

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 679

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 2/27
DATE FOR REVIEW 3/7
DATE DUE 3/13

Adopted w/a hearing _____
Adopted w/o a hearing X
Temporary rule _____

Approved 3/4 Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____

✓ Rule as Adopted

✓ Rule as Proposed see S.R.

✓ Order Adopting 2.26.80

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
_____ ~~Date of Hearing~~

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice of rulemaking
✓ 12.10.80 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
✓ 1.26.81 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

N/A Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

_____ Agency's Findings of Fact
not submitted

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

_____ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)
✓ See transmittal memo — 1 comment received but not submitted

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT of Administration
BUILDING CODES & STANDARDS

TO : Ted Grindahl
Special Assistant Attorney General

DATE: 2/27/81

FROM : Don Pates
Assistant Director

PHONE: 6-4626

SUBJECT: ADOPTION OF THE NATIONAL ELECTRICAL CODE - 1981 EDITION

Enclosed please find for your review as to form and legality:

1. Order for Notice of Intent to Adopt Rules Without a Public Hearing
2. Notice of Intent to Adopt a Rule Without a Public Hearing
3. State Register, dated Jan. 26, 1981, Vol. 5, No. 30
4. Mailing List Certificate
5. Affidavit of Mailing
6. Statement of Need & Reasonableness
7. Affidavit of Mailing Notice of Submission to the Attorney General with attached Notice of Submission to the Attorney General
8. Order Adopting Rules with 3 copies
9. Rule as Adopted with 3 copies (1981 N.E.C. with amendment)
10. Statement of Rulemaking Compliance

The Division received one written comment on the adoption from the State Board of Electricity. The Board concurred with our intention to adopt the 1981 N.E.C. We received no requests for public hearing.

Also included is a copy of the 1980 State Building Code. The proposed/adopted amendment is taken from the 1980 S.B.C. (See Section 1.18601, page 72.)

If you have any questions please call.

DP:p

enclosures

RECEIVED
FEB 27 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

RECEIVED
FEB 27 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : JAMES J. HINIKER, JR.
Commissioner

DATE: March 6, 1981

ATTN : Allen E. Giles

FROM : H. Theodore Grindal HTG
Special Assistant
Attorney General

PHONE: 296-1288

SUBJECT: In the Matter of Proposed Rules on Adoption of the National Electrical Code 1981 Edition

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. Please 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 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 to the rules in the approved set.

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

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODES & STANDARDS DIVISION

In the Matter of Proposed Rules on Adoption of the National Electrical Code 1981 Edition

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on January 26, 1981 and was sent by the United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on December 10, 1980. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that these rules identified as National Electrical Code 1981 Edition are adopted this 26th day of February, 1981 pursuant to authority vested in me by Minnesota Statutes Section 16.86.

STATE OF MINNESOTA

James Hunter Jr.

COMMISSIONER OF ADMINISTRATION

RULE AS ADOPTED

Sec. 1.18601 Electrical. Scope. All new electrical wiring, apparatus, and equipment for electric light, heat and power shall comply with the regulations contained in the 1981 edition of the National Electrical Code (NEC) as approved by the American National Standards Institute (ANSI-CI-1981) and Minn. Stats. 326.243 and the State Building Code as promulgated by the commissioner of administration. Synopsis as follows:

APPROVED AS TO FORM AND LEGALITY

March 4 19 81

WARREN SPANNAUS, ATTORNEY GENERAL

BY H Theodore Arndt

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
MAR - 6 1981
Joan Anderson Growe
Secretary of State
11:00 AM

DEPARTMENT OF ADMINISTRATION

DIVISION OF BUILDING CODES & STANDARDS

Proposed Rules for the Minnesota State Building Code 2MCAR 1.18601 Adopting the National Electrical Code 1981 Edition as approved by the American National Standards Institute

Notice of Intent to Adopt A Rule without A Public Hearing

Notice is hereby given that the Minnesota Department of Administration (hereinafter "agency") intends to adopt the above-entitled rule without a public hearing. The agency has determined that the proposed adoption of this rule is noncontroversial in nature and has elected to follow the procedures set forth in Laws of 1980, ch. 615, Sec. 7, for adoption of noncontroversial rules. 2

The proposed rules provides for amending 2MCAR Sec. 1.18601 as follows:

Delete: "1978 Edition of the National Electrical Code (NEC)" and insert "1981 Edition of the National Electrical Code (NEC)."

Delete: "(ANSI-c1-1978)" and insert "(ANSI-C1-1981)."

The exceptions to NEC Table 220-2(b), NEC Section 300-22(b), NEC Section 700-6(b)(3), NEC Section 800-3; and the synopsis are retained as part of the State Building Code. This rule is authorized by Minn. Stat. 16.86. ✓ 9

The agency has prepared a Statement of Need and Reasonableness that describes the agency's reason for the proposed rule and identifies the data and information relied upon by the Agency to support the proposed rule. Copies of the 1981 National Electrical Code are in general distribution and may be reviewed at the Building Codes and Standards Division and obtained from the State Board of Electricity. Copies of the Statement of Need and Reasonableness may be obtained from the agency by contacting: 10

Ms. Peggi Opalinski
Building Codes & Standards Division
408 Metro Square Building
7th and Robert Streets
St. Paul, Minnesota 55101

Interested persons have 30 days after publication in the State Register to submit comments on the proposed rule. The proposed rule may be modified if the data and views submitted to the agency warrant modifications and the modification does not result in the substantial change in the proposed language. 3 4

If, during the comment period, seven or more persons submit to the agency a written request for a hearing on the proposed rule, the agency shall proceed to schedule a public hearing before adoption of the rule. The agency requests that if a person desires a public hearing, with the written request for a public hearing the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications. 5

Persons who wish to submit comments or a request for a public hearing should submit such comments or requests no later than 30 days after publication in the State Register to Ms. Peggi Opalinski at the address given above.

In the event a hearing is required, a new Notice of Hearing will be mailed out and published in the State Register. If no hearing is requested, the agency will adopt the proposed rule to be effective April 6, 1981. Persons who wish to receive a copy of the final rule as proposed for adopotion should submit a written statement of such desire to Ms. Opalinski.

After adoption of the final rule by the agency, the proposed rule, this notice, the Statement of Need and Reasonableness, all written comments received by the agency, and the final rule as adopted will be sent to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General should submit a written statement of such desire to Ms. Opalinski.

Please be advised that Minn. Stat. Ch. 10A (1978) requires each lobbyist to register with the Ethical Practices Board within five days after he/she commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250.00 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250.00 per year or five hours per month lobbying. The statute in questions provides certain exceptions. Questions should be directed to the Minnesota Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155. Telephone (612) 296-5651.

James J. Hiniker, Jr.
Commissioner

1-12-81
Date

AMENDMENTS AS PROPOSED:

Sec. 1.18601 Electrical. Scope. All new electrical wiring, apparatus, and equipment for electric light, heat and power shall comply with the regulations contained in the ~~1978~~ 1981 edition of the National Electrical Code (NEC) as approved by the American National Standards Institute (ANSI-CI-~~1978~~ 1981) and Minn. Stats. 326.243 and the State Building Code as promulgated by the commissioner of administration. Synopsis as follows:

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODES & STANDARDS DIVISION

In the Matter of Proposed Rules on Adoption of the National Electrical Code 1981 Edition

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 12th day of January, 1981 that Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Building Codes and Standards Division for that purpose and be published in the State Register.

STATE OF MINNESOTA

COMMISSIONER OF ADMINISTRATION

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODES & STANDARDS DIVISION

In the Matter of Proposed Rule on
Adoption of National Electrical
Code 1981 Edition

AFFIDAVIT OF MAILING

Gloria Safford, being first duly sworn, deposes and says:

That on the 10th day of December, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules Without a Public 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 Agency Hearing Notification List and all municipalities in the State of Minnesota pursuant to Minn. Stats. Sec. 16.86, subd. 6.

Gloria Safford

Gloria Safford
Building Codes and Standards

Subscribed and sworn to before
me this 10th day of December, 1980

Marilyn Helmes

MARILYN HELMES
WASHINGTON COUNTY
NOTARY PUBLIC-MINNESOTA
MY COMMISSION EXPIRES AUG. 26, 1986

Allegheny Ludlum Steel
Corporation
5217 Wayzata Blvd.
Minneapolis, MN 55416

Anchor Block Company
P.O. Box 43360
St. Paul, MN 55164

Anderson Corporation
R.A. Dahlin
Bayport, MN 55003

Harlyn E. Anderson
NSP
825 Rice Street
St. Paul, MN 55117

Arch Design Group
205 South Clark Street
Forest City, Iowa 50436

Wally Arentzen
17817 Ward Lake Drive
Cedar, MN 55011

Arthur G. McKee & CO.
2729 13th Avenue East
Hibbing, MN 55746
Attn: Stuart Anderson

Axelson Engineering, Inc
14407 Excelsior Blvd.
P.O. Box 1059
Minnetonka, MN 55343

Knutson Development
G.P. Uttley
17 Washington Ave No.
Minneapolis, MN 55401

Bean, Robert Bean & Hill
2002 London Road
Duluth, MN 55812

Robert Gergquist
Citation Homes
P.O. Drawer AF
Spirit Lake, MN 51306

Richard Bins
217 100 First Ave
Rochester, MN 55901

Gordon Bluhm
Code Enforcement Division
1421 3rd Ave SE
Rochester, MN 55901

Frank Bomberg
Benada Aluminum of MN
725 2nd Avenue North
Mpls., MN 55405

Bor-Son Construction
Ibb Agvald
1550 E. 78th Street
Richfield, Mn 55423

James Bragonier
304 E. 2nd Street
Northfield, MN 55057

Richard Brennan
511 Ryan Avenue West
Roseville, MN 55113

Knutson Development Co.
G.P. Uttley
17 Washington Avenue North
Minneapolis, MN 55401

Gerald Buege
Lamoille, MN 55948

Building Inspection Co., In
4620 West 77th Street
Minneapolis, MN 55435

Robert Buresh
4801 West 50th Street
Edina, MN 55424

Donald Burke
6700 Portland South
Richfield, MN 55423

William Buth
St. Paul BOMA
386 Wabasha St. - Suite 330
St. Paul, MN 55101

Butler Mfg. Company
BMA Tower
Penn Valley Park
Kansas City, Missouri
64141

Cameron-Sullivan & Assn
Red Lake Falls, MN 56750

Cardinal Insulated Glass
6700 Excelsior Blvd.
Minneapolis, MN 55428

Jim Carlson
Exchange Building
Winona, MN 55987

Carney & Assoc.
P.O. Box 1237
Mankato, MN 56001

Close Associates, Inc.
A. Bojes
3101 E. Franklin Avenue
Minneapolis, MN 55406

James Clubb
MPS 807 NE Broadway
Minneapolis, MN 55413

Bob Coborn Jr.
Miller Construction
Box 1228
St. Cloud, MN 56301

LeRoy DeBoom
3945 Zarthan
St. Louis Park, MN 55416

Department Inspection
City of Albert Lea
221 E. Clark Street
Albert Lea, MN 56007

