

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 709

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 6/18
DATE FOR REVIEW 6/29
DATE DUE 7/8

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

Approved ____ Disapproved 7/6 Returned to Agency 7/6

Resubmitted 7/27 Due 8/6

Approved ____ Disapproved 8/6 Returned to Agency 8/25

Resubmitted 8/25 Approved 8/25

Date filed w/Secretary of State 8/25 Returned to Agency ____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 6.10.81

✓ Notice of Intent to Solicit Outside Opinion 10.6.80

✓ Order for rulemaking
4.13.81 Date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

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

? Mailing list Certificate See my comment.

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

✓ 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

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

____ 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)

✓ Certificate of Compliance w/Rulemaking Procedures

? Affidavit of Mailing Notice of Submission to Attorney General
See my comment

? Notice of Submission to the Attorney General
See my comment.

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL
ST. PAUL 55155

WARREN SPANNAUS
ATTORNEY GENERAL

June 17, 1981

ADDRESS REPLY TO:
720 AMERICAN CENTER BLDG.
150 EAST KELLOGG BOULEVARD
ST. PAUL, MN 55101
TELEPHONE: (612) 296-6030

Mr. Jerry Anderson
Special Assistant Attorney General
G-25 Administration Building
50 Sherburne Avenue
Saint Paul, Minnesota 55155

RECEIVED
JUN 18 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Re: The Adoption of Rules of the Minnesota Energy Agency Governing the Community Energy Planning Grants Program, 6 MCAR §§ 2.2401-2.2409.

Dear Mr. Anderson:

Enclosed and submitted for your review pursuant to Minn. Stat. § 15.0412, subd. 4 and 1 MCAR § 1.202 are the documents related to the Energy Agency's adoption of rules with a public hearing.

Sincerely,

Dwight S. Wagenius

DWIGHT S. WAGENIUS
Special Assistant
Attorney General

DSW:cl

Enclosures

AN EQUAL OPPORTUNITY EMPLOYER

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MARK E. MASON
Director
Minnesota Energy Agency

DATE: August 25, 1981

ATTN : Dwight S. Wagenius
Special Assistant Attorney General

FROM : Ted A. Martinez
Special Assistant Attorney General

PHONE: 296-0316

SUBJECT: In the Matter of the Adoption of Rules of the Minnesota Energy Agency Governing the Community Energy Planning Grants Program, 6 MCAR §§ 2.2401 - 2.2409

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.

TAM:rjg

Enc.

cc: Susan Robertson
Duane Harves

Minnesota Energy Agency
Adopted Rules for the Administration and Distribution of
Community Energy Planning Grants
Rules as Adopted

6 MCAR S 2.2401 Authority and purpose.

A. Authority. Rules 6 MCAR SS 2.2401-2.2409 implementing the Community Energy Planning Grants Program are promulgated by the agency pursuant to Minn. Stat. S 116H.089 ~~(1980)~~.

B. Purpose. It is the purpose of the Community Energy Planning Grants Program to improve the energy planning capabilities of local governments, to conserve traditional energy sources, to develop renewable energy systems and to broaden community involvement in the energy planning process. These rules set forth criteria and procedures for providing state assistance to counties and cities, however organized.

C. Limitation. No more than forty-five percent (45%) of the amount appropriated for Community Energy Planning Grants shall be distributed to counties and cities within the seven-county metropolitan area defined in Minn. Stat. S 473.121, subd. 2 ~~(1980)~~.

6 MCAR S 2.2402 Definitions. The following terms used in ~~these rules~~ 6 MCAR SS 2.2401-2.2409 shall have the following meanings.

A. "Agency" means the Minnesota Energy Agency.

B. "Local unit of government," for purposes of applying for grants under this program, means a city, a county or a combination of such units. ~~A city of the first class may apply for a grant to assist a neighborhood organization to do energy-related planning and implementation activities~~ "Local unit of government" also includes those organizations which the local unit of government recognizes as capable of, and with which it may enter into a contract for the purpose of, performing the authorized energy-related planning and implementation activities.

~~C. "Neighborhood organizations" means those organizations recognized by the city government for planning and development purposes in areas whose boundaries are officially determined by the city.~~

~~D.~~ 'Clearinghouse" means that governmental unit which has authority to review requests for state and federal aid for local units of government within its jurisdiction.

In the seven-county metropolitan area this review authority is the Metropolitan Council under Minn. Stat. S 473.171, subd. 2 ~~(1980)~~.

The review authority for the remainder of the state is the appropriate Regional Development Commission under Minn. Stat. S 462.391, subd. 3 ~~(1980)~~.

E D. "In-kind" means:

1. Salary and cost of fringe benefits of the grant recipient staff working on activities funded by the grant.

2. Increases in overhead resulting from carrying out activities funded by the grant.

6 MCAR S 2.2403 Types of grants. There shall be two types of grants made to local units of government: Community Energy Planning Grants and Community Energy Plan Implementation Grants.

A. Community Energy Planning Grants. Planning Grants shall be used for developing local energy plans relating to such issues as, but not limited to: citywide or countywide conservation; use of renewable resources through technologies

currently available; conservation of energy used in buildings owned by the local unit of government, of energy used for building and street lighting, and of energy used in building space heating and cooling; and energy considerations in traffic management, in land use planning, in capital improvement ~~programming/budgeting~~ programming and budgeting, in municipal operating budgets, and in economic development plans.

B. Community Energy Plan Implementation Grants. Implementation Grants shall be used for purposes of implementing all or portions of a local community energy plan. Local units of government may apply for implementation grants whether or not the community energy plan was prepared under the Community Energy Planning Grant Program, provided the community energy plan has been submitted to and ~~approved~~ reviewed by the agency.

C. The following activities or expenditures are eligible for Planning Grants:

1. ~~Planning staff personnel;~~ Salaries, or benefits for planning staff personnel;

2. Data collection or analysis or both;

3. Development of local energy documents including plans;

4. Modification of capital improvement programs for energy-related projects;

5. Development of energy-conscious fleet management systems, transportation plans, intergovernmental plans;

6. Development of budgetary or fiscal systems which significantly address energy costs;

7. Development of zoning, subdivision and ~~building~~ other codes ~~for~~, ordinances, regulations, supplements or amendments relating to energy;

8. ~~Housing code development for energy-related elements;~~

9. Any other activities which carry out the purpose of the program as expressed in ~~rule~~ 6 MCAR S 2.2401 B.

D. The following activities or expenditures are ineligible for Planning Grants:

1. Non-energy related issues;

2. ~~Repayment~~ Retroactive payment of revenue to local

units of government for energy activities previously undertaken;

3. Out-of-state travel, unless specifically approved in a contract between the grantee and the agency.

E. The following activities or expenditures are eligible for Implementation Grants:

1. Detailed drawings, architectural drawings, site designs, engineering specifications;

2. Equipment purchases directly affecting energy recovery, conservation or production;

3. Construction of energy production or energy recovery systems;

4. Any other activities which carry out the purpose of the program as expressed in ~~rule~~ 6 MCAR S 2.2401 B.

F. The following activities or expenditures are ineligible for Implementation Grants:

1. Non-energy related projects;

2. Property acquisition (real property);

3. Personnel for continued operation of energy conservation, production or recovery facilities beyond the first year of an Implementation Grant.

6 MCAR S 2.2404 Evaluation of preliminary applications.

A. Planning Grants. Preliminary applications which satisfy all eligibility requirements shall be evaluated in a two step process: general ~~criterion~~ criteria and planning function criteria.

1. General ~~criterion~~ criteria. Planning Grant applications which address the greatest number of the following considerations will be given priority over Planning Grant applications which address a lesser number of the following considerations.

a. Programs designed to result in significant savings of traditional energy sources;

b. Programs designed to assist in the development of renewable energy systems;

c. Programs which encourage broad community

involvement in addressing and solving energy problems encountered by local citizens and local units of government;

d. Programs that show a significant degree of transferability to similar units of government;

e. Local-unit-of-government programs which include the provision of local ~~resources or other types of~~ support to address energy problems and to undertake energy planning for the local unit of government.

2. Planning function evaluation. Applications achieving similar priority ranking based on the general ~~criterion~~ criteria stated in ~~rule 2.2404~~ A.1. will be evaluated for purposes of funding on the basis of the following criteria:

a. Comprehensiveness of plan elements, such as: potential effects on residential, industrial, municipal and county programs;

b. Ability of the local unit of government's plan to affect energy consumption through the use of tools, such as, but not limited to, codes, ordinances, ~~legal instruments~~ joint powers agreements, property covenants and easements;

c. Use of ~~renewables~~ renewable energy resources such as: solar, wind, biomass, hydropower;

d. Cost-effectiveness;

e. Public participation efforts, such as: neighborhood energy committees, governmental energy committees;

f. Private sector participation such as: ~~financial leverage~~, van pools, staff, materials or financial contributions;

g. Transferability, as shown by the appropriateness of other units of government utilizing all or parts of a planning process or the results of that plan or process.

B. Implementation Grants. Evaluation of preliminary applications. Preliminary applications which satisfy all eligibility requirements shall be evaluated in a two-step process: general ~~criterion~~ criteria and implementation function criteria.

1. General ~~criterion~~ criteria. Implementation Grant applications which address the greatest number of the following

considerations will be given priority over Implementation Grant applications which address a lesser number of the following considerations:

a. Applications with programs designed to result in significant savings of traditional energy sources;

b. Programs designed to assist in the development of renewable energy systems;

c. Programs which encourage broad community involvement in addressing and solving energy problems encountered by local citizens and local units of government;

d. Programs that show a significant degree of transferability to similar units of government;

e. Local-unit-of-government programs which include the provision of local ~~resources or other types of~~ support to address energy problems and to undertake energy production ~~and/or~~ or conservation in the local unit of government.

2. Implementation grant evaluation. ~~Application~~ Applications achieving similar priority ranking based on the general ~~criterion~~ criteria stated in ~~rule 2.2404~~ B.1. will be evaluated for purposes of funding on the basis of the following criteria.

a. The proposed project must be technically feasible. Technically feasible means:

(1) The degree to which the project meets scientifically accepted laws; or

(2) The degree to which the project increases or enhances the state of the energy art.

b. The project must be economically viable.

~~(1)~~ Economically viable means the budget is adequate to complete the proposed project.

~~(2) The estimated cost of the energy produced or conserved as a result of this project, including all research, development and production costs, and excluding research and development costs.~~

c. The applicant must be capable of successfully conducting the project. This will be determined by evaluating:

(1) The level of education, or experience in conducting similar project implementation; or

(2) ~~Awareness~~ The existence of other or similar projects or related studies from which the applicant may obtain assistance.

d. The ~~applicant~~ application must show that economic benefits ~~may~~ will result from this project. Economic benefits are:

(1) Monetary or fuel savings resulting from conservation, or

(2) Job creation.

e. The proposal must demonstrate a significant degree of transferability.

f. The applicant must show that the proposal complies with local, state ~~and/or~~ and federal requirements (environmental, zoning, health).

6 MCAR S 2.2405 General application procedure.

A. ~~The approval process~~ for Planning Grants and Implementation Grants has three stages: preliminary application, final application, and contract execution.

B. Joint applications may be submitted by two or more local units of government which are encountering energy-related problems for which it appears joint consideration of problems is possible, preferable and appropriate. In addition to complying with ~~rule~~ 6 MCAR S 2.2406 regarding application contents, joint applicants shall also designate a lead applicant and include their authority for joint application in the form of resolutions, joint powers agreement, or other such agreements.

C. The preliminary application or a notice of preapplication shall be submitted to the appropriate clearinghouse for review and comment at least 45 days prior to the date applications are due at the agency. The clearinghouse may waive this review requirement. Written evidence of the clearinghouse waiver shall be included in preliminary applications submitted directly to the agency. Failure of the clearinghouse to conduct its review

within 45 days shall be considered as approval of the application by the clearinghouse, unless both the applicant and the clearinghouse agree to extend the review period for an agreed-upon time period. Upon receipt of the clearinghouse review comments the applicant shall submit the preliminary application together with the clearinghouse comments to the agency on or before the due date. Each clearinghouse must submit to the agency a list of all applications reviewed during a particular funding cycle. The timetable in this rule shall apply to all grant cycles after the first cycle. During the first cycle simultaneous submission to both the agency and the clearinghouse shall be permitted.

D. The agency shall have thirty days after the preliminary application due date to review preliminary applications. Incomplete or ineligible applications will be returned to the applicant with a written statement of reasons for rejection.

6 MCAR S 2.2406 Preliminary application.

A. ~~A preliminary application shall be submitted to the~~ agency for purposes of determining eligibility and priority for funding. The preliminary application shall be in a form and manner prescribed by the agency and shall contain the information required by the rules, including ~~but not limited to~~ the following: name of ~~community(s)~~ community, demographic data, previous community planning efforts, descriptions of community services, statement of intended results, identification of amount and source of local share, total estimated program cost, and a copy of a resolution authorizing submission of the application to the agency.

B. Preliminary applications shall be submitted semi-annually not later than February 1 and August 1, except that during calendar year 1981, the due date for preliminary applications shall be 90 days after these rules become effective.

6 MCAR S 2.2407 Final application.

A. A final application may be submitted only by applicants which have received a letter of notification authorizing

submission of a final application. Final applications must be received by the agency no later than 45 days after the date of the letter of notification. The format for final applications is set out in ~~rule 6 MCAR S 2.2407~~ B. Final applications will be reviewed for completeness and compliance with the rules of this program. Incomplete applications or applications which differ substantially from preliminary applications will not be granted, and a written statement citing the reasons for rejection will be provided to the applicant. Eligible final applications will be funded based on the priorities of this program and the availability of grant funds. Receipt of a letter of notification is not a guarantee that a grant will be made to the submitter of a final application. A grant award shall be made by contract as set out in ~~rule~~ 6 MCAR S 2.2408.

B. The final application shall contain at least the following elements:

1. A work ~~program/schedule~~ program and schedule which contains the following:

a. A statement of the existing or emerging energy ~~problem(s)~~ problems which are to be investigated with the grant. This statement should identify how the ~~problem(s)~~ problems are affecting or will affect the applicant and the means the recipient is planning to use to alleviate the ~~problem(s)~~ problems.

b. A description of the activities which the grant makes possible. The description of activities should identify the expected results ~~and/or~~ and products and should be in sufficient detail to enable the agency to measure progress and to identify the person responsible for the completion of each activity. The description should include expected completion dates, by particular activity. Each work element should be assigned to a specific staff member or consultant.

c. A statement identifying the way in which the grant will improve the governing body's capability to address local energy problems and a schedule indicating when and how this will be accomplished.

2. Designation of a lead applicant. The grant applicant shall designate a lead applicant~~,~~. Lead applicant means an agency, organization or individual who will be responsible for completion of the agreed-upon work program.

3. Local share. A detailed statement identifying the ~~source(s)~~ source and amount of the local share. The local share may be in cash or in-kind or a combination of cash and in-kind.

4. Signature/resolution. The application shall be submitted to the agency only if accompanied by a resolution passed at an official meeting of the governing body and signed by the authorized person.

6 MCAR S 2.2408 Grant contract.

A. The final step in the awarding of a Planning Grant or an Implementation Grant is execution of a grant contract. The grant contract shall be based upon the final application. The contract shall specify the amount of the grant to the recipient and the duration of the grant. The contract shall include assurance that the local share will be provided and that the agreed-upon work program will be carried out. A grant contract based upon a joint application will be executed by the lead applicant. Amendments may only be made in writing signed by both parties. Extensions must be justified in writing. Planning grant extensions shall not exceed 90 days. Implementation Grant extensions will be based on the scope of work remaining and a reasonable period in which to complete all work.

B. Funding period. Grants will be funded for the following periods.

1. Planning Grants will be approved for a period of up to one year.

2. Implementation Grants will be approved for a period to be agreed upon by the grantee and the agency and specified in the contract, based upon the scope of the implementation activities funded and a reasonable work schedule~~, or timetable~~.

C. Grant ratios.

1. Planning Grants shall not exceed 75% of the total first year proposed planning budget;

2. The agency may award an Implementation Grant up to 50% of the ~~project~~ project's implementation cost, but not to exceed $50,000.00;

3. No single grant shall exceed $50,000.00.

D. Disbursement schedule. Grant funds will be disbursed to the grantee according to invoices submitted on the following schedule:

1. 50% during the first month of the grant contract funding period;

2. 40% upon completion of half of the agreed-upon work program;

3. 10% upon completion of a satisfactory evaluation according to 6 MCAR S 2.2409.

E. Required reports. The grantee shall submit to the agency quarterly work progress reports in a format prescribed by the agency. Reporting requirements will vary depending upon the scope of work proposed and approved by the agency for funding. In addition, the grantee shall provide the agency with three copies and a camera-ready copy of a grantee's final community energy plan.

F. Records. The grantee shall maintain for a period of not less than three years from the date of the execution of the contract all records relating to the receipt and expenditure of grant monies.

G. Monitoring grant results. As a condition of accepting a grant a grantee ~~will~~ shall be expected to:

1. Document on an annual basis the results of the grant program for a period of up to 3 years from the date of the execution of the contract (for example, energy savings, financial savings, or any other documentation related to the results of the grant); and

2. Participate in at least one agency workshop at which the grantee will present the results of the grant program.

H. Contract deviations.

1. No grant funds shall be used to finance activities by consultants or local staff not included in the grant contract, unless agreed upon in writing by the agency.

2. Unless agreed upon by the grantee and the agency it will not be permissible for 100% of all energy-related activities to be contracted out to consultants.

6 MCAR S 2.2409 Evaluation. The agency shall conduct a final evaluation ~~of grant work performance~~ within 60 days of the submission by the grantee to the agency of a the final community energy plan ~~or~~ and all the required reports and financial documents. The evaluation shall assess:

~~A. Whether the local share contributed was equal to or greater than 25% of the total cost of a first year Planning Grant;~~

~~B. Whether the local share contributed was equal to or greater than 50% of an Implementation Grant;~~

~~C.~~ Whether the agreed-upon work program was completed;

~~D~~ B. Whether the governing body has formally reviewed the completed energy plan.

Upon completion of a satisfactory evaluation the remaining 10% of the grant shall be disbursed to the grant recipient. If the results of the evaluation are unfavorable to the grantee and the grantee does not agree with the findings of the evaluation, the grantee may request a ~~hearing~~ review before the agency.

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Minnesota Energy Agency

Rule Numbers: 6 MCAR S 2.2401-2.2409

Rule Title: Adopted Rules for the Administration and Distribution of Community Energy Planning Grants

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference:

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

APPROVED AS TO LEGALITY
Aug. 25 1981
WARREN SPANNAUS, ATTORNEY GENERAL
BY Ted A. Mathews
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 25 1981
Joan Anderson Growe
Secretary of State
2:40 PM

Name: Ann L. Bateson
Ann L. Bateson
Title: Deputy Revisor

Phone: 296-1536

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MARK E. MASON
Director
Minnesota Energy Agency

DATE: August 6, 1981

ATTN : Dwight S. Wagenius
Special Assistant Attorney General

FROM : Ted A. Martinez
Special Assistant Attorney General

PHONE: 296-0315

SUBJECT: In the Matter of the Adoption of Rules of the Minnesota Energy Agency Governing the Community Energy Planning Grants Program, 6 MCAR §§ 2.2401 - 2.2409

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

On July 27, 1981, these rules were resubmitted to this office and to the Revisor of Statutes' office for review pursuant to my memo dated July 6, 1981, that initially disapproved the rules. Upon resubmission the Revisor of Statutes disapproved the rules as to form in accordance with Minn. Stat. § 15.0412 subd. 4h. The Agency then undertook the task of making the necessary changes to the rules as recommended by the Revisor of Statutes. There is nothing in the record, however, that indicates approval of the changes by the chief hearing examiner as required by Minn. Stat. § 15.0412 subd. 4e. Therefore, this office, before it can approve these rules, must be furnished with documentation that the rules were submitted to the chief hearing examiner and a copy of his report.

After consideration of the above comments and agency action, if any, these rules may be resubmitted for review. Please include a memorandum specifying that the rules are being resubmitted so that we may obtain our initial file in this matter.

If you have any questions concerning the issue raised in this memorandum, please do not hesitate to call me.

TAM:rjg

Enc.

cc: Duane Harves
Susan Robertson

ADMIN 1000 (Rev. 1/78)

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO JUDITH WEHRWEIN
G-25 Administration Building

DATE: August 24, 1981

FROM DWIGHT S. WAGENIUS
Special Assistant Attorney General
Minnesota Energy Agency

PHONE: 6-8278

SUBJECT RULES OF THE MINNESOTA ENERGY AGENCY GOVERNING THE COMMUNITY ENERGY PLANNING GRANTS PROGAM; Docket EA-81-002-KR

Enclosed to complete the record in the subject case is the Order of the Chief Hearing Examiner regarding substantial change. Your patience is appreciated. Thanks.

DSW:dw

Enclosure

RECEIVED
AUG 25 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

EA-81-002-KR

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA ENERGY AGENCY

IN THE MATTER OF THE PROPOSED ADOPTION OF RULES OF THE MINNESOTA ENERGY AGENCY GOVERNING THE COMMUNITY ENERGY PLANNING GRANTS PROGRAM.

ORDER OF THE CHIEF HEARING EXAMINER

WHEREAS, a hearing was held on April 13, 1981, before Kent B. Roberts, a Hearing Examiner of the State Office of Administrative Hearings, on the above-entitled matter in compliance with Minn. Stat. § 15.0412, subd. 4; and

WHEREAS, the Report of Hearing Examiner made pursuant to Minn. Stat. § 15.052, subd. 3, was issued to the Minnesota Energy Agency and;

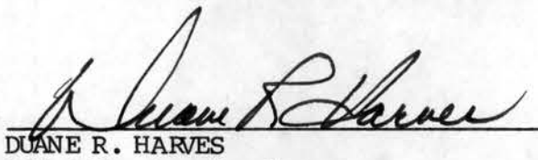
WHEREAS, the Minnesota Energy Agency has now determined to adopt rules pursuant to Minn. Stat. § 15.0412, subd. 4-4f; and

WHEREAS, the Minnesota Energy Agency has submitted said rules to the Chief Hearing Examiner for review pursuant to Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 4, and 9 MCAR § 2.111; and

WHEREAS, the Chief Hearing Examiner finds that the final proposed rules are not substantially different from those proposed at the public hearing.

NOW, THEREFORE, upon receipt of this Order, the Minnesota Energy Agency has the responsibility of submitting the complete hearing record and the rules as adopted by the Minnesota Energy Agency to the Attorney General and to publish in the State Register, all pursuant to Minn. Stat. § 15.0412, subd. 4e and 4f.

Dated: August 20, 1981.



DUANE R. HARVES
Chief Hearing Examiner

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ATTORNEY GENERAL

TO : MARK E. MASON
Director
Minnesota Energy Agency

DATE: July 6, 1981

ATTN : Dwight S. Wagenius
Special Assistant
Attorney General

FROM : Ted A. Martinez
Special Assistant
Attorney General

PHONE: 296-0315

SUBJECT: In the Matter of the Adoption of Rules of the Minnesota Energy Agency Governing the Community Energy Planning Grants Program, 6 MCAR §§ 2.2401-2.409

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

1. Section 2.2402 B. It appears that this should read . . . "enter into a contract . . ."

2. Section 2.2402 D.1. The word "activiites" should be spelled "activities."

3. Section 2.2404 B.2. "Application" should be "Applications."

4. Section 2.2408 F. The word "recipt" should be spelled "receipt."

5. Section 2.2409 In the second line, "the" should be inserted between "of" and "final."

6. Section 2.2408 C.3. The word "excced" should be spelled "exceed."

7. In § 2.2406 regarding the contents of the preliminary application, the language "including but not limited to" should be deleted or modified. The rule as it presently reads may give rise to uneven application in that it may require additional and different information from one prospective grantee than it requires from another. Moreover, by deleting or modifying this language a more consistent and orderly preliminary application process may be attained.

8. The language contained in § 2.2408 C.1. and 2. is unclear. As C.1. of that section reads now, it may be construed by a prospective grantee to mean that "total first year proposed budget" includes the project cost. If so construed and calculated accordingly, the figure reached may actually exceed the amount needed for planning therefore suggesting that there is no need for a local share contribution. This can best be corrected perhaps, by inserting the word "planning" between "proposed" and "budget." Additionally, express language stating that the local share be 25% or more may be useful to more adequately clarify the requirement.

Similarly, in subpart C.2. of that section, "project cost" may be construed as to take into account that sum used for planning. This can be remedied by inserting language that would exclude planning costs from "total project cost." Again, express language stating that the local share be 50% or more for implementation grant purposes may be helpful.

After consideration of the above comments and agency action, if any, these rules may be resubmitted for review. Upon resubmission, please include two copies of a new or supplemental Order Adopting, and the original and two copies of the new Rule as Adopted. Also, please include a memorandum specifying that the rules are being resubmitted so that we may obtain our initial file in this matter.

Please be advised that pursuant to Minn. Stat. § 15.0412 subd. 4g effective July 1, 1981, "(n)o rule shall be filed with the secretary of state or published in the state register unless the revisor of statutes has endorsed on the rule that it is approved as to form." Therefore, at the time when you resubmit the new rule to this office, you must submit two copies of the same to the revisor of statutes.

If you have any questions concerning the issues raised in this memorandum, please do not hesitate to call me.

TAM:rjg

Enc.

cc: Duane Harves
Susan Robertson

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT Minnesota Energy Agency
980 American Center Building
150 East Kellogg Blvd.
St. Paul, Mn.

DATE: July 23,1981

TO : Revisor of Statutes
Rm. 3 Capitol Bldg.
Aurora Ave St. Paul, Mn 55155

FROM : Jay A. Brunner
Grants Analyst Senior JAB

PHONE: 297-3562

SUBJECT: 6MCAR 2.2401-.22409

The Energy Agency has re-adopted and revised these rules according to the request made by Ted A. Martinez, Special Assistant Attorney General. Presently we are awaiting final approval of these rules by the Attorney Generals Office.

