing for the Department of Agriculture (hereinafter "the Department") were the following: Gerald Heil, Director of Planning; Gary Kuyava, Plant Health Specialist; and Arthur H. Mason, Plant Health Specialist, Senior.

No persons from the public attended the hearing. The hearing continued until all interested persons had an opportunity to participate and file written comments following the hearing.

The record includes seven marked exhibits of the procedural documents required to be filed under the rulemaking provisions with a post-hearing comment from the Department.

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 days. Thereafter, the Department of Agriculture 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 records and proceedings herein, the Examiner makes the following:

FINDINGS OF FACT

Procedural Requirements

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

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

2. On January 14, 1980, a Notice of Hearing and a copy of the proposed rules were published at 4 State Register 1125.

3. On January 15, 1980, 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 January 24, 1980, the Department filed the following documents:

(a) The Order for Hearing.
(b) The Notice of Hearing.
(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.
(f) The Statement of Need and Reasonableness.

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

5. The record remained open through March 13, 1980, for the receipt of written comments and statements.

Statutory Authority

6. Statutory authority for the Department to promulgate the proposed rule is contained in Minn. Stat. §§ 18.44 - 18.61. Minn. Stat. § 18.48, subd. 2 provides specific authority for the Department to make reasonable rules relative to plant and animal pest control.

7. The purpose of the Plant Pest Act is to prevent the introduction into and the propagation and dissemination within Minnesota of plant pests and to provide for their suppression and control. The proposed amendments to the rule govern the disposal of refuse and dunnage of foreign origin at Minnesota ports of entry that might be carrier of plant pests.

Need and Reasonableness

8. The proposed rules consist of three sections, 3 MCAR §§ 1.0190, 1.0191 and 1.0192. The proposed rule includes the deletion of existing rule 3 MCAR § 1.0191. These proposed rules drew no comments except from the Hearing Examiner during the hearing procedure. In response to the Hearing Examiner's questions of the lack of state standards or criteria by which the Commissioner's discretionary authority shall be exercised, the Department in its post-hearing comment amended Sections 1.0192 B.4., 1.0192 C.2.b. and c., 1.0192 C.2.d. and 1.0192 D.

Section 1.0192 B.4. was amended as follows:

If the above methods are not available or practiced, any other manner ~~approved by the commissioner that would~~ sufficient to eliminate all pest risks.

Section 1.0192 C.2.b. was amended as follows:

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

Section 1.0192 C.2.c. was amended as follows:

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

Section 1.0192 C.2.d. was amended as follows:

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

Section 1.0192 D. was amended as follows:

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

The Hearing Examiner finds that the use of the term "sufficient" and the deletion of the permissive language are still unreasonable as an amendment to the proposed rule to give adequate notice and direction to those affected by the proposed rules. The effect of the proposed amendments is that of no rule being promulgated herein. These provisions are unreasonable and should include definite yet flexible standards.

The proposed amendment under Section 1.0192 D. appears reasonable; however, the term "alternative means of disposal has been approved by the commissioner" has not been set forth clearly in the rules under the preceding proposed provisions. Unless the prior proposed provisions are amended, this provision is without substance.

Section 1.0190 B.1. of the definitions uses the terms "approved by the commissioner" and "in such a manner" without adequate criteria set forth in the proposed rule provisions. This gives the Commissioner unfettered discretion. Unless this proposed rule is cross-referenced to standards within the rule, it is found to be unreasonable.

Section 1.0191 A. uses the term "such information as may be required". The proposed rule provisions should contain the kind of information which "shall" be required. This provision leaves too much discretion with the Commissioner and is therefore unreasonable.

Line 5 of Section 1.0191 B. of the proposed rule appears to have a typographical error by the letter "a" missing between the words "before" and "certificate".

Proposed rule Section 1.0191 C. uses the term the commissioner "may, when it is deemed" which appears to grant unfettered authority to the commissioner. This provision should be made mandatory. How would compliance "be deemed" by the commissioner? In such a case, the Commissioner should include all of the criteria to be used. After such modifications, the Hearing Examiner finds this section to be reasonable.

Existing rule Section 1.0191 was deleted and is reasonable and needed. This provision drew no comments.