Edward Vogt and Assoc.
Suite 141 Freeway Office
9100 W. Bloomington Fwy.
Minneapolis, MN

EES of Minnesota
600 No. Fairview
St. Paul, MN 55104

Ellerbe Architects, Inc.
One Appletree Square
Bloomington, MN 55420

Engineering Assn. P.C.
1407 12th Avenue South
Grand Forks, ND 58201

Erdman, Anthony, Assoc.
242 Andrews Street

Glenn A. Erickson
245 City Hall
St. Paul, MN 55012

Jerry Ernst
Wick Homes
Box 30
Fairmont, MN 56031

Foss Engelstad & Foss
Box 306
Moorhead, MN 56560

Marie Goff
2618 Quincey Street NE
Mpls., MN 55418

J.C. Hansen Jr.
c/o Celotex Corporation
764 Vandalia,
St. Paul, MN 55114

Harris-Billings Co.
4933 Boone Avenue North
Mpls., MN 55428

Ina Haugen
2633 2nd Avenue South
Mpls., MN 55408

Jim Hetlzer
Dayton-Hudson Corporation
777 Nicollet Mall
914 IDS Center
Mpls., MN 55402

Highway Construction
9150 Central Avenue NE
Minneapolis, MN 55434

Housing & Redevelopment
Authority
55 East 5th Street
St. Paul, MN 55101

Donald Hove

Fi

Donald Hove
Fire Chief
1616 Humboldt Avenue
West St. Paul, MN 55118

Patrick Hubbard
American Stair-Glide Cor
4001 E. 138th Street
Grandview, Mo. 64030

Hydro Air Engineering, I
P.O. Box 7359
St. Louis, MO 63177

Dean Jacobson
ORD Corp
Box 358
Pelican Rapids, MN 5657

Judd Jacobson
143 W. Bridge St.
Owatonna, MN 55060

Larry Fischer
Metro Metals
4345 Lyndale North
Room 2
Minneapolis, MN 55412

Ronald Johnson
929 Washington Avenue
Minneapolis, MN 55415

Jones & Haugh Inc.
PO Box 648
Albert Lea, MN 56007

Harry Kane
MN Electrical Assoc., In
3100 Humboldt Avenue So
Mpls., MN 55408

Alvin Kleinbeck
221 E. Clark Street
Albert Lea, MN 56007

Develop

General Mills, Inc.
Attn: J. W. Haun
P.O. Box 1113
Mpls., MN 55440

Murray Casserly
MHFA
333 Sibley-Suite 200
St. Paul, MN 55101

Marv Tero
MN Housing Finance
333 Sibley - Suite 200
St. Paul, MN 55101

Herbert W. Meyer
2215 W. Old Shakopee Rd.
Bloomington, MN 55431

Richard Nelson
2215 W. Old Shakopee Rd.
Bloomington, MN 55431

Robert Mood
2215 W. Old Shakopee Rd.
Bloomington, MN 55431

Joel Blumenthal
American Stair Glide
4001 E. 138th St.
Grandview, Missouri 64030

[illegible]

J. D. Giallombardo
Burlington Northern
176 E. 5th St., Room 1280
St. Paul, MN 55101

Bruce W. Schmitt
2655 Valley View Drive
Burnsville, MN 55337

John G. Horner
MN Multi Housing Assn.
3100 W. Lake St.
Mpls., MN 55416

Norman Mattson
Control Data Corp.
4201 No. Lexington
Mail Station ARH201
St. Paul, MN 55112

George C. Mastor
Minnesota Gas Co. - Legal Div.
300 Peavey Bldg.
Mpls., MN 55402

John J. Hogenson
Superamerica
1240 W. 98th St.
Bloomington, MN 55431

James D. Wolverton
Wolverton Engineering Co.
847 40th Ave. N.E.
Columbia Heights, MN 55421

Frank A. McGurn, Jr.
Regional Executive Coordinator
4908 Tile Line Road
Crystal Lake, Illinois 60014

Harold Nelson
Administrative Engineer
G-10 Administration Bldg.
St. Paul, MN 55155

P. W. Rich
Central Engineering Dept./3M
P.O. Box 33331
St. Paul, MN 55133

Bruce E. Ryden
Fire Marshal
2660 Civic Center Drive
Roseville, MN 55113

Wm. B. O'Mally
University Park Plaza Ste. 704
2829 University Ave. S.E/
Mpls., MN 55414

Michael Allen
Rt. 1, Box 22H
South Haven, MN 55382

LeRoy deBoom
3945 Zarthan Ave.
St. Louis Park, MN 55416

Frank Houser
718 Gordon Lane, Apt. 2
Shakopee, MN 55397

LeeC. Gresser
1600 Excelsior Ave. W.
Hopkins, MN 55343

Heidi Ebeltoft
MN Housing Finance Agency
333 Sibley, Ste. 200
St. Paul, MN 55101

[illegible]

Ron Warren
6301 Shingle Creek Pkwy.
Brooklyn Center, MN 55430

M. L. Oftedal
620 Sexton Bldg.
Mpls., MN 55415

Reg. Comm. #15
Nat'l Auto. Sprinkler & FCA
325 Roosevelt St. N.E.
Mpls., MN 55413

Rich, Philip W.
900 Bush Ave.
Bldg. 42-2W 3m Co.
St. Paul, MN 55106

Robertson, George M. Jr.
City Attorney
4th and Lafayette
Winona, MN 55987

Ryden, Burce E.
Fire Marshal
2701 No. Lexington
Roseville, MN 55113

Art, Saxrud
Honeywell, Inc.
7354 Bush Lake Road
Mpls., MN 55435

Scarano, Anthony L.
Plastics Pipe Inst.
3 Sprindale Terrace
Morrisville PA 19067

Donald Herron
W-140 Boynton Health Service
U of M - 410 Church St.
Mpls., MN 55455

Schroeder, Robert J.
807 Hennepin Ave.
Mpls., MN 55403

Schullder, Karl
Metal Building, Dealers Assn.
117 No. Broadway
Rochester, MN 55901

Skenzich & Warn
Eleveth T.V.I.
Eveibth, MN 55734

Sievert, Sandra J.
Indus

Sievert, Sandra J.
Industrial Coatings
Route 2, Box 63C
Rogers, MN 55374

Wm. F. Stewart
13 W. Minn. St.
Savage, MN 55378

Stordahl, Conrad
6613 Portland Ave. So.
Richfield, MN 55422

Summers, Joseph P.
630 Osborn Bldg.
St. Paul, MN 55102

Swenson, Harvey G.
6100 Green Valley Drive
Bloomington, MN 55438

Tegan, James
Brin Glass Co.
600 Washington Ave. NO.
Mpls., MN 55401

Tibbits, Robert Lester's
Lester Priaire, MN 55354

Tilly, Stan
M.L. Gordon Sash & Door Co.
7201 W. Lake St.
Mpls., MN 55426

Tonn, Ralph L.
Mill Craft
P.O. Box 327
Waupaca, WI 54981

T. R. Arnold & Assoc.
401 Bristol St.
Elkhart, IN 46514

Warnes, Jack
City Hall Annex
St. Cloud, MN 56301

Wausau Metals Corp.
L. Niederhofer
1415 W. St.
Box 1305
Wausau, WI 54401

Wees, Donald J.
City Bldg. & Safety
1421 3rd Ave. S.E.
Rochester, MN 55901

Weis, J. C.
Box 6757
Rochester, MN 55901

Wherry Construction
Stephen Wherry
7325 Cornelia Drive
Edina, MN 55435

Whitney, Granger B.
Lancer Construction
54 E. Moreland W.
West St. Paul, MN 55118

Wick AGri-Buildings
P.O. Box 38
Mazomanie, WI 53560

WI Bridge and Iron Co.
5023 No. 35th St.
Milwaukee, WI 53209

Wisniewski, Donald
621 W. 96th St.
Chaska, MN 55318

Wolverton Engineering Co.
847 40th Ave. N.E.
Columbia Heights, MN 55421

Young, Spencer
Engineer, Codes & Ordinances
733 Marquette Ave.
Mpls., MN 55402

Robert L. Tibbits, P.E.
Tibbits Engineering
735 11th St. E.
Glencoe, MN 55336

James K. Carlson
300 Exchange Bldg.
Winona, MN 55987

George Seanor
Lamont Associates
306-1/2 So. Main St.
Aberdeen, So. Dakota 57401

Jim W. Miller Construction
3335 W. St. Germain St.
P.O. Box 1228
St. Cloud, MN 56301
Attn: Bob Coborn, JR.

Langer Construction Co.
54 E. Moreland Ave.
West St. Paul, MN 55118

Ronad W. Johnson
Pella Products
929 Washington Ave. So.
Mpls, MN 55415

Merle Berkeland
Fire Marshal
Willmar Fire Dept.
P.O. Box 932
Willmar, MN 56201

Howard Nessel
Oliver D. Billing & Assoc.
3960 Minnehaha Ave. So.
Mpls., MN 55406

Donald Wisniewski
621 W. 96th St.
Chaska, MN 55318

Mille Lacs County
Zoning Office
635 2nd St. S.E.
Milaca, MN 56353

Ralph T. Keyes
1631 Brooks Ave. W.
St. Paul, MN 55113

Richard Clark
Public Water Supply/Gen. Eng.
Dept. of Health
717 Delaware Ave. S.E.
Mpls., MN 55440

Lynn B. Olsson, P.E.
Energy Technology Resources
15816 Highwood Drive
Minnetonka, MN 55343

Arrowhead Reg. Devel. Comm.
200 Arrowhead Place
Duluth, MN 55802
Attn: Bob Louiseau

Alison M. Harwood
S and FA Reporting Services
1101 15th St. N.W.
Washington, D.C. 20005

George Brandon
Sales Manager
Minnesota Gas Co.
9525 Wayzata Blvd.
Mpls., MN 55402

F. James Rybak, Ph.D.
MN Dept. of Economic Security
690 American Cntr. Bldg.
150 E. Kellogg Blvd.
St. Paul, MN 55101

David V. Remely
Remely & Assoc.
544 No. 25th Ave.
St. Cloud, MN 56301

Francis X. McGrath
Mon-Ray Windows Inc.
6118 Wayzata Blvd.
Mpls., MN 55416

Susan P. Robertson, Director
Room 430, State Office Bldg.
St. Paul, MN 55155

Donald L. Johnson
Butler Manf. Company
135th St. & Botts Road
Grandview, Missouri 54030

Rick Carter
MN Assoc. of Health Care Fac.
2850 Metro Drive, Suite 429
Mpls., MN 55420