Mr. Martinez informed the MEA in a July 6,1981 memorandum that pursuant to Minn. Stat. § 15.0412 subd. 4g effective July 1, 1981, "(n)o rule shall be filed with the secretary of state or published in the state register unless the revisor of statutes has endorsed on the rule that it is approved as to form." Mr. Martinez went on to say that at the time I resubmit the rules to the Attorney General's Office the MEA must also submit two copies of the same rules to the revisor of statutes.

Pursuant to Mr. Martinez request I have enclosed two copies of the proposed rules for your review at this time.

If I can be of any assistance to you in regard to these rules please contact me at your earliest convenience.

11-31-81

OFFICE OF THE REVISOR OF STATUTES
Disapproval of Form of Rules

__X__ The form of the attached rules is not approved. The revisor requests the changes described below before the rules will be approved.

See Attached

Steven C. Cross
Revisor of Statutes

Name: Ann L. Bateson

Title: Deputy Revisor

Phone: 296-1536

- - - -

RECOMMENDED

Page 2-1, line 2, strike "these rules" and insert "6 MCAR SS 2.2401-2.2409"

Page 2-1, line 5, after "government" insert ","

Page 3-1, line 14, strike "programming/budgeting" and insert "programming and budgeting"

Page 4-1, line 5, strike "criterion" and insert "criteria"

Page 4-1, line 6, strike "criterion" and insert "criteria"

Page 4-1, line 26, strike "rule 2.2404"

Page 4-2, line 21, strike "criterion" and insert "criteria"

Page 4-2, line 23, strike "criterion" and insert "criteria"

Page 4-3, line 13, strike "and/or" and insert "or"

Page 4-3, line 16, strike "rule 2.2404"

Page 4-3, line 22, delete the new comma

Page 4-4, line 8, delete the new comma after "or"

Page 4-4, line 19, strike "and/or" and insert "and"

Page 6-1, line 7, strike "community(s)" and insert "community"

Page 7-1, line 7, strike "rule 6 MCAR S 2.2407"

Page 7-1, line 11, after "granted" insert a comma and underline it

Page 7-1, line 17, strike "rule"

Page 7-1, line 21, strike "program/schedule" and insert "program and schedule"

Page 7-1, lines 22, 24, and 26, strike "problem(s)" and insert "problems"

Page 7-2, line 1, strike "and/or" and insert "and"

Page 7-2, line 18, strike "source(s)" and insert "source"

Page 8-1, line 22, strike the comma

REQUIRED

Page 1-1, line 2, delete the period after "6 MCAR S 2.2401"

Page 1-1, line 6, delete "sec." and insert the section sign

Page 1-1, line 6, strike "(1980)"

Page 1-1, line 20, strike "(1980)"

Page 2-1, line 1, delete the period after "6 MCAR S 2.2402"

Page 2-1, line 24, strike "(1980)"

Page 2-1, line 27, strike "(1980)"

Page 3-1, line 1, delete the period after "6 MCAR S 2.2403"

Page 3-2, line 6, after "codes" insert "for" and strike it (old text)

Page 3-2, line 6, underline the comma after "codes"

Page 3-2, line 9, either underline "8." or delete "8." and reinstate the stricken "8." on line 8.

Page 3-2, line 10, strike "rule" and insert "6 MCAR S"

Page 3-2, line 26, strike "rule" and insert "6 MCAR S"

Page 3-2, line 28, delete the semicolon and insert a colon

Page 4-1, line 1, delete the period after "6 MCAR S 2.2404"

Page 4-2, line 5, delete the slash mark and insert a strike mark if the intent was to strike the colon

Page 4-2, line 6, delete the stricken comma

Page 4-2, line 7, delete the underscoring under the semicolon

Page 4-3, line 15, insert "Application" and strike it;

underline "Applications"

Page 4-3, line 20, delete the underlining under the colon

Page 4-3, line 21, insert a parenthesis before the "1)"

Page 4-3, line 22, after "laws" insert a period and strike it

Page 4-3, line 23, before the "2)" insert a parenthesis

Page 4-3, line 25, after "viable" insert a colon and strike it

Page 4-3, line 26, before "Economically" insert "(1)" and strike it

Page 4-3, line 27, delete the stricken semicolon

Page 4-4, line 6, delete the underlining under the period

Page 4-4, line 7, before the "1)" insert a parenthesis

Page 4-4, line 9, before the "2)" insert a parenthesis and place the stricken language before the new

Page 4-4, line 12, delete "application" and insert "applicant" which is the word in the State Register. If you wish "application" to appear in the rule, underscore the word and have it appear after the stricken "applicant"

Page 4-4, line 14, before "1)" insert a parenthesis

Page 4-4, line 14, after "conservation" insert a period and strike it

Page 4-4, line 15, before the "2)" insert a parenthesis

Page 5-1, line 1, delete the period after "6 MCAR S 2.2405"

Page 5-1, line 13, delete the underscoring under the period

Page 6-1, line 1, delete the period after "6 MCAR S 2.2406"

Page 6-1, line 16, delete "becomes" and insert "become"

Page 7-1, line 1, delete the period after "6 MCAR S 2.2407"

Page 7-2, line 13, delete "should" and insert "shall" which appeared in the State Register. If "should" is how you want the text to finally read, insert and strike "shall" and underline "should"

Page 7-2, line 13, before the new period insert a comma and strike it

Page 8-1, line 1, delete the period after "6 MCAR S 2.2408"

Page 8-2, line 14, delete "camera-copy" and insert

"camera-ready copy"

Page 8-2, line 27, delete the first new comma and insert a semicolon which is not underlined

Page 9-1, line 1, after "6 MCAR S 2.2409", delete the period

Page 9-1, line 2, after "evaluation" insert "of grant work performance"

Page 9-1, line 3, after the second "of" insert "a" and strike it

Page 9-1, lines 10 and 11, underscore the new "A." and "B." or reinstate the old "A." on line 6 and underline the new "B."

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT

Office Memorandum

TO : Ted A. Martinez

DATE: July 17, 1981

FROM : Jay A. Brunner JAB

PHONE: 297-3562

SUBJECT: In the Matter of the Adoption of Rules of the Minnesota Energy Agency Governing the Community Energy Planning Grants Program, 6 MCAR §§ 2.2401-2.2409.

The subject rules are being resubmitted so that you may obtain your initial file in this matter. Two copies of the revised adopted rules are being submitted at this time to the revisor of statutes.

cc: Revisor of Statutes

RECEIVED
JUL 27 1981
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Adoption of Rules of the Minnesota Energy Agency Governing the Community Energy Planning Grants Program, 6 MCAR §§ 2.2401-2.2409.

SUPPLEMENTAL ORDER ADOPTING RULES

The Agency adopted rules governing the Community Energy Planning Grants Program on June 10, 1981. On July 6, 1981, Ted A. Martinez, Special Assistant Attorney General, disapproved the adopted rules for eight stated reasons apparently based on 1 MCAR § 1.206 D.5. Those stated reasons have been taken into consideration in revising the adopted rules.

WHEREFORE, IT IS ORDERED that the Rules of the Minnesota Energy Agency Governing the Community Energy Planning Grants Program, adopted June 10, 1981, are adopted again in revised form this 20th day of July 1981, pursuant to the authority vested in me by Minn. Stat. §§ 116H.08(a) and 116H.089.

Mark Mason
Director

Adopted June 10, 1981
Adopted in Revised form
July 20, 1981

Rules as Adopted

6 MCAR § 2.2401. Authority and purpose.

A. Authority.

Rules 6 MCAR §§ 2.2401 - 2.2409 implementing the Community Energy Planning Grants Program are promulgated by the Agency pursuant to Minn. Stat. sec. 116H.089 (1980).

B. Purpose.

It is the purpose of the Community Energy Planning Grants Program to improve the energy planning capabilities of local governments, to conserve traditional energy sources, to develop renewable energy systems and to broaden community involvement in the energy planning process. These rules set forth criteria and procedures for providing state assistance to counties and cities, however organized.

C. Limitation.

No more than forty-five percent (45%) of the amount appropriated for Community Energy Planning Grants shall be distributed to counties and cities within the seven-county metropolitan area defined in Minn. Stat. § 473.121, subd. 2 (1980).

6 MCAR § 2.2402. Definitions.

The following terms used in these rules shall have the following meanings.

A. "Agency" means the Minnesota Energy Agency.

B. "Local unit of government" for purposes of applying for grants under this program, means a city, a county or a combination of such units. ~~A city of the first class may apply for a grant to assist a neighborhood organization to do energy related planning and implementation activities.~~ "Local unit of government" also includes those organizations which the local unit of government recognizes as capable of, and with which it may enter into a contract for the purpose of, performing the authorized energy-related planning and implementation activities.

~~C. "Neighborhood organizations" means those organizations recognized by the city government for planning and development purposes in areas whose boundaries are officially determined by the city.~~

C. ~~D.~~ "Clearinghouse" means that governmental unit which has authority to review requests for state and federal aid for local units of government within its jurisdiction.

In the seven-county metropolitan area this review authority is the Metropolitan Council under Minn. Stat. § 473.171, subd. 2 (1980).

The review authority for the remainder of the state is the appropriate Regional Development Commission under Minn. Stat. § 462.391, subd. 3 (1980).

D. ~~E.~~ "In-kind" means:

1. Salary and cost of fringe benefits of the grant recipient staff working on activities funded by the grant.
2. Increases in overhead resulting from carrying out activities funded by the grant.

6 MCAR § 2.2403. Types of grants.

There shall be two types of grants made to local units of government: Community Energy Planning Grants and Community Energy Plan Implementation Grants.

A. Community Energy Planning Grants.

Planning Grants shall be used for developing local energy plans relating to such issues as, but not limited to : citywide or countywide conservation; use of renewable resources through technologies currently available; conservation of energy used in buildings owned by the local unit of government, of energy used for building and street lighting, and of energy used in building space heating and cooling; and energy considerations in traffic management, in land use planning, in capital improvement programming/budgeting, in municipal operating budgets, and in economic development plans.

B. Community Energy Plan Implementation Grants.

Implementation Grants shall be used for purposes of implementing all or portions of a local community energy plan. Local units of government may apply for implementation grants whether or not the community energy plan was prepared under the Community Energy Planning Grant Program, provided the community energy plan has been submitted to and ~~approved~~ reviewed by the Agency.

C. The following activities or expenditures are eligible for Planning Grants:

~~1. Planning staff personnel, salaries, or benefits;~~
1. Salaries or benefits for planning staff personnel;

2. Data collection or analysis or both;

3. Development of local energy documents including plans;

4. Modification of capital improvement programs for energy-related projects;

5. Development of energy-conscious fleet management systems, transportation plans, intergovernmental plans;

6. Development of budgetary or fiscal systems which significantly address energy costs;

7. Development of zoning, subdivision and ~~building~~ other codes, ordinances, regulations, supplements or amendments relating to energy;

~~8. Housing code development for energy related elements;~~

8. ~~9.~~ Any other activities which carry out the purpose of the program as expressed in rule 2.2401 B.

D. The following activities or expenditures are ineligible for Planning Grants:

1. Non-energy related issues;

2. ~~Repayment~~ Retroactive payment of revenue to local units of government for energy activities previously undertaken;

3. Out-of-state travel, unless specifically approved in a contract between the grantee and the Agency.

E. The following activities or expenditures are eligible for Implementation Grants:

1. Detailed drawings, architectural drawings, site designs, engineering specifications;

2. Equipment purchases directly affecting energy recovery, conservation or production;

3. Construction of energy production or energy recovery systems;

4. Any other activities which carry out the purpose of the program as expressed in rule 2.2401 B.

F. The following activities or expenditures are ineligible for Implementation Grants;

1. Non-energy related projects;

2. Property acquisition (real property);

3. Personnel for continued operation of energy conservation, production or recovery facilities beyond the first year of an Implementation Grant.

6 MCAR § 2.2404. Evaluation of preliminary applications.

A. Planning Grants.

Preliminary applications which satisfy all eligibility requirements shall be evaluated in a two step process: general criterion and planning function criteria.

1. General criterion.

Planning Grant applications which address the greatest number of the following considerations will be given priority over Planning Grant applications which address a lesser number of the following considerations.

a. Programs designed to result in significant savings of traditional energy sources;

b. Programs designed to assist in the development of renewable energy systems;

c. Programs which encourage broad community involvement in addressing and solving energy problems encountered by local citizens and local units of government;

d. Programs that show a significant degree of transferability to similar units of government;

e. Local-unit-of-government programs which include the provision of local ~~resources or other types of~~ support to address energy problems and to undertake energy planning for the local unit of government.

2. Planning function evaluation.

Applications achieving similar priority ranking based on the general criterion stated in rule 2.2404 A. 1. will be evaluated for purposes of funding on the basis of the following criteria:

a. Comprehensiveness of plan elements, such as: potential effects on residential, industrial, municipal and county programs;

b. Ability of the local unit of government's plan to affect energy consumption through the use of tools, such as: but not limited to codes, ordinances, ~~legal instruments,~~ joint powers agreements, property covenants and easements;

c. Use of renewables~~,~~ energy resources such as: solar, wind, biomass, hydropower;

d. Cost-effectiveness;

e. Public participation efforts, such as: neighborhood energy committees, governmental energy committees;

f. Private sector participation such as: ~~financial leverage,~~ van pools, staff, materials or financial contributions;

g. Transferability, as shown by the appropriateness of other units of government utilizing all or parts of a planning process or the results of that plan or process.

B. Implementation Grants.

Evaluation of preliminary applications:

Preliminary applications which satisfy all eligiblity requirements shall be evaluated in a two-step process: general criterion and implementation function criteria.

1. General criterion.

Implementation Grant applications which address the greatest number of the following considerations will be given priority over Implementation Grant applications which address a lesser number of the following considerations:

a. Applications with programs designed to result in significant savings of traditional energy sources;

b. Programs designed to assist in the development of renewable energy systems;

c. Programs which encourage broad community involvement in addressing and solving energy problems encountered by local citizens and local units of government;

d. Programs that show a significant degree of transferability to similar units of goverment;

e. Local-unit-of-government programs which include the provision of local ~~resources or other types of~~ support to address energy problems and to undertake energy production and/or conservation in the local unit of government.

2. Implementation grant evaluation.

Applications achieving similar priority ranking based on the general criterion stated in rule 2.2404 B.1. will be evaluated for purposes of funding on the basis of the following criteria.

a. The proposed project must be technically feasible. Technically feasible means:

1) The ~~D~~degree to which the project meets scientifically accepted laws; or,

2) The ~~D~~degree to which the project increases or enhances the state of the energy art.

b. The project must be economically viable. Economically viable means the budget is adequate to complete the proposed project~~;~~.

~~2)~~ ~~The estimated cost of the energy produced or conserved as a result of this project, including all research, development and production costs, and excluding research and development costs.~~

c. The applicant must be capable of successfully conducting the project. This will be determined by evaluating:

1) The ~~L~~level of education, or experience in conducting similar project implementation~~.~~; or,

2) The existence ~~awareness~~ of other or similar projects or related studies from which the applicant may obtain assistance.

d. The application must show that economic benefits ~~may~~ will result from this project. Economic benefits are:

1) Monetary or fuel ~~S~~savings resulting from conservation, or

2) Job creation.

e. The proposal must demonstrate a significant degree of transferability.

f. The applicant must show that the proposal complies with local, state and/or federal requirements (environmental, zoning, health).

6 MCAR § 2.2405. General application procedure.

A. The approval process for Planning Grants and Implementation Grants has three stages: preliminary application, final application, and contract execution.

B. Joint applications may be submitted by two or more local units of government which are encountering energy-related problems for which it appears joint consideration of problems is possible, preferable and appropriate. In addition to complying with rule 6 MCAR § 2.2406 regarding application contents, joint applicants shall also designate a lead applicant and include their authority for joint application in the form of resolutions, joint powers agreement, or other such agreements.

C. The preliminary application or a notice of preapplication shall be submitted to the appropriate clearinghouse for review and comment at least 45 days prior to the date applications are due at the Agency. The clearinghouse may waive this review requirement. Written evidence of the clearinghouse waiver shall be included in preliminary applications submitted directly to the Agency. Failure of the clearinghouse to conduct its review within 45 days shall be considered as approval of the application by the clearinghouse, unless both the applicant and the clearinghouse agree to extend the review period for an agreed-upon time period. Upon receipt of the clearinghouse review comments the applicant shall submit the preliminary application together with the clearinghouse comments to the Agency on or before the due date. Each clearinghouse must submit to the Agency a list of all applications reviewed during a particular funding cycle. The timetable in this rule shall

apply to all grant cycles after the first cycle. During the first cycle simultaneous submission to both the Agency and the clearinghouse shall be permitted.

D. The Agency shall have thirty days after the preliminary application due date to review preliminary applications. Incomplete or ineligible applications will be returned to the applicant with a written statement of reasons for rejection.

6 MCAR § 2.2406. Preliminary application.

A. A preliminary application shall be submitted to the Agency for purposes of determining eligibility and priority for funding. The preliminary application shall be in a form and manner prescribed by the Agency and shall contain the information required by the rules, including ~~but not limited to~~ the following: name of community(s), demographic data, previous community planning efforts, descriptions of community services, statement of intended results, identification of amount and source of local share, total estimated program cost, and a copy of a resolution authorizing submission of the application to the Agency.

B. Preliminary applications shall be submitted semi-annually not later than February 1 and August 1, except that during calendar year 1981, the due date for preliminary applications shall be 90 days after these rules becomes effective.

6 MCAR § 2.2407. Final application.

A. A final application may be submitted only by applicants which have received a letter of notification authorizing submission of a final application. Final applications must be received by the Agency no later than 45 days after the date of the letter of notification. The format for final applications is set out in rule 6 MCAR § 2.2407 B. Final applications will be reviewed for completeness and compliance with the rules of this program. Incomplete applications or applications which differ substantially from preliminary applications will not be granted and a written statement citing the reasons for rejection will be provided to the applicant. Eligible final applications will be funded based on the priorities of this program and the availability of grant funds. Receipt of a letter of notification is not a guarantee that a grant will be made to the submitter of a final application. A grant award shall be made by contract as set out in rule 6 MCAR § 2.2408.

B. The final application shall contain at least the following elements:

1. A work program/schedule which contains the following:

a. A statement of the existing or emerging energy problem(s) which are to be investigated with the grant. This statement should identify how the problem(s) are affecting or will affect the applicant and the means the recipient is planning to use to alleviate the problem(s).

b. A description of the activities which the grant makes possible. The description of activities should identify

the expected results and/or products and should be in sufficient detail to enable the Agency to measure progress and to identify the person responsible for the completion of each activity. The description should include expected completion dates, by particular activity. Each work element should be assigned to a specific staff member or consultant.

c. A statement identifying the way in which the grant will improve the governing body's capability to address local energy problems and a schedule indicating when and how this will be accomplished.

2. Designation of a lead applicant.

The grant applicant should designate a lead applicant. Lead applicant means an agency, organization or individual who will be responsible for completion of the agreed-upon work program.

3. Local share.

A detailed statement identifying the source(s) and amount of the local share. The local share may be in cash or in-kind or a combination of cash and in-kind.

4. Signature/resolution.

The application shall be submitted to the Agency only if accompanied by a resolution passed at an official meeting of the governing body and signed by the authorized person.

6 MCAR § 2.2408. Grant contract.

A. The final step in the awarding of a Planning Grant or an Implementation Grant is execution of a grant contract. The grant contract shall be based upon the final application. The contract shall specify the amount of the grant to the recipient and the duration of the grant. The contract shall include assurance that the local share will be provided and that the agreed-upon work program will be carried out. A grant contract based upon a joint application will be executed by the lead applicant. Amendments may only be made in writing signed by both parties. Extensions must be justified in writing. Planning grant extensions shall not exceed 90 days. Implementation grant extensions will be based on the scope of work remaining and a reasonable period in which to complete all work.

B. Funding period.

Grants will be funded for the following periods.

1. Planning Grants will be approved for a period of up to one year.
2. Implementation Grants will be approved for a period to be agreed upon by the grantee and the Agency and specified in the contract, based upon the scope of the implementation activities funded and a reasonable work schedule, or timetable.

C. Grant ratios.

1. Planning Grants shall not exceed 75% of the total first year proposed planning budget;
2. The Agency may award an Implementation Grant up to 50% of the project's implementation cost, but not to exceed $50,000.00
3. No single grant shall exceed $50,000.00.

D. Disbursement schedule.

Grant funds will be disbursed to the grantee according to invoices submitted on the following schedule:

1. 50% during the first month of the grant contract funding period;
2. 40% upon completion of half of the agreed-upon work program;
3. 10% upon completion of a satisfactory evaluation according to 6 MCAR § 2.2409.

E. Required reports.

The grantee shall submit to the Agency quarterly work progress reports in a format prescribed by the Agency. Reporting requirements will vary depending upon the scope of work proposed and approved by the Agency for funding. In addition, the grantee shall provide the Agency with three copies and a camera-copy of a grantee's final community energy plan.

F. Records.

The grantee shall maintain for a period of not less than three years from the date of the execution of the contract all records relating to the receipt and expenditure of grant monies.

G. Monitoring grant results.

As a condition of accepting a grant a grantee ~~will~~ shall be expected to:

1. Document on an annual basis the results of the grant program for a period of up to 3 years from the date of the execution of the contract (for example, energy savings, financial savings, or any other documentation related to the results of the grant), and,
2. Participate in at least one Agency workshop at which the grantee will present the results of the grant program.

H. Contract deviations.

1. No grant funds shall be used to finance activities by consultants or local staff not included in the grant contract, unless agreed upon in writing by the Agency.
2. Unless agreed upon by the grantee and the Agency it will not be permissible for 100% of all energy-related activities to be contracted out to consultants.

6 MCAR § 2.2409. Evaluation.

The Agency shall conduct a final evaluation within 60 days of the submission by the grantee to the Agency of the final community energy plan ~~or~~ and all the required reports and financial documents. The evaluation shall assess:

~~A. Whether the local share contributed was equal to or greater than 25% of the total cost of a first year Planning Grant;~~

~~B. Whether the local share contributed was equal to or greater than 50% of an Implementation Grant;~~

~~C.~~ A. Whether the agreed-upon work program was completed;

~~D.~~ B. Whether the governing body has formally reviewed the completed energy plan.

Upon completion of a satisfactory evaluation the remaining 10% of the grant shall be disbursed to the grant recipient. If the results of the evaluation are unfavorable to the grantee and the grantee does not agree with the findings of the evaluation, the grantee may request a ~~hearing~~ review before the Agency.

Exhibit No.
File No.
Date

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing the Community Energy Planning Grants Program, 6MCAR §§ 2.2401-2.2409.

STATEMENT OF NEED AND REASONABLENESS

INTRODUCTION

In its 1980 session, the Minnesota Legislature passed Chapter 579 Sec. 7 (codified as Minn. Stat. Sec. 116H.089) which addressed the provision of grants and assistance for community energy planning to be administered by the Minnesota Energy Agency ("Agency").

The purpose of this law is to begin to address the gamut of energy issues that cities and counties presently encounter, and likely will continue to encounter in both the near and distant future. To pursue this purpose, the law provides for the development of a Community Energy Planning Grants Program. The specified intent of the law is to improve the energy planning capabilities of local governments. To this end the Agency shall make grants to counties and cities, however organized.

The Statement of Need and Reasonableness contained herein will illustrate the manner in which the Minnesota Energy Agency will provide state assistance to cities and counties. The rules are written in such a way as to not prohibit the integration of Community Energy Planning programs with other State and Federal planning assistance programs.

On October 6, 1980 a Notice of Intent to Solict Outside Opinion Concerning Rules Governing the Administration and Distribution of Community Energy Planning Grants was published in the State Register at 5 S.R. 590. This notice allowed for comments to be received until November 21, 1980, inclusive. All comments which were received as a result of that notice have been considered, and where appropriate, incorporated in the promulgation of these rules.

In order to provide for extensive input into the development of these program rules, the Agency formed the Community Energy Planning Panel. This panel included representatives from many of the groups who could be affected by this program. The following people with their affiliations participated in the activities of the Community Energy Planning Panel.

Dennis Welsch	Minnesota Planning Association President, City of Red Wing Planning Coordinator
Ted Mueller	Minnesota Rural Electric Association
Jim Wright	Minnesota Department of Transportation
Craig Waldron	Region Nine Development Commission
John Kari	Metropolitan Council
James Fisher	Urban Technology Exchange
Tracy Godfrey	Minnesota Department of Economic Development
Karl Nollenberger	City of Richfield, Minnesota City Manager
James Pomeroy	City of Winona, Minnesota Transit Coordinator
William Maher	Chairman, Blue Earth County Board
Gilbert Kapsner	Chairman, Morrison County Board
Ms. Carol Carlson	City of Champlin, Minnesota Administrative Assistant
Tim Ruhn	City of Eden Valley, Minnesota City Coordinator

This advisory committee has met regularly since October to discuss the intent of this program and how the rules can be applied systematically to applicants throughout the State.

The responsibilities of this panel were divided into categories: 1) General Responsibilities and 2) Specific Responsibilities.

General responsibilities were:

1. To become familiar with the history and problems associated with community energy planning;

2. To know and understand the duties and responsibilities of the Consultant and State staff;

3. To attend and participate in scheduled Panel meetings and serve on subcommittees as may be appropriate;

4. To evaluate and encourage intergovernmental relationships which may better serve the goal of Comprehensive Community Energy Planning.

The more specific responsibilities included:

1. To provide input and recommendations to state staff on policies and procedures relating to delivering Community Energy Planning Grants;

2. To assist in making recommendations on establishing priorities for the grant program;

3. To provide leadership, expertise and experience in specific areas of community energy planning;

4. To evaluate, with staff assistance, current community-related energy programs and make recommendations on how programs and services might be improved.