Proposed rule Section 1.0192 B. provides for approved refuse disposal. If the Commissioner intends to use this as the "approved" manner of disposal as cited throughout the rules, then a reference to this provision should be incorporated into those provisions which would make those provisions reasonable

and needed. However, Section 1.0192 B.4. uses the term "any other manner approved by the commissioner". This presents the same problem as referenced throughout the proposed rule provisions of giving the Commissioner unfettered discretion by not including all proposed standards or criteria. This term is unreasonable and should be deleted. The Department attempted to correct this and other provisions through its amendments which did not adequately correct the defects.

deleted but see FoF 12

Except for the above recommendations of the Hearing Examiner, all of the proposed rule provisions are needed and reasonable and the justification for the proposed rules was established by the Department's Statement of Need and Reasonableness.

Based upon the foregoing Findings of Fact, the Hearing Examiner makes the following:

CONCLUSIONS

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

2. The Department has demonstrated its statutory authority to adopt the proposed rules.

3. The Department has demonstrated the need for and the reasonableness of the proposed rules and deletion by an affirmative presentation of facts, except those provisions found unreasonable by the Hearing Examiner.

4. The Examiner has made several recommendations to proposed rule provisions which the Department should modify and make its own non-substantive changes and improvement provided they are based upon the facts in the Statement of Need and Reasonableness. It is further suggested that certain provisions of the Statement of Need and Reasonableness be incorporated into the rules provisions to clarify and give substance to the proposed rules.

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

RECOMMENDATION

The Hearing Examiner recommends that the proposed rules be modified, as suggested in the Findings above, and so modified that they be adopted.

Dated: April 10 , 1980.

HARRY SEYMOUR CRUMP
Hearing Examiner

EXHIBIT XI

AGR-80-004-HC

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF AGRICULTURE

AUG 11 REC'D

IN THE MATTER OF THE PROPOSED)
ADOPTION OF AMENDMENTS TO THE)
RULES OF THE DEPARTMENT OF)
AGRICULTURE GOVERNING THE DIS-)
POSAL OF REFUSE FROM TRANSPORT)
INVOLVED IN FOREIGN COMMERCE)
(CHAPTER 10:AGR 190-212).)

ORDER OF THE
CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on February 22, 1980, before Harry Seymour Crump, a Hearing Examiner of the State Office of Administrative Hearings, 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 April 10, 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 Rule 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 Depart- 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 6th day
of August, 1980.

DUANE R. HARVES
Chief Hearing Examiner

DEPARTMENT OFFICE OF ADMINISTRATIVE HEARINGS

Office Memorandum

TO : GERALD HEIL
Director, Division of Planning

DATE: 8/6/80

FROM : DUANE R. HARVES
Chief Hearing Examiner

AUG 11 REC'D

PHONE: 6-8100

SUBJECT: Adoption of Rules Governing the Disposal of Refuse from Transport Involved in Foreign Commerce. Docket No. AGR-80-004-HC.

Enclosed herewith and served upon you is the Order of the Chief Hearing Examiner in the above-referenced matter. As it appears obvious that you submitted the original of the Agency Findings of Fact, et cetera, and the other exhibits, they are being returned to you. We have kept copies for our file.

You will note that the Chief Hearing Examiner's Order includes all issues, including substantial change, and compliance with the provisions of Minn. Stat. § 15.0412, subd. 4 (1978). This is the first case where the Chief Hearing Examiner's review has occurred subsequent to August 1, 1980, with the Hearing Examiner's Report being issued prior to that time. As you know, the Administrative Procedure Act was amended effective August 1. The question in everyone's mind at the present time is the role of the Chief Hearing Examiner on subsequent review.

As this question remains, in the event the Attorney General believes that I should review under the prior law, my review has been completed in accordance with that law. The new law would limit the Chief Hearing Examiner's review at this stage in the proceedings to the question of "substantial change".

As is obvious from my Order, I agree with your Findings and disagree with the Hearing Examiner on the discretionary language which you have discussed in your Order. I do recall the Hearing Examiner indicating that it was a "very close call" at the time he issued his Report.