Thomas W. Lewis
Box 336
222 Tenth St.
Windom, MN 56101

Earl Bartels
Minnegasco
733 Marquette Ave.
Mpls., MN 55402

Harold H. Haugh
515 So. Washington
Albert Lea, MN 56007

Wm. F. Stewart
7208 Boone Ave. No.
Mpls., MN 55428

Gerald Gorton
Brainerd Community College
W. College Drive
Brainerd, MN 56401

Lucas, Mrs. Russel
3264 Victoria St.
St. Paul, MN 55112

MacArthur Co.
R. L. Lockwood
936 Raymond Ave.
St. Paul, MN 55114

McDonagh, James R.
R.R. 2
Salem Road
Rochester, MN 55901

McLean Pate
C/O Clark R. Gibb Co.
1311 W. 25th St.
Mpls., MN 55405

Marincel, Steve
United Handicapped Federal
1951 University Ave.
St. Paul, MN 55103

Marshfield Homes
P.O. Box 530
2301 E. 4th St.
Marshfield, WI 55449

Orville N. Mertz
MN State Fire Chiefs
521 S. Broadway
Rochester, MN 55901

John Meyer
Meyer, Borgman, Johnson
810 Plymouth Building
Mpls., MN 55402

Ken Mihelich
3M Building 42-8E-02
Box 33331
St. Paul, MN 55113

Mill-Craft
Box 327 Tower Road
Waupaca, WI 54981

~~Alvin Miller~~
~~Hussmann No. Central~~
~~6100 Wayw~~

Alvin Miller
C/o Hussmann No. Central
6100 Wayzata Blvd.
Mpls., MN 55416

Miller HWB Architects
W. J. Berger
Butler Square Ste 300
100 No. 6th St.
Mpls., MN 55403

Minn. Lathing & Plastering
796 Raymond Ave.
St. Paul, MN 55114

MN State Bd of Electricity
1954 University Ave.
St. Paul, MN 555104

Mjorud, Al
Armstrong, Troseth, Skold,
Rydeen
4901 Olson Memorial Hwy.
Mpls., MN 55422

Gary Moore
P.O. Box 21174
Eagan, MN 55112

Alfred J. Nelson
1312 IDS Building
777 Nicollet Mall
Mpls., MN 55402

Nelson-Zepper
9150 Central Ave. N.E.
Blaine, MN 55434

Nicholson, Morris E.
1776 No. Pascal Ave.
Falcon Heights, MN 55113

NW Bell Co.
2701 E. 80th St.
G. B. Fletcher
Mpls., MN 54420

~~Olofson, Arthur~~ W.
~~xxxxxxxxxx~~
~~927 Soo Line~~

Otis Elevator
Mike Essma
2101 Minnehaha Ave.
Mpls., MN 55404

Owatonna Builders
206 W. Rose St.
Owatonna, MN 55060

Paulsen, Brian
SPS Co. Inc.
6250 W. 36th St.
Mpls, MN 55416

Peil, Eugene
United Sprinkler Co.
1700 65th Ave. No.
Mpls., MN 55430

Pemton Inc.
R. W. Anderson
8200 Humboldt
Bloomington, MN 55431

Plumber and Gasfitters #34
418 Auditorium Suite 205
St. Paul, MN 55102

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STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of Proposed Rule on
Adoption of National Electrical
Code 1981 Edition

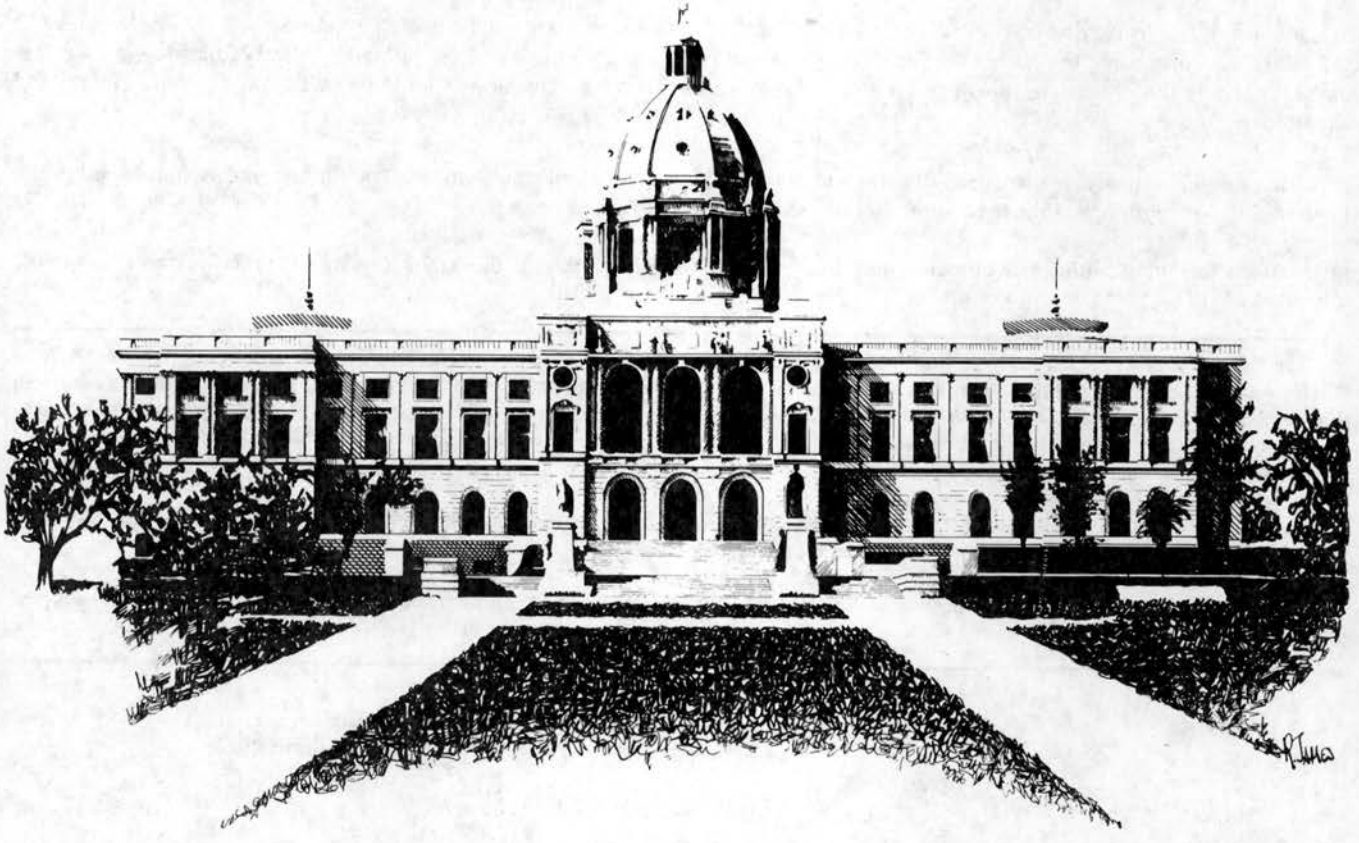
I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. Section 15.0412, subd. 4, that their names be placed on file with and maintained by the State Building Codes and Standards Division for the purpose of receiving notice of the proposed adoption of rules by this agency is accurate and complete as of 8:00 a.m., this 10th day of December, 1980.

Margaret Ann Opalinski

Margaret Ann Opalinski

STATE REGISTER

STATE OF MINNESOTA



VOLUME 5, NUMBER 30

January 26, 1981

Pages 1155-1182

STATE REGISTER

Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
	SCHEDULE FOR VOLUME 5		
31	Monday Jan 19	Monday Jan 26	Monday Feb 2
32	Monday Jan 26	Monday Feb 2	Monday Feb 9
33	Monday Feb 2	Monday Feb 9	Monday Feb 16
34	Monday Feb 9	Friday Feb 13	Monday Feb 23

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at $120.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at $2.25 per copy.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

Albert H. Quie
Governor

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Commissioner
Department of Administration

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NOTICE

How to Follow State Agency Rulemaking Action in the *State Register*

State agencies must publish notice of their rulemaking action in the *State Register*. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a **NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION.** Such notices are published in the **OFFICIAL NOTICES** section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The *State Register* publishes partial and cumulative lisitngs of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Issues 1-13, inclusive
Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
Issue 39, cumulative for 1-39
Issues 40-51, inclusive
Issue 52, cumulative for 1-52

The listings are arranged in the same order as the table of contents of the MCAR.

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PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

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 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Administration
Building Codes and Standards Division

Proposed Rule for the Minnesota State Building Code (2 MCAR § 1.18601) Adopting the National Electrical Code 1981 Edition as Approved by the American National Standards Institute

Notice of Intent to Adopt A Rule without A Public Hearing

Notice is hereby given that the Minnesota Department of Administration (hereinafter "agency") intends to adopt the above-entitled rule without a public hearing. The agency has determined that the proposed adoption of this rule is noncontroversial in nature and has elected to follow the procedures set forth in Laws of 1980, ch. 615, § 7, for adoption of noncontroversial rules.

The proposed rule provides for amending 2 MCAR § 1.18601 as follows:

Delete: "1978 Edition of the National Electrical Code (NEC)" and insert "1981 Edition of the National Electrical Code (NEC)."

Delete: "(ANSI-c1-1978)" and insert "(ANSI-C1-1981)."

The exceptions to NEC Table 220-2(b), NEC Section 300-22(b), NEC Section 700-6(b)(3), NEC Section 800-3; and the synopsis are retained as part of the State Building Code. This rule is authorized by Minn. Stat. 16.86.

The agency has prepared a Statement of Need and Reasonableness that describes the agency's reason for the proposed rule and identifies the data and information relied upon by the Agency to support the proposed rule. Copies of the 1981 National Electrical Code are in general distribution and may be reviewed at the Building Codes and Standards Division and obtained from the State Board of Electricity. Copies of the Statement of Need and Reasonableness may be obtained from the agency by contacting:

Ms. Peggi Opalinski
Building Codes & Standards Division
408 Metro Square Building
7th and Robert Streets
St. Paul, Minnesota 55101

Interested persons have 30 days after publication in the *State Register* to submit comments on the proposed rule. The

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

proposed rule may be modified if the data and views submitted to the agency warrant modifications and the modification does not result in the substantial change in the proposed language.

If, during the comment period, seven or more persons submit to the agency a written request for a hearing on the proposed rule, the agency shall proceed to schedule a public hearing before adoption of the rule. The agency requests that if a person desires a public hearing, with the written request for a public hearing the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

Persons who wish to submit comments or a request for a public hearing should submit such comments or requests no later than 30 days after publication in the *State Register* to Ms. Peggi Opalinski at the address given above.

In the event a hearing is required, a new Notice of Hearing will be mailed out and published in the *State Register*. If no hearing is requested, the agency will adopt the proposed rule to be effective April 6, 1981. Persons who wish to receive a copy of the final rule as proposed for adoption should submit a written statement of such desire to Ms. Opalinski.