RULES

The format used in preparing this Statement of Need and Reasonableness is as follows: each rule is stated and underlined; it is then followed by an explanation of the intent of the proposed rule and the need for the proposed rule.

6MCAR § 2.2401. Authority and purpose.

A. Authority.

Rules 6 MCAR §§ 2.2401-2.2409 implementing the Community Energy Planning Grants Program are promulgated by the agency pursuant to Minn. Stat. sec. 116H.089 (1980).

This section is necessary to indicate the statutory authority and requirement for promulgating these rules.

B. Purpose.

It is the purpose of the Community Energy Planning Grants Program to improve the energy planning capabilities of local governments, to conserve traditional energy sources, to develop renewable energy systems and to broaden community involvement in the energy planning process. These rules set forth criteria and procedures for providing state assistance to counties and cities, however organized.

This section is necessary to indicate to the interested parties the reason for the promulgation of these rules and the purpose of the program to which they apply. The language expresses the purpose of the program as discussed above in the introduction to this Statement of Need and Reasonableness.

C. Limitation.

No more than forty-five percent (45%) of the amount appropriated for Community Energy Planning Grants shall be distributed to counties and cities within the seven-county metropolitan area defined in Minn. Stat. § 473.121, subd. 2 (1980).

This rule is needed to indicate that a maximum portion of any funds appropriated for this program will be made available to eligible applicants within the seven-county metropolitan area. The 45% limitation is stated directly in subdivision 1 of Section 116H.089.

6 MCAR § 2.2402. Definitions.

The following terms used in these rules shall have the following meanings.

A. "Agency" means the Minnesota Energy Agency.

The term "Agency" means the Minnesota Energy Agency as provided in sections 116H.01 to 116H.15.

This definition is necessary in order to identify the state agency that has been charged with the responsibility to promulgate rules for this program and to administer state assistance.

B. "Local unit of government" means a city, a county or a combination of such units. A city of the first class may apply for a grant to assist a neighborhood organization to do energy-related planning and implementation activities.

This definition is necessary to indicate which units of government are eligible to apply for grants to be used to assist in developing local energy plans. Cities, counties and neighborhood organizations are all specified in the legislation as eligible recipients.

C. "Neighborhood organizations" means those organizations recognized by the city government for planning and development purposes in areas whose boundaries are officially determined by the city.

It is reasonable to allow cities of the first class to undertake neighborhood facilities based on specific boundaries recognized by the city.

D. "Clearinghouse" means that governmental unit which has authority to review requests for state and federal aid for local units of government within its jurisdiction.

In the seven-county metropolitan area this review authority is the Metropolitan Council under Minn. Stat. § 473.171, subd. 2 (1980).

The review authority for the remainder of the state is the appropriate Regional Development Commission under Minn. Stat. § 462.391, subd. 3 (1980).

This definition is needed in order to indicate by whom the necessary reviews can be completed to meet the requirements of other state laws. This requirement of having a clearinghouse review is designed to help minimize duplication of effort and improve the quality of the applications so that the maximum benefit is received for each program dollar expended.

E. "In-kind" means:

1. Salary and cost of fringe benefits of the grant recipient staff working on activities funded by the grant.
2. Increases in overhead resulting from carrying out activities funded by the grant.

This definition inludes two forms of contribution that the local unit of government can make to the activities funded by a grant. Because "in-kind" contribution by the local unit of government is permitted it is reasonable to allow this to take the form of paying salary and fringe benefits or payment of increases in overhead which result from activities being carried out under the terms of a grant.

6 MCAR § 2.2403. Types of grants.

There shall be two types of grants made to local units of government: Community Energy Planning Grants and Community Energy Plan Implementation Grants.

Section 116H.089 provides an array of qualifying expenditures which when evaluated and categorized could be grouped into two categories, planning functions and implementation functions. It is reasonable then to provide for two types of grants which are intended to fulfill two distinct purposes. Those purposes are 1) the evaluation of energy-related problems and the development of policies, strategies and or plans addressing those community energy problems, and 2) the implementation of plans, programs, strategies by capital investment which are intended to solve or ameliorate the local energy problems.

A. Community Energy Planning Grants.

Planning Grants shall be used for developing local energy plans relating to such issues as, but not limited to: citywide or countywide conservation; use of renewable resources through technologies currently available, conservation of energy used in buildings owned by the local unit of government, of energy used for building and street lighting, and of energy used in building space heating and cooling; and energy considerations in traffic management, in land use planning, in capital improvement programming/budgeting, in municipal operating budgets, and in economic development plans.

In order to improve the energy planning capability of local units of government it will be necessary for the local units of government to address a wide variety of energy producing, consuming and conservation-related activities. A comprehensive energy planning process or program is intended to examine issues relating to excessive consumption and/or lack of conservation and the inability of local energy consumers to use locally available renewable resources or the unit of government's inability to develop a component to their comprehensive plan which accurately addresses the myriad of energy-related issues, such as, capital improvement programming/budgeting, solar access, or subdivision design. It is reasonable then to allow grant activities which are designed to provide information that will allow strategies or plans to be developed which aid the unit of government in citywide or countywide conservation, use of renewables, land use planning as related to energy, traffic management, capital improvement programming/budgeting, operating budgets and economic development within the community.

B. Community Energy Plan Implementation Grants.

Implementation Grants shall be used for purposes of implementing all or portions of a local community energy

plan. Local units of government may apply for implementation grants whether or not the community energy plan was prepared under the Community Energy Planning Grant Program, provided the community energy plan has been submitted to and approved by the Agency.

Chapter 579, Sec. 7, specifically states in subdivision 2 that grants may be made to implement comprehensive energy plans to undertake the management of problems resulting from 1) rising energy costs; 2) lack of efficient public and private transportation; 3) lack of community conservation efforts; 4) lack of widespread renewable energy sources; and 5) lack of energy components in comprehensive plans and local ordinances. The statute also authorizes grants for any other purposes deemed appropriate by the director of the Agency.

The requirement of Agency review of a community energy plan which wasn't prepared with Community Energy Planning grant funds is needed and reasonable so the Agency can be assured that the MEA and the grantee are receiving the greatest benefit for the dollars granted to local units of government. The intent of the Agency is to examine the local unit of government's analysis of its energy problem to see if the implementation grant program proposed accurately addresses the problems identified in the planning process.

C. The following activities or expenditures are eligible for Planning Grants:

1. Planning staff personnel, salaries, or benefits;
2. Data collection or analysis or both;
3. Development of local energy documents including plans;
4. Modification of capital improvement programs for energy-related projects;
5. Development of energy-conscious fleet management systems, transportation plan, intergovernmental plans;

6. Development of budgetary of fiscal systems which significantly address energy costs;
7. Development of zoning, subdivision and building codes for supplements or amendments relating to energy;
8. Housing code development for energy-related elements;
9. Any other activities which carry out the purpose of the program as expressed in rule 2.2401 B.

This section is needed to inform potential applicants which activities or types of activities are allowable for expenditure of grant funds under this program. The items listed in the rule individually or collectively represent the various elements, activities or expenditures which would be necessary to develop a partial or complete community energy plan. Because the purpose of this grants program is to improve the energy planning capabilities of local governments it is reasonable to allow communities to expend grant monies on activities which are directly related to the development of energy plans.

The provision for allowing "Any other activities which carry out the purpose of the program as expressed in rule 2.2401 B. "reflects the flexibility and discretion allowed to the Agency and grant applicants in subdivision 2(e) of the laws. This provision of the rule allows for a reasonable amount of flexibility within the limitations of the program's express purposes to permit the Director to fund planning grants which show significant innovation and potential benefit but which may not meet the standard guidelines for the program.

D. The following activities or expenditures are ineligible for Planning Grants:
1. Non-energy related issues;
2. Repayment of revenue to local units of government for energy activities previously undertaken;

3. Out-of-state travel, unless specifically approved in a contract between the grantee and the agency.

The above-stated restrictions are needed to indicate for what activities expenditures of planning grant monies will not be permitted. Expenditure of grant money on non-energy related issues should not be permitted because the purpose of the program is to improve the energy planning capability of local units of government. The expenditure of funds on non-energy related issues would not help attain the purposes of the enabling legislation.

The program is also not intended to reimburse a community for activities that have been previously undertaken. The receipt of a planning grant may incidentally reassure a community that prior activities were wisely undertaken, but the community should not reimburse itself for those activities. Rather, the receipt of a planning grant should be understood to be an opportunity to improve capabilities in areas where little or no effort has previously been expended.

The rules prohibiting out-of-state travel unless approved in the grant contract is needed to help insure that the maximum benefit is derived locally from the grant expenditure. After prior consultation between the grantee and the Agency, the Agency may be convinced that the expenditure of grant funds for out-of-state travel would significantly benefit the community and could at that time approve such an expenditure. This rule is reasonable because it does not totally prohibit this type of expenditure while at the same time discouraging an activity that may have marginal impact locally. In addition, limitation on out-of-state travel may encourage useful communication between local units of government within the State of Minnesota.

E. The following activities or expenditures are eligible for Implementation Grants:

1. Detailed drawings, architectural drawings, site designs, engineering specifications;

2. Equipment purchases directly affecting energy recovery conservation or production;

3. Construction of energy production or energy recovery systems;

4. Any other activities which carry out the purpose of the program as expressed in rule 2.2401 B.

This section of the rules is needed to inform potential applicants of the activities or types of activities that are allowable expenditures under the rules of this program. The items listed in the rule individually or collectively represent the types of expenditures that would implement all or portions of an implementation grant. Specific projects will require significant technical work and detail to bring them to a successful completion. If a particular project is identified as an essential component of a comprehensive energy plan it is reasonable then to allow expenditure of grant funds to achieve the purpose of the plan.

The provision for allowing "Any other activities which carry out the purpose of the program as expressed in rule 2.2401 B. "reflects the flexibility and discretion allowed to the Agency and grant applicants by subdivision 2(e) of the law. This rule allows for a reasonable amount of flexibility within the limitations of the program's express purposes to permit the Director to fund implementation grants which show significant innovation and potential community-wide benefit but which may not meet the standard guidelines for the program.

F. The following activities or expenditures are ineligible for Implementation Grants:

1. Non-energy related projects;

2. Property acquisition (real property);

3. Personnel for continued operation of energy conservation production or recovery facilities beyond the first year of an Implementation Grant.

The above-stated restrictions are needed to indicate for what activities the expenditure of implementation grant monies will not be permitted. The expenditure of grant monies on non-energy related activities should not be permitted because such expenditures have no relationship to the purpose or intent of the program as stated in the legislation or these rules. Therefore the expenditure on non-energy related activities or equipment would not be reasonable.

The limitation or prohibition against real property acquisition is needed and reasonable to reduce or eliminate the Agency's liability as it relates to the Uniform Relocation Act of 1970. By not allowing real property acquisition, the Agency can avoid what can be the extremely expensive costs associated with property acquisition and relocation.

This rule is not intended to prohibit the local unit of government from undertaking property acquisition and relocation with their own funds as might be necessary to complete various energy projects. This rule is needed and reasonable in order to insure that the local unit of government is cognizant of its responsibilities and liabilities and to insure that the limited amount of state funds provided for in this program can be used to provide as much benefit to as many local units of government as possible. This would not be the case were the Agency to allow the expenditure of grant monies on real property acquisition and relocation expenses.

The rule which prohibits expenditure of grant funds for personnel to continue operation of various facilities beyond the first year of an implementation grant is also needed and reasonable. It is needed to clearly indicate to local units of government that this grant program is not intended to be an on-going source of funding for the continued operation of any projects which may be developed as a result of the use of these grant funds. Implicit in this rule is that during the first year of the contract grant period grant funds may be used for operation of the facility.

The use of funds for operational purposes during the first year may be needed and reasonable expenditures to bring a facility up to an operating level where it will be self-sustaining. Each funded project should be economically viable and if a project does not appear to be economically viable or self-sustaining the local unit of government should decide prior to beginning implementation of that project if sufficient public benefit can be derived to justify an operating subsidy from the local unit of government.

6MCAR § 2.2404. Evaluation of preliminary applications.

A. Planning Grants.

Preliminary applications which satisfy all eligibility requirements shall be evaluated in a two step process: general criterion and planning function criteria.

This rule is both needed and reasonable to indicate to prospective applicants in what manner their applications will be reviewed and processed for possible funding under these rules. Planning grants necessarily will have to be reviewed on two different levels, those being generalcriterion and a planning function evaluation.

1. General criterion.

Planning Grant applications which address the greatest number of the following considerations will be given priority over Planning Grant applications which addresses a lesser number of the following considerations.

a. Programs designed to result in significant savings of traditional energy sources;

b. Programs designed to assist in the development of renewable energy systems;

c. Programs which encourage broad community involvement in addressing and solving energy problems encountered by local citizens and local units of government;

d. Programs that show a significant degree of transferability to similar units of government;

e. Local-unit-of-government programs which include the provision of local resources or other types of support to address energy problems and to undertake energy planning for the local unit of government.

The general criterion is needed in the rules to indicate to potential applicants the general judgmental framework which will be used in evaluating each particular application.

Subdivision 1 of the law provides that:

> The energy agency when making grants shall give priority to those units of government that submit proposals that could result in significant savings of traditional energy sources, development of renewable energy systems, and broad community involvement. The director shall give priority to local units of government that provide staff or other support for a program and who request grants for programs which can be used by other local governments.

Minn. Stat. § 116H.089 (1980).

Because the legislature specified that the above-listed items be given priority it is necessary and reasonable to inform potential applicants that these factors will be considered in the ranking of proposals.

It is also necessary and reasonable to inform applicants that those applications which address the greatest number of those considerations will be ranked higher than those addressing fewer considerations. The provisions of this rule will aid in diminishing the differences that may occur between larger and smaller units of government. This will be done by evaluating each application for inclusion of elements related to the five specified considerations to determine if the application for funding seeks to develop a comprehensive strategy with which local energy problems can be addressed. A comprehensive strategy will be to the local unit of government's advantage because it will allow the unit of government to address the gamut of energy problems it is encountering and not

restrict the program to a single sector of the local community which could result in only a partial solution to a highly diversified and complex problem.

2. Planning function evaluation.

Applications achieving similar priority ranking based on the general criterion stated in rule 2.2404 A.1. will be evaluated for purposes of funding on the basis of the following criteria:

a. Comprehensiveness of plan elements, such as: potential effects on residential, industrial, municipal and county programs;

b. Ability of the local unit of government's plan to affect energy consumption through the use of tools, such as: codes, ordinances, legal instruments;

c. Use of renewables, such as: solar, wind, biomass, hydropower;

d. Cost-effectiveness;

e. Public participation efforts, such as: neighborhood energy committees, governmental energy committees;

f. Private sector participation such as: financial leverage, van pools, staff or financial contributions;

g. Transferability, as shown by the appropriateness of other units of government utilizing all or parts of a planning process or the results of that plan or process.

This rule is needed and reasonable in order to inform prospective applicants of the methods that will be used to evaluate applications which address similar numbers of the previously-stated general criteria.

The planning function criteria will be applied to each application to develop a more detailed analysis of a local unit of government's ability to accomplish the

objectives set forth in its application.

The extent to which the planning function criteria are notified will be evaluated by a panel of Agency staff that will then rank similarly rated preliminary applications to achieve a priority order of applications which are to be funded.

The planning function criteria will be applied to similarly ranked preliminary applications to determine a final priority for funding of preliminary applications. This process will be completed by a panel of Agency staff in order to achieve a diversified, equitable review of preliminary applications.

It is needed and reasonable to evaluate the comprehensiveness of the application to see if the approach proposed is adequate to cover the range of problems and issues identified in the application. An application which addresses problems which are apparent throughout the community will be given priority over an application which addresses a narrower scope of problems because that program will provide more opportunity for the unit of government to control its own energy future.

It is also needed and reasonable to evaluate a unit of government's ability to implement the program it has proposed. This evaluation will help to determine if the programs it is proposing which require some use of governmental public powers are within the unit's legal powers. If such programs are proposed and are within a unit of government's legal powers an accurate measure of the impact of that program will be possible and useful for purposes of evaluation.

It is needed and reasonable to evaluate the current and potential use of renewables. The use of renewable energy resources presently is growing and is likely to continue to grow because of the escalating costs of traditional energy resources. Therefore the Agency should evaluate applications to see if the local unit of government has realized the potential of those resources and is encouraging their use.

It is also needed and reasonable to evaluate the cost-effectiveness of any programs the local unit of government has included in the preapplication. This is necessary in order to insure that the maximum benefit is being obtained at the lowest possible cost. This evaluative mechanism is especially important during periods of reduced state and federal revenues when the public sector must seek to insure that the expenditure of taxpayers' money is as effective as possible.

It is also needed and reasonable to evaluate the public participation efforts which are detailed in the preapplication. This is particularly true for two reasons. First, the enabling legislation states that priority will be given to applications which use or encourage broad-based community involvement. Second, a program which encourages broad community involvement has a tremendous potential impact on community energy planning, conservation or production. Broad community support will reinforce the comprehensive community planning effort and help to fully develop the community's potential to effectively deal with its own energy future.

It is also needed and reasonable to evaluate what, if any, private sector participation is included in the proposed program. This assessment is important because it will reveal to what extent the non-governmental or general population is involved in working towards the resolution of the total energy problems that have been identified in the application. It is extremely important that as diverse a group of participants as possible be identified to address the issues. Without private sector involvement there is little possibility for the proposed program to be a total success.

It is also needed and reasonable for the Agency to evaluate the transferability of the program. This evaluation is intended to reveal what portions of the program hold potential for other local units of government. Evaluating how transferable certain aspects of the planning program are will enable the Agency to determine which portions of a program can be readily transfered to other local units of government and how successful they likely will be.

B. Implementation Grants.

Evaluation of preliminary applications:

Preliminary applications which satisfy all eligibility requirements shall be evaluated in a two-step process: general criterion and implementation function criteria.

This rule is both needed and reasonable to indicate to prospective applicants in what manner their applications will be reviewed and processed for possible funding under these rules. Implementation grants necessarily will have to be reviewed on two different levels, those being general criterion and an implementation function evaluation.

1. General criterion.

Implementation Grant applications which address the greatest number of the following considerations will be given priority over Implementation Grant applications which address a lesser number of the following considerations:

a. Applications with programs designed to result in significant savings of traditional energy sources;

b. Programs designed to assist in the development of renewable energy systems;

c. Programs which encourage broad community involvement in addressing and solving energy problems encountered by local citizens and local units of government;

d. Programs that show a significant degree of transferability to similar units of government;

e. Local-unit-of-government programs which include the provision of local resources or other types of support to address energy problems and to undertake energy production and/or conservation in the local unit of government

The general criterion is needed in the rules to indicate to potential applicants the general judgmental framework which will be used in evaluating each particular application.

Subdivision 1 of the law provides that:

> The energy agency when making grants shall give priority to those units of government that submit proposals that could result in significant savings of traditional energy sources, development of renewable energy systems, and broad community involvement. The director shall give priority to local units of government that provide staff or other support for a program and who request grants for programs which can be duplicated by other local governments.

Minn. Stat. § 116H.089 (1980).

Because the legislature specified that the above listed items be given priority it is necessary and reasonable to inform potential applicants that these factors will be considered in the ranking of proposals.

It is also needed and reasonable to inform applicants that those applications which address the greatest number of those considerations will be ranked higher than those addressing fewer considerations. The provisions of this rule will aid in diminishing the differences that may occur between larger and smaller units of government. This will be done by evaluating each application for inclusion of elements related to the five specified considerations to determine if the application for funding seeks to develop a comprehensive strategy with which local energy problems can be addressed. A comprehensive approach will be to the local unit of government's advantage because it will allow the unit of government to address the gamut of energy problems it is encountering and not restrict the program to a single sector of the local community which could result in only a partial solution to a highly diversified and complex problem.

2. Implementation grant evaluation.

Application achieving similar priority ranking based on the general criterion stated in rule 2.2404 B.1. will be evaluated for purposes of funding on the basis of the following criteria.

a. The proposed project must be technically feasible:

1) Degree to which the project meets scientifically accepted laws.

2) Degree to which the project increases or enhances the state of the art.

b. The project must be economically viable:

1) The budget is adequate to complete the proposed project.

2) The estimated cost of the energy produced or conserved as a result of this project, including all research, development and production costs, and excluding research and development costs.

c. The applicant must be capable of successfully conducting the project:

1) Level of education, or experience in conducting similar project implementation.

2) Awareness of other or similar projects or related studies from which the applicant may obtain assistance.

d. The applicant must show that economic benefits may result from this project:

1) Savings resulting from conservation.

2) Job creation.

e. The proposal must demonstrate a significant degree of transferability.

f. The applicant must show that the proposal complies with local, state and/or federal requirements (environmental, zoning, health).

This rule is needed and reasonable in order to inform prospective applicants of the methods that will be used to evaluate applications which address similar numbers of the previously-stated general criteria.

The implementation function criteria will be applied to each application in order to develop a more detailed analysis of a local unit of government's ability to accomplish the objectives set forth in its application.

The extent to which the implementation function criteria are satisfied will be evaluated by a panel of Agency staff that will then rank similarly rated preliminary applications to achieve a priority order of applications which are likely to be funded.

It is necessary to institute a technical review of implementation grant applications in order to justify the expenditure of Agency funds on any particular project. This technical review is needed to determine whether the proposed project is possible on a scientific basis. The project must be technically feasible in order to assure that the proposed results are actually attained. A decision to fund unproven technologies or speculative projects cannot be justified in light of the current state and federal financial situations. A proposal should show that a project is possible or meets scientifically accepted laws.

It is also reasonable to give additional merit to a proposal which increases or enhances the state of the art as it relates to a particular proposal, provided it continues to meet scientifically accepted laws. This will encourage innovation which may be readily transferable to other applicants in this program and local units of government throughout the state.

The requirement that an implementation project be economically viable is needed and reasonable because of the limited fiscal resources available from all levels of government. The reality of finite financial resources demands that those implementation projects undertaken by a local unit of government pay their

own way or operate at a level at which the local unit of government can realistically provide a subsidy. In order to determine if such a subsidy is necessary, a total budget must be drawn up for the project. This budget should reveal whether the commitments from all funding sources are adequate to complete the proposed project. The basis for Agency commitment, in part, should be the evidence of firm commitment, at an adequate level to complete the project, from all parties involved in the development and implementation of the project.

An additional analysis which is needed and reasonable is that of the estimated cost of the energy produced or conserved as a result of the project. Such an analysis should indicate the cost per unit of energy and how it compares with present production and/or conservation efforts. This analysis will assist the Agency in determining priorities for funding and greatly aid the Agency in obtaining the greatest benefit from its limited resources.

It is also reasonable that the Agency be shown that the applicant is capable of successfully implementing the project. This can reasonably be evaluated based on education and/or previous experience in implementing similar or related projects. It is also reasonable to determine if the applicant is sufficiently aware of similar projects which might provide advice, information or technical assistance to the applicant in completing the project. By successfully conducting background research an applicant may be able to avoid pitfalls which may jeopardize the entire project.

It is also needed and reasonable that the project show that economic benefits may be derived from the implementation of this project. Two examples are included in the rule. First, significant conservation can reduce the outflow of financial resources from the community. A reduction of this outflow allows for those resources to be invested locally which in turn has a multiplying effect on the local economy. Secondly, a local implementation project holds potential to produce

both temporary and permanent job opportunities which can add to the total financial benefits derived from the project. While a project may not directly employ a large number of persons it may generate jobs which effectively supplement the project. A meaningful measurement of either or both of these factors would demonstrate economic benefits.

It is also needed and reasonable for the Agency to assess to what degree the proposal shows the transferability of this project to other local units of government. This evaluation will allow the Agency to determine which portions of the program may be useful to other local units of government in the State of Minnesota. This evaluation could also aid the Agency in determining a long range investment strategy for State monies. Again, a strategy such as that will assist the Agency in making the most cost-effective use of finite financial resources.

It is also needed and reasonable for theproposed project to comply with local, state and federal requirements related to issues such as the environment, zoning laws and public health regulations. This requirement will help promote the orderly use and development of a local unit of government's resources. While the proposed project is designed to produce positive change in a community this change should not be at the expense of other local, state and federal regulations which have been shown to be methods which can induce positive change in the local area.

6MCAR § 2.2405. General application procedures.

A. The approval process for Planning Grants and Implementation Grants has three stages: preliminary application, final application, and contract execution.

This rule is needed to inform applicants that a three-step process is required prior to the community being able to receive or expend any grant funds.

It is reasonable to provide for a three-step process as this will minimize the expense of applying for funds by the local unit of government. The expense of application will be minimized because the preliminary application will be the basis on which applications are ranked. A final application will be requested only from the applications which are ranked in categories high enough and for which sufficient funds exist to fund those grants. By using this method it will not be necessary for a local unit of government to submit a final application unless it is asked to submit such an application and reasonably assured that it will receive a grant allocation.

A final application, provided it does not significantly differ from the preliminary application, will be used to determine the level of funds given to a local unit of government. The final application will also be used to determine a work program, activities to be undertaken, desired results and local administrative organization.

The contract execution phase will only occur when a final application has been requested, reviewed and approved by the Agency. This contract will then assign the obligations of both the grantee and the agency.

B. Joint applications may be submitted by two or more local units of government which are encountering energy-related problems for which it appears joint consideration of problems is possible, preferable and appropriate. In addition to comploying with rule 6 MCAR § 2.2406 regarding application contents, joint applicants shall also designate a lead applicant and include their authority for joint application in the form of resolutions, joint power agreement, or other.

It is needed and reasonable for the Agency to allow joint grant applications to be submitted by two or more units of government for a number of reasons. First,

Minnesota's numerous smaller communities could combine their local resources to address common problems. This combined approach would allow joint applications to be funded that individually may not rank high enough to be funded. Second, the joint application provision could provide for the attainment of various economics of scale that single applications probably could not attain. This means that the combined resources, human and financial, could be applied to the resolution of problems that may not otherwise be addressed because of staff or financial limitations. Finally several statewide benefits may be attained by the reduced financial burden of multiple administrative mechanisms on the local level and the reduction in direct Agency administrative expense of providing one grant versus that of providing two or more.