Rule 3 MCAR § 1.0191 A. uses the term "as may be required". In the event the Attorney General requires this phrase to be changed to "as may be necessary", please take this Memorandum as my review that such change would not be a substantial change. The term "required" seems to be a word which has been looked at very closely by the Attorney General in the past year, as it may indicate discretion on the Department to add additional requirements. However, the term "necessary" has been approved in the past. Likewise, Rule 3 MCAR § 1.0191 C. uses the discretionary word "may" which, in the event the Attorney General requires the term be changed to "shall", it would not be deemed to be a substantial change.

DRH:sw
Encs.

EXHIBIT IX

STATE OF MINNESOTA
DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED AMENDMENTS TO THE RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING THE DISPOSAL OF REFUSE FROM TRANSPORT INVOLVED IN FOREIGN COMMERCE (Agr 190, 191 and 192)

STATEMENT OF NEED AND REASONABLENESS

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

The authority to adopt these rules arises from the Plant Pest Act, Minn. Stat. Sec. 18.44 to 18.61. The purpose of the Plant Pest Act is to prevent the introduction into and the propagation and dissemination within Minnesota of plant pests and to provide for their suppression and control. The proposed amendments to the rules govern the disposal of refuse and dunnage of foreign origin at Minnesota ports of entry that might be carriers of plant pests. This refuse and dunnage must be disposed of in a prescribed manner to prevent the entry and dissemination of plant pests. The legal authority to promulgate these rules is contained in Minn. Stat. Sec. 18.48, Subd. 2.

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

The Department will call no outside witnesses to testify.

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

...All of 3 MCAR 1.0190 is new language except for those parts of (B) which replace, amend or clarify the definitions that appear in Agr 192. The existing rule 192 is proposed to be deleted. It consists of definitions of refuse, vessel and dunnage. The definitions of refuse and dunnage are amended or clarified in the proposed rules. It is felt the definition of vessel can be deleted in lieu of 3 MCAR 1.0190 (B) 4 and 5.

3 MCAR 1.0190 General.

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

...This section of 3 MCAR 1.0190 sets forth the authority under the provisions of the Minnesota Plant Pest Act through which these rules may be promulgated. The reason for these rules are stated for reference by authorities and readers of the rules.

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

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

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

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

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

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

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

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

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

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

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

...This section amends Agr 190.

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

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

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

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

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

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

...The term "during the year" is removed as being redundant since registration is done annually as stated in 3 MCAR 1.0191 A. Notice and hearing provisions are added in compliance with Minn. Stat. ch. 15 which is necessary and reasonable to insure due process.

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

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

~~Agr-191--Disposal-Facilities-and-Procedures~~

...Substantial rewriting of this section is proposed. All of Section 191 of the Existing Rule is deleted. However, Parts (a), (b), (g) and (h) of this Section are incorporated into the proposed 3 MCAR 1.0192, Parts A and B, as new material. It was felt such editing of the material would prevent confusion and misunderstanding on the part of the reader. Agr 191 (a) is incorporated into 3 MCAR 1.0192, A (6); Agr 191 (b) is incorporated into 3 MCAR 1.0192, A (7); Agr 191 (g) is incorporated into 3 MCAR 1.0192, A (5); and Agr 191 (h) is incorporated into 3 MCAR 1.0192, (B) (1) a.

Parts (c), (e), (i) and (f) are deleted entirely. Part (d) is replaced by 1.0192 (A) 3.

The proposed deletion of Agr 191 (c) is reasonable since the intent of the rules focuses on the disposal of refuse in a manner that will prevent a pest risk and not any one particular method of disposal. It may be possible to use an incinerator with less than 150,000 BTU or some other disposal method that will save energy.

The repeal of Agr 191 (e) is proposed since the conditions and chemical treatment as stated are unnecessary in reducing or eliminating a plant pest risk. Chemical treatment as worded would have no useful purpose in preventing a pest introduction.

The proposed repeal of Agr 191 (f) appears reasonable since 3 MCAR 1.0192 is intended to provide specific direction to those persons who will be handling refuse and dunnage. The deletion of d, e and f is proposed for restatement to address the following: (1) the prompt disposal of refuse is necessary to reduce the risk of plant pest escape; (2) the prevention of movement of the refuse is necessary to prevent the spreading of a threat; and (3) the prevention of escape of a plant pest through accidental spillage is very important.