After adoption of the final rule by the agency, the proposed rule, this notice, the Statement of Need and Reasonableness, all written comments received by the agency, and the final rule as adopted will be sent to the Attorney General. Persons who wish to be advised of the submission of this material to the Attorney General should submit a written statement of such desire to Ms. Opalinski.

Please be advised that Minn. Stat. ch. 10A (1978) requires each lobbyist to register with the Ethical Practices Board within five days after he/she commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than $250.00 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250.00 per year or five hours per month lobbying. The statute in questions provides certain exceptions. Questions should be directed to the Minnesota Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155. Telephone (612) 296-5651.

January 12, 1981

James J. Hiniker, Jr.
Commissioner

Amendments as Proposed

2 MCAR § 1.18601 Electrical. Scope. All new electrical wiring, apparatus, and equipment for electric light, heat and power shall comply with the regulations contained in the ~~1978~~ 1981 edition of the National Electrical Code (NEC) as approved by the American National Standards Institute (ANSI-CI-~~1978~~ 1981) and Minn. Stat. § 326.243 and the State Building Code as promulgated by the Commissioner of Administration. Synopsis as follows:

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Employee Relations
Social Security Division

Adopted Rules Regarding Depositing of Social Security Contributions by Covered Public Employers

The rules proposed and published at *State Register*, Volume 5, Number 18, pp. 696-698, November 3, 1980 (5 S.R. 696) are now adopted as proposed.

Energy Agency Conservation Division

Adopted Temporary Rules for the Establishment of the Minnesota Energy Conservation Service Program

The proposed temporary rules for the establishment of the Minnesota Energy Conservation Service published in *State Register*, Volume 5, Number 18 pp. 698-722, November 3, 1980, (5 S.R. 699) (with the notice of temporary rules at 5 S.R. 723) are adopted with the following amendments:

Amendments as Adopted

6 MCAR § 2.2301 Definitions.

H. Energy conserving practice.

3. Reducing thermostat setting in winter, which means limiting the maximum thermostat control setting for the furnace to ~~68~~ 65°F during the heating season.

U. Renewable resource measures.

2. Passive ~~p~~solar space heating and cooling systems.

d. Window heat gain ~~retardants~~ and/or loss. Those mechanisms which significantly reduce summer heat gain or wintertime heat loss through ~~South facing (or 45° of True South)~~ window by the use of devices such as awnings, insulated rollup shades (external or internal), metal or plastic solar screens, or moveable rigid insulation.

W.3. Positive fireplace shutoffs. A manual shutoff device which can be utilized to produce a seal to inhibit the flow of air when a fireplace or fireplace stove is not operating.

6 MCAR § 2.2302 Program promotion.

A.1.c. Program announcements shall be submitted to the agency for approval one month prior to the date that the utility intends to print the announcement. The agency shall approve the distribution of program announcements only if:

(1) The criteria of 6 MCAR § 2.2302 A.2. have been met; and

(2) The information contained in the program announcement ~~represented~~ is presented in simple language.

6 MCAR § 2.2303 Energy audits.

A. Validation of audit procedures.

1. Alternative audits. The agency shall develop a model program audit based on the calculation procedures in Appendix A for use by participating utilities and heating suppliers in the MECS. A participating utility or heating supplier may use an alternative audit if the alternative has been approved by the agency. The alternative audit will be approved if its results are within ± 20% of the results provided by the MECS Audit. To determine this, the agency shall conduct five field tests of the alternative audit on five representative residences of different sizes and ages. The results of these audits shall be reviewed by the agency and compared to the results achieved by the MECS Audit. If the alternative audit does not meet this test, any necessary changes may be made in the audits procedures and five additional audits may be conducted and reviewed. ~~All alternative audits shall be submitted to the agency for validation by January 5, 1981.~~

6 MCAR § 2.2305 Master list of contractors, lenders and suppliers.

B. Eligibility requirements.

1. To be eligible for listing, contractors, lenders and suppliers must enter into a written agreement with the agency.

6 MCAR § 2.2306 Post-installation inspections.

A. Inspection procedures.

1. Each covered utility shall arrange to conduct the post-installation inspections of its customers required in this section. By ~~Dec. 15, 1980~~ February 15, 1981 each covered utility shall submit to the agency, for approval, its plans for conducting the inspections and for coordinating these inspections with the agency and the Office of Consumer Services.

KEY: 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." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

B. Mandatory inspections. All installations of the following arranged measures shall be inspected within one week of installation:

1. Flue opening modifications;

2. Electric or mechanical ignition systems;

3. Wind energy devices; and

4. Solar domestic hot water systems.

C. Random inspections.

1. Four of the first ten arranged installations made by each contractor of each of the following program measures shall be inspected:

a. Ceiling insulation;

b. Floor insulation; and

c. Wall insulation ~~; and~~

~~d. Solar domestic hot water systems~~.

2. Ten percent of all utility arranged installations of each program measure listed in 6 MCAR § 2.2306 C.1. shall be inspected each year. The inspections required in 6 MCAR § 2.2306 C.1. shall count toward the fulfillment of this requirement.

3. At least one inspection shall be conducted each year of the arranged installations of the following measures for each contractor on the Master List:

a. Ceiling insulation;

b. Floor insulation;

c. Wall insulation;

d. Water heater insulation;

e. Storm or thermal windows;

f. Storm or thermal doors;

g. Replacement burner (oil); and

~~h. Solar domestic hot water systems~~

h ~~i~~. Replacement solar swimming pool heaters.

6 MCAR § 2.2307 Qualification procedures for auditors and inspectors.

B. Auditors.

1. Training.

c. Two months prior to the first public offer of the audit, the participating utility and heating supplier shall submit to the agency for approval a plan to develop and administer a program of in-service training for the continued education of certified auditors. The agency shall approve a plan if it reviews and updates the material listed in 6 MCAR § 2.2307 B.2.b., provides the auditors with additional technical information and the program measures and audit techniques and reviews the communication skills needed for the interaction with the ~~homeowner~~ customer.

C. Inspectors.

1.c. Each covered utility shall submit to the agency for approval a plan for the training of general inspectors, as required in 6 MCAR § 2.2307 C.1.a., by ~~January 15, 1980~~ February 15, 1981. The agency shall approve a plan if it insures coverage of the subject matter pursuant to 6 MCAR § 2.2307 C.1.b.

2.c. Each covered utility shall submit to the agency for approval a plan for the training of specialized inspectors as required in 6 MCAR § 2.2307 C.2.a. by ~~January 15, 1980~~ February 15, 1981. The agency shall approve a plan if it insures coverage of the subject matter pursuant to 6 MCAR § 2.2307 C.2.b.

Department of Public Welfare
Income Maintenance

Adopted Temporary Rule Governing Pre-admission Screening for Long Term Care

The proposed temporary rule (12 MCAR § 2.065) published at *State Register*, Volume 5, Number 15, pp. 599-601, October 13, 1980 (5 S.R. 599) was adopted on December 19, 1980, approved by the Office of the Attorney General on December 29, 1980, and filed with the Office of the Secretary of State on December 31, 1980, with the following amendments:

Amendments as Adopted

12 MCAR § 2.065 D. The pre-admission screening.

2. Nursing home admission shall be recommended by the screening team if it is determined that the individual requires care or services which are not available outside the nursing home.

3. A recommendation for the applicant to remain in the community shall be accompanied by a plan of care including referrals, followup services, and assignment of responsibility to implement each individual's plan of care.

4. ~~2.~~ Renumbered.

5. ~~3.~~ Renumbered.

6. ~~4.~~ Renumbered.

7. ~~5.~~ Renumbered.

E. Right to appeal.

1. Persons who are recipients of or applying for Medical Assistance have the right to a fair hearing to challenge the action or inaction of the local and/or state welfare agencies. ~~The appeal is automatic if the individual's physician does not agree with the recommendation of the screening team.~~ Such hearings shall be conducted in accordance with applicable appeal procedures, as set forth by statute. Action taken as a result of the hearings shall be governed by applicable state law and federal regulations relating to Medical Assistance reimbursement. Appeals must be filed within ten working days of the screening team's decision.

2. Where the treating physician is in opposition to the screening team's decision, the physician shall notify the screening team and request an appeal on behalf of the individual. The appeal may be withdrawn with the consent of the individual and the treating physician.

3. ~~2.~~ Renumbered.

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TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota

Tax Court

Kern and Tabery, Inc.,

Appellant,

v.

The Commissioner of Revenue,

Appellee.

In the matter of an appeal from the Commissioner's Order dated September 14, 1979, pertaining to sales & use tax liability of appellant.

Docket No. 2984

Order dated January 9, 1981.

This is an appeal from an Order of the Commissioner of Revenue dated September 14, 1979 determining sales and use tax liability of appellant in the amount of $7,558.77 including penalty and interest. The transactions involved are purchases by appellant, a road building contractor, of fill material from landowners under options in leases. The two issues are whether these transactions constitute sales of tangible personal property and, in addition, whether these transactions are exempt as isolated or occasional sales under Minn. Stat. § 297A.25, subd. 1(k).

Robert A. Albrecht of Moore, Costello & Hart,
appeared for appellant,
Thomas K. Overton, Special Assistant Attorney General,
appeared for appellee.

Decision

The Order of the Commissioner of Revenue is reversed.

The essential facts have been stipulated by the parties and, in addition, an evidentiary hearing was held at the Tax Court in St. Paul on September 11, 1980 before Judge Earl B. Gustafson.

The Stipulation of Facts agreed upon between the parties is adopted by the Court as follows:

Findings of Fact

Earl B. Gustafson

1. Kern and Tabery, Inc. is a general contractor engaged, among other things, in the business of constructing highways. During 1976, 1977 and 1978 Kern and Tabery built interstate and state highways for the Minnesota Department of Transportation.

2. Kern and Tabery used fill materials (subsoil) in the construction of such highways for the Minnesota Department of Transportation.

3. Prior to submitting bids to the Department of Transportation for such construction projects, Kern and Tabery and other potential bidders negotiated with owners of lands in the vicinity of such projects which contained fill materials suitable for use in such projects. The landowners involved were primarily engaged in farming. The lands involved were, generally speaking, farm lands. A potential bidder desires to obtain fill at the lowest possible cost. Some bidders attempt to exclude other bidders from obtaining fill (exclusive contract). Each landowner desires to obtain a non-exclusive contract at the highest possible price. Kern and Tabery did not attempt to obtain exclusive contracts prior to the submission of bids, but did obtain quotations from landowners before submitting bids. Other potential bidders also obtained quotations before submitting their bids.

4. Kern and Tabery used such quotations in computing its bid to the Department of Transportation on such highway construction projects.

5. After Kern and Tabery was awarded a general construction contract for a highway project by the Department of Transportation, it entered into written contracts with one or more of such landowners, such as those attached hereto as Exhibits 1, 2 and 3, which are representative thereof.