It is also needed and reasonable for the Agency to ask for a designated lead applicant who will be responsible for the administration of the grant on the local level. This is needed in order to determine to whom correspondence should be sent and to indicate who will assume the responsibility of completing the agreed upon tasks in the work program.

It is also needed and reasonable to ask joint applicants to supply a resolution indicating that they are knowingly and willfully undertaking a joint project. This will supply the Agency with evidence that the policymaking bodies of the local units of government are fully aware of their units' role and obligations under this program.

C. The preliminary application or a notice of preapplication shall be submitted to the appropriate clearinghouse for review and comment at least 45 days prior to the date applications are due at the Agency. The clearinghouse may waive this review requirement. Written evidence of the clearinghouse waiver shall be included in preliminary applications submitted directly to the Agency. Failure of the clearinghouse to conduct its review within 45 days shall be considered as approval

of the application by the clearinghouse, unless both the applicant and the clearinghouse agree to extend the review period for an agreed-upon time period. Upon receipt of the clearinghouse review comments the applicant shall submit the preliminary application together with the clearinghouse comments to the Agency on or before the due date. Each clearinghouse must submit to the Agency a list of all applications reviewed during a particular funding cycle. The timetable in this rule shall apply to all grant cycles after the first cycle. During the first cycle simultaneous submission to both the Agency and the clearinghouse shall be permitted.

State laws (Minn. Stat. § 433.171, subd. 2, and Minn. Stat. § 462.391, subd. 3) require that the Metropolitan Council or the appropriate regional development commission review all applications of governmental units for state or federal aid, in order for the reviewing body to advise the state or federal government as to the relationship of the application to the comprehensive plan and priorities of the region as established by the region. Therefore it is both needed and reasonable to include this requirement in the rules.

The forty-five (45) day requirement is also reasonable because it allows sufficient time to conduct reviews by clearinghouse staff or their local policy makers. If the clearinghouse elects not to conduct such reviews it is reasonable to permit them to waive this requirement. However, if they elect not to review the applications it should be required that they indicate that waiver in a written statement to the applicant or the Agency.

The provision of the rules which would automatically give clearinghouse approval unless the review was conducted within 45 days is needed and reasonable in order to keep the application process moving forward once the application has been sent to the clearinghouse.

The provision requiring the clearinghouse to submit a list of all applications reviewed is necessary so that the Agency can identify those applications which have been reviewed or waived for review purposes relative to those applications which have been submitted to the Agency.

The waiver of this required timetable is needed on the first grant cycle in order to start the grants process in a timely manner. The timetable for rules adoption, and notification of program availability to applicants would indicate that a normal cycle would not be possible to meet. Therefore the Agency feels it is needed and reasonable to allow simultaneous submission to both the clearinghouse and Agency.

D. The Agency shall have thirty days after the preliminary application due date to review preliminary applications. Incomplete or ineligible applications will be returned to the applicant with a written statement of reasons for rejection.

This rule is needed and reasonable because it will supply the Agency with a reasonable time period in which to review all the preliminary applications received. It is also reasonable for the Agency to provide a written statement to applicants if and when their application is determined to be incomplete or ineligible. The notification will help to avoid a repetition of the mistakes which made the application incomplete or ineligible and will assure applicants that reasons for rejection will be articulated.

6MCAR § 2.2406. Preliminary application.

A. A preliminary application shall be submitted to the Agency for purposes of determining eligibility and priority for funding. The preliminary application shall be in a form and manner prescribed by the Agency and shall contain the information required by the rules, including but not limited to the

following: name of community(s), demographic data, previous community planning efforts, descriptions of community services, statement of intended results, identification of amount and source of local share, total estimated program cost, and a copy of a resolution authorizing submission of the application to the Agency.

This rule is needed in order to indicate to prospective applicants what the purpose of the preliminary application is and for what purposes it is used. This will assist the applicant in determining what information and materials should be supplied in a preliminary application to the Agency.

The information requested in this rule is needed in order for the Agency to identify the local unit of government, determine the size of the population and where possible benefits might be attained, determine planning capacity and organizational skills that presently exist, determine what functions the local unit of government presently performs, determine if the intended results are reasonable relative to available funds and local capacity to attain those results, identify the local contribution and total program cost and finally to determine if the local policy body is initiating the undertaking of this program.

B. Preliminary applications shall be submitted semi-annually not later than February 1 and August 1, except that during calendar year 1981, the due date for preliminary applications shall be 90 days after these rules become effective.

These timetables are necessary and reasonable in order to allow the Agency to spread the work load evenly over an entire twelve-month period. The dates will also allow unsuccessful applicants to revise their applications and submit them within the next six months thereby maintaining any momentum they may have built up for their programs. By using the dates of February 1 and August 1 this

would also allow the local units of government to incorporate possible grant funds into their annual operating budgets which would help local units of government develop their work plans for an entire year.

6MCAR § 2.2407. Final application.

A. A final application may be submitted only by applicants which have received a letter of notification authorizing submission of a final application. Final applications must be received by the Agency no later than 45 days after the date of the letter of notification. The format for final applications is set out in rule 6 MCAR § 2.2407 B. Final applications will be reviewed for completeness and compliance with the rules of this program. Incomplete applications or applications which differ substantially from preliminary applications will not be granted and a written statement citing the reasons for rejection will be provided to the applicant. Eligible final applications will be funded based on the priorities of this program and the availability of grant funds. Receipt of a letter of notification is not a guarantee that a grant will be made to the submitter of a final application. A grant award shall be made by contract as set out in rule 6 MCAR § 2.2407.

This rule is needed in order to indicate to the prospective applicants the process that will be followed in order to submit a final application. A final application will be requested only from preliminary applicants which are ranked high enough to receive some of the available funds. Forty-five (45) days should be sufficient time for the local unit of government to submit the final application after having been notified. It will be necessary for the Agency to review the final applications to insure that they are complete and that the proposed activities are in compliance with the other rules of this program.

It is reasonable for the Agency to reject those final applications which differ substantially from the preliminary applications. This is both needed and reasonable because the invitation to submit a final application will be based on the ranking or priority that is determined from the materials and programs presented in the preliminary application. Therefore a program which significantly differs from the preliminary application would or could not be compared on an equal basis to other preliminary applications. If it is determined that an application should be rejected it is also reasonable the Agency should supply, to the applicant, a written explanation for that rejection.

It is also needed and reasonable to provide that grant awards are made on a contract basis so that all parties involved are fully aware of their rights and obligations under this program.

B. The final application shall contain at least the following elements:

1. A work program/schedule which contains the following:

a. A statement of the existing or emerging energy problem(s) which are to be investigated with the grant. This statement should identify how the problem(s) are affecting or will affect the applicant and the means the recipient is planning to use to alleviate the problem(s).

b. A description of the activities which the grant makes possible. The description of activities should identify the expected results and/or products and should be in sufficient detail to enable the Agency to measure progress and to identify the person responsible for for the completion of each activity. The description should include expected completion dates, by particular activity. Each work element should be assigned to a

specific staff member or consultant.

c. A statement identifying the way in which the grant will improve the governing body's capability to address local energy problems and a schedule indicating when and how this will be accomplished.

2. Designation of a lead applicant.

The grant applicant shall designate a lead applicant, agency, organization or individual who will be responsible for completion of the agreed-upon work program.

3. Local share.

A detailed statement identifying the source(s) and amount of the local share. The local share may be in cash or in-kind or a combination of cash and in-kind.

4. Signature/resolution.

The application shall be submitted to the Agency only if accompanied by a resolution passed at an official meeting of the governing body and signed by the authorized person.

This rule is needed and reasonable in order to indicate to final applicants what will be required from them in order to complete a final application.

6MCAR § 2.2407 B.1.a. is needed in order to determine what analysis of energy problems will be undertaken with the use of grant funds. This is reasonable in order for the Agency to determine if the final application and its proposed activities closely parallel those which have been stated in the preliminary application. This requirement will also assist the Agency in determining if the planning program is appropriate for present or anticipated energy problems

6MCAR § 2.2407 B.1.b. is needed and reasonable in that it permits the Agency to evaluate the proposed activities, relative to the preliminary application, to see

what specific measures the program will allow and over what time period these activities will occur and when completion can reasonably be expected. This will apply to all individual activities detailed in the application.

6MCAR § 2.2407 B.1.c. is needed and reasonable because it will help the Agency and the applicant determine how the governing obdy will use the results of this planning program to help them address in policy issues ways in which they can significantly impact the energy problems they are encountering or will encounter.

6MCAR § 2.2407 B.2. is both needed and reasonable in order for the Agency to know who the formal contact person is and who correspondence should be sent to relating to this program. It is reasonable for an applicant to designate a lead person, organization or agency so that the administrative and organizational issues can be resolved. This will also allow for a more centralized reporting system which will help the grantee and the Agency determine if all parties to the grant contract are fulfilling their obligations as set out in the work program and schedule.

6MCAR § 2.2407 B.3. is needed and reasonable in order for the applicant and the Agency to determine if the local match or ratio is sufficient to meet the requirements of the program. By providing this information the Agency will also be able to determine if the local match is in a form, such as cash or in-kind, that meets the requirements of this program's rules.

6MCAR § 2.2407 B.4. is needed and reasonable in order for the Agency to be assured that the public policymaking body of the local unit of government approves the final application for grant funds being submitted to the Agency. This requirement will further aid the Agency in determining that the local policymaking body has had adequate opportunity to supply input into the application process and program development.

6MCAR § 2.2408. Grant contract.

A. The final step in the awarding of a Planning Grant or an

Implementation Grant is execution of a grant contract. The grant contract shall be based upon the final application. The contract shall specify the amount of the grant to the recipient and the duration of the grant. The contract shall include assurance that the local share will be provided and that the agreed-upon work program will be carried out. A grant contract based upon a joint application will be executed by the lead applicant. Amendments may only be made in writing signed by both parties. Extensions must be justified in writing. Planning grant extensions shall not exceed 90 days. Implementation grant extensions will be based on the scope of work remaining and a reasonable period in which to complete all work.

6MCAR § 2.2408 is needed in order to inform the prospective grantee that a contract will be drawn up between the successful applicant and the Agency for purposes of formalizing the duties, activities, and obligations of the grantee and the Agency. It is reasonable and needed that the contract specify the amount of the grant and for what period the grant will cover. This will also aid the local unit of government in predicting the cash receipts relative to the expenditure of funds.

The provision for assurances that the local share is being provided is both needed and reasonable in order to assure the Agency that the local unit of government is making a significant contribution while at the same time being the recipient of some of the financial and technical resources available from the Agency.

The requirement of the lead applicant of a joint application executing the contract is reasonable and needed in order to designate who will be in charge of administering the grant on the local level and formalizing that relationship between the lead applicant and Agency.

It is also needed and reasonable for the Agency to allow for amendment of contracts because of problems or situations which may necessitate program change. At the same time it is needed and reasonable that these amendments be made in writing and approved by the grantee and the Agency so that both parties remain aware of their responsibilities and obligations under this program. The need for justifying any grant extensions in writing is reasonable to the grantee and the Agency because it will supply the opportunity to supply suggestions which may be helpful in resolving any problems which may be inhibiting successful completion of the agreed upon tasks.

The provision for allowing flexible periods or extensions on implementation grants is needed and reasonable because the implementation grants will likely include construction of facilities and involve parties or elements who actions are beyond their own control. Possible examples of extenuating circumstance might be labor strikes, weather conditions or the inability to obtain material essential to the successful completion of the job. The possibility of these types of problems makes it essential that a flexibility be built into the system which allows for such occurrences.

B. Funding period.

Grants will be funded for the following periods.

1. Planning Grants will be approved for a period of up to one year.
2. Implementation Grants will be approved for a period to be agreed upon by the grantee and the Agency and specified in the contract, based upon the scope of the implementation activities funded and a reasonable work schedule, or timetable.

6MCAR § 2.2408 B.1. is needed to inform the local unit of government that a period of up to one year will be allowed for the completion of a planning grant.

With the assistance that will be available from the Agency in terms of technical and financial assistance, it is reasonable that within a year period all scheduled work could be completed.

6MCAR § 2.2408 B.2. is reasonable because it provides sufficient flexibility to implement a project based on the scope of work predetermined by the Agency and the grantee. This flexibility is necessary because the types of implementation projects allowable under this grant program are extremely diverse and will require varying amounts of time in order to successfully complete a project.

C. Grant ratios.

1. Planning Grants shall not exceed 75% of the total first year proposed budget;
2. The Agency may award an Implementation Grant up to 50% of the project cost, but not to exceed $50,000.00;
3. No single grant shall exceed $50,000.00.

Rule 6MCAR 2.2408 C.1. is needed to clearly state to the applicant that a planning grant shall not exceed 75% of the total year's cost for their energy planning program. This indicates to the applicant that a 25% local match will be required under the rules of this program. This 25% local match ratio is reasonable because it shows a significant local match which when combined with the Agency's grant amount can be used to help solve the local energy problems.

6MCAR § 2.2408 C.2. allows for the Agency to grant implementation monies up to 50% of a project's costs, not to exceed $50,000. This maximum of $50,000. is specifically prescribed in Chapter 579, sec. 7, subd. 1.

The provision for allowing a 50%-of-total grant amount up to $50,000. was selected because any implementation project should be evaluated, prior to beginning implementation, as a project that is economically self-sustaining or requiring a subsidy level that the local unit of government is willing to contribute.

Furthermore, if the Agency is willing to contribute up to $50,000. the local unit of government should be willing to match or far exceed the Agency contribution because it will be the primary recipient of the benefits that are derived from the project.

D. Disbursement schedule.

Grant funds will be disbursed to the grantee according to invoices submitted on the following schedule:

1. 50% during the first month of the grant contract funding period;
2. 40% upon completion of half of the agreed-upon work program;
3. 10% upon completion of a satisfactory evaluation according to 6 MCAR § 2.2409.

This rule is needed is order for the applicant to understand on what basis or schedule grant funds will be made available to the applicant.

The provision of 50% of the grant funds during the first month of the contract period is reasonable because of the sudden increase in expenses directly associated with the grant program. These sudden costs are for expenses such as salaries, fringe benefits, materials and supplies, etc.

The availability of 40% upon completion of half of the agreed-upon work program is also reasonable because the completion of half of the work program will show to the Agency the local unit of government's commitment to fulfilling its obligations under this grant program.

It is also reasonable for the Agency to withhold 10% of the grant amount until a satisfactory evaluation has been completed. This is needed and reasonable in order for the Agency to be sure that the grantee has completed all of the agreed-upon work program and that the local unit has contributed its local share.

E. Required reports.

The grantee shall submit to the Agency quarterly work progress reports in a format prescribed by the Agency. Reporting requirements will vary depending upon the scope of work proposed and approved by the Agency for funding. In addition, the grantee shall provide the Agency with three copies and a camera-ready copy of a grantee's final community energy plan.

This rule is needed to inform the grantee that quarterly reports to the Agency will be required in order to keep the Agency informed on the progress of this recipient's program. This is a reasonable requirement placed upon the grantee that will inform the Agency of the programs status and provide an indication of when and how the Agency may be of assistance to a community in bringing about the successful completion of its planning or implementation program.

Reporting requirements will be based on the type of grant provided and a reasonable reporting schedule which when provided will assist the Agency in determining the progress of the program.

It is also reasonable for the grantee to provide the Agency with 3 copies and a camera ready copy of any final reports developed for the community under this program. The copies of this report will be distributed as follows:

1. Applicant's file
2. MEA library
3. State Planning Agency
4. Camera ready copy - in applicant's file.

The provision of three copies will allow the Agency to keep copies readily available, and supply the State Planning Agency with a copy. The camera ready copy is to allow for copies to be easily made which will help to make the information contained therein more accessible to other communities or agencies in the State of Minnesota.

F. Records.

The Grantee shall maintain for a period of not less than three years all records relating to the receipt and expenditure of grant monies.

This requirement is needed and reasonable in order to comply with Minn. Stat. 138.17 and the Agency's record retention schedule which was prepared pursuant to this law.

G. Monitoring grant results.

As a condition of accepting a grant a grantee will be expected to:

1. Document on an annual basis the results of the grant program for a period of up to 3 years (for example, energy savings, financial savings, or any other documentation related to the results of the grant);
2. Participate in at least one Agency workshop at which the grantee will present the results of the grant program.

This rule is needed in order to insure that the grantee is fully aware of its obligations under this program. It also serves as a signal to the grantee that it should be able to indicate or document to the Agency how this grant assisted the local unit of government in developing and implementing a program that helps the community solve its energy-related problems. The three year requirement is needed and reasonable because it provides a long enough period of review to accurately measure the effectiveness of the program.

The requirement that a grant recipient participate in at least one Agency-sponsored workshop is needed and reasonable because it assures that a local unit of government that receives a grant will in some measure share with the balance of the State the successes and shortcomings of its planning or implementation program.

H. Contract deviations.

1. No grant funds shall be used to finance activities by consultants or local staff not included in the grant contract, unless agreed upon in writing by the Agency.
2. Unless agreed upon by the grantee and the Agency it will not be permissible for 100% of all energy-related activities to be contracted out to consultants.

This is both needed and reasonable because it informs the grant recipient that it is bound by the grant contract to fulfill the requirements of that contract. It also indicates to the possible grant recipient that the final grant application and contract should accurately reflect the concerns addressed. Likewise it indicates that the local staff can reasonably and usefully work on the project. Any deviations to the contract must be made in writing in order to assure the Agency that the activities and expenses are allowable under this programs rules.

It is also reasonable not to allow 100% of all activities to be done by consultants. This is necessary because the legislation states that the purpose is to improve the local energy planning capabilities of local units of government. If the Agency were to allow 100% grant expenditures on consultants it is likely that the local unit of government will not be deeply involved in the planning process. By not allowing all grant expenditures to consultants the local unit will be more responsible for portions of the plans development. This in turn will increase the likelihood that the plan or portions of that plan will be implemented.

6MCAR § 2.2409. Evaluation.

The Agency shall conduct a final evaluation of grant work performance within 60 days of the submission by the grantee

to the Agency of a final community energy plan or all the required reports and financial documents. The evaluation shall assess:

A. Whether the local share contributed was equal to or greater than 25% of the total cost of a first year Planning Grant;

B. Whether the local share contributed was equal to or greater than 50% of an Implementation Grant;

C. Whether the agreed-upon work program was completed;

D. Whether the governing body has formally reviewed the energy plan.

Upon completion of a satisfactory evaluation the remaining 10% of the grant shall be disbursed to the grant recipient. If the results of the evaluation are unfavorable to the grantee and the grantee does not agree with the findings of the evaluation, the grantee may request a hearing before the Agency.

The requirement that the Agency conduct a final evaluation of grant work is reasonable in order to insure that the grant work, required reports and financial documentation have been completed as required by the grant contract. The 60 day period allowed is sufficient because it allows plenty of time to review the required documents within the Agency and prepare to do field checks as may be needed in order to conduct a full evaluation. The review shall consider:

A. Whether the local share contributed was equal to or greater than 25% of the total cost of a first year Planning Grant;

B. Whether the local share contributed was equal to or greater than 50% of an Implementation Grant.

This review requirement is necessary and reasonable in order to evaluate the program to see if the program ratios are met.

The evaluation shall also consider:

C. Whether the agreed-upon work program was completed.

This is necessary and reasonable in order to see that the local unit has fulfilled its obligation as detailed in the grant contract. This portion of the evaluation will be based on the final approved application and the signed contract agreement.

D. Whether the governing body has formally reviewed the energy plan.

This requirement is necessary in order to insure that the governing body which submitted the application has formally reviewed the documents which are developed from the work of this program. This is intended to insure that the governing body of the local unit formally considers the findings of the program and considers for implementation the aspects of the program which may assist in the resolution of the local unit of government's energy problems.

It is also reasonable that the state will then provide the remaining 10% of the grant contract amount. It is needed for the State to be able to withhold the last 10% of grant funds in the event that the agreed-upon work program is not completed. Because the Agency is investing heavily in the future, the Agency must have some recourse, such as withholding 10% of the grant funds, if contract obligations are not fulfilled.

It is also needed and reasonableto allow the grantee a hearing before the Agency in the event that an evaluation is unfavorable to grantee. This hearing will provide an opportunity for the grantee to submit information or evidence to the Agency upon which a final decision can be rendered regarding the grant evaluation.

Date: March 19, 1981

MINNESOTA ENERGY AGENCY
CONSERVATION DIVISION

By Jay A. Brunner
Jay Brunner

AG copy.

Rules as Adopted

6 MCAR § 2.2401. Authority and purpose.

A. Authority.

Rules 6 MCAR §§ 2.2401 - 2.2409 implementing the Community Energy Planning Grants Program are promulgated by the Agency pursuant to Minn. Stat. sec. 116H.089 (1980).

B. Purpose.

It is the purpose of the Community Energy Planning Grants Program to improve the energy planning capabilities of local governments, to conserve traditional energy sources, to develop renewable energy systems and to broaden community involvement in the energy planning process. These rules set forth criteria and procedures for providing state assistance to counties and cities, however organized.

C. Limitation.

No more than forty-five percent (45%) of the amount appropriated for Community Energy Planning Grants shall be distributed to counties and cities within the seven-county metropolitan area defined in Minn. Stat. § 473.121, subd. 2 (1980).

6 MCAR § 2.2402. Definitions.

The following terms used in these rules shall have the following meanings.

A. "Agency" means the Minnesota Energy Agency.

B. "Local unit of government" for purposes of applying for grants under this program, means a city, a county or a combination of such units. ~~A city of the first class may apply for a grant to assist a neighborhood organization to do energy related planning and implementation activities.~~ "Local unit of government" also includes those organizations which the local unit of government recognizes as capable of, and with which it may enter a contract for the purpose of performing the authorized energy-related planning and implementation activities.

~~C. "Neighborhood organizations" means those organizations recognized by the city government for planning and development purposes in areas whose boundaries are officially determined by the city.~~

C. ~~D.~~ "Clearinghouse" means that governmental unit which has authority to review requests for state and federal aid for local units of government within its jurisdiction.

In the seven-county metropolitan area this review authority is the Metropolitan Council under Minn. Stat. § 473.171, subd. 2 (1980).

The review authority for the remainder of the state is the appropriate Regional Development Commission under Minn. Stat. § 462.391, subd. 3 (1980).

D. ~~E.~~ "In-kind" means:

1. Salary and cost of fringe benefits of the grant recipient staff working on activiites funded by the grant.
2. Increases in overhead resulting from carrying out activities funded by the grant.

6 MCAR § 2.2403. Types of grants.

There shall be two types of grants made to local units of government: Community Energy Planning Grants and Community Energy Plan Implementation Grants.

A. Community Energy Planning Grants.

Planning Grants shall be used for developing local energy plans relating to such issues as, but not limited to : citywide or countywide conservation; use of renewable resources through technologies currently available; conservation of energy used in buildings owned by the local unit of government, of energy used for building and street lighting, and of energy used in building space heating and cooling; and energy considerations in traffic management, in land use planning, in capital improvement programming/budgeting, in municipal operating budgets, and in economic development plans.

B. Community Energy Plan Implementation Grants.

Implementation Grants shall be used for purposes of implementing all or portions of a local community energy plan. Local units of government may apply for implementation grants whether or not the community energy plan was prepared under the Community Energy Planning Grant Program, provided the community energy plan has been submitted to and ~~approved~~ reviewed by the Agency. HE 9

C. The following activities or expenditures are eligible for Planning Grants:

~~1. Planning staff personnel, salaries, or benefits;~~
1. Salaries or benefits for planning staff personnel; HE 10

2. Data collection or analysis or both;

3. Development of local energy documents including plans;

4. Modification of capital improvement programs for energy-related projects;

5. Development of energy-conscious fleet management systems, transportation plans, intergovernmental plans;

6. Development of budgetary or fiscal systems which significantly address energy costs;

7. Development of zoning, subdivision and ~~building~~ other codes, ordinances, regulations, supplements or amendments relating to energy; HE 11

~~8. Housing code development for energy related elements;~~

8. ~~9.~~ Any other activities which carry out the purpose of the program as expressed in rule 2.2401 B.

D. The following activities or expenditures are ineligible for Planning Grants:

1. Non-energy related issues;

2. ~~Repayment~~ Retroactive payment HE 14 of revenue to local units of government for energy activities previously undertaken;

3. Out-of-state travel, unless specifically approved in a contract between the grantee and the Agency.

E. The following activities or expenditures are eligible for Implementation Grants:

1. Detailed drawings, architectural drawings, site designs, engineering specifications;

2. Equipment purchases directly affecting energy recovery, conservation or production;

3. Construction of energy production or energy recovery systems;

4. Any other activities which carry out the purpose of the program as expressed in rule 2.2401 B.

F. The following activities or expenditures are ineligible for Implementation Grants;

1. Non-energy related projects;

2. Property acquisition (real property);

3. Personnel for continued operation of energy conservation, production or recovery facilities beyond the first year of an Implementation Grant.

6 MCAR § 2.2404. Evaluation of preliminary applications.

A. Planning Grants.

Preliminary applications which satisfy all eligibility requirements shall be evaluated in a two step process: general criterion and planning function criteria.

1. General criterion.

Planning Grant applications which address the greatest number of the following considerations will be given priority over Planning Grant applications which address a lesser number of the following considerations.

a. Programs designed to result in significant savings of traditional energy sources;

b. Programs designed to assist in the development of renewable energy systems;

c. Programs which encourage broad community involvement in addressing and solving energy problems encountered by local citizens and local units of government;

d. Programs that show a significant degree of transferability to similar units of government;

e. Local-unit-of-government programs which include the provision of local ~~resources or other types of~~ HE 14 support to address energy problems and to undertake energy planning for the local unit of government.