The deletion of Agr 191 (i) is necessary to provide wording that will identify what dunnage must be regulated and provide other means of disposal of this dunnage.

~~(a)--Containers-used-for-unloading-and-transporting-refuse-shall-be-leakproof-and-shall-have-adequate-covers.~~

~~(b)--Vehicles-used-for-transporting-refuse-shall-be-leakproof-and-the-bed-or-body-shall-be-enclosed-or-covered-with-a-tarpaulin-tightly-secured-when-in-use.~~

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

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

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

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

~~(g)--Refuse-shall-be-handled-at-all-times-in-a-manner-which-will-prevent-spillage.~~

~~(h)--No-refuse-residue-shall-be-removed-from-an-incinerator-for disposal-unless-it-has-been-reduced-to-ash-or-slag.~~

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

3 MCAR 1.0192 Operating Standards.

A. Refuse Handling:

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

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

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

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

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

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

...A repeal of the wording in section Agr 191 (d) is proposed along with the addition of wording that clarifies the intent of the rules. The original wording suggested that the storage of refuse in an incinerator for up to 24 hours is acceptable but storage over a longer period of time is not.

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

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

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

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

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

...This section of 3 MCAR 1.0192 (replacing Agr 191 (g)) is intended to provide specific direction to those persons who will be handling refuse to prevent the accidental introduction of a plant pest. The deletion of Agr 191 (d), (e), and (f) is proposed with the above restatements for clarification.

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

...The wording change (from Agr 191 (a)) is necessary to identify which refuse containers are regulated. It is also necessary and reasonable to require these containers to be vermin proof to prevent the dissemination of a plant pest by vermin.

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

...The proposed deletion (Agr 191 (b)) of the wording "bed or body" is necessary and reasonable since it is unimportant to the rules, the refuse is the plant pest risk and must be covered.

The addition to the rules builds upon Agr 191 (b). It is reasonable to provide flexibility yet assurance that refuse is secure. If the refuse has been secured in tight containers then any additional covering is unnecessary.

B. Approved Refuse Disposal. The following methods shall be used for refuse disposal:

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

...This section is intended to provide for any kind of incineration provided that the refuse can be reduced to ash in a 24 hour period. This is necessary to assure the prompt elimination of any plant pest to reduce the risk in a reasonable length of time. It replaces Agr 191 (h).

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

3. Grinding into an approved sewage system.

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

...2 through 4 provide for methods of disposal other than incineration that would prevent any pest risk and specifies these methods. This is necessary to allow for a reasonable amount of flexibility in the handling of refuse while preserving the intent of the rules.

C. Dunnage Disposal:

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

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

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

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

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

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

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

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

...It is necessary and reasonable to add section 2. a through d to identify what dunnage is a pest risk and to provide methods of disposal of this material. Dunnage is distinctly different from refuse and must be handled accordingly. Other methods of disposal should be available to provide flexibility in the system.

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

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

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

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

~~Agr-192--Definitions~~

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

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

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

...Deletion of these lines is proposed in lieu of the new definitions proposed in 3 MCAR 1.0190 B. It is the opinion of the Department that the new definitions are more appropriate to the proposed rules.

Mark W. Seetin
Commissioner

EXHIBIT D

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF)
AMENDMENTS TO THE RULES OF THE DEPARTMENT)
OF AGRICULTURE GOVERNING THE DISPOSAL OF) AFFIDAVIT OF MAILING
REFUSE FROM TRANSPORT INVOLVED IN FOREIGN)
COMMERCE (Chapter 10: Agr 190-212))

Joyce Walkosz being first duly sworn, deposes and says:

That on the 15th day of January, 1980, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State.

Joyce Walkosz

Subscribed and sworn to before me this
15th day of January 1980.

Janet E. Gruening
Notary Public

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

EXHIBIT W1

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF AMENDMENTS TO THE RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING THE DISPOSAL OF REFUSE FROM TRANSPORT INVOLVED IN FOREIGN COMMERCE (Chapter 10: Agr 190-212)	AFFIDAVIT OF RECEIPT OF THE SECRETARY OF STATE'S LIST

Diane M. Windham being duly sworn on oath deposes and says:

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

2) That on the 9th day of January, 1980, she went to the Secretary of State's Office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to Minn. Stat. 15.0412 (1977 Supp.).