6. These landowners had never entered into any contracts involving fill materials prior to the events described herein.

7. These contracts were for a term of at least one year.

8. Kern and Tabery obtained fill materials from these lands under such contracts by cutting down hills on such lands,

removing the topsoil therefrom, removing the subsoil therefrom for fill, and replacing the topsoil on such lands when the job was completed. On most projects fill was removed from such lands over a period of several months. The landowner who owned such lands received regular reports from Kern and Tabery of the quantities of fill removed.

9. The landowners were paid under such contracts on the basis of the number of cubic yards of fill removed.

10. Each land owner would be willing to enter into similar contracts in the future if the opportunity arose, but none of these landowners has had such an opportunity since his contract with Kern and Tabery.

11. Kern and Tabery paid no sales tax to such landowners and no use tax to the State of Minnesota with respect to the fill materials.

Conclusions of Law

1. The transactions in question are sales of tangible personal property at retail ordinarily subject to the Minnesota Sales and Use Tax, Ch. 297A, Minnesota Statutes.

2. Based upon the specific facts of this case the transactions in question come within the exemption to the Sales and Use Tax as isolated or occasional sales under Minn. Stat. § 297A.25, subd. 1(k).

3. The Order of the Commissioner of Revenue assessing sales and use tax liability should be reversed.

Memorandum

Appellant, Kern and Tabery, Inc., is a road building contractor. To obtain fill materials for use in its highway construction projects, Kern and Tabery entered into lease agreements with farmers near construction sites that contained options to purchase fill materials from the leased lands for a set price per cubic yard. All of the land was farm land and the owners were farmers who had never entered into contracts involving the sale of fill materials before. None have made similar contracts since. These leases were from one to two years and rent was a nominal $1.00.

If appellant had need for fill material on a nearby highway project, it would first remove the topsoil, then, remove the required amount of subsoil for fill and replace the topsoil when the job was completed. On most projects fill was removed from the land over a period of several months. The land disturbed or altered in this process were hills or high ground that were returned to the owners as lower or more level ground ready to be used for agricultural purposes again.

Kern and Tabery paid no sales tax to the landowners and no use tax to the State of Minnesota on the purchase of these fill materials.

The Commissioner of Revenue claims there is a use tax due because these transactions constitute the purchase of tangible personal property taxable under Minn. Stat. § 297A.14.

The appellant denies any tax is owed and claims this was not the purchase of tangible personal property but rather the exercise of its right under the lease to enter upon the land and remove fill. Whether or not appellant had acquired a "profit a prendre," an interest in real estate, there is no doubt that it purchased and paid for fill material by the cubic yard. This fill was tangible personal property once it was removed from the land and hauled away to the road construction site. Barring an exemption the transaction would be taxable.

Appellant raises another and more persuasive defense, however. It claims no sales or use tax is due because the purchase of fill from farmers are isolated or occasional sales purchased from a person who is not engaged in selling such property in the normal course of business and therefore exempt under Minn. Stat. § 297A.25, subd. 1(k).

The applicable statute reads as follows:

Minn. Stat. § 297A.25, subd. 1. Exemptions. The following are specifically exempted from the taxes imposed by sections 297A.01 to 297A.44:

* * * *

(k) The gross receipts from the isolated or occasional sale of tangible personal property in Minnesota not made in the normal course of business of selling that kind of property, and the storage, use, or consumption of property acquired as a result of such a sale . . .

The governing Sales and Use Tax Regulation reads as follows:

Tax S&U 411 Isolated or Occasional Sales.

(a) In general. As provided in Section 297A.25, Subd. 1 (k), the sales or use tax does not apply to *isolated or occasional sales* of tangible personal property *made by a person who is not engaged in selling such property in the normal course of business.* The term "isolated" is defined as "standing alone or solitary." The term "occasional" is defined as "occurring at infrequent intervals" or as "incidental" or as "casual"; that is, as distinguished from events of a similar nature recurring with some degree of regularity.

(b) Isolated or occasional sales. The following transactions are considered to be isolated or occasional sales:

(1) Infrequent sales of a non-recurring nature made by a person not engaged in the business of selling tangible personal property. (Emphasis added)

It is clear from the record that the farmers who sold this fill material to appellant were "not engaged in selling such property in the normal course of business." They were in the business of farming and not in the business of selling fill, gravel or other road building materials. Only because of the fortuitous proximity of their land to highway projects did the farmers have occasion to sell this sub-soil material.

The commissioner argues that each load of material removed constituted a separate sale and therefore there were a series of sales not just an "occasional or isolated" sale. There certainly were a number of truck loads of soil removed, but each farmer, in essence, made only one sale. They were not paid separately for each load. Once all the material was removed the farmer was paid the entire amount based upon the cubic yards removed. Some interim payments may have been made but these were only based on estimates of the quantities of material removed to that date.

Our holding in this case is strictly limited to the facts presented. There may be farmers who regularly sell fill, topsoil or gravel and who would be considered as being in that business. That is not the case before us.

The complete separation of these transactions from the sellers' normal course of business plus the unitary nature of these transactions between appellant and each farmer brings them within the exceptions of § 297A.25, subd. 1(k).

Earl B. Gustafson
Judge of Tax Court

SUPREME COURT

Decisions Filed Friday, January 16, 1981

Compiled by John McCarthy, Clerk

51097, 51170/387 Arthur J. Juve, Jr., et al, Marlyn Vorgert, Plaintiff, Gambles C & M Leasing Company, et al, H. J. Heinz Company, et al, Liberty Mutual Insurance Company, vs. Home Indemnity Company, et al, Appellants, Jerome M. Kunza, et al. Otter Tail County.

The insurance policy issued to the city here does not provide excess liability insurance coverage to the driver-owner of a vehicle which was not a "hired automobile" as defined in the policy.

The driver-owner was also specifically excluded under a clause denying coverage to owners of such vehicles.

Reversed. Sheran, C. J.

50813/Sp. State of Minnesota vs. Eddie Davis, Appellant. Hennepin County.

Trial court did not err in admitting eyewitness identification testimony challenged as being product of unnecessarily suggestive identification procedures.

Trial court did not abuse its discretion in admitting, pursuant to R. 801 (d) (2) (E), Minn. R. Evid., testimony against defendant concerning statements made by a coconspirator.

Evidence of defendant's guilt was sufficient to sustain the verdict.

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

51455/Sp. In the Matter of the Appeal of Wayne G. Hasty from the Order of the Brainerd Police and Fire Civil Service Commission. Crow Wing County.

To the extent that Rules 13 and 14, Special Rules of Practice, Ninth Judicial District, do not irreconcilably conflict with Minn. Stat. § 419.12 (1978) they may be applied to proceedings brought thereunder.

In an appeal under Minn. Stat. § 419.12 (1978) the appellant must bear the costs of preparing a transcript.

Sheran, C. J.

51193/Sp. Commissioner, Department of Economic Security, State of Minnesota, vs. JEK Industries, Inc., Relator. Department of Economic Security.

Affirmed with modification. Todd, J.

50789/359 State of Minnesota, on Behalf of Wendy Forslund (Cooper), vs. Richard Bronson, Appellant. Anoka County.

Minn. Stat. § 257.251 (1971) (repealed 1980) establishes a statutory requirement of support of illegitimate children by the father which parallels the common law requirement of support by the mother, thus making the duty of support coextensive and does not create a gender-based classification.

Minn. Stat. § 257.251 (1971) (repealed 1980) does not place a greater burden of support of children upon unmarried fathers that the statute requiring support by married fathers places upon such fathers, and does not deny equal protection on basis of marital status.

Affirmed. Amdahl, J.

50803/372 In the Matter of the Petitions of Space Center Inc. and Honeywell Inc. for Reduction of Taxes and Assessed Valuation of a Certain Tract of Real Estate in the City of St. Louis Park, County of Hennepin. Space Center, Inc. and Honeywell Inc., petitioners, Relators, vs. County of Hennepin. Tax Court.

The present use and configuration of a building are items of value to be weighed only to the extent they affect its selling price.

The Tax Court gave undue weight to "value-in-use" as a factor for calculating market value where evidence clearly established the building could not be sold without extensive alterations.

Reversed and remanded. Simonett, J.

50458, 50684/Sp. State of Minnesota vs. Elizabeth N. Ellert, Appellant. Hennepin County.

Evidence that shooting was intentional, not accidental, was sufficient.

Trial court did not commit prejudicial error in any evidentiary rulings.

Prosecutor did not commit prejudicial error.

Trial court did not commit prejudicial error in any of its instructions.

Affirmed. Simonett, J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over $2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over $10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Hibbing Community College

Notice of Request for Proposals for Arrowhead Region Instructional Interactive Television Microwave Network

Arrowhead Region Instructional Television Consortium
Five Northeastern Minnesota Community Colleges (Hibbing, Itasca, Mesabi, Rainy River, Vermilion)

The Arrowhead Region Instructional Television Consortium is soliciting proposals from engineering firms for the following service:

To provide an engineering plan for an interactive television microwave network to link the five (5) community colleges in the Arrowhead Region of northeastern Minnesota, including an interconnection with local cable television systems. Requirements

and specifications for this project are outlined in detail in the Request for Proposals (RFP). The formal RFP may be requested, and inquiries should be directed to:

Theodore R. Switzer, Project Director
Arrowhead Region Instructional Television Network
Hibbing Community College
1515 E. 25th St.
Hibbing, MN 55746

It is anticipated that the professional services and expenses for this engineering study should not exceed a total cost to the Consortium of $8,000. The deadline for the submission of completed proposals will be the close of the working day February 20, 1981.

State Board of Investment

Notice of Request for Proposals for An Evaluation of the State Board's Investment Program and Recommendations for Future Investment Techniques

The State Board of Investment is requesting proposals from independent investment advisory firms for the purpose of selecting a consultant to analyze the nature and effectiveness of the investment management system relating to funds managed by the state (presently, approximately $4.3 billion) and to suggest ways in which future investment performance may be improved.

This procurement is undertaken by the state board pursuant to the provisions of Minnesota Statutes § 16.098. The state board shall select the consultant whose proposal and oral presentation, if requested, demonstrate clear capability to best fulfill the purposes of the RFP in a cost effective manner. The state board reserves the right to accept or reject proposals in whole or in part and to negotiate separately as necessary to serve the best interests of the state.

All interested vendors shall contact the person named below by letter or telephone to request a copy of the Request for Proposal.

Carolyn Peabody, Chairperson
SBI Evaluation Committee
Room 180, State Office Building
Saint Paul, Minnesota 55155
Telephone: (612) 296-2309

All proposals must be submitted to the address listed below on or before 4:30 p.m., February 16, 1981. NO PROPOSALS RECEIVED AFTER THAT DATE WILL BE CONSIDERED.