2. Planning function evaluation.

Applications achieving similar priority ranking based on the general criterion stated in rule 2.2404 A. 1. will be evaluated for purposes of funding on the basis of the following criteria:

a. Comprehensiveness of plan elements, such as: potential effects on residential, industrial, municipal and county programs;

b. Ability of the local unit of government's plan to affect energy consumption through the use of tools, such as/ but not limited to codes, ordinances, ~~legal instruments,~~ joint powers agreements, property covenants and easements;

c. Use of renewables~~,~~ energy resources such as: solar, wind, biomass, hydropower;

d. Cost-effectiveness;

e. Public participation efforts, such as: neighborhood energy committees, governmental energy committees;

f. Private sector participation such as: ~~financial leverage,~~ van pools, staff, materials or financial contributions;

g. Transferability, as shown by the appropriateness of other units of government utilizing all or parts of a planning process or the results of that plan or process.

B. Implementation Grants.

Evaluation of preliminary applications:

Preliminary applications which satisfy all eligiblity requirements shall be evaluated in a two-step process: general criterion and implementation function criteria.

1. General criterion.

Implementation Grant applications which address the greatest number of the following considerations will be given priority over Implementation Grant applications which address a lesser number of the following considerations:

a. Applications with programs designed to result in significant savings of traditional energy sources;

b. Programs designed to assist in the development of renewable energy systems;

c. Programs which encourage broad community involvement in addressing and solving energy problems encountered by local citizens and local units of government;

d. Programs that show a significant degree of transferability to similar units of goverment;

e. Local-unit-of-government programs which include the provision of local ~~resources or other types of~~ support to address energy problems and to undertake energy production and/or conservation in the local unit of government.

2. Implementation grant evaluation.

Application achieving similar priority ranking based on the general criterion stated in rule 2.2404 B.1. will be evaluated for purposes of funding on the basis of the following criteria.

a. The proposed project must be technically feasible.

Technically feasible means:

1) The ~~D~~degree to which the project meets scientifically accepted laws; or,

2) The ~~D~~degree to which the project increases or enhances the state of the energy art.

b. The project must be economically viable.

Economically viable means the budget is adequate to complete the proposed project~~;~~.

~~2)~~ ~~The estimated cost of the energy produced or conserved as a result of this project, including all research, development and production costs, and excluding research and development costs.~~

c. The applicant must be capable of successfully conducting the project. This will be determined by evaluating:

1) The ~~L~~level of education, or experience in conducting similar project implementation~~.~~; or,

2) The existence ~~awareness~~ of other or similar projects or related studies from which the applicant may obtain assistance.

d. The application must show that economic benefits ~~may~~ will result from this project. Economic benefits are:

1) Monetary or fuel ~~S~~savings resulting from conservation, or

2) Job creation.

e. The proposal must demonstrate a significant degree of transferability.

f. The applicant must show that the proposal complies with local, state and/or federal requirements (environmental, zoning, health).

6 MCAR § 2.2405. General application procedure.

A. The approval process for Planning Grants and Implementation Grants has three stages: preliminary application, final application, and contract execution.

B. Joint applications may be submitted by two or more local units of government which are encountering energy-related problems for which it appears joint consideration of problems is possible, preferable and appropriate. In addition to complying with rule 6 MCAR § 2.2406 regarding application contents, joint applicants shall also designate a lead applicant and include their authority for joint application in the form of resolutions, joint powers agreement, or other such agreements.

C. The preliminary application or a notice of preapplication shall be submitted to the appropriate clearinghouse for review and comment at least 45 days prior to the date applications are due at the Agency. The clearinghouse may waive this review requirement. Written evidence of the clearinghouse waiver shall be included in preliminary applications submitted directly to the Agency. Failure of the clearinghouse to conduct its review within 45 days shall be considered as approval of the application by the clearinghouse, unless both the applicant and the clearinghouse agree to extend the review period for an agreed-upon time period. Upon receipt of the clearinghouse review comments the applicant shall submit the preliminary application together with the clearinghouse comments to the Agency on or before the due date. Each clearinghouse must submit to the Agency a list of all applications reviewed during a particular funding cycle. The timetable in this rule shall

apply to all grant cycles after the first cycle. During the first cycle simultaneous submission to both the Agency and the clearinghouse shall be permitted.

D. The Agency shall have thirty days after the preliminary application due date to review preliminary applications. Incomplete or ineligible applications will be returned to the applicant with a written statement of reasons for rejection.

6 MCAR § 2.2406. Preliminary application.

A. A preliminary application shall be submitted to the Agency for purposes of determining eligibility and priority for funding. The preliminary application shall be in a form and manner prescribed by the Agency and shall contain the information required by the rules, including but not limited to the following: name of community(s), demographic data, previous community planning efforts, descriptions of community services, statement of intended results, identification of amount and source of local share, total estimated program cost, and a copy of a resolution authorizing submission of the application to the Agency.

B. Preliminary applications shall be submitted semi-annually not later than February 1 and August 1, except that during calendar year 1981, the due date for preliminary applications shall be 90 days after these rules becomes effective.

6 MCAR § 2.2407. Final application.

A. A final application may be submitted only by applicants which have received a letter of notification authorizing submission of a final application. Final applications must be received by the Agency no later than 45 days after the date of the letter of notification. The format for final applications is set out in rule 6 MCAR § 2.2407 B. Final applications will be reviewed for completeness and compliance with the rules of this program. Incomplete applications or applications which differ substantially from preliminary applications will not be granted and a written statement citing the reasons for rejection will be provided to the applicant. Eligible final applications will be funded based on the priorities of this program and the availability of grant funds. Receipt of a letter of notification is not a guarantee that a grant will be made to the submitter of a final application. A grant award shall be made by contract as set out in rule 6 MCAR § 2.2408.

B. The final application shall contain at least the following elements:

1. A work program/schedule which contains the following:

a. A statement of the existing or emerging energy problem(s) which are to be investigated with the grant. This statement should identify how the problem(s) are affecting or will affect the applicant and the means the recipient is planning to use to alleviate the problem(s).

b. A description of the activities which the grant makes possible. The description of activities should identify

the expected results and/or products and should be in sufficient detail to enable the Agency to measure progress and to identify the person responsible for the completion of each activity. The description should include expected completion dates, by particular activity. Each work element should be assigned to a specific staff member or consultant.

c. A statement identifying the way in which the grant will improve the governing body's capability to address local energy problems and a schedule indicating when and how this will be accomplished.

2. Designation of a lead applicant.

The grant applicant should designate a lead applicant. Lead applicant means an agency, organization or individual who will be responsible for completion of the agreed-upon work program.

3. Local share.

A detailed statement identifying the source(s) and amount of the local share. The local share may be in cash or in-kind or a combination of cash and in-kind.

4. Signature/resolution.

The application shall be submitted to the Agency only if accompanied by a resolution passed at an official meeting of the governing body and signed by the authorized person.

6 MCAR § 2.2408. Grant contract.

A. The final step in the awarding of a Planning Grant or an Implementation Grant is execution of a grant contract. The grant contract shall be based upon the final application. The contract shall specify the amount of the grant to the recipient and the duration of the grant. The contract shall include assurance that the local share will be provided and that the agreed-upon work program will be carried out. A grant contract based upon a joint application will be executed by the lead applicant. Amendments may only be made in writing signed by both parties. Extensions must be justified in writing. Planning grant extensions shall not exceed 90 days. Implementation grant extensions will be based on the scope of work remaining and a reasonable period in which to complete all work.

B. Funding period.

Grants will be funded for the following periods.

1. Planning Grants will be approved for a period of up to one year.
2. Implementation Grants will be approved for a period to be agreed upon by the grantee and the Agency and specified in the contract, based upon the scope of the implementation activities funded and a reasonable work schedule, or timetable.

C. Grant ratios.

1. Planning Grants shall not exceed 75% of the total first year proposed budget;
2. The Agency may award an Implementation Grant up to 50% of the project cost, but not to exceed $50,000.00;
3. No single grant shall excced $50,000.00.

D. Disbursement schedule.

Grant funds will be disbursed to the grantee according to invoices submitted on the following schedule:

1. 50% during the first month of the grant contract funding period;
2. 40% upon completion of half of the agreed-upon work program;
3. 10% upon completion of a satisfactory evaluation according to 6 MCAR § 2.2409.

E. Required reports.

The grantee shall submit to the Agency quarterly work progress reports in a format prescribed by the Agency. Reporting requirements will vary depending upon the scope of work proposed and approved by the Agency for funding. In addition, the grantee shall provide the Agency with three copies and a camera-copy of a grantee's final community energy plan.

F. Records.

The grantee shall maintain for a period of not less than three years from the date of the execution of the contract all records relating to the recipt and expenditure of grant monies.

G. Monitoring grant results.

As a condition of accepting a grant a grantee ~~will~~ shall be expected to:

1. Document on an annual basis the results of the grant program for a period of up to 3 years from the date of the execution of the contract (for example, energy savings, financial savings, or any other documentation related to the results of the grant), and,
2. Participate in at least one Agency workshop at which the grantee will present the results of the grant program.

H. Contract deviations.

1. No grant funds shall be used to finance activities by consultants or local staff not included in the grant contract, unless agreed upon in writing by the Agency.
2. Unless agreed upon by the grantee and the Agency it will not be permissible for 100% of all energy-related activities to be contracted out to consultants. ?

6 MCAR § 2.2409. Evaluation.

The Agency shall conduct a final evaluation within 60 days of the submission by the grantee to the Agency of final community energy plan ~~or~~ and all the required reports and financial documents. The evaluation shall assess:

~~A. Whether the local share contributed was equal to or greater than 25% of the total cost of a first year Planning Grant;~~

~~B. Whether the local share contributed was equal to or greater than 50% of an Implementation Grant;~~

~~C.~~ A. Whether the agreed-upon work program was completed;

~~D.~~ B. Whether the governing body has formally reviewed the completed energy plan.

Upon completion of a satisfactory evaluation the remaining 10% of the grant shall be disbursed to the grant recipient. If the results of the evaluation are unfavorable to the grantee and the grantee does not agree with the findings of the evaluation, the grantee may request a ~~hearing~~ review before the Agency.

EA-81-002-KR

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing the Community Energy Planning Grants Program.

REPORT OF THE HEARING EXAMINER

The above-entitled matter came on for hearing before Kent B. Roberts, duly appointed Hearing Examiner, on Monday, April 13, 1981, at 9:30 a.m. in the Fifth Floor Conference Room, Veterans Service Building, 20 West 12th Street, Saint Paul, Minnesota.

This is a rulemaking proceeding conducted pursuant to Minn. Stat. Ch. 15 to determine whether the Minnesota Energy Agency has authority to adopt the rules proposed and whether they are needed and reasonable.

Dwight Wagenius, Special Assistant Attorney General, 720 American Center Building, Saint Paul, Minnesota 55101, appeared as counsel for the Minnesota Energy Agency (hereinafter the "Agency"). In addition, appearing as a witness for the Agency was Jay Brunner, Grant Analyst, Minnesota Energy Agency, 980 American Center Building, 150 East Kellogg Boulevard, Saint Paul, Minnesota 55101.

There were two public appearances at the hearing and two persons signed the hearing register. The hearing continued throughout the morning until all persons had an opportunity to be heard. Subsequent to the hearing and prior to the expiration of the 20-day comment period, one Agency and one public comment were filed with the Office of Administrative Hearings.

Pursuant to Minn. Stat. § 15.0412, subd. 4d and 4e (1980), this Report shall be available for review to all affected individuals upon request for at least five working days. Thereafter, the Energy Agency shall, if it proposes to adopt the rule as recommended herein, submit the rule, together with the complete hearing record to the Attorney General and shall be responsible for notifying persons who have indicated that they wish to be notified of such filing. If the Energy Agency makes changes in the rule other than those recommended herein, it shall submit the rule with the complete hearing record to the Chief Hearing Examiner for a review of the changes prior to submitting it to the Attorney General for review.

Based upon all the testimony, exhibits, and written comments, the Hearing Examiner makes the following:

FINDINGS OF FACT

1. On February 20, 1981, the Agency filed the following documents with the Chief Hearing Examiner:

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

(d) A Statement of the number of persons expected to attend the hearing and estimated length of the Agency's presentation.

2. On March 9, 1981, more than 30 days prior to the hearing, a Notice of Hearing and a copy of the proposed rules were published at 5 State Register 1365-1371.

3. On March 10, 1981, more than 30 days prior to the hearing, the Agency mailed the Notice of Hearing to all persons and associations who had registered their names with the Agency for the purpose of receiving such notice.

4. On March 18, 1981, more than 25 days prior to the hearing, the Agency filed the following documents:

(a) The Notice of Hearing as mailed.
(b) The Agency's certification that its mailing list was accurate and complete.
(c) The Affidavit of Mailing of the Notice to all persons on the Agency's list.
(d) The Statement of Need and Reasonableness.
(e) The names of Agency personnel who will represent the Agency at the hearing together with the names of any other witnesses solicited by the Agency to appear on its behalf.
(f) A copy of the State Register containing the proposed rules.
(g) All materials received following a Notice of Intent to Solicit Outside Opinion published at 5 State Register 590-591 on October 6, 1980.

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

5. The record remained open through May 4, 1981, for the receipt of written comments and statements, the period having been extended by order of the Hearing Examiner to 20 calendar days following the hearing.

6. Minn. Stat. §§ 116H.08(a) and 116H.089 (1980) grant to the Agency statutory authority to adopt 6 MCAR §§ 2.2401-2.2409 as rules.

7. Many of the provisions and sections of the proposed rules were not commented on by the public, and this Report is generally limited to those that were. A detailed discussion of each section of the proposed rules is believed to be unnecessary on this record. Such an analysis is contained in the Statement of Need and Reasonableness submitted by the Agency. Sections not commented on in this Report are hereby found to be needed and reasonable and the Agency has documented this by an affirmative presentation of facts. With respect to the sections commented on in this Report, all of the concerns discussed on the record and in written comments have been carefully considered.

8. In response to comments from representatives from The Minnesota Project, the Lexington-Hamline Community Council and the University of Minnesota Center for Urban and Regional Affairs, the Agency proposed in its post-hearing comments to amend 6 MCAR § 2.2402 B. to read as follows:

> B. "Local unit of government", for purposes of applying for grants under this program, means a city, a county, or a combination of such units. ~~For purposes of the planning and implementation activities by a grant under this program,~~ local unit of government also includes those organizations which the local unit of government recognizes as capable of, and with which it may enter a contract for the purpose of, performing the authorized energy-related planning and implementation activities.

p. 2-1 except for lined-out language this portion inserted —

This amendment was made to permit greater flexibility in selecting organizations (such as neighborhood organizations) to become involved in both the

planning and the implementation phase of the energy grant program. This is a needed, reasonable and insubstantial amendment. Without this amendment, the rule would have been found to be unreasonable.

9. Section 2.2403 B. was amended by deleting the word "approved" and inserting therein the word "reviewed". This amendment is needed in that the Agency lacks statutory authority to "approve" community energy plans. The Agency only has the power to review such plans to determine whether they are consistent with the implementation projects. As amended, the rule complies with the limits of the Agency's statutory authority.

so amended p. 3-1

10. While 6 MCAR § 2.2403 C.1. is needed and reasonable as proposed, the Hearing Examiner suggests the following amendment for purposes of clarity:

1. Salaries or benefits for planning staff personnel.

The agency may in its discretion decide to make this change; however, it is not required to do so.

changed p. 3-1

11. As originally proposed in § 2.2403 C.7., planning grants would be available for the development of building codes. Under Minn. Stat. § 16.83, et seq. (1980), local units of government are prohibited from developing their own building codes. They can only adopt or reject the state building code, as provided by statute. The Agency made amendments to this rule by deleting the reference to the building code. As the rule now reads, it is both needed and reasonable.

C.8 also deleted. p. 3-2

12. Section 2.2403 E.2. and 3. provide local governments with financial resources to purchase energy efficient equipment and to construct energy recovery systems. The Minnesota Solar Resource Advisory Panel (MN/SRAP) recommended in prehearing comments that rather than financing equipment and construction, the grant monies should be used to pay for such things as financial analyses, economic feasibility studies, and bond prospectuses. The Agency responded in post-hearing comments by declining to make the suggested change because it believed that MN/SRAP's proposed amendments did not recognize the great differences that exist among local units of government in Minnesota. Significant differences in taxing and bonding capacity exist between larger cities and smaller cities. The rule, as proposed, while not providing a competitive advantage to a smaller unit of government, should encourage the smaller units to undertake capital expenditures which they might otherwise avoid or delay. The Agency believes, and the Examiner concurs, that § 2.2403 E.4. provides discretion to allow for the use of grant monies for such things as financial analyses and bond prospectuses. The Examiner finds that this rule, as originally proposed, has been demonstrated to be both needed and reasonable.

13. With respect to § 2.2404 A.2., MN/SRAP recommends that the first criterion should be the existence of an adopted comprehensive plan and capital improvement program. MN/SRAP believes that communities that have already made the investment in time and money to prepare, adopt and follow comprehensive plans are most likely to be able to successfully prepare and adopt and follow a community energy plan; and, furthermore, such communities would have the necessary experience in public participation, plan development, implementation techniques and program administration to assure that the energy planning grant

money is properly spent. The Agency disagrees that the first consideration should be the existence of an adopted comprehensive plan and a capital improvement plan. The Agency believes that the capability to plan varies dramatically from community to community throughout Minnesota. If the change is suggested by MN/SRAP were adopted, the large cities and metropolitan areas of the state would gain a competitive advantage over the smaller cities where no planning staff is maintained. If a local unit of government is placed at a competitive disadvantage because it lacks the sophistication of the larger communities, this penalty will only serve to continue a history of energy misuse and abuse. The Examiner believes that the rule as proposed, without the addition of an adopted comprehensive plan and capital improvement program, has been demonstrated to be both needed and reasonable.

14. There are other minor amendments made solely for purposes of clarification or proper grammar, which the Examiner has not commented on. Such amendments are needed, reasonable and insubstantial.

15. Persons or groups who do not find their particular comments addressed above should note that the Examiner has read and considered each and every suggestion. The Examiner finds that the Agency's proposed rules have been shown to be both needed and reasonable.

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

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

CONCLUSIONS

1. That the Agency gave proper notice of the hearing in this matter.

2. That the Agency has fulfilled the procedural requirements of Minn. Stat. § 15.0412, subd. 4-4f (1980) and all other procedural requirements of law or rule.

3. That the Agency has documented its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 15.0412, subd. 4e and 15.052, subd. 3(4)(i) and (ii) (1980).

4. That the Agency has documented the need for and reasonableness of its proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. § 15.0412, subd. 4c (1980).

5. That the additions and amendments to the proposed rules which were suggested by the Agency after publication of the proposed rules in the State Register do not result in rules which are substantially different from the proposed rules as published in the State Register within the meaning of Minn. Stat. § 15.0412, subd. 4d (1980) and 9 MCAR §§ 2.110 A. and 2.111 (1980 Ed.).

6. That any Findings which might properly be termed Conclusions and any Conclusions which might properly be termed Findings are hereby adopted as such.

7. That a finding or conclusion of need and reasonableness in regard to any particular rule subsection does not preclude, and should not discourage, the Agency from further modification of the proposed rules based upon an examination of the public comments, provided that no substantial change is made

from the proposed rules as originally published, and provided that the rule finally adopted is based upon facts appearing in this rule hearing record.

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

RECOMMENDATION

It is hereby recommended that the proposed rules be adopted.

Dated: June 2 , 1981.

Kent B Roberts

KENT B. ROBERTS
Hearing Examiner

STATE OF MINNESOTA)
(ss.
COUNTY OF RAMSEY)

EA-81-002-KR

AFFIDAVIT OF SERVICE

SUSAN WOJCIK, being first duly sworn, deposes and says that on the 2nd day of June, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Report of the Hearing Examiner

unstamped, by placing in the designated tray to be collected by messenger for delivery to the central mailing station as required by Minn. Stat. § 16.54 (1974), a true and correct copy thereof on all persons at the addresses shown on the attached mailing list.

Susan Wojcik

Subscribed and sworn to before me this
2nd day of June, 1981.

Sandra A. Haven

SANDRA A. HAVEN
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 29, 1983

Mr. Dwight Wagenius
Special Assistant
Attorney General
720 American Center Building
Saint Paul, Minnesota 55101

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Adoption of
Rules of the Minnesota Energy Agency
Governing the Community Energy Planning
Grants Program, 6 MCAR §§ 2.2401-2.2409.

ORDER
ADOPTING
RULES

The above-captioned matter came on for hearing before Hearing Examiner Kent B. Roberts on April 13, 1981, at 9:30 a.m. in the Fifth Floor Conference Room of the Veterans Service Building, Saint Paul, Minnesota pursuant to notice required by Minn. Stat. § 15.0412 being served upon all persons, associations, and other interested groups registered with the Minnesota Energy Agency for that purpose.

After affording interested persons an opportunity to present written and oral data, statements, and arguments, reviewing the testimony, considering the evidence adduced, and upon the records, files and proceedings herein and applicable statutory criteria, and confirming the need for and reasonableness of the above-entitled rules,

NOW, THEREFORE, IT IS ORDERED that the Rules of the Minnesota Energy Agency Governing the Community Energy Planning Grants Program are adopted this tenth day of June 1981, pursuant to authority vested in me by Minn. Stat. §§ 116H.08(a) and 116H.089.

Mark Mason
Director

Exhibit No. ●
File No. EA-81-002-KR
Date

RECEIVED
1 8 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing the Community Energy Planning Grants Program, 6 MCAR §§ 2.2401-2.2409.

NOTICE OF HEARING

Notice is hereby given that the public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1980) in the Fifth Floor Conference Room Verterans Service Building, 20 West 12th Street, Saint Paul, Minnesota on April 13, 1981, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard. 1

All interested or affected persons will have the opportunity to participate. Statements may be made orally and written material may be submitted at the hearing. In addition, written materials may be submitted by mail to: Kent Roberts, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, MN 55104 (612)296-8112. Unless a longer period not to exceed twenty calendar days is ordered by the Hearing Examiner at the hearing, the record will remian open for the inclusion of written material for five (5) working days after the hearing ends. The proposed rules are subject to change as a result of the rules hearing process. The Agency therefore strongly urges those who may be affected in any manner by the substance of the proposed rules applicable to this hearing to participate in the rules hearing process. 2 5a 7a 7b 5b

The proposed rules, if adopted, would guide the Energy Agency in the administration and distribution of Community Energy Planning Grants to cities and counties. The subjects of the rules include: authority and purpose; definitions; applicability; application procedures, timing and due dates; project notification and review; application review and priority setting; final application format, content and due date; funding periods; contracts; disbursement schedules; evaluation and monitoring; use of funds; records; and deviations. 3a

The Agency's authority to promulgate the proposed rules is contained in Minn. Stat. §§ 116H.089 and 116H.08(a) (1980). 4

Copies of the proposed rules are now available and one free copy may be obtained by writing to or calling the Minnesota Energy Agency, Attention: Jay Brunner, 980 American Center Building, 150 E. Kellogg Blvd., St. Paul, Minnesota 55101--(612)297-3562. Copies will also be available at the door on the date of the hearing. 3b

Minn. Stat. Ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he/she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual: 6

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five (5) hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

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

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

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the Agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the Agency. If you desire to be notified, you may so indicate at the public hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report) or to the Agency (in the case of the Agency's submission or resubmission to the Attorney General). 8

Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will be available for review at the Agency and at the Office of Administrative Hearings. This Statement of Need and Reasonableness will include a summary of all the evidence and argument which the Agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Administrative Hearing at a minimal charge. 9

The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.417 and 15.052 (1980) and by 9 MCAR §§ 2.101-2.113. Any questions regarding the procedures may be directed to the Hearing Examiner. 11

2-18-81

Date

Mark Mason, Director

RECEIVED
MAR 18 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing the Community Energy Planning Grants Program, 6 MCAR §§ 2.2401-2.2409.

ORDER FOR HEARING

IT IS HEREBY ORDERED that a public hearing on the above-captioned proposed rules be held in the Fifth Floor Conference Room, Veterans Service Building, 20 West 12th Street, St. Paul, Minnesota on April 13, 1981, commencing at 9:30 a.m. and continuing until all persons have had the opportunity to he heard.

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

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

Mark Mason, Director
Minnesota Energy Agency

2-16-81
Date

Exhibit No. _____

File No. _____

Date _____

Exhibit No. _____

File No. _____

Date _____

STATE OF MINNNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed
Adoption of Rules of the Minnesota
Energy Agency Governing the Community
Energy Planning Grants Program, 6
MECS §§ 2.2401-2.2409.

AFFIDAVIT
OF MAILING

STATE OF MINNESOTA)

COUNTY OF RAMSEY)

Jodie Nelson, being duly sworn, deposes and says:

That on the 10 day of March, 1981 at the City of Saint Paul, County of Ramsey, State of Minnesota she/he served the attached Notice of Hearing by depositing in the State of Minnesota Central Mail System for Inter-Office distribution or in the United States mail at said City of Saint Paul a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be places on file with the Minnesota Energy Agency for the purpose of receiving notice of the proposed adoption of rules by the Agency.

Jodie Nelson

Subscribed and sworn to before
me this 10th day of March, 1981.

Karla V. Sand

KARLA V. SAND
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Commission Expires Jan. 26, 1986.

Exhibit No. _____

File No. _____

Date _____

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Rules of the Minnesota Energy Agency Governing the Community Energy Planning Grants Program 6 MCAR §§ 2.401-2.2409.

MAILING LIST CERTIFICATE

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the Minnesota Energy Agency for the purpose of receiving notice of the proposed adoption of rules by this Agency is accurate and complete as of 10:00 a.m., this 25th day of February 1981.

Nancy G. Hall

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Adoption of
Rules of the Minnesota Energy Agency
Governing the Community Energy Planning
Grants Program, 6 MCAR §§ 2.2401-2.2409.