3) That on the 9th day of January, 1980 in response to the above request, the Secretary of State provided her with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not. Diane M Windham

Subscribed and sworn to before me this 15th day of January, 1980.

Janet E. Gruening
Notary Public

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

EXHIBIT VIII

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED)
ADOPTION OF AMENDMENTS TO THE)
RULES OF THE DEPARTMENT OF) CERTIFICATE OF DELIVERY
AGRICULTURE GOVERNING THE) SECRETARY
DISPOSAL OF REFUSE FROM) OF STATE LIST
TRANSPORT INVOLVED IN FOREIGN)
COMMERCE (Chapter 10: Agr)
190-212))

I hereby certify that the attached 337 labels 5 sheets constitute the complete list of persons, associations, and other interested groups who as of 12:30 o'clock PM, this 9th day of January, 1980, 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 Donna Rietz

EXHIBIT V

Please Note:

If you intend to supplement this list with other lists when mailing a hearing notice, please compare lists and eliminate duplicate notices.

Thank you.

ALSO
NOTIFY ALL INTERESTED STATE DEPARTMENTS, BOARDS AND COMMISSIONS
AND
PLEASE SORT OUT INTEROFFICE MAIL FROM LABELS

337 labels

The following Names on the General Mailing List can be sent through Interoffice Mail

Dawson, Jean Mn. Gov't Rep. Room B12 Capitol Bldg., St. Paul, Mn. 55155

Heckt, Paul 720 American Center Bldg., St. Paul, Mn. 55101

Hiniker, James Commissioner of Admin. 200 Admin Bldg., St. Paul, Mn.

Leg.Ref.Lib Z. Dewitt, Room 111 State Capitol, St. Paul, Mn.

Met. Waste Control Comm. 350 Metro Sq. Bldg., St. Paul, Mn.

Minn. Pollution Control , Water Quality, 1935 W. Co. Rd. B2, Roseville, Mn.

Minn. Pollution Control Agency, 1935 W. Co. Rd. B2, Roseville, Mn.

Minnesota Water Resources Bd., Rm. 206 555 Wabasha St., St. Paul, Mn.

Minn. State Council for the Handicapped, Metro Sqr. Bldg. 7th & Robert, St. Pau

Office of the Governor, 130 State Capitol, St. Paul, Mn.

Peterson, H. Commissioner of Labor & Industry, 444 Lafayette Rd., St. Paul

Schultz, Linda, Room 328 Capitol Bldg., St. Paul, Mn.

Sheehy, Lee E., 625 Admin. Bldg., St. Paul, Mn.

Whitlock, Marshal LCRAR, Rm 44 St. Off. Bldg., St. Paul, Mn.

ADDITIONAL NAMES FOR GENERAL MAILING LIST

Mc Kee, Michael 2721 Chisholm, No. St. Paul, Mn. 55109

Millman, Debby 2616 Harriet Ave. So. #104, Mpls 55408

Anderson, B.G., Burlington Northern, Engineering Div., 176 E 5th St, St.Paul 551

Anderson, Lynn, Route 2, Moorhead ,, Minn. 56560

Anderson Produce Co., T.F. Anderson, Moose Lake (Eggs Only) 55767

Beckstead, S.W., Am.Potash & Chemical Corp., PO Box 25861, Oklahoma City, OK 731

Bruner, Richard C., Sunkist Growers, Inc., 720 E. Sunkist St., Ontario, CA 91761

Carlson, Dr. Lauren, Chokio 56221

Dairy Processors, Inc., 2239 Carter Ave., St Paul 55108

Dawald, Don US Dept.of Agr. 230 Federal Bldg. & US Courthouse, 316 No. Robert St.
St. Paul, Mn. 55101

Day, Paul M., Senior High School, Faribault 55021

Dept. of Health, Attn: Dir. Cleon LeMont, 111 4th Avenue South St Cloud 56301

Epley, Dr. Richard J., 129 Peters Hall, UM, St Paul 55101

Everfresh Food Corp., 501 Huron St SE, Mpls 55414
Forner, Donald J., Route 2, Box 105, Chaska 55318
Fuchs, Mrs. LuElla, Nerstrand, 55053