Jonathan P. White, Executive Director
State Board of Investment
Room 105, MEA Building
55 Sherburne Avenue
Saint Paul, Minnesota 55155

Department of Transportation

Notice to Minnesota Consulting Engineers (Registered Civil and Structural)

The Minnesota Department of Transportation (Mn/DOT) anticipates retaining Bridge Design Consultants to design and prepare construction plans for a limited number of bridges of average complexity during 1981.

Recent experience in bridge design for local, state or federal agencies is required.

Eligible design firms desiring to be considered as design contractors are asked to submit a brochure or resume giving qualifications and experience to K. V. Benthin, Bridge Engineer, 610D Transportation Building, Mn/DOT, St. Paul, Minnesota 55155. Identify personnel to conduct the project and detail their training and experience. Brochures and resumes will be received until 4:30 p.m., February 17, 1981. Qualified applicants will be contacted, and may be requested to appear at Mn/DOT Building in St. Paul for interviews.

Designs for bridges which are above average complexity will be solicited by specific proposal.

Names of selected firms will be retained on file with Mn/DOT for consideration during 1981.

OFFICIAL NOTICES

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

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

Department of Administration Cable Communications Board

Invitation to Comment on Proposed Cable Service Territory for the Municipalities of Blaine, Circle Pines, Ham Lake and Lexington

On December 10, 1980, the City of Blaine proposed a cable service territory (CST) consisting of the corporate limits of the cities of Ham Lake, Blaine, Lexington and Circle Pines.

On March 13, 1981, the board must make its decision to approve, reject or delay consideration of the proposed CST. Prior to that date, the board continues to seek written comments from parties interested in the proposed CST—not only from municipalities included in the original proposal and those who may wish to be, but also from other interested municipalities, organizations, agencies, school districts, other units of government and individuals.

The board will set aside a portion of its February 13, 1981 meeting in order to hear public comments on the proposed cable service territory.

Comments may be addressed to the Minnesota Cable Communications Board at 500 Rice Street, Saint Paul, Minnesota 55103, (612) 296-2545.

Invitation to Comment on Proposed Cable Service Territory for the Municipality of Burnsville

On October 29, 1980, Dowden Communications, Inc., proposed a cable service territory (CST) consisting of the corporate limits of the city of Burnsville.

On February 13, 1981, the board must make its decision to approve, reject or delay consideration of the proposed CST. Prior to that date, the board continues to seek written comments from parties interested in the proposed CST — not only from the City of Burnsville, but also from other interested municipalities, organizations, agencies, school districts, units of government and individuals.

Comments may be addressed to the Minnesota Cable Communications Board at 500 Rice Street, Saint Paul, Minnesota 55103, (612) 296-2545.

Invitation to Comment on Proposed Cable Service Territory for the Municipalities of Belle Plaine, Le Center, Le Sueur, Lonsdale, Montgomery and New Prague

On September 19, 1980, Harmon & Company proposed a cable service territory (CST) consisting of the corporate limits of the cities of Le Sueur, Belle Plaine, New Prague, Lonsdale, Montgomery and Le Center.

On February 13, 1981, the board must make its decision to approve, reject or delay consideration of the proposed CST. Prior to that date, the board continues to seek written comments from parties interested in the proposed CST — not only from municipalities included in the original proposal and those who may wish to be, but also from other interested municipalities, organizations, agencies, school districts, other units of government and individuals.

The board will set aside a portion of its February 13, 1981 meeting in order to hear public comments on the proposed cable service territory.

Comments may be addressed to the Minnesota Cable Communications Board at 500 Rice Street, Saint Paul, Minnesota 55103, (612) 296-2545.

Ethical Practices Board

Notice of Meeting

Friday, January 30, 1981, Room 95, State Office Building, 9:00 a.m.

Agenda

1. Minutes (December 18, 1980)
2. Chairperson's Report
3. Legal Counsel's Report
4. Advisory Opinion Request #77—Hennepin County Commissioner Randy Johnson
5. Executive Director's Report
   a) Financial Report
   b) Waiver Requests
6. Legislative Proposals
7. Other Business
8. Executive Session pursuant to Minn. Stat. § 10A.02, subd. 11

Office of the Governor

Notice of Appointment of Department Head

In accordance with Minn. Stat. § 15.06, subd. 2, notice is hereby given of the appointment of Charles T. Pinkham as Commissioner of the Veterans Affairs Department on December 31, 1980.

The Metropolitan Council and Metropolitan Health Board

Notice of Public Hearing for Joint Consideration of: I. 1980-1981 Annual Implementation Plan, and II. Application for 1981-1982 Funding for HSA Designation

The Metropolitan Council and Metropolitan Health Board will jointly hold a public hearing on Wednesday, February 18, 1981, at 7:00 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, 7th and Robert Streets, St. Paul, Minnesota 55101 for the purpose of receiving written and oral comments on the proposed 1981 Annual Implementation Plan and Application for 1981-1982 funding of the Metropolitan Council/Metropolitan Health Board's HSA Designation. Copies of the Annual Implementation Plan and the 1981-1982 HSA Application are available for public inspection beginning January 20, 1981 at the following locations:

Metropolitan Council Library
300 Metro Square Building
St. Paul, MN 55101

Minneapolis Public Library
Government Documents Room
300 Nicollet Mall
Minneapolis, MN 55401

St. Paul Public Library
Science and Industry Room
90 West Fourth Street
St. Paul, MN 55102

Anoka County Library—Blaine Branch
707 Highway 10
Blaine, MN 55434

Carver County Library—Chaska Branch
314 Walnut Street
Chaska, MN 55318

Dakota County Library—Burnsville Branch
1101 W. County Rd. 42
Burnsville, MN 55337

Hennepin County Library—Southdale Branch
7001 York Avenue
Edina, MN 55435

Ramsey County Library—Roseville Branch
2180 N. Hamline Avenue
Roseville, MN 55113

Scott County Library—Shakopee Branch
235 S. Lewis Street
Shakopee, MN 55379

Washington County Library—Park Grove Branch
7520-80th Street S.
Cottage Grove, MN 55106

Copies of the Annual Implementation Plan and work program and budget for the agency are available free of charge from the Metropolitan Council Public Information Office, 300 Metro Square Building, St. Paul, Minnesota 55101, telephone 291-6464.

Persons wishing to speak at this public hearing may register in advance by contacting Eleanor Suneson at 291-6352. Those who register first will be scheduled to speak first. If you cannot attend you are encouraged to send written comments to the Metropolitan Health Board, up to seven days following this hearing. For further information contact the Metropolitan Health Board at 291-6352.

Barbara O'Grady, Chairperson
Metropolitan Health Board

Charles Weaver, Chairperson
Metropolitan Council

Department of Natural Resources

Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Pope County

Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a public hearing in the above-entitled matter pursuant to Minnesota Statutes, § 105.391, subd. 1 (1979) will be held in the Community Room, Court House, Glenwood, Minnesota on February 13, 1981, commencing at 10:00 a.m. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted by a three-person hearings unit consisting of County representative Palmer Arness, Sedan MN 56380, Department of Natural Resources representative Merlyn Wesloh, and Pope County Soil and Water Conservation District representative Orin Syverson, Route 2, Starbuck, MN 56381.

Each of the waters listed in this notice is the subject of a petition for a hearing. The issue to be determined at the hearing is whether the following waters shall be designated public waters or wetlands pursuant to Minnesota Statutes, Section 105.391 (1979) and the criteria contained in Minnesota Statutes, Section 105.37, Subdivisions 14 and 15 (1979):

A. Public Waters

1. Basins

Number and Name	Section	Township	Range
61-111: Pelican Lake	9, 10, 16	125	38
61-116: McClellan Lake	7, 8, 17, 18	126	38

2. Watercourses

Name	From Section	From Township	From Range	To Section	To Township	To Range
Unnamed to LCR	13 (Basin 434)	125	40	30 (Basin 513)	125	39

B. Wetlands

Number and Name	Section	Township	Range
61-151: Unnamed	33	124	39
61-157: Unnamed	12	125	39
61-187: Unnamed	12	124	40
61-232: Unnamed	7	124	39
61-246: Unnamed	18	124	38
61-247: Unnamed	NE 18	124	38
61-248: Unnamed	7, 18	124	38
61-259: Unnamed	25	123	40
61-260: Unnamed	SW 24	123	40
61-268: Unnamed	32, 33	123	39
61-279: Unnamed	5	123	39
61-364: Unnamed	25, 26	126	38
61-383: Unnamed	SE 32	125	37
61-472: Unnamed	NW 18	124	36
61-475: Unnamed	3, 4	123	37
61-495: Unnamed	21, 28	123	38
61-507: Unnamed	32	124	39
61-528: Unnamed	32	125	40

Within 60 days following completion of the hearing, the hearings unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to Minnesota Statutes, §§ 15.0424 and 15.0425.

Any activity that would change the course, current or cross-section of public waters or wetlands requires a permit from the Commissioner of Natural Resources. Minnesota Statutes, § 105.42, subd. 1 (1979). Designation as public waters or wetlands does not transfer ownership of the bed or shore, does not grant the public any greater right of access to those waters than was available prior to designation and does not prevent a landowner from utilizing the bed of those waters for pasture or cropland during periods of drought. Minnesota Statutes, § 105.391, subdivisions 10 and 12 (1979).

All petitioners may be represented by counsel or anyone else of their choosing and shall be given an opportunity to be heard orally, to present and cross-examine witnesses and to submit written data, statements or arguments. Petitioners should bring all evidence bearing on these matters including maps, records or other documents.

Failure to attend may result in the challenged waters being designated public waters or wetlands and may prejudice your rights in this and subsequent proceedings.

Questions concerning this Notice and Order may be directed to any member of the hearings unit or to

David B. Milles
DNR—Division of Waters
Third Floor, Space Center Building
444 Lafayette Road
Saint Paul, MN 55101
Telephone: 612/297-2835

January 19, 1981

Joseph N. Alexander, Commissioner
Department of Natural Resources

Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Le Sueur County

Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a public hearing in the above-entitled matter pursuant to Minnesota Statutes, § 105.391, subd. 1 (1979) will be held in the 4-H Building, Fairgrounds, Le Center, Minnesota on February 6, 1981, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard. The hearing will be conducted by a three-person hearings unit consisting of County representative Clarence Miller, Route 1, Kilkenny, MN 56052, Department of

Natural Resources representative Maynard Nelson, and Le Sueur County Soil and Water Conservation District representative Kenneth Krenik, Route 1, Madison Lake, MN 56063.