FINDINGS OF FACT
AND CONCLUSIONS

The above-captioned matter came on for hearing before Hearing Examiner Kent B. Roberts on April 13, 1981, at 9:30 a.m. in the Veterans Service Building, Saint Paul, Minnesota, after proper notice as required by Minn. Stat. § 15.0412.

After giving interested persons an opportunity to present written and oral data, statements and arguments, and having reviewed the record of the proceedings herein, I make the following

FINDINGS OF FACT

The Hearing Examiner performed a thorough and competent review of the proposed rules and the submissions of the Agency and other interested persons. His Findings are adopted as the Findings of the Director.

Based upon the Findings, the Director makes the following

CONCLUSIONS

The Hearing Examiner's Conclusions are fully supported by the Findings of Fact and the record. They are adopted as the Findings of the Director.

Based upon the whole record and the Findings and Conclusions, the Director makes the following

DECISION

The proposed rules governing the Community Energy Planning Grants Program, as recommended for adoption by the Hearing Examiner, are adopted as rules of the Minnesota Energy Agency in a separate Order Adopting Rules.

Date: June 10, 1981

MINNESOTA ENERGY AGENCY

By _____
Mark Mason
Director

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Adoption of Rules of the Minnesota Energy Agency Governing the Community Energy Planning Grants Program, 6 MCAR §§ 2.2401-2.2409.

STATEMENT OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Special Assistant Attorney General Dwight S. Wagenius, do hereby declare that I have examined the rules and all related documents and that, based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed.

Dated: June ~~16~~ 17, 1981.

Dwight S. Wagenius

Special Assistant
Attorney General

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Adoption of Rules of the Minnesota Energy Agency Governing the Community Energy Planning Grants Program, 6 MCAR §§ 2.2401-2.2409.

AFFIDAVIT OF MAILING NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Jay A. Brunner being first duly sworn, deposes and says:

That on the 11th of June, 1981, in the City of St. Paul, County of Ramsey, State of Minnesota, he deposited in the State of Minnesota Central Mail System for first class mailing (or) in the United Sates mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached list of persons who requested notice that the hearing record has been submitted to the Attorney General.

Jay A. Brunner

Subscribed and sworn to before me
this 11th day of June, 1981.

Cecilia J. Loughrey

CECILIA J. LOUGHREY
NOTARY PUBLIC—MINNESOTA
RAMSEY COUNTY
My Comm. Expires July 18, 1987

STATE OF MINNNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Adoption of
Rules of the Minnesota Energy Agency
Governing the Community Energy Planning
Grants Program, 6 MCAR §§ 2.2401-2.2409.

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 date, June 10, 1981, for review as to form and legality. Pursuant to 1 MCAR § 1.206 C., the Attorney General will retain the rules for at least ten calendar days after receipt to allow any person or association to comment on the legality of the rules, after which that Office will conduct 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, Saint 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 the hearing and before submission to the Attorney General you may contact Minnesota Energy Agency, c/o Jay Brunner 980 American Center Building, 150 E. Kellogg Blvd., Saint Paul, Minnesota, telephone (612) 297-3562.

_____

STATE REGISTER

STATE OF MINNESOTA

Exhibit No. _____

File No. _____

Date _____



VOLUME 5, NUMBER 36

March 9, 1981

Pages 1359-1426

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		
37	Monday Mar 2	Monday Mar 9	Monday Mar 16
38	Monday Mar 9	Monday Mar 16	Monday Mar 23
39	Monday Mar 16	Monday Mar 23	Monday Mar 30
40	Monday Mar 23	Monday Mar 30	Monday Apr 6

*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

James J. Hiniker, Jr.
Commissioner
Department of Administration

Stephen A. Ordahl
Director
State Register and
Public Documents Division

Carol Anderson Porter
Editor

Paul Hoffman, Robin PanLener
Editorial Staff

Roy Schmidtke
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Cindy Peterson
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David Zunker
Information Officer

Cover graphic: *Minnesota State Capitol*, ink drawing by Ric James.

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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
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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.

State Board of Education
Department of Education
Department of Public Safety

Proposed Amendment of Rules of the State Board of Education and of the Department of Public Safety Governing the Physical Examination of School Bus Drivers

Notice of Intent to Adopt Rules without A Public Hearing

Notice is hereby given that the State Board of Education and the Department of Public Safety is proposing to adopt, without a public hearing, rules relating to new requirements for tuberculosis test as a prerequisite for obtaining or renewing a school bus driver license endorsement. The State Board of Education and the Department of Public Safety proposes to require a satisfactory Mantoux or chest X-ray upon first application for a school bus driver license endorsement and thereafter only upon exposure to an active tuberculosis case. This requirement will conform with the recently adopted Health Department rules (7 MCAR §§ 1.327-1.328) relating to requirements for tuberculosis testing for employees of school districts, private and parochial schools, and day care centers. The Department of Education and the Commissioner of Public Safety has determined that the

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proposed adoption of these rules will be noncontroversial and has elected to follow procedures set forth in Minn. Stat. § 15.0412, subdivision 4h (1980).

The State Board of Education and the Department of Public Safety's authority to adopt the proposed rules is contained in Minn. Stat. § 171.321. A Statement of Need and Reasonableness is available for review at the Department of Education and at the Department of Public Safety. This Statement of Need and Reasonableness contains a justification in support of the rules and the rationale justifying the need for the proposed rules and their reasonableness.

All persons interested in these rules shall have 30 days from the date of this notice to submit comments on the proposed rules. The rules may be modified prior to final adoption if supported by data and views submitted during the 30-day period and do not result in substantial changes in the proposed language. Any person may request notification of the date on which the proposed rules, this Notice, the Statement of Need and Reasonableness, all public comments and the rules as adopted are submitted to the Attorney General for final review by writing to the addresses shown below. The Attorney General shall approve or disapprove the rules as to form and legality and determine whether a substantial change has been made in the rules to be adopted.

Within the 30-day period any person may make a written request for a public hearing on any of the rules. The written request must be specific on which rule(s) a hearing is desired; and identification of the particular objection, the suggested modifications, and the reasons or data relied upon to support the suggested modifications is desired. If seven or more persons make a written request for a hearing on any of the rules, a public hearing will be held according to the provisions of Minn. Stat. § 15.0412, subdivision 4-4f.

Persons wishing to make written comments on these rules or make a written request for a public hearing on any of these rules may address their correspondence to:

Diane Hamilton
Department of Public Safety
211 Transportation Building
St. Paul, Minnesota 55155

Gerald Pavek, Director
Pupil Transportation
Department of Education
550 Cedar Street
St. Paul, Minnesota 55101

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within 5 days after he or she commences lobbying. Minn. Stat. § 10A.01, subd. 11 (1980), defines a lobbyist as any individual engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or who spends more than $250, not including his own travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

A copy of the proposed rule is attached to this Notice.

February 12, 1981

John P. Sopsic
Commissioner of Public Safety

February 12, 1981

Howard B. Casmey
Secretary

Amendments as Proposed

[The State Board of Education rule 5 MCAR § 1.0222 B. (EDU 222) Physical examination., and the Department of Public Safety rule 11 MCAR § 1.0082 B. Physical examination., are identical. These rules are going to be amended to read as follows:]

5 MCAR § 1.0222 ~~EDU 222~~ and 11 MCAR § 1.0082

B. Any school bus driver applicant, whose physical examination discloses communicable diseases or mental or physical conditions of intermittent or continuing nature that might reasonably affect his ability to operate a school bus, shall be denied a school bus driver's endorsement. One or more of the following deficiencies will disqualify the applicant for a school bus driver's endorsement.

1. Eyesight. Visual acuity less than 20/40 (Snellen) in either eye without lenses or by correction with lenses; total form field of vision in the horizontal meridian less than 140 degrees in either eye (drivers requiring correction by lenses shall wear properly prescribed lenses at all times when driving).

2. Hearing. Hearing less than 30 db (10/20) in the better ear, with or without a hearing aid.

3. Inebriates or users of narcotics or drugs which may impair driving ability.

4. Coronary disease. Any indication of coronary or heart ailment likely to interfere with safe driving. Electrocardiogram is required when other findings indicate desirability.

5. Blood pressure over 160/90.

6. Lungs. Failure to have a satisfactory Mantoux and chest x-ray ~~within the past six months~~ as required by Minnesota Health Department rule 7 MCAR §§ 1.327-1.328.

7. Any communicable disease as listed in Minnesota Health Department ~~regulations~~ rules ~~10795~~ 7 MCAR § 1.316 and ~~10812~~ 7 MCAR § 1.326. ~~(As recoded.)~~

8. Loss of foot, leg, hand or arm, or other structural defect or limitation of movement likely to interfere with safe driving.

9. Any mental, nervous, organic, or functional disease likely to interfere with safe driving.

10. Diabetes unless controlled by diet only.

11. Epilepsy or other episodic (Paroxysmal) periods of unconsciousness (not accepted).

12. Use of any medication which the examining physician determines is likely to interfere with safe driving.

13. Applicant not of good general health.

Energy Agency Conservation Division

Proposed Rules for the Administration and Distribution of Community Energy Planning Grants

Notice is hereby given that the public hearing in the above-entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1980) in the Fifth Floor Conference Room, Veterans Service Building, 20 West 12th Street, Saint Paul, Minnesota on April 13, 1981, commencing at 9:30 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have the opportunity to participate. Statements may be made orally and written material may be submitted at the hearing. In addition, written materials may be submitted by mail to: Kent Roberts, Office of Hearing Examiner. Room 300, 1745 University Avenue, St. Paul, MN 55104 (612) 296-8112. Unless a longer period not to exceed twenty calendar days is ordered by the hearing examiner at the hearing, the record will remain open for the inclusion of written material for five (5) working days after the hearing ends. The proposed rules are subject to change as a result of the rules hearing process. The agency therefore strongly urges those who may be affected in any manner by the substance of the proposed rules to be considered in this hearing to participate in the rules hearing process.

The proposed rules, if adopted, would guide the Energy Agency in the administration and distribution of Community Energy Planning Grants to cities and counties. The subjects of the rules include: authority and purpose; definitions; applicability; application procedures, timing and due dates; project notification and review; application review and priority setting; final application format, content and due date; funding periods; contracts; disbursement schedules; evaluation and monitoring; use of funds; records; and deviations.

The agency's authority to promulgate the proposed rules is contained in Minn. Stat. §§ 116H.089 and 116H.08(a) (1980).

Copies of the proposed rules are now available and one free copy may be obtained by writing to or calling the Minnesota Energy Agency, Attention: Jay Brunner, 980 American Center Building, 150 E. Kellogg Boulevard, St. Paul, Minnesota 55101, (612) 297-3562. Copies will also be available at the door on the date of the hearing.

Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he/she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends

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more than five (5) hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

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

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

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the agency may not take any final action on the rules for a period of five (5) working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the agency. If you desire to be notified, you may so indicate at the public hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the Hearing Examiner's Report) or to the agency (in the case of the agency's submission or resubmission to the Attorney General).

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

The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052 (1980) and by 9 MCAR §§ 2.101-2.113. Any questions regarding the procedures may be directed to the Hearing Examiner.

February 23, 1981

Mark Mason, Director

Rules as Proposed (all new material)

6 MCAR § 2.2401 Authority and purpose.

A. Authority. Rules 6 MCAR §§ 2.2401-2.2409 implementing the Community Energy Planning Grants Program are promulgated by the agency pursuant to Minn. Stat. § 116H.089 (1980).

B. Purpose. It is the purpose of the Community Energy Planning Grants Program to improve the energy planning capabilities of local governments, to conserve traditional energy sources, to develop renewable energy systems and to broaden community involvement in the energy planning process. These rules set forth criteria and procedures for providing state assistance to counties and cities, however organized.

C. Limitation. No more than forty-five percent (45%) of the amount appropriated for Community Energy Planning Grants shall be distributed to counties and cities within the seven-county metropolitan area defined in Minn. Stat. § 473.121, subd. 2 (1980).

6 MCAR § 2.2402 Definitions. The following terms used in these rules shall have the following meanings.

A. "Agency" means the Minnesota Energy Agency.

B. "Local unit of government" means a city, a county or a combination of such units. A city of the first class may apply for a grant to assist a neighborhood organization to do energy-related planning and implementation activities.

C. "Neighborhood organizations" means those organizations recognized by the city government for planning and development purposes in areas whose boundaries are officially determined by the city.

D. "Clearinghouse" means that governmental unit which has authority to review requests for state and federal aid for local units of government within its jurisdiction.

In the seven-county metropolitan area this review authority is the Metropolitan Council under Minn. Stat. § 473.171, subd. 2 (1980).

The review authority for the remainder of the state is the appropriate Regional Development Commission under Minn. Stat. § 462.391, subd. 3 (1980).

E. "In-kind" means:

1. Salary and cost of fringe benefits of the grant recipient staff working on activities funded by the grant.
2. Increases in overhead resulting from carrying out activities funded by the grant.

6 MCAR § 2.2403 Types of grants. There shall be two types of grants made to local units of government: Community Energy Planning Grants and Community Energy Plan Implementation Grants.

A. Community Energy Planning Grants. Planning Grants shall be used for developing local energy plans relating to such issues as, but not limited to: citywide or countywide conservation; use of renewable resources through technologies currently available; conservation of energy used in buildings owned by the local unit of government, of energy used for building and street lighting, and of energy used in building space heating and cooling; and energy considerations in traffic management, in land use planning, in capital improvement programming/budgeting, in municipal operating budgets, and in economic development plans.

B. Community Energy Plan Implementation Grants. Implementation Grants shall be used for purposes of implementing all or portions of a local community energy plan. Local units of government may apply for implementation grants whether or not the community energy plan was prepared under the Community Energy Planning Grant Program, provided the community energy plan has been submitted to and approved by the Agency.

C. The following activities or expenditures are eligible for Planning Grants:

1. Planning staff personnel, salaries, or benefits;
2. Data collection or analysis or both;
3. Development of local energy documents including plans;
4. Modification of capital improvement programs for energy-related projects;
5. Development of energy-conscious fleet management systems, transportation plans, intergovernmental plans;
6. Development of budgetary or fiscal systems which significantly address energy costs;
7. Development of zoning, subdivision and building codes for supplements or amendments relating to energy;
8. Housing code development for energy-related elements;
9. Any other activities which carry out the purpose of the program as expressed in rule 2.2401 B.

D. The following activities or expenditures are ineligible for Planning Grants:

1. Non-energy related issues;
2. Repayment of revenue to local units of government for energy activities previously undertaken;
3. Out-of-state travel, unless specifically approved in a contract between the grantee and the agency.

E. The following activities or expenditures are eligible for Implementation Grants:

1. Detailed drawings, architectural drawings, site designs, engineering specifications;
2. Equipment purchases directly affecting energy recovery, conservation or production;
3. Construction of energy production or energy recovery systems;
4. Any other activities which carry out the purpose of the program as expressed in rule 2.2401 B.

F. The following activities or expenditures are ineligible for Implementation Grants:

1. Non-energy related projects;
2. Property acquisition (real property);
3. Personnel for continued operation of energy conservation, production or recovery facilities beyond the first year of an Implementation Grant.

6 MCAR § 2.2404 Evaluation of preliminary applications.

A. Planning Grants. Preliminary applications which satisfy all eligibility requirements shall be evaluated in a two step process: general criterion and planning function criteria.

1. General criterion. Planning Grant applications which address the greatest number of the following considerations will be given priority over Planning Grant applications which address a lesser number of the following considerations.

a. Programs designed to result in significant savings of traditional energy sources;

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b. Programs designed to assist in the development of renewable energy systems;

c. Programs which encourage broad community involvement in addressing and solving energy problems encountered by local citizens and local units of government;

d. Programs that show a significant degree of transferability to similar units of government;

e. Local-unit-of-government programs which include the provision of local resources or other types of support to address energy problems and to undertake energy planning for the local unit of government.

2. Planning function evaluation. Applications achieving similar priority ranking based on the general criterion stated in rule 2.2404 A. 1. will be evaluated for purposes of funding on the basis of the following criteria:

a. Comprehensiveness of plan elements, such as: potential effects on residential, industrial, municipal and county programs;

b. Ability of the local unit of government's plan to affect energy consumption through the use of tools, such as: codes, ordinances, legal instruments;

c. Use of renewables, such as: solar, wind, biomass, hydropower;

d. Cost-effectiveness;

e. Public participation efforts, such as: neighborhood energy committees, governmental energy committees;

f. Private sector participation such as: financial leverage, van pools, staff or financial contributions;

g. Transferability, as shown by the appropriateness of other units of government utilizing all or parts of a planning process or the results of that plan or process.

B. Implementation Grants. Evaluation of preliminary applications: Preliminary applications which satisfy all eligibility requirements shall be evaluated in a two-step process: general criterion and implementation function criteria.

1. General criterion. Implementation Grant applications which address the greatest number of the following considerations will be given priority over Implementation Grant applications which address a lesser number of the following considerations:

a. Applications with programs designed to result in significant savings of traditional energy sources;

b. Programs designed to assist in the development of renewable energy systems;

c. Programs which encourage broad community involvement in addressing and solving energy problems encountered by local citizens and local units of government;

d. Programs that show a significant degree of transferability to similar units of government;

e. Local-unit-of-government programs which include the provision of local resources or other types of support to address energy problems and to undertake energy production and/or conservation in the local unit of government.

2. Implementation grant evaluation. Application achieving similar priority ranking based on the general criterion stated in rule 2.2404 B.1. will be evaluated for purposes of funding on the basis of the following criteria.

a. The proposed project must be technically feasible:

(1) Degree to which the project meets scientifically accepted laws.

(2) Degree to which the project increases or enhances the state of the art.

b. The project must be economically viable:

(1) The budget is adequate to complete the proposed project.

(2) The estimated cost of the energy produced or conserved as a result of this project, including all research, development and production costs, and excluding research and development costs.

c. The applicant must be capable of successfully conducting the project.

(1) Level of education, or experience in conducting similar project implementation.

(2) Awareness of other or similar projects or related studies from which the applicant may obtain assistance.

d. The applicant must show that economic benefits may result from this project.

(1) Savings resulting from conservation.

(2) Job creation.

e. The proposal must demonstrate a significant degree of transferability.

f. The applicant must show that the proposal complies with local, state and/or federal requirements (environmental, zoning, health).

6 MCAR § 2.2405 General application procedure.

A. The approval process for Planning Grants and Implementation Grants has three stages: preliminary application, final application, and contract execution.

B. Joint applications may be submitted by two or more local units of government which are encountering energy-related problems for which it appears joint consideration of problems is possible, preferable and appropriate. In addition to complying with rule 6 MCAR § 2.2406 regarding application contents, joint applicants shall also designate a lead applicant and include their authority for joint application in the form of resolutions, joint powers agreement, or other.

C. The preliminary application or a notice of preapplication shall be submitted to the appropriate clearinghouse for review and comment at least 45 days prior to the date applications are due at the agency. The clearinghouse may waive this review requirement. Written evidence of the clearinghouse waiver shall be included in preliminary applications submitted directly to the agency. Failure of the clearinghouse to conduct its review within 45 days shall be considered as approval of the application by the clearinghouse, unless both the applicant and the clearinghouse agree to extend the review period for an agreed-upon time period. Upon receipt of the clearinghouse review comments the applicant shall submit the preliminary application together with the clearinghouse comments to the agency on or before the due date. Each clearinghouse must submit to the agency a list of all applications reviewed during a particular funding cycle. The timetable in this rule shall apply to all grant cycles after the first cycle. During the first cycle simultaneous submission to both the agency and the clearinghouse shall be permitted.

D. The agency shall have thirty days after the preliminary application due date to review preliminary applications. Incomplete or ineligible applications will be returned to the applicant with a written statement of reasons for rejection.

6 MCAR § 2.2406 Preliminary application.

A. A preliminary application shall be submitted to the agency for purposes of determining eligibility and priority for funding. The preliminary application shall be in a form and manner prescribed by the Agency and shall contain the information required by the rules, including but not limited to the following: name of community(s), demographic data, previous community planning efforts, descriptions of community services, statement of intended results, identification of amount and source of local share, total estimated program cost, and a copy of a resolution authorizing submission of the application to the agency.

B. Preliminary applications shall be submitted semi-annually not later than February 1 and August 1, except that during calendar year 1981, the due date for preliminary applications shall be 90 days after these rules become effective.

6 MCAR § 2.2407 Final application.

A. A final application may be submitted only by applicants which have received a letter of notification authorizing submission of a final application. Final applications must be received by the agency no later than 45 days after the date of the letter of notification. The format for final applications is set out in rule 6 MCAR § 2.2407 B. Final applications will be reviewed for completeness and compliance with the rules of this program. Incomplete applications or applications which differ substantially from preliminary applications will not be granted and a written statement citing the reasons for rejection will be provided to the applicant. Eligible final applications will be funded based on the priorities of this program and the availability of grant funds. Receipt of a letter of notification is not a guarantee that a grant will be made to the submitter of a final application. A grant award shall be made by contract as set out in rule 6 MCAR § 2.2408.

B. The final application shall contain at least the following elements:

1. A work program/schedule which contains the following:

a. A statement of the existing or emerging energy problem(s) which are to be investigated with the grant. This statement should identify how the problem(s) are affecting or will affect the applicant and the means the recipient is planning to use to alleviate the problem(s).

b. A description of the activities which the grant makes possible. The description of activities should identify the expected results and/or products and should be in sufficient detail to enable the Agency to measure progress and to identify the

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person responsibile for the completion of each activity. The description should include expected completion dates, by particular activity. Each work element should be assigned to a specific staff member or consultant.

c. A statement identifying the way in which the grant will improve the governing body's capability to address local energy problems and a schedule indicating when and how this will be accomplished.

2. Designation of a lead applicant. The grant applicant shall designate a lead applicant, agency, organization or individual who will be responsible for completion of the agreed-upon work program.

3. Local share. A detailed statement identifying the source(s) and amount of the local share. The local share may be in cash or in-kind or a combination of cash and in-kind.

4. Signature/resolution. The application shall be submitted to the agency only if accompanied by a resolution passed at an official meeting of the governing body and signed by the authorized person.

6 MCAR § 2.2408 Grant contract.

A. The final step in the awarding of a Planning Grant or an Implementation Grant is execution of a grant contract. The grant contract shall be based upon the final application. The contract shall specify the amount of the grant to the recipient and the duration of the grant. The contract shall include assurance that the local share will be provided and that the agreed-upon work program will be carried out. A grant contract based upon a joint application will be executed by the lead applicant. Amendments may only be made in writing signed by both parties. Extensions must be justified in writing. Planning grant extensions shall not exceed 90 days. Implementation grant extensions will be based on the scope of work remaining and a reasonable period in which to complete all work.

B. Funding period. Grants will be funded for the following periods.

1. Planning Grants will be approved for a period of up to one year.

2. Implementation Grants will be approved for a period to be agreed upon by the grantee and the agency and specified in the contract, based upon the scope of the implementation activities funded and a reasonable work schedule, or timetable.

C. Grant ratios.

1. Planning Grants shall not exceed 75% of the total first year proposed budget;

2. The agency may award an Implementation Grant up to 50% of the project cost, but not to exceed $50,000.00;

3. No single grant shall exceed $50,000.00.

D. Disbursement schedule. Grant funds will be disbursed to the grantee according to invoices submitted on the following schedule:

1. 50% during the first month of the grant contract funding period;

2. 40% upon completion of half of the agreed-upon work program;

3. 10% upon completion of a satisfactory evaluation according to 6 MCAR § 2.2409.

E. Required reports. The grantee shall submit to the agency quarterly work progress reports in a format prescribed by the Agency. Reporting requirements will vary depending upon the scope of work proposed and approved by the agency for funding. In addition, the grantee shall provide the agency with three copies and a camera-ready copy of a grantee's final community energy plan.

F. Records. The grantee shall maintain for a period of not less than three years all records relating to the receipt and expenditure of grant monies.

G. Monitoring grant results. As a condition of accepting a grant a grantee will be expected to:

1. Document on an annual basis the results of the grant program for a period of up to 3 years (for example, energy savings, financial savings, or any other documentation related to the results of the grant);

2. Participate in at least one agency workshop at which the grantee will present the results of the grant program.

H. Contract deviations.

1. No grant funds shall be used to finance activities by consultants or local staff not included in the grant contract, unless agreed upon in writing by the agency.

2. Unless agreed upon by the grantee and the agency it will not be permissible for 100% of all energy-related activities to be contracted out to consultants.

6 MCAR § 2.2409 Evaluation. The agency shall conduct a final evaluation of grant work performance within 60 days of the submission by the grantee to the agency of a final community energy plan or all the required reports and financial documents. The evaluation shall assess:

A. Whether the local share contributed was equal to or greater than 25% of the total cost of a first year Planning Grant;

B. Whether the local share contributed was equal to or greater than 50% of an Implementation Grant;

C. Whether the agreed-upon work program was completed;

D. Whether the governing body has formally reviewed the energy plan.

Upon completion of a satisfactory evaluation the remaining 10% of the grant shall be disbursed to the grant recipient. If the results of the evaluation are unfavorable to the grantee and the grantee does not agree with the findings of the evaluation, the grantee may request a hearing before the agency.

Energy Agency
Data and Analysis Division

Notice of Intent to Solicit Outside Opinions Regarding Rules Governing The Minnesota Emergency Motor Fuel Conservation Plan

Notice is hereby given that the Minnesota Energy Agency is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing the State Emergency Motor Fuel Plan and those measures therein which describe the actions to be taken by the state prior to, and in response to, an energy supply emergency for motor fuel. The promulgation of these rules is authorized by Minn. Stat. § 116H.09, subds. 2, 3 and 4 (1980), which requires the agency to promulgate rules for revisions to the Energy Supply Emergency Conservation and Allocation Plan.

The agency requests information and comments generally concerning the subject matter of the rules, and specifically on a set of draft rules which appears below. Interested or affected persons or groups may submit statements of information or comment in writing. Written statements and requests for the draft rules should be addressed to David Miller, Emergency Rules Analyst, Minnesota Energy Agency, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.