X Garrity, Cahill, Gunhus et al, 1st Nat'l Bank Bldg, Moorhead 56560 (Grading Onl

Gieseke, Robert, Route 1, St. James 56081

Guy, D.L. Parkers, Prairie 56361

Harrington, J.K., P.O. Box 33221, St Paul 55133

International Dairy Queen Inc., 5701 Green Valley Drive, Mpls 55437

Johnson, Stuart, Route 1, Underwood 56586

Koppers, Mgr., Prod. Reg. & Labeling, Koppers Bldg., Pittsburgh, PA 15219

Krengel, Alex A., Peavey Co., 11 Peavey Road, Chaska 55318
Kreykes, Keith, Route 1, Box 270, St. Peter 56082
Kvasnicka, John, Hayfield 55940
Land O'Lakes Creameries Inc., Attn: H.H. Ebert, 2215 NE Kennedy, Mpls 55413

Mabee, Robert L., Atty., Qualley, Larson & Jones, Ste. 606 Court House Plaza, Sio
Falls,S.D. 5710

Mallinckrodt Chemical Works, 2nd & Mallinckrodt St., St Louis MO 63160

X Mandeville Company, Inc., 605 North 4th St, Mpls 55401 (Meat & Food Only)

~~Minnesota Farm Bur. Federation, Legislative Div., 3100 Wooddale Dr PO Box 3370~~
~~St Paul 55165~~

Received change of address info. on 1.23.80; forwarded on to Donna Scott at Secretary of State per phone call with her

changed to:
MINN. FARM BUREAU FEDERATION
1976 WOODDALE DRV., P.O. BOX 43370
ST. PAUL, MN. 55164

Minnesota State Pharmaceutical Assn., 2388 University Avenue St Paul 55104

O.M. Scott & Sons, Marysville, Ohio 43040

Olson Fish Company, Attn: R.N. Juhl, 813-821 North 5th St, Mpls 55401

Patrick, Peter 2772 Egandale Blvd., St Paul 55121

Peterson - Biddick Co., Wadena, Mn. 56482

Roberts, John O., 631 Leffingwell Avenue, Kickwood, MO 63122

S & FA Reporting Services, Inc. 1101 15th. St. N.W. Ste.205, Washington,DC 20005

Sartell, Charles J., Totino's, 7350 Commerce Lane, Mpls 55432

Shannon, Mattew A., General Foods Corp. 250 North St, White Plains NY 10602

Smith, James L., Box 456 Excelsior, Minnesota 55331

Sheridan, Fred F., 400 Ardmore Drive, Mpls 55422

Steven, W.R., Box 26, Sartell, Mn. 56377

Twin City Exterminating Co., 1953 University Avenue West, St Paul, Mn. 55104

Waconia Sorghum Co., P.O. Box 1227, Cedar Rapids, Iowa 52406 Attn: L.S. Wessale

Watkins, Products, Inc., Attn: N.A. Barth, Legal Dept., Winona 55987

Wheeler, Edwin M., 1015 18th St. NW, Washington D.C. 20036 (Fertilizers Only)

Wirt, Russell J., Lewiston 55952

SLAUGHTER HOUSE LICENSE ONLY

Betlach, Edward, Blooming Prairie , Mn. 53917

Jenkins, LeRoy, Staples , Mn. 56476

Mehring, M.J., Paynesville , Mn. 56362

Nelson, Howard, Lindstrom , Mn. 55045

South St Paul Chamber of Commerce, South St Paul 55075

Stacker, Ralph, 1250 Northern Federal Bldg., St. Paul, Mn. 55102

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF THE RULES OF THE DEPARTMENT OF AGRICULTURE GOVERNING THE DISPOSAL OF REFUSE FROM TRANSPORT INVOLVED IN FOREIGN COMMERCE (AGR 190, 191 AND 192)	)))))	STATEMENT OF COMPLIANCE WITH THE MANUAL OF RULE MAKING PROCEDURES

I, Special Assistant Attorney General Jon K. Murphy, 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 Rulemaking Procedures has been followed. Any exceptions are noted below.