Each of the waters listed in this notice is the subject of a petition for a hearing. The issue to be determined at the hearing is whether the following waters shall be designated public waters or wetlands pursuant to Minnesota Statutes, Section 105.391 (1979) and the criteria contained in Minnesota Statutes, § 105.37, subds. 14 and 15 (1979):

A. Public Waters

1. Basins

Number and Name	Section	Township	Range
40-8 : Goose Lake	2; 35	109; 110	23
*40-10 : Lake Dora	3, 4, 9, 10	110	23
*40-11 : Lake Mabel	5	110	23
40-21 : Mud Lake	27	111	23
40-26 : Mud Lake	18, 19	112	23
40-27 : Lake Sanborn	25, 26, 35, 36	112	23
40-34 : Graham Lake	7, 18; 12, 13	112	23; 24
40-37 : Rice Lake	3, 4, 10	109	24
40-54 : Perch Lake	NW 26	109	24
40-55 : Swains Lake	27	109	24
40-62 : Sanders Slough	33	110	24
40-64 : Unnamed	7, 8	110	24
40-70 : Hecorts Marsh	17-20	110	24
40-77 : Hackridge Lake	1, 2	111	24
40-78 : Mary Lake	3	111	24
40-84 : Tyler Lake	16, 21	111	24
40-88 : Renneberg Lake	14, 15	112	24
40-91 : School Lake	35, 36	112	24
40-93 : Mud Lake	18, 19; 13, 24	110	24; 25
40-100: Unnamed	11, 12	109	25
40-114: Rice Lake	10, 11, 14, 15	111	25
40-121: Lake Plaza	2, 11	109	26
40-129: Unnamed	33	109	23
40-143: Unnamed	26	112	24
40-145: Unnamed	32, 33	112	24

2. Watercourses

Name	From Section	From Township	From Range	To Section	To Township	To Range
Unnamed to Mn. River	24 (State Hwy. 99)	110	26	10	110	26
Unnamed tributary	2 (Basin 16)	111	23	35 (Basin 27)	112	23
*Cannon River	12	110	23	27 (Basin 2)	109	23

C. Wetlands

Number and Name	Section	Township	Range
40-3 : Querums Slough	10	109	23
40-22 : Unnamed	31, 32	111	23
40-30 : Dietz Lake	35	112	23
40-35 : Cherry Lake	6; 31	108; 109	24
40-38 : Unnamed	6, 7	109	24
40-41 : Unnamed	11	109	24

40-42 :	Unnamed	12	109	24
40-43 :	Unnamed	12	109	24
40-45 :	Unnamed	16	109	24
40-46 :	Unnamed	16, 17	109	24
40-49 :	Unnamed	21, 22	109	24
40-52 :	Unnamed	25	109	24
40-53 :	Unnamed	NE 26	109	24
40-58 :	Unnamed	29	109	24
40-74 :	Mud Lake	30, 31	110	24
40-75 :	Schmidt Slough	4; 33	110; 111	24
40-80 :	Mud Lake	31, 32	112	24
40-89 :	Unnamed	18, 19	112	24
40-96 :	Unnamed	6	109	25
40-97 :	Unnamed	6, 7	109	25
40-132:	Unnamed	25	112	23
40-133:	Unnamed	20	110	24
40-136:	Unnamed	22	111	24
40-138:	Unnamed	4	111	24
40-141:	Unnamed	10	112	24
40-146:	Unnamed	5; 32	109; 110	25
40-147:	Unnamed	5	109	25
40-154:	Unnamed	22, 23	110	23
40-155:	Unnamed	4; 33	110; 111	23
40-158:	Unnamed	24	111	23
40-161:	Unnamed	7	109	24

*Petitions received after the 90 day review period.

Within 60 days following completion of the hearing, the hearings unit shall issue its findings of fact, conclusions and an order, which shall be considered the decision of an agency in a contested case for purposes of judicial review pursuant to Minnesota Statutes, §§ 15.0424 and 15.0425.

Any activity that would change the course, current or cross-section of public waters or wetlands requires a permit from the Commissioner of Natural Resources. Minnesota Statutes, § 105.42, subd. 1 (1979). Designation as public waters or wetlands does not transfer ownership of the bed or shore, does not grant the public any greater right of access to those waters than was available prior to designation and does not prevent a landowner from utilizing the bed of those waters for pasture or cropland during periods of drought. Minnesota Statutes, § 105.391, subds. 10 and 12 (1979).

All petitioners may be represented by counsel or anyone else of their choosing and shall be given an opportunity to be heard orally, to present and cross-examine witnesses and to submit written data, statements or arguments. Petitioners should bring all evidence bearing on these matters including maps, records or other documents.

Failure to attend may result in the challenged waters being designated public waters or wetlands and may prejudice your rights in this and subsequent proceedings.

Questions concerning this Notice and Order may be directed to any member of the hearings unit or to

David B. Milles
DNR—Division of Waters
Third Floor, Space Center Building
444 Lafayette Road
Saint Paul, MN 55101
Telephone: 612/297-2835

January 18, 1981

Joseph N. Alexander, Commissioner
Department of Natural Resources

Office of the Secretary of State

Notice of Vacancies in Multi-member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Bldg., St. Paul 55155; (612) 296-7876. **Application deadline is February 17, 1981.**

REHABILITATION REVIEW PANEL has one vacancy open immediately for a public member. The panel reviews rehabilitation plans and rules; advises Commissioner of Labor and Industry. Members are appointed by the Governor. For specific information, contact Rehabilitation Review Panel, 30 State Capitol, St. Paul 55155; (612) 296-3391.

METROPOLITAN COUNCIL has one vacancy open immediately. The council coordinates planning and development of the 7 county Twin Cities metropolitan area; establishes a long range development plan containing regional plans for aging, the arts, aviation, health, housing, law and justice, parks and open space, solid waste, transportation, wastewater management and water resources; reviews the long range plans for local governments, and can require them to be consistent with the regional plans. Members are appointed by the Governor and confirmed by Senate, and receive $50 per diem plus expenses. For specific information, contact Metropolitan Council, 300 Metro Square Bldg., St. Paul 55101; (612) 291-6359.

BOARD OF EXAMINERS IN WATCHMAKING has one vacancy open immediately for a public member. The board examines and licenses watchmakers. Members are appointed by the Governor, and receive $35 per diem. For specific information, contact Board of Examiners in Watchmaking, 5th Floor, Metro Square Bldg., St. Paul 55101; (612) 296-2197.

COUNCIL ON BLACK MINNESOTANS has one vacancy open immediately for a public member. The council makes recommendations to the Governor and Legislature to improve the economic and social conditions of Black Minnesotans; serves as a referral agency and liaison to federal, state and local governments and private organizations on matters relating to blacks. Members are appointed by the Governor. For specific information, contact Council on Black Minnesotans, 130 Capitol, St. Paul 55155; (612) 297-3708.

Department of Transportation Technical Services Division

Appointment and Scheduled Meeting of A State Aid Standards Variance Committee

Notice is hereby given that the Commissioner of Transportation has appointed a State-Aid Standards Variance Committee who will conduct a meeting on Wednesday, February 11, 1981 at 10:00 a.m. in Room 419, State Transportation Building, John Ireland Boulevard, St. Paul, Minnesota.

This notice is given pursuant to Minn. Stat. § 471.705.

The purpose of the open meeting is to investigate and determine recommendation(s) for variances from minimum State-Aid roadway and parking standards as governed by 14 MCAR § 1.5032 M.4.b., Rules for State-Aid Operations under Minn. Stat. chs. 161 and 162 (1978), as amended.

The agenda will be limited to these questions:

1. Petition of the City of St. Paul for a variance from Standards for A Bridge Width on Forest Street over the CNW & BN RRYS.

2. Petition of the City of South St. Paul for a variance from Standards for Parallel Parking along 3rd Avenue South.

3. Petition of the City of Virginia for a variance from Standards for Diagonal Parking on Chestnut Street West.

Dated this 12th day of January, 1981.

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of Chicago, Milwaukee, St. Paul and Pacific Railroad Company for Authority to Abandon and Remove Tracks Owned by Petitioner between Washington Avenue and Second Street, Approximately Four to Five Blocks East of the Milwaukee Road Passenger Depot in Minneapolis, Minnesota

Order for Hearing and Notice Thereof

It is hereby ordered, and notice is hereby given, that a contested case hearing concerning the above-entitled matter will be held on March 10, 1981 at 9:30 a.m. in Meeting Room E, Level A, Hennepin County Government Center (North East Street Level) 300 South 6th Street, Minneapolis, Minnesota.

The hearing will be held before Mr. Richard Delong, 1745 University Avenue, Saint Paul, Minnesota 55104 (Telephone: 612-296-8117) a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the contested case proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minnesota Statutes § 15.0411 through Minnesota Statutes § 15.052 and 9 MCAR §§ 2.201 through 2.222. Questions concerning the issues raised in this Order or concerning informal disposition or discovery may be directed to Mr. Gordon W. Boldt, Director, Office of Railroad Administration, 419 Transportation Building, Saint Paul, Minnesota 55155 (Telephone: 612-296-2452).

The purpose of the hearing is to ensure that under the provisions of Minnesota Statutes §§ 219.681 and 219.741 all parties and potential parties of interest are given an opportunity to be heard on the petition of Chicago, Milwaukee, St. Paul and Pacific Railroad Company for authority to abandon and remove tracks owned by Petitioner between Washington Avenue and Second Street, approximately four to five blocks east of the Milwaukee Road passenger depot in Minneapolis, Minnesota.

The petition recites among other matters:

"That the property upon which said trackage is located has been sold by Petitioner to the County of Hennepin which proposes to use said property for parking facilities."

"That there is no longer any need by the shipping or receiving public for the continued maintenance of this track, and its continued maintenance and operation is economically not justified and therefore Petitioner requests authority to remove said trackage. . . ."

Any person who desires to become a PARTY to this matter must submit a timely Petition to Intervene to the Hearing Examiner pursuant to 9 MCAR § 2.210, showing how the person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought.

ALL PARTIES ARE ADVISED that if a party intends to appear at the hearing scheduled for March 10, 1981, the Notice of Appearance form enclosed with this order must be completed and returned to the Hearing Examiner at least 10 days before the hearing date. SHOULD A PARTY FAIL TO APPEAR AT THE HEARING, THE ALLEGATIONS MADE IN THE PETITION MAY BE TAKEN AS TRUE.

The above cited procedural rules are available at the Office of Administrative Hearings or may be purchased from the Documents Section of the Department of Administration, Ford Building, 117 University Avenue, Saint Paul, Minnesota 55155 (Telephone: 612-297-3000). They provide generally for the procedural rights of the parties including: rights to advance notice of witnesses and evidence, right to a prehearing conference, rights to present evidence and cross-examine witnesses, and right to purchase a record or transcript. Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence.

Persons attending the hearing should bring all evidence bearing on the case including any records or other documents. If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the Hearing Examiner at least 5 days prior to the hearing. A copy of the request must be served on the agency and any other parties.

January 19, 1981.

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of Chicago, Milwaukee, St. Paul and Pacific Railroad Company for Authority to Abandon and Remove Tracks Owned by Petitioner between Washington Avenue and Second Street, Approximately Four to Five blocks East of the Milwaukee Road Passenger Depot in Minneapolis, Minnesota

Notice of Appearance

Date of Hearing: March 10, 1981

Name and Telephone Number of Hearing Examiner: Richard DeLong
1745 University Avenue
Saint Paul, Minn. 55104
296-8117

TO THE HEARING EXAMINER:

You are advised that the party named below will appear at the above hearing.