Statements of information and comment shall be accepted until April 24, 1981. Any written material received by the agency shall become part of the record when the rules are promulgated.

Emergency Motor Fuel Conservation Rules governing the procedures and measures to be used to reduce demand and increase supply of motor fuel during an Energy Supply Emergency.

6 MCAR § 2.3120 Authority. These rules are authorized by Minn. Stat. § 116H.09 (1980). These rules will also meet, in part, the federal requirements set forth in the Emergency Energy Conservation Act of 1979, Pub. L. 96-102, 42 U.S.C. 8511-8541 (1979).

6 MCAR § 2.3121 Purpose. The main purpose of these rules is to identify those measures and actions to be employed in the event of a motor fuel supply emergency. The further purposes of these rules are: To facilitate the distribution of supplies to first priority users so that they have sufficient motor fuel to conduct necessary transportation; to facilitate the distribution of supplies to the public in a fair and equitable manner; to identify and authorize the actions to be undertaken by government agencies in a declared energy supply emergency; to describe and delineate the activities and responsibilities of major employers and school district authorities in motor fuel emergency planning and implementation; to establish an appeals system and procedures whereby exemptions may be determined and exceptions to imposed measures granted to persons during an energy supply emergency; and to create the authority for the State Executive to provide for the public health, safety, and welfare during an energy supply emergency.

6 MCAR § 2.3122 Applicability of rules. These rules shall apply:

A. generally, during a declared Energy Supply Emergency for motor fuel (see 6 MCAR § 2.3125);

B. generally, during a declared Energy Supply Alert for motor fuel (see 6 MCAR § 2.3124);

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C. to the Minnesota Energy Agency when the agency is preparing to recommend that an Energy Supply Alert for motor fuel or an Energy Supply Emergency for motor fuel be declared.

6 MCAR § 2.3123 Definitions. For purposes of these rules, the following definitions shall apply:

A. "Agency" means the Minnesota Energy Agency.

B. "Agriculture" means all the activities classified under the industry code numbers specified in paragraph 1 below as set forth in the Standard Industrial Classification Manual, 1972 edition, except those industry code numbers listed in paragraph 2 which are excluded:

1. Activities included:

a. All industry code numbers included in Division A, Agriculture, Forestry and Fishing, except as specified in paragraph 2 of this section;

b. All industry code numbers included in Major Group 20, Food and Kindred Products, of Division D, Manufacturing, including grain and seed drying, except as specified in paragraph 2 below; and

c. All the following other industry code numbers:

1474 Potash, Soda and Borate Mineral (Potash mining only);

1475 Phosphate Rock;

2141 Tobacco Stemming and Redrying;

2411 Logging Camps and Logging Contractors;

2421 Sawmills and Planing Mills;

2819 Industrial Inorganic Chemicals, Not Elsewhere Classified (dicalcium phosphate only);

2873 Nitrogenous Fertilizers;

2874 Phosphatic Fertilizers;

2875 Fertilizers, Mixing Only;

2879 Pesticides and Agricultural Chemicals Not Elsewhere Classified;

4212 Local Trucking Without Storage (Farm to market hauling and log trucking only);

4971 Irrigation Systems (for farm use); and

5462 Retail Bakeries, Baking and Selling.

2. Activities excluded: All the following industry code numbers otherwise listed under Division A, Agriculture, Forestry and Fishing, are excluded from the definition:

0271 Fur-Bearing Animals and Rabbits (except rabbit farms which are included in the definition);

0279 Animal Specialties, Not Elsewhere Classified, (except apiaries, honey production and bee, catfish, fish, frog and trout farms which are included in the definition);

0742 Veterinary Services for Animal Specialties;

0752 Animal Specialty Services;

0781 Landscape Counseling and Planning;

0782 Lawn and Garden Services; and

0849 Gathering of Forest Products, Not Elsewhere Classified;

C. "Baseline consumption" means the reasonable estimate of the amount of motor fuel consumed by employees or students in commuting to and from the worksite plus the amount of motor fuel consumed for a school's or an employer's travel, over a period which represents the normal or standard level of operation. The preceding year's consumption or the most recent 3-year average will be a representative period for purposes of these rules.

D. "Cargo, freight and mail hauling by truck, including newspaper deliveries means all of the following:

1. Motor carriers for hire operating under the authority of Minn. Stat. §§ 221.011 to 221.791 and subject to the rules or orders of the Commissioner of Transporation or the Public Utilities Commission of Minnesota,

2. Mail hauling by any motor vehicle owned and operated by the U.S. Postal Service, and

3. Newspaper delivery by motor vehicle identified as a newspaper carrier;

E. "Carpool" means a continuing travel arrangement by which two or more persons travel together in a vehicle owned or rented by one or more of such persons.

F. "Carpool program" means a program undertaken by an employer either alone or in cooperation with a group of employers which matches commuting employees so that they may commute together.

G. "Company-owned vehicles" means passenger automobiles, vans, and light trucks, owned or leased by the employer.

H. "Consumer" means any person that consumes motor fuel whether diesel, gasoline, propane or alcohol.

I. "County and/or municipal fuel coordinator" means any person who has been appointed by the county board or city council to act as local fuel allocation resource person.

J. "Demand" means that quantity of products or services for which there are willing and able purchasers.

K. "Division" means the Division of Emergency Services of the Department of Public Safety.

L. "Electric utility" means any entity engaged in the generation, transmission, or distribution of electric energy for sale.

M. "Emergency services vehicle" means any of the following vehicles when equipped and identified according to law:

1. a vehicle of a fire department;

2. a publicly-owned police vehicle or a privately-owned vehicle used by a police officer for police work under agreement, express or implied, with the local authority to which he is responsible;

3. a vehicle of a licensed emergency ambulance service, whether publicly or privately owned;

4. an emergency vehicle of a municipality, department or a public service corporation, approved by the Commissioner of Public Safety or the chief of police of a municipality; and

5. a utility's or contractor's vehicles performing emergency repairs for electric, telecommunications, water, or waste treatment utilities; and

6. a vehicle designated as an authorized emergecy vehicle upon a finding by the division director that a designation of that vehicle is necessary for the execution of emergency governmental functions.

N. "Employer-provided parking" means any space such as a lot, garage, or other space, or portion thereof, which is used for the parking of commuter vehicles, and which is wholly or partly owned or leased by an employer or otherwise made available to its employees, except that this term shall not include park-and-ride facilities or customer parking provided by a retail or service establishment.

O. "Employment site" means each building, facility, complex or site at which employees work or study, or any combination of such buildings or sites which are geographically closely related.

P. "Energy production" means the refining, processing, production and distribution of coal, natural gas, petroleum or petroleum products, shale oil, nuclear fuels and electrical energy.

Q. "Extracurricular activities" means school-sponsored activities requiring transportation off-campus, except for the daily transportation of students to and from school.

R. "Flexible work hours" or "flextime" means a work system in which some or all of the employees at a given employment site have some discretion in their choice of working hours.

S. "Forecast" means a projection of future demand or supply for a specified time period.

T. "Health and residential care services" means hospitals, nursing homes, penal institutions, and all types of residential treatment centers including but not limited to drug/alcoholism treatment centers, residential mental health centers, and residential care centers for the retarded or handicapped.

U. "Highways" means all Interstate, Trunk, County state-aid, County, and Municipal state-aid highways in Minnesota, as defined in Minn. Stat. § 160.02, subds. 2-5 and 7 (1980), and the Federal Aid Highways Act of 1956;

V. "Moped" means a pedal bicycle or similar two-wheel vehicle that is propelled by a motor.

W. "Motorcycle" means a vehicle with two wheels in tandem, propelled by an internal combustion engine, and sometimes having a sidecar with a third wheel.

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X. "Motor gasoline" means a mixture of volatile hydrocarbons, suitable for operation of an internal combustion engine, whose major components are hydrocarbons with boiling points ranging from 140° F to 390° F and whose source is distillation of petroleum by cracking, polymerization, and other chemical reactions by which the naturally occurring petroleum hydrocarbons are converted to those which have superior fuel properties.

Y. "Motor vehicle owner" means any person owning or renting a motor vehicle, or having exclusive use thereof, under a lease or otherwise, for a period of greater than seven (7) days.

Z. "Park-and-ride facility" means a parking facility the use of which is limited exclusively to the parking of commuter vehicles whose occupants transfer at this facility to transit or paratransit services;

AA. "Passenger transportation services" means all of the following transportation modes:

1. conventional public transit service which operates on a fixed route and is available to the public for a fare;
2. paratransit services such as vanpools and subscription buses,
3. air travel available to the public on a regular basis for a fare,
4. tour and charter bus services,
5. bus transportation of pupils to and from school, and
6. taxicabs licensed to conduct business in a municipality.

BB. "Permit-sticker" means a self-adhesive tag issued by the Department of Public Safety which designates the weekday on which a vehicle issued that sticker is prohibited from being operated.

CC. "Person" means any individual, firm, estate, trust, sole proprietorship, partnership, association, company, corporation, governmental unit or subdivision thereof, or a charitable, educational or other institution.

DD. "Plant protection" means minimum plant maintenance necessary to secure buildings and prevent damage to equipment or plant property from inclement weather or loss of essential processes.

EE. "Preferential parking for carpools and vanpools" means allocation of desirable parking spaces in an employer-owned or leased lot to employees who are regular participating members in carpools or vanpools, formed through a company-sponsored or independent ride sharing program, on a priority basis over other employees who do not participate in such arrangements.

FF. "Prepaid transit" means a system through which transit use is paid for in a lump sum in advance of individual rides, usually on a weekly or monthly basis, by means of tickets, tokens, punches, passes, or other mechanisms, valid for either a fixed time period, and accepted in lieu of cash on boarding a transit vehicle or entering a transit station.

GG. "Prohibited day" means the day for which a vehicle owner has been issued a permit-sticker designating a "no-driving" day for that vehicle.

HH. "Sanitation services" means the collection and disposal for the public of solid wastes and hazardous wastes, whether by public or private entities, and the maintenance, operation and repair of liquid purification and waste facilities. Sanitation services includes the provision of water supply services by public utilities, whether privately or publicly owned and operated.

II. "Shortage" means a situation in which demand exceeds supply and normal market forces will not act to equalize supply and demand within a reasonable period.

JJ. "Shuttle bus" means a transportation service that utilizes vehicles with a capacity of six passengers or more, operated on a fixed route and on a regular schedule, or on a shuttle basis, between a public transit station or stop and the employer's employment site.

KK. "State set-aside" means the amount of an allocated product from the total supply of a supplier made available to the state for use to meet emergencies and hardship needs..

LL. "Supplier" means any firm or any part of a subsidiary of any firm (other than the Department of Defense) which presently supplies, sells, transfers, or otherwise furnishes (as by consignment) any petroleum product to wholesale purchasers or end users, including but not limited to refiners, natural gas processing plants or fractioning plants, importers, resellers, jobbers and retailers.

MM. "Staggered work hours" means employee starting and quitting times that are stipulated by the employer at step intervals so that work arrival and departure times of all or some employees on a single shift are spread over a period of at least two hour(s).

NN. "Subscription bus" means a type of transit service in which employers or groups of employees contract with a public or private bus operator to provide daily commuter service for a group of preassembled subscribers on a prepaid or daily fare basis, following a fixed route and schedule tailored to meet the needs of the subscribers.

OO. "Telecommunications" means the repair, operation and maintenance of voice, data, telegraph, video and similar communication services for the public by a communications common carrier or by a firm providing the same service in direct competition with a communications common carrier.

PP. "Vanpool" means eight or more persons commuting on a daily basis to and from work by means of a vehicle with a seating arrangement designed to carry eight to fifteen adult passengers.

QQ. "Vanpool program" means a program, administered by a company or government agency, which makes vehicles and services available to employers or employees for vanpooling purposes.

RR. "Vehicle lessee" means any person, firm or corporation in possession of a motor vehicle by lease.

SS. "Vehicle lessor" means any person, firm, or corporation leasing more than 25 motor vehicles a year for profit.

6 MCAR § 2.3124 Energy Supply Alert. An Energy Supply Alert shall be declared to inform the citizens of a potential motor fuel shortage, encourage conservation, and initiate a state of readiness for such a shortage.

A. An Energy Supply Alert may be declared when the agency forecast indicates a reasonable likelihood that a motor fuel supply shortage will occur within 6 months from the date of declaration.

B. The director shall have sole responsibility for declaring an Energy Supply Alert.

6 MCAR § 2.3125 Energy Supply Emergency. An Energy Supply Emergency is a state of declared emergency resulting from a shortage of motor fuel or petroleum.

A. Minnesota Energy Agency. When the agency forecast of short-term demand for motor fuel and/or other petroleum products exceeds the forecast of short-term supply of such fuels and that such a supply shortage will occur within three months, the director may recommend that an Energy Supply Emergency be declared.

B. The Executive Council or Legislature. The Executive Council (consisting of the Governor, the Lieutenant Governor, the Attorney General, the Auditor, the Treasurer, and the Secretary of State) or the Legislature, has responsibility for declaring an energy supply emergency.

1. An energy supply emergency automatically expires in 30 days, unless renewed by the Legislature.

2. Emergencies may be declared for all or part of the State and measures invoked accordingly. The declaration of emergency shall define the geographic area included in the energy supply emergency.

3. The declaration shall be promptly disseminated and brought to the attention of the general public by the Executive Council or Legislature, whichever body declares the emergency. The Energy Supply Emergency Resolution shall be promptly filed with the division, the agency and the Secretary of State.

6 MCAR § 2.3126 Operating organization during an emergency.

A. Energy Emergency Operating Center. During a declared energy supply emergency, the division will set up an Energy Operating Center.

1. The director of the Emergency Operating Center will be the director of the Division of Emergency Services. The director shall oversee the implementation of the emergency plan.

2. The Emergency Operating Center shall be located at a site designated by the division director and staffed by personnel from the division, the Energy Agency and other state agencies as deemed necessary by the division director. While on detail at the center, these personnel shall be responsible to the director of the center.

B. Energy Agency.

1. The agency shall assist the division by analyzing the gasoline and motor fuel situation, evaluating alternative courses of action included in the emergency plan, and advising as to the proper time and sequence of the implementation of emergency measures.

2. The agency shall select and recommend to the Governor the least restrictive measures specified in 6 MCAR §§ 2.3131 A.-H. and 2.3132 A.-D. capable of eliminating a motor fuel supply shortage.

3. The agency shall review and certify qualifying or employer and school district conservation plans which meet the requirements set out in 6 MCAR § 2.3131 B.-C.

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4. The director of the agency shall make a final decision on appeals heard and decided by the Local Energy Conservation Board during a declared energy supply emergency as specified in 6 MCAR § 2.3128.

C. Emergency Services.

1. The division shall implement the energy emergency plan and coordinate the emergency operations of government agencies involved in energy supply emergency actions.

2. The division shall use a network of regional and local coordinators who are responsible for coordinating the emergency operations in the different geographic areas of the State.

3. By January 1, 1983, the division shall develop procedures to monitor compliance with measures contained in these rules.

D. Other organizations with important responsibilities. The division shall have the authority to call on any state agency or cooperating organization, if its services are deemed to be necessary.

6 MCAR § 2.3127 Local Energy Conservation Board.

A. A Local Energy Conservation Board will be created in each county and in each city of the first class to hear requests for exemptions or exceptions to the measures listed in 6 MCAR §§ 2.3131 A.-H. and 2.3132 A.-D., except 2.3131 B. and C.

1. The Governor may order that additional Local Energy Conservation Boards be established to hear appeals taken from measures imposed during an energy emergency.

2. The appointment of additional Local Energy Conservation Boards and their conduct shall be governed by the rules and procedures set forth in 6 MCAR § 2.3127 and 6 MCAR § 2.3129.

B. Members.

1. The chair of the county board of commissioners shall appoint a five-member county Local Energy Conservation Board which includes, if available, an elected county official, the county fuel coordinator, a health professional, the county director of emergency services (if different from the county fuel coordinator), and a member of the public. If the county fuel coordinator and county director of emergency services are the same person, the fifth member shall be selected from the public. The county attorney shall act as an advisor to the Local Energy Conservation Board.

2. For cities of the first class and other designated municipalities, the chair of the city council shall appoint a five-member municipal Local Energy Conservation Board which includes, if available, an elected city official, the city fuel coordinator, a health professional, the city director of emergency services (if different from the city fuel coordinator), and a member of the public. If the city fuel coordinator and the city director of emergency services are the same person, the fifth member shall be selected from the public. The city attorney shall act as an advisor to the Local Energy Conservation Board.

C. The appointed members shall not be named until after declaration of an energy supply alert or energy supply emergency. The chair of the county board of commissioners and the chair of the city council shall make every reasonable effort to avoid any conflict of interests in the appointment of the members to the Local Conservation Boards.

D. Three members shall constitute a quorum.

6 MCAR § 2.3128 Appeals.

A. Appeals shall be delivered by mail or in person to the following locations:

1. Appeals of mandatory measures described in 6 MCAR § 2.3132 A.-H. and 2.3132 A.-D., except 2.3131 B. and C., shall be heard by the Local Energy Conservation Board and should be directed to the county courthouse, or the mayor's office, whichever is appropriate. Persons residing in a municipality where a Local Conservation Board has been established shall direct appeals to the municipal Local Energy Conservation Board.

2. Appeals from a director's decision denying all or any part of an employer or school district conservation plan, or an appeal from a division director's order to implement an employer or school plan shall be heard and decided by a hearing examiner appointed by the Chief Hearing Examiner and shall be directed to the Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota 55104.

B. Content of appeals.

1. Each appeal from an action taken pursuant to a declared energy supply emergency or other actions taken pursuant to the authority contained in these rules, shall be in writing and signed by the appellant. Each appeal shall state:

a. the action from which the appeal is made, including the individual or unit of government taking the action, and the date and nature of the action;

b. the reason for the appeal, including the reasons the appellant believes the action to be unjust or unwise;

c. the names and addresses of any persons known to the appellant who might be adversely or beneficially affected by the outcome of the appeal;

d. the nature of the relief sought, whether reversal, modification, or some other relief.

2. Each appeal of the director's decision to deny all or part of an employer or school district conservation plan or an appeal of the division director's order to implement all or any part of an approved conservation plan shall also include:

a. documentation of the methodology on which the appellant bases his/her claim of motor fuel savings or program performance,

b. a calculation of appellant's baseline consumption.

C. Timing and procedures.

1. Within three (3) calendar days after receipt of an appeal, the Local Conservation Board or Hearing Examiner, whichever is appropriate, shall set a hearing date. The date of the hearing shall not be more than five (5) calendar days after receipt of an appeal unless the appellant requests a later hearing date. The Chair of the Local Conservation Board or designate, or the Hearing Examiner, shall notify all affected persons, either verbally or in writing, of the appeal and the time and place for the hearing, not less than (2) calendar days before the hearing. An appeal shall be considered received when it has arrived at the location(s) designated in 6 MCAR § 2.3128 A. Local Conservation Boards may convene at any location within their jurisdiction for expediting appeals and decreasing the distance to the hearing for appellants.

2. Appeals from the director's decision to deny all or any part of an employer or school district conservation plan not made during a declared energy supply emergency shall be directed to the Office of Administrative Hearings. The "Rules for Procedure for Contested Cases" found at 9 MCAR §§ 2.201-2.222 shall govern the conduct of the appeals.

3. The parties to an appeal from actions taken during a declared energy supply emergency shall be the appellant and the Emergency Operating Center. Appeals from a director's decision denying all or any part is of an employer or school district conservation plan shall name the director as a party to the appeal.

4. Any party may be represented by counsel, but need not be.

5. The appellant, if subject to provisions of these rules, must comply with all applicable mandatory measures or requirements pending a final decision on the appeal. A final decision of an appeal shall be made in accordance with 6 MCAR § 2.3129 E.

6. Informal disposition of an appeal may be made at any point in the proceeding in regard to any issue therein by stipulation, agreed settlement, or consent order between the appellant and the Emergency Operating Center. In the case of employer and school district conservation plans, the director shall have the power to informally dispose of an appeal by agreement or consent order.

7. An appellant failing to appear after receiving timely notice, may have his/her claim disposed of adversely by the Local Conservation Board or the hearing examiner.

8. The failure of the Emergency Operating Center (EOC) to appear before a hearing of a Local Conservation Board on a matter pertaining to these rules shall not constitute a default, or act to prejudice or bar the director from contesting the board's decision so long as the director complies with the timing provisions contained in 6 MCAR § 2.3128 E.5.

9. The hearing examiner or Local Energy Conservation Board may order a prehearing conference to be held at any time prior to a hearing, if it determines that such conference may simplify the issues or provide an opportunity for settlement. If a prehearing conference is ordered, notice of the time and place of the conference shall be served on all parties to the appeal not less than two (2) working days before the date of the conference.

10. Appeals from an action taken pursuant to an energy supply emergency shall not be heard if received more than ten (10) working days after the termination or expiration of the energy supply emergency.

D. Hearings.

1. Anyone submitting an appeal shall have the right to a hearing before the Local Energy Conservation Board, or the Hearing Examiner whichever is appropriate according to 6 MCAR § 2.3128 A., at which hearing the parties may present and

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cross-examine witnesses, and present evidence, rebuttal testimony and argument with respect to the issue or issues raised in the appeal. Evidence must be offered to be considered.

2. The Local Energy Conservation Board or the hearing examiner shall prepare an official record of each hearing. Any party requesting a verbatim transcript of the hearing must bear the expense of preparing the transcript.

3. The Chair of the Local Energy Conservation Board and the Hearing Examiner shall use procedures set by the Office of Administrative Hearings at the hearing. The Hearing Examiner or Local Conservation Board may prohibit devices which interfere with the hearing and may evict persons who disrupt the hearing.

E. Decision.

1. No factual information or evidence which is not part of the record shall be considered by the board or the hearing examiner in deciding an issue in an appeal.

2. Within two (2) calendar days after the hearing is closed, the Local Conservation Board or the hearing examiner shall issue a decision in writing, including the findings and conclusions on which the decision is based, and a copy of the decision shall be given to all parties to the appeal.

3. The hearing examiner shall issue a final decision.

4. The Local Conservation Board shall issue a recommended decision on each appeal heard. The recommendation shall be referred to the director for final decision.

5. The director may accept or reverse the board's decision or may remand the appeal for further hearing on specified parts. The director must notify the appellant and the Local Board of his/her decision within two (2) calendar days after receipt of the Board's recommendation. If the director's decision is to reverse or remand a decision of a Local Energy Conservation Board, the director shall issue a written statement containing the findings and grounds for overturning or remanding for further hearing the Local Board's decision. A copy of the director's statement shall be sent to the appellant and the Local Energy Conservation Board within five (5) working days of the notice of the decision. Failure of the director to make timely notice of his/her intent to reverse or remand the Local Board's decision will act to automatically validate and make effective the Local Board's recommended decision.

6. The appellant may seek judicial review of a final decision of the director, the hearing examiner, or the Local Conservation Board, in accordance with the Minnesota Administrative Procedure Act, Minn. Stat. §§ 15.0411-052 (1980).

6 MCAR § 2.3129 Penalties.

A. Penalties for the violation of any provision of the plan are set out in Minn. Stat. § 116H.15 (1980).

B. Any person who violates the plan or knowingly submits false information in any report required by the plan shall be guilty of a misdemeanor. Maximum penalty is $500 or 90 days or both. Each day of violation shall constitute a separate offense.

C. The plan may be enforced by injunction, action to compel performance or other appropriate action in the district court of the county where the violation takes place. The existence of an adequate remedy at law shall not be a defense to such an action.

D. A court which finds that a person has violated a requirement of the plan or has knowingly submitted false information in any report required by the plan, or has violated a court order issued pursuant to the plan may impose a civil penalty of not more than $10,000 for each such violation. These funds are payable to the general fund in the state treasury.

6 MCAR § 2.3130 Priority users.

A. The following is the list of first priority motor fuel consumers:

1. Department of Defense,
2. Agricultural production,
3. Emergency services,
4. Energy production,
5. Sanitation services,
6. Telecommunication services,
7. Passenger transportation services,
8. Cargo, freight, and mail hauling by truck, including newspaper deliveries, and
9. Aviation ground support services.

B. Exemptions granted in 6 MCAR § 2.3131 A.-H., and 6 MCAR § 2.3132 A.-D., are based on the above list of first priority users.

C. State set-aside motor fuel supplies shall be allocated to meet the fuel requirements of first priority users to the extent that state set-aside supplies are available. State set-aside shall be allocated according to

D. Users claiming an exemption under these rules or operating a vehicle under an exempt status must do so in good faith. Abuse of vehicles' exemption status will constitute a violation of these rules and subject the user to the penalties described herein.

6 MCAR § 2.3131 Measures.

Upon declaration of an Energy Supply Emergency, the Governor shall select from the following measures to reduce a motor fuel supply shortage.

A. Public information measure.

1. This measure is intended to conserve motor fuel through voluntary public conservation in response to a declared energy emergency, and through broad public application of vehicle efficiency improvements and ridesharing induced by public service announcements, conservation demonstrations, and energy-related literature.

2. Measure requirements.

a. The Emergency Operating Center shall prepare and issue news releases to the local news media throughout the state containing at least the following:

(1) The specific cause or causes of the gasoline or petroleum shortage;

(2) Agency estimates of the shortfall of supplies expected for Minnesota;

(3) Agency estimates of the probable duration of the energy emergency; and

(4) A list of specific actions taken and measures imposed to reduce shortage.

b. Owners and operators of diesel-powered automobiles may be requested to substantially reduce or altogether discontinue use of their diesel vehicles during severe fuel oil shortages.

c. The Emergency Operating Center shall make available to large worksites, schools and local energy coordinators literature which relates vehicle fuel economy to driving practices and vehicle maintenance.

3. The Emergency Operating Center shall provide public service announcements to local media which emphasize the importance of individual and corporate efforts in conserving motor fuel as well as providing specific conservation tips.