Jon K. Murphy
Special Assistant Attorney General

Dated: 9/8/80

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

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

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

Office Memorandum

TO : Jon K. Murphy
Special Assistant Attorney General

DATE: August 25, 1980

FROM : Gerald Heil, Director
Planning Division

PHONE: 296-7686

SUBJECT: Plant Industry Rules

The proposed amendments to the Plant Industry Rules have completed the entire rule promulgation process except for the final review by the Attorney General. The rules are now ready to be submitted for that review. However, one procedural error was 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 provided each Department with a general and specific mailing list. The general mailing list came on gummed labels which were then used to send the Notice of Hearing to the individuals on the list. I neglected to copy the gummed labels. Consequently, there is no copy of the 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 regarding the list are in order and are included for submission.

I suggest that this memorandum be attached to the Certificate of Compliance with the Manual of Rulemaking Procedures and be noted as an exception. If you have any questions, please call me.

GH:dw

EXHIBIT III

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

IN THE MATTER OF THE PROPOSED ADOPTION OF)
AMENDMENTS TO THE RULES OF THE DEPARTMENT)
OF AGRICULTURE GOVERNING THE DISPOSAL OF) ORDER FOR HEARING
REFUSE FROM TRANSPORT INVOLVED IN FOREIGN)
COMMERCE (Chapter 10: AGR 190-212))

IT IS HEREBY ORDERED that a public hearing on the above-captioned rules be held in the Administration Building, Room 116A, 50 Sherburne Avenue, Saint Paul, Minnesota on February 22, 1980, commencing at 9:00 a.m., or as soon thereafter as possible and continuing until all persons have had an opportunity to be heard.

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

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

STATE OF MINNESOTA

Mark W. Seetin
Commissioner of Agriculture

Date: December 14, 1979

SF-00006-01

DEPARTMENT OF AGRICULTURE

Office Memorandum

TO : Jon K. Murphy
Special Assistant Attorney General

DATE: August 25, 1980

FROM : Gerald Heil, Director
Planning Division

PHONE:296-7686

SUBJECT: Adoption of the Rules Governing the Disposal of Refuse from Transport Involved in Foreign Commerce (AGR 190, 191 and 192)

The Chief Hearing Examiner has submitted an Order of the Chief Hearing Examiner in regard to the above-mentioned rules. The Department is now required to submit the complete Hearing Record and the Rules as Adopted to the Attorney General for final review. Enclosed are the originals and two copies of the following required documents:

Exhibit 1. Rules as Adopted (four copies).
Exhibit 2. Rules as Proposed.
Exhibit 3. Order for Hearing.
Exhibit 4. Notice of Hearing.
Exhibit 5. Secretary of State's List.
Exhibit 6. Affidavit of Receipt of Secretary of State's List.
Exhibit 7. Affidavit of Mailing.
Exhibit 8. Certificate of Delivery of Secretary of State's List.
Exhibit 9. Statement of Need and Reasonableness.
Exhibit 10. Hearing Examiner's Finding of Fact and Recommendations.
Exhibit 11. Chief Hearing Examiner's Report and Order.
Exhibit 12. Agency Finding of Fact and Order Adopting Rules (four copies).

The Agency did not publish a Notice of Intent to Solicit Outside Opinion since the amendments were done without outside consultation. No petitions for adoptions, suspension, amendments, or repeals were received; therefore, none are included. Also attached is a Statement of Compliance with the Manual of Rulemaking Procedures. If the attached documents are in order, please sign the Compliance Form and forward it to the Attorney General. Please note the explanation of procedural non-compliance as explained in the attachment to the Statement of Compliance.

If you have additional questions, please call me.

GH:dw

Enclosure

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

STATE OF MINNESOTA

DEPARTMENT OF AGRICULTURE

Office Memorandum

TO : Jerry Anderson
Special Assistant Attorney General
Administration-Finance Division

DATE: Sept. 9, 1980

FROM : Jon K. Murphy
Special Assistant Attorney General

PHONE: 6-9310

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

Enclosed for your reveiw are the rules captioned above. A tape of the proceeding is also enclosed.

If any questions arise, please contact me.

JKM:crb

Enclosures

PRINTED ON RECYCLED PAPER