Name of Party: _____

Address: _____

Telephone Number: _____

Party's Attorney or Other Representative: _____

_____

Signature of Party or Attorney: _____

Date: _____

Department of Transportation

Petition of Duluth, Winnipeg and Pacific Railway Company to Abandon Its Agency Service at Duluth, Minnesota, and to Abandon Its Shop, Terminal, Yard and Related Facilities in Duluth, Minnesota Relocating Said Agency Service and Said Shop, Terminal, Yard and Related Facilities to the State of Wisconsin

Order for Hearing and Notice Thereof

It is hereby ordered, and notice is hereby given that a contested case hearing concerning the above-entitled matter will be held on March 10, 1981 at 9:00 a.m. in Room 110, St. Louis County Court House, Duluth, Minnesota.

The hearing will be held before Mr. Harry Seymour Crump, 1745 University Avenue, Saint Paul, Minnesota 55104 (Telephone: 612-296-8111), a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the contested case proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minnesota Statutes §§ 15.0411 through 15.052 and 9 MCAR §§ 2.201 through 2.222. Questions concerning the issues raised in this Order or concerning informal disposition or discovery may be directed to Mr. Gordon W. Boldt, Director, Office of Railroad Administration, 419 Transportation Building, Saint Paul, Minnesota 55155 (Telephone: 612-296-2452).

The purpose of the hearing is to ensure that under the provisions of Minnesota Statutes §§ 219.70, 219.71 and 219.85 all parties and potential parties of interest are given an opportunity to be heard on the petition of Duluth, Winnipeg and Pacific Railway Company to abandon its agency service at Duluth, Minnesota, and to abandon its shop, terminal, yard and related facilities in Duluth, Minnesota, relocating said agency service and said shop, terminal, yard and related facilities to the State of Wisconsin.

The petition recites among other matters that:

"1. Petitioner is a railroad corporation organized under the laws of the State of Maine, having its regional office in Duluth, Minnesota and is engaged in carrying on the business of a common carrier by rail of freight within the State of Minnesota.

2. The applicant presently maintains agency service at Duluth, Minnesota.

3. That applicant presently maintains shop, terminal and related yard and other facilities at Duluth, Minnesota.

4. That applicant desires to terminate the providing of agency service at Duluth, Minnesota and to abandon the terminal, shop, yard and related facilities located at Duluth, Minnesota.

5. That this application is filed under the provisions of Minnesota Statutes 1980, Chapter 219, including Secs. 219.70, 219.71 and 219.85.

6. That the basis for terminating agency service and abandoning terminal, shop, yard and related facilities, relocating same to the State of Wisconsin, include the following:

(a) through the construction of Interstate 35, a part of the Federal interstate highway system, and the extension of same through downtown Duluth, Minnesota, certain switching yards located in Duluth, Minnesota proximate to the downtown area will be relocated.

(b) While the relocation of said switching yards is not a subject of this Petition, the relocation of such switching yards will render the current agency service, terminal, shop, yard and related operations of the Duluth, Winnipeg and Pacific Railway Company at Duluth inappropriate, uneconomical and impractical, so as to compel the relocation of same.

(c) That an investigation of prospective sites for any new facility has been conducted by Petitioner, independent consultant and the Minnesota Department of Transportation in connection with the proposed construction of the interstate highway extensions; the City of Duluth; and Petition and that the most practical available site for such facility is located immediately south and west of Superior, Wisconsin in the area known as "Pokegama", such site providing a practical and reasonable location for agency, terminal, shop, yard and related facilities.

(d) That Petitioner is proposing to construct new agency, terminal, shop, yard and related facilities at said Pokegama location and that such location will produce more efficient and economical and timely rail service to the benefit of persons utilizing the Duluth, Winnipeg and Pacific Railway.

(e) That under the terms of Petitioner's contract with Unions representing employees of the Duluth, Winnipeg and Pacific Railway Company, all employees will be provided with economic protection.

(f) That the actual physical move involves a move of less than 20 miles, so that employees and users of the railroad will still find reasonably convenient facilities for their purposes located at the new facility.

7. As a result of the proposed termination of agency service and abandonment of the shop, terminal, yard and related facilities, no substantial injury to the public will occur and such change will not be detrimental to the public welfare.

8. The proposed action set forth herein is contingent upon acquisition of land; approval of governmental bodies, including federal, state and local government, and other matters. Any Order approving and/or correcting the matters set forth herein should be contingent upon such approvals."

Any person who desires to become a party to this matter must submit a timely petition to intervene to the Hearing Examiner pursuant to 9 MCAR § 2.210, showing how the person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought.

All parties are advised that if a party intends to appear at the hearing scheduled for March 10, 1981, the Notice of Appearance form enclosed with this order must be completed and returned to the Hearing Examiner at least 10 days before the hearing date. Should a party fail to appear at the hearing, the allegations made in the petition may be taken as true.

The above cited procedural rules are available at the Office of Administrative Hearings or may be purchased from the Documents Section of the Department of Administration, Ford Building, 117 University Avenue, Saint Paul, Minnesota 55155 (Telephone: 612-297-3000). They provide generally for the procedural rights of the parties including: rights to advance notice of witnesses and evidence, right to a prehearing conference, rights to present evidence and cross-examine witnesses, and right to purchase a record or transcript. Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence.

Persons attending the hearing should bring all evidence bearing on the case including any records or other documents. If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the Hearing Examiner at least 5 days prior to the hearing. A copy of the request must be served on the agency and any other parties.

January 19, 1981

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Petition of Duluth, Winnipeg and Pacific Railway Company to Abandon Its Agency Service at Duluth, Minnesota, and to Abandon Its Shop, Terminal, Yard and Related Facilities in Duluth, Minnesota Relocating Said Agency Service and Said Shop, Terminal, Yard and Related Facilities to the State of Wisconsin

Notice of Appearance

Date of Hearing: March 10, 1981

Name and Telephone Number of Hearing Examiner: Harry Seymour Crump
1745 University Avenue
Saint Paul, Minn. 55104
296-8111

To the Hearing Examiner:

You are advised that the party named below will appear at the above meeting.

Name of Party: _____

Address: _____

Telephone Number: _____

Party's Attorney or Other Representative: _____

_____

Signature of Party or Attorney: _____

Date: _____

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155

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FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.

Minnesota Reports—Old editions available at $8.25 each plus tax. These are Supreme Court decisions. Recent volumes are available at the Supreme Court, Office of Court Administrator, 317E Capitol, St. Paul, MN 55155. Volumes available are 312 and previous numbers.

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODES & STANDARDS DIVISION

In the Matter of Proposed Rule on Adoption of National Electrical Code 1981 Edition

STATEMENT OF NEED AND REASONABLENESS

The Minnesota State Building Code 2MCAR 1.10101-1.18901 includes the adoption of current model codes and amendments to these model codes. One of these model codes is the National Electrical Code (ANSI/NFPA 70) copyright National Fire Protection Association, 470 Atlantic Avenue, Boston, Mass. that provides for electrical design and construction. The National Electrical Code is updated and printed every three years.

The Minnesota Electrical Act Minn. Stats. 326.243 Safety Standards: requires that the "most recently published edition of the National Electrical Code as approved by the United States of America Standards Institute and the National Electrical Safety Code as issued by the National Bureau of Standards shall be prima facie evidence of accepted standards of construction for safety to life and property....compliance with said methods of electrical construction of said Minnesota building code shall also constitute compliance with the section..." Therefore the new 1981 edition is the most recent edition of the National Electrical Code and must be incorporated into the State Building Code. Authorization for building code adoption of the National Electrical Code is provided in Minn. Stat. Sec. 16.86.

The 1980 Edition of the State Building Code (2MCAR 1.18601) presently contains the 1978 National Electrical Code by reference and specifies amendments to the 1978 National Electrical Code as illustrated in 2MCAR 1.18601. The amendments to the National Electrical Code include N.E.C. Table 220-2(b) which amends the N.E.C. General Lighting Loads to correspond with the Minnesota Energy Code. Amended N.E.C. Section 300-22(b) allows combustible low voltage communication wire in environmental plenums in Group B Division 2 buildings. Amended N.E.C. Section 700-6(b)(3) allows for alternate fuel delivery systems and N.E.C. Section 800-3 allows exception for existing buildings. The above listed amendments have been approved through the Administrative Procedure Act public hearings and are being carried forward.

Adopting the 1981 Edition of the National Electrical Code complies with the intent of Minn. Stats. Sec. 16.86 and Sec. 326.243, for the safety of Minnesota Citizens.

James J. Hiniker, Jr.
Commissioner

12-3-80
Date

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODES & STANDARDS DIVISION

In the Matter of Proposed Rules on Adoption of the National Electrical Code 1981 Edition

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Allen E. Giles, do hereby declare that I have examined the proposed rules and all related documents and that, based on my examination and personal familiarity with applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed.

ALLEN E. GILES
Special Assistant Attorney General

STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODES & STANDARDS DIVISION

In the Matter of Proposed Rules on Adoption of the National Electrical Code 1981 Edition

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
)ss.
COUNTY OF RAMSEY)

Margaret Opalinski, being first duly sworn, deposes and says:

That on the 27th day of February, 1981, in the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Submission to the Attorney General by depositing in the State of Minnesota Central Mail System for first class mailing in the United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Margaret Opalinski

Subscribed and sworn to before me
this 27th day of February, 1981.

Cynthia K. Claason



STATE OF MINNESOTA

DEPARTMENT OF ADMINISTRATION

BUILDING CODES & STANDARDS DIVISION

In the Matter of Proposed Rules on Adoption of the National Electrical Code 1981 Edition

NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minnesota Statutes, section 15.0412:

PLEASE TAKE NOTICE that the above-captioned rules have been submitted to the Office of the Attorney General on this 27th day of February, 1981, for review as to form and legality. Pursuant to 1 MCAR section 1.206 B, the Attorney General will not approve the rules for at least 14 calender days after receipt to allow any person or association time to comment on the legality of the rules, after which that Office will complete its review. If you desire to comment on the legality of the above-captioned rules, you should direct your comments to the Office of the Attorney General, G-25 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155, telephone (612)296-7030. Please note that the above-cited rule of the Attorney General also provides that a copy of any written comments submitted to the Attorney General must be submitted simultaneously to this agency.

If you are interested in determining what changes, if any, were made in the proposed rules after publication in the State Register and before submission to the Attorney General, you may contact Peggi Opalinski, Building Codes & Standards Division, 408 Metro Square Building, St. Paul, Minnesota 55101, telephone (612)296-4626.

Norman R. Osterby

Norman R. Osterby
Director