B. Employer-based commuter and travel measure.

1. The purpose of this measure is to conserve motor fuel by requiring certain employers to take steps to reduce the motor fuel consumption of employees in commuting to and from the work site and in business-related travel.

2. Applicability.

a. The following employers are required to comply with the provisions of this measure:

(1) Employers who have employment sites where 100 or more persons are employed during the course of any 24-hour period during a normal work week.

(2) All educational institutions at the post-secondary school level, including but not limited to colleges, universities, and vocational schools, with a total combined student-faculty-staff commuting population of 200 or more persons.

(3) State, county, and municipal governments at each employment sites where 50 or more persons are employed.

b. Employers having fewer employees at a location shall be encouraged to adopt strategies listed under this subsection or implement any conservation activity which reduces employee motor fuel use in commuter travel.

c. Technical assistance in the preparation of emergency contingency plans will be provided by the agency to employers upon request.

3. Employers required to comply with this measure shall submit to the director, within one year of the effective date of these rules, or within 45 days after declaration of an energy supply emergency, whichever comes first, a plan designed to reduce motor fuel consumption of employees in commuting to and from the work site and in business-related travel. Employers shall either submit a self-styled reduction plan as provided in paragraph 4, or select from the strategies provided in paragraph 5.

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4. Employer emergency conservation plan.

a. Employers may submit an emergency motor fuel conservation plan which demonstrates how commuting and business travel motor fuel consumption would be reduced during an energy supply emergency. The plan shall contain whatever conservation strategies the employer chooses to achieve the required reduction.

b. Employer plans submitted under this paragraph must contain conservation strategies which taken together would reduce employee motor fuel consumption in commuting and in business travel by 15 percent from the baseline consumption as defined in 6 MCAR § 2.3123 C.

c. A conservation credit of up to 5 percent will be allowed for employers who can demonstrate that ongoing conservation programs have reduced:

(1) the commuting miles of employees, and/or

(2) business-related motor fuel consumption.

d. The director may disapprove any employer plan submitted under this paragraph which fails to empirically support the levels of savings attributed to each of the proposed activities. Self-styled employer plans may contain any of the strategies provided in paragraph 5.

5. Employer emergency plan reduction strategies.

a. An employer plan, otherwise, shall be structured as follows. Employers shall select at least four strategies from the following categories, and in no case shall select less than one strategy from Category I.

b. Category I strategies:

(1) Initiate a carpool program for employees, either in-house or through participation in a state or regional car pool program.

(2) Provide a minimum 50 percent discount for transit fares, through direct sale of transit passes at the job site. In conjunction with this strategy employers shall adopt flexible work hours.

(3) Sponsor an employee vanpool program involving at least one operating van (purchased, leased) per 50 employees, or demonstrate an equivalent level of employee participation in an independent vanpool program or employee-owned or operated vans.

(4 Reduce by one the number of weekdays during which business is conducted. Employers selecting this strategy shall not perform, or have employees perform, any activity related to their business except where:

(a) Business- or employment-related activity can be performed at an employer's or employee's place of residence;

(b) Manufacturing activities required in certain industrial processes, such as coke ovens or chemical manufacture, must operate continuously and where disruption would be extremely costly; and

(c) Plant and equipment protection requires a minimum level of attention or surveillance.

c. Category II strategies: Employers shall select from the following measures so that the number of strategies adopted in their plan totals at least four.

(1) Adopt and enforce one parking management strategy from the following choices:

(a) Provide preferential parking for high occupancy vehicles in employer parking lots (at least one-third of available spaces).

(b) Subsidize at least 20 percent of the cost of contract parking in independently operated parking facilities for employee carpools of three or more people.

(2) Prohibit the use of company-owned vehicles for single-occupant commuting and adopt a policy of utilizing company vehicles for employee carpools where the employer owns or leases more than 20 automobiles.

(3) Provide one company-sponsored auxiliary transportation service (e.g., subscription bus or shuttle service) or participate in a consortium of two or more employers to provide such a service.

(4) Purchase an electric vehicle for urban travel of at least 4000 miles a year to be dispatched as fleet vehicle in substitution of a conventional vehicle.

(5) Subsidize at least 25 percent of transit pass expense for employees at the work site. This may be done in conjunction with existing discount plans offered by transit corporations to employers and employees. Flexible work hours must be instituted in conjunction with this strategy.

(6) Provide facilities which promote employee commuting by bicycle or moped such as:

(a) indoor or sheltered bicycle parking areas,

(b) high security bicycle parking, and

(c) showers and dressing areas.

(7) Participate on a regular basis with a rideshare coordinating agency to provide jitney service to persons requesting travel to a destination at or near the route taken for the business trip. The vehicle provided for this purpose may be an employer-owned vehicle or an employee-owned vehicle used extensively for business purposes.

6. Employers will be credited for travel reduction actions taken prior to enactment of these rules when those actions are shown to produce ongoing fuel savings.

7. The employer plan shall identify:

a. Sources of needed capital improvement;

b. The specific carpool program and transit services to be used;

c. Title of person responsible for supervising each plan increment;

d. Type of internal communication media to be used to keep employees informed of the employer's program;

e. The administrative assistance that will be provided in the organization of carpools, vanpools, and other joint transportation modes; and

f. The personnel or positions that will perform essential minimum operations for the firm during a driving ban.

8. Employers shall implement conservation strategies that require significant lead time and organization prior to a declared energy supply emergency, (preferably at or before submittal of their emergency energy conservation plans), if the employer intends to rely on those strategies to complete the minimum number of strategies required for their plan. During an energy emergency, the division director may direct an employer to intensify efforts in existing programs or strategies where there exists a potential for further motor fuel conservation (i.e., ridesharing).

9. Employers shall institute any or all strategies contained in an approved employer conservation plan upon the Governor's selection of the employer-based motor fuel conservation measure.

C. School conservation measure.

1. The purpose of this measure is to conserve motor fuel by involving school authorities and students in emergency contingency planning and by requiring school districts to take steps to reduce the quantity of motor fuels consumed by schools for school-sponsored activities.

2. Applicability.

a. Each school district, as defined in Minn. Stat. §§ 122.01-122.541 (1980), and all non-public schools, as defined in Minn. Stat. § 123.932, subd. 3 (1980), which have a combined student-staff population of 100 persons or more, are required to comply with the provisions of this measure.

b. The boards of all school districts, defined and empowered under the Education Code, Minn. Stat. chs. 120-129 (1980), and non-public school authorities, shall be the responsible entities for submitting plans under this rule.

3. School boards shall submit to the director within one year of the effective date of these rules, or within 45 days of a declared energy supply emergency, whichever comes first, a plan designed to reduce by at least 15 percent from baseline consumption the amount of motor fuel consumed by students and staff in commuting to and from the school site and the amount of motor fuel consumed by vehicles for school-sponsored functions. The baseline consumption is defined in 6 MCAR § 2.3123 C.

4. Non-public schools may fulfill the requirements of this rule by submitting a plan to the agency in one of the following ways:

a. A school-specific plan, or

b. A school association plan that contains strategies adopted by member schools, or

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c. A signed agreement with a school district which documents the non-public school's strategies and identifies the contact person(s) through whom information regarding the implementation and monitoring of strategies adopted by the private school is to be communicated to the school district.

5. School districts or non-public school associations shall have the option of submitting either a self-styled conservation plan consisting of strategies which would reduce baseline consumption by at least 15 percent, or a plan structured from the strategies provided in clause 7.

6. School emergency conservation plan: Option A.

a. School districts submitting self-styled emergency motor fuel conservation plans shall include calculations of the reductions of student and staff commuting and fuel use for school-sponsored activities, including bus transportation, resulting from each selected strategy.

b. A maximum conservation credit of five (5) percent will be allowed to school districts which can demonstrate that ongoing conservation programs or actions have reduced the student/staff commuting and/or school transportation motor fuel consumption.

c. The director may disapprove of any school district or association plan submitted under this rule which fails to empirically support the level of savings attributable to each of the proposed actions. Self-styled school plans may contain any of the strategies provided in paragraph 7 of this rule.

7. School emergency conservation plan: Option B Reduction Strategies.

a. School districts shall select at least four strategies from the following categories, provided that at least one strategy is from Category I.

b. Category I strategies:

(1) Ban student driving except for students exempted on the basis of special need. Exemptions may be granted to students who:

(a) have no alternative transportation to school; or

(b) have special medical needs that prevent use of alternative methods of traveling to school; or

(c) have job requirements that demand access to automobile transportation.

(2) Reschedule or cancel extracurricular activities including athletic events until termination of the energy supply emergency.

c. Category II strategies:

(1) Initiate a student carpool program.

(2) Adopt and enforce one parking management strategy from the following choices:

(a) give preferential parking to high occupancy vehicles in student parking lots;

(b) provide indoor or sheltered bicycle and moped parking with a capacity for at least five percent of the student body; and

(c) institute a system of fees for parking on and around school grounds.

(3) Eliminate the on-the-road portion of driver education for the period of the emergency.

(4) Cancel or reschedule all non-athletic extra-curricular activities.

(5) Participate in an independently-sponsored school bus fuel economy program.

8. Plans submitted by school districts shall include:

a. The person or position responsible for implementing the plan during a motor fuel shortage.

b. The means of communications through which student and faculty will be notified of the measures taken during an energy shortage.

c. Procedures necessary to implement the plan, such as the method by which carpools will be formed or the fees that will be charged for parking.

9. School districts shall implement conservation strategies that require significant lead time and organization prior to a declared energy emergency (preferably at or before submittal of their energy conservation plans), if the school district intends to rely on those strategies to complete the minimum number of strategies required for their plan. During an energy supply

emergency, the division director may direct a school district to intensify efforts in existing programs or strategies where there exists a potential for further motor fuel consumption (i.e., student ridesharing).

10. School districts shall implement all or any part of these plans as specified by the division director upon selection of this measure by the Governor.

D. Odd-even purchase requirement measure.

1. The purpose of the odd-even purchase requirement is to conserve motor fuel and facilitate the orderly purchase of motor fuel by alternating the days of purchase eligibility.

2. Applicability.

a. All retail sales and purchases of motor fuel shall be restricted to even-numbered days of the month for persons in possession of vehicles whose license plate numbers end in one of the even digits 0, 2, 4, 6, 8; and to odd-numbered days of the month for persons in possession of vehicles whose license plate numbers end in the odd digits 1, 3, 5, 7, and 9.

b. Specialty plates and personalized plates issued by the Division of Driver and Vehicle Services to individuals or organizations which display no ending numeral are deemed to be "odd" for purposes of the purchase requirement.

c. Sales and purchases of motor fuel shall not be restricted to any vehicle on the thirty-first day of any month or on the twenty-ninth day of February in a leap year.

3. Exemptions. The following users shall be exempt from the odd-even purchase requirements and may purchase motor fuel on any day of the week.

a. Vehicles being driven for any first priority use defined in 6 MCAR § 2.3130. For purposes of this rule, vehicles used for agricultural production will be limited to registered and licensed farm trucks and trailers, and vehicles directly and currently engaged in agricultural uses such as tractors and trucks hauling feed, livestock, grain or farm implements.

b. For purposes of the minimum purchase requirement vanpools will be those vehicles either:

(1) displaying an identifying designation of "vanpool" issued by a vanpool leasing agency, vanpool services agency, or employer, or

(2) carrying at least eight passengers for the purpose of a work commuting trip, in the judgement of the motor fuel retailer.

c. Vehicles operated by handicapped persons and displaying a handicapped license plate or other special identification.

d. Vehicles with out-of-state license plates.

e. Motorcycles and mopeds.

f. Vehicles not licensed for highway use.

g. Vehicles being operated by individuals under emergency circumstances which in the judgement of the retailer demand an exception.

E. Minimum purchase requirement measure.

1. The purpose of this measure is to decrease vehicle lines at motor fuel retail outlets by reducing the frequency of fill ups.

2. Measure requirements. Motor fuel shall not be sold, dispersed, or otherwise transacted from a motor fuel retailer for use in any vehicle unless:

a. The amount transacted and dispersed is at least 5 gallons for all 4 cylinder vehicles, or 7 gallons for all vehicles with more than 4 cylinders.

b. In the event that the quantity purchased is less than the five- or seven-gallon minimum, the purchaser shall pay the retailer an additional amount so that the total transaction is equal to the stated pump price times either the five- or seven-gallon minimum.

c. In any single transaction, not more than six gallons of motor fuel may be sold or dispensed into any container or

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containers other than the fuel tank of a vehicle to be transported away from the premises of the retail seller. Such containers must meet applicable safety requirements.

3. Any person selling motor fuel in transactions to which provisions of this section apply shall display, at the point of sale, notice of such provisions.

4. Both the motor fuel retailer and the vehicle operator are required to comply with the provisions of this section.

5. Exemptions. The following users are not required to purchase a minimum amount:

a. Vehicles being driven for first priority uses as defined in 6 MCAR § 2.3130. For purposes of the minimum-purchase requirement, vehicles used for agricultural production will be limited to trucks registered and licensed as farm trucks and trailers, and trucks or trailers directly engaged in agricultural uses such as hauling feed, livestock, grain, or farm implements.

b. For purposes of the minimum purchase requirement, vanpools will be those vehicles either:

(1) displaying an identifying designation of "vanpool" issued by a vanpool leasing agency or vanpool services agency, or

(2) carrying at least eight passengers for the purpose of a work commuting trip, in the judgement of the motor fuel retailer.

c. Motorcycles and mopeds and other similar three-wheeled vehicles.

d. Out-of-state licensed vehicles.

F. Flag requirement for motor fuel retailers measure.

1. The purposes of this measure are: to signal motorists of the availability of motor fuel for purchase at stations through the display of flags; to permit retailers to limit sales to priority one users only; and to ensure that preferential treatment or favoritism is not practiced by retailers.

2. Each motor fuel retail station shall clearly indicate its motor fuel supply and servicing status by displaying a flag of one of the three colors listed below. The flag should be clearly visible from at least 100 yards in each direction of the station.

3. Flags should be displayed as follows:

a. Green Flag indicates that gasoline is available to the public subject to any purchase restrictions imposed pursuant to these rules. A station flying a green flag cannot show any preference in regard to the dispensing of gasoline to customers, except that emergency vehicles may be allowed to move to the front of an existing gas line and be fueled.

b. Yellow Flag indicates that motor fuel is available only to first priority vehicles, as defined in 6 MCAR § 2.3130. Automobile servicing may or may not be available to the public. A station flying a yellow flag cannot preferentially serve non-priority vehicles.

c. Red Flag indicates a station is out of gasoline and/or is closed. No gasoline may be dispensed from a station flying a red flag, except to emergency service vehicles, as defined in 6 MCAR § 2.3123 M.

G. Motor fuel availability measure.

1. The purpose of this measure is to assure that motor fuel is available for purchase at key locations throughout the state 24 hours a day and that these locations and their hours of operation are locally publicized.

2. The Emergency Operating Center shall issue state set-aside, if available, to retailers who have historically remained open 24 hours a day and provided emergency road service, so that these stations continue to provide 24-hour road service and have motor fuel supplies for sale.

3. The Emergency Operating Center shall publicize the location of those stations participating in the availability program in local newspapers in the proximate geographic area. This information will also be supplied to the AAA of Minnesota (American Automobile Association) and the Department of Economic Development's Tourist Information Center, both of which provide gasoline availability information services.

H. Strict enforcement of 55 mph speed limit measure. The purpose of this measure is to conserve motor fuel by strictly enforcing the current maximum speed limit of 55 mph.

1. All motorists shall strictly obey the maximum legal speed limit of 55 mph. Violation(s) of the maximum legal speed limit on all highways during a declared energy supply emergency shall suffer the additional penalities provided in 6 MCAR § 2.3129.

2. The Emergency Operating Center shall request state, county, and municipal law enforcement agencies to intensify speed limit enforcement activities through assignment of personnel and increased road surveillance efforts.

6 MCAR § 2.3132 Measures. When the Emergency Operating Center determines that the measures listed in 6 MCAR § 2.3131 A.-H. have not been or will not be sufficient to eliminate the shortage of motor fuel, the Governor may choose to implement any of the following measures.

A. Vehicle permit-sticker measure.

1. This measure is intended to conserve motor fuel by prohibiting the use of vehicles for one day per week.

2. Applicability.

a. Vehicle owners shall apply to the Department of Public Safety for a no-driving-day-designation permit-sticker. The applicant may select any weekday (Monday through Friday) as the no-driving-day for his/her vehicle but must choose the same day for all vehicles owned. The owner must prominently display the sticker on each vehicle owned and driven during the term of this measure.

b. A vehicle rented or leased for a period exceeding seven (7) days shall be considered owned by the lessee for purposes of this measure.

c. Upon the effective date of the vehicle permit-sticker requirement, all Minnesota-licensed motor vehicles subject to this rule must display a permit-sticker in the lower right-hand corner of the front windshield.

3. Exemptions.

a. The following vehicle classes are not subject to the no-driving-day prohibition:

(1) Single-unit commercial vehicles with six tires or more in contact with the road surface and/or with a gross weight rating of 10,000 pounds or more;

(2) Emergency vehicles;

(3) Cargo, freight and mail hauling by truck, including newspaper deliveries;

(4) Energy production vehicles;

(5) Vehicles directly engaged in agricultural production and farm trucks registered and licensed as farm trucks with the Division of Driver and Vehicle Services of the Division of Public Safety;

(6) Public passenger transportation services;

(7) Motorcycles and mopeds;

(8) Short-term vehicle rentals; and

(9) Such other vehicle classifications that the Governor may determine.

b. Vehicle owners operating a motor vehicle under one of the qualifying exemptions listed above must apply for an exempt sticker to the Division of Driver and Vehicle Services (DDVS) of the Department of Public Safety. Exempt stickers issued by the DDVS must be prominently displayed on the vehicle for which the exempt permit was issued.

c. Vehicle rental agencies shall apply for "exempt" stickers for vehicles rented for periods less than one week. Upon approval of an agency's application, DDVS will issue exempt stickers for designated rental vehicles. Vehicles rented or leased for use predominantly in Minnesota for periods exceeding seven (7) days must be registered by the lessee.

d. The Governor may waive the requirement for the application and display of exempt permit-stickers for any vehicle class listed under clause a.

B. Recreational vehicle ban measure—Type I.

1. This measure is intended to conserve motor fuel by prohibiting the operation of certain recreational vehicles upon public roads and lands during limited periods within a declared energy supply emergency.

2. Measure requirements for a Type I recreational vehicle ban.

a. The use and operation of self-propelled vehicles with living quarters, designated and registered as class RV vehicles with the Division of Driver and Vehicle Services of the Department of Public Safety, and vehicles with living quarters, commonly non-motorized trailers, designated and registered as class RL vehicles, shall be prohibited for a period not to exceed

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fifteen (15) days during any thirty (30)-day declared energy emergency. A Type I ban may, however, be renewed for the maximum fifteen (15)-day period for each month the energy supply emergency remains in effect.

b. A statement to the news media shall be issued at least seven (7) days prior to the effective date of the ban, which explains the class of vehicles subject to the ban, the duration of the ban, the penalties for violation of the ban, any exemptions to the ban, the probable enforcement strategies to obtain compliance with this measure, and the appeals procedure for obtaining exception to the measure. The division director's statement is to receive widest possible coverage to inform the public of the ban.

c. Exceptions. Parties may apply to the Local Energy Conservation Board of appropriate jurisdiction for an exception to this measure. Upon a favorable determination by the board that the applicant is eligible for an exception to the ban, the board shall recommend to the director that an exempt-sticker be issued to the applicant. If the director upholds the board's decision, a sticker will be issued and sent by mail to the applicant, who must prominently display it during the ban.

C. Recreational vehicle ban measure—Type II.

1. The use and operation of snowmobiles upon public lands, rights-of-way, roads, trails, and waters, subject to the state's proprietary interest, shall be prohibited for a period not to exceed fifteen (15) days during any thirty (30) day declared energy supply emergency. A Type II ban may, however, be renewed for the maximum fifteen (15) day period for each month the energy supply emergency remains in effect.

2. A statement to the news media shall be issued at least seven (7) days prior to the effective date of the ban, which explains the class of vehicles subject to the ban, the geographic scope of the ban, the duration of the ban, the penalties for violation of the ban, any exemptions to the ban, the probable enforcement actions being taken to ensure compliance with the measure, and the appeals procedure for obtaining an exception to the measure. The division director's statement is to receive widest possible coverage to inform the public of the ban.

3. Exemptions. Parties who demonstrate that their snowmobiles are used for essential personal transportation, or predominantly for commercial purposes, or that no practical alternative transportation exists, shall be granted exceptions to the ban by the local conservation board of appropriate jurisdiction. Parties may apply for exceptions to this measure according to the appeals procedure described in 6 MCAR § 2.3128. Upon a determination by the board that an applicant is eligible for an exception to the ban, the board shall recommend to the director that an exempt sticker be issued to the applicant. If the director upholds the board's decision, he/she shall issue an exempt-sticker to the applicant at the mailing address indicated on the application.

D. Speed limit reduction measure.

1. This measure is intended to conserve motor fuel by reducing the maximum speed limit to 50 mph on all highways in Minnesota.

2. The Governor upon the advice of the Emergency Operating Center shall order the Commissioner of Transportation to set a speed limt of 50 mph for all highways in Minnesota. The Commissioner of Transportation shall lower the speed limit during an energy supply emergency pursuant to the authority granted him/her under Minn. Stat. § 169.141 (1980).

3. Violation of the maximum limit during a declared energy supply emergency for motor fuel shall carry an additional fine as provided in 6 MCAR § 2.3129.

4. The Emergency Operating Center shall request state, county, and municipal law enforcement agencies to intensify speed limit enforcement activities through assignment of additional personnel and increased road surveillance efforts.

E. Driving ban measure.

1. This measure is intended to conserve motor fuel by prohibiting the use and operation of all non-exempt motor vehicles for a specified 24-hour period.

2. Upon the Governor's determination that a one-day driving ban is necessary to reduce the demand for motor fuel in a severe energy supply emergency and a designated no-driving day has been selected, the Emergency Operating Center shall issue a statement to the news media to be promptly disseminated and brought to the attention of the public. The statement shall detail the designated date of the ban, the emergency services which will remain available during the ban, the enforcement actions to be taken, and the penalties imposed for violation of the ban. The statement shall be released at least five (5) days prior to the imposition of the driving ban.

3. It shall be unlawful for anyone to operate a Minnesota-registered and licensed motor vehicle on public roads during the period of an emergency driving ban.

4. The following motor vehicle uses (users) shall be exempt from the energy supply emergency driving ban:

a. Out-of-state licensed vehicles,

b. Emergency services,

c. Sanitation services,

d. Aviation ground support vehicles,

e. Vehicles identified as required in 6 MCAR § 2.3131 B.7.f. and used by employees in commuting for the purposes of providing medical care, residential care, telecommunications services, energy production, news reporting, and plant protection.

f. Individuals who require daily medical treatment.

5. Any vehicle registered and licensed by the State of Minnesota and operated during an energy supply emergency driving ban shall prominently display a sticker or tag which clearly identifies that vehicle as exempt. The Governor may waive this requirement for any category of exempted user, e.g., police, fire, ambulance, or aviation ground support vehicles. The agency will issue guidelines for identification of exempt vehicles prior to an energy emergency driving ban.

Pollution Control Agency

Notice of Hearing in Ely, Minnesota in the Matter of Proposed Amendments to Minnesota Rule APC 1

Please take notice that on Monday, March 16, 1981, at Vermilion Community College in Ely, Minnesota, at 1 p.m. and at 7 p.m., the Minnesota Pollution Control Agency will hold a public hearing to solicit views and comments about the state ambient air quality standards for sulfur dioxide and ozone.

The Minnesota Association of Commerce and Industry has petitioned the agency to amend the state's air quality standards by adopting less stringent federal standards for sulfur dioxide and ozone. The Minnesota Public Interest Research Group has requested the agency to consider the acid rain problem and opposes the relaxation of the state standards. The agency has not proposed a specific standard but is soliciting public comment on a range of numbers from the existing state standards on the low (more stringent) end to the existing federal standards on the high (less stringent) end.

The hearing on this matter is being conducted by Mr. Howard Kaibel, a hearing examiner with the Office of Administrative Hearings. Mr. Kaibel will preside at the hearing in Ely.

The agency staff has prepared a document called a Statement of Need and Reasonableness, which discusses the relevant information regarding sulfur dioxide and ozone. Five reports are included with the Statement of Need and Reasonableness. Report 1 discusses health and welfare effects of sulfur dioxide and provides some background information on sulfur dioxide. Report 2 provides similar information on ozone. Report 3 presents estimates on the costs to Minnesota industry to meet the various standards. Report 4 describes some of the minor changes in the language of rule APC 1, the rule of the agency that contains the state ambient air quality standards. Report 5 is the staff's discussion of the acid rain phenomenon. The Statement of Need and Reasonableness, including the five Reports, is available for review at the library at Vermilion Community College.

Members of the agency staff will be available in Ely to provide further information about the air quality standards and the data in the staff Reports. Persons who wish to submit written statements or make oral presentations should plan to attend one of the sessions. Persons who are unable to attend the hearing but wish to submit comments should mail their comments to Mr. Kaibel, Office of Administrative Hearings, 1745 University Avenue, Saint Paul, Minnesota 55104, as soon as possible.

If there are any questions, please contact Richard Sandberg in the Division of Air Quality, Minnesota Pollution Control Agency, at (612) 296-7274.

February 23, 1981

Louis J. Breimhurst
Executive Director

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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 Corrections

Adopted Rules Governing Secure Juvenile Detention Facilities

The rules proposed and published at *State Register,* Volume 5, Number 9, pp. 307-332, September 1, 1980 (5 S.R. 307) are now adopted with the following changes:

Amendments as Adopted

Table of Contents

11 MCAR

§ 2.521 Staff deployment, job description, work assignments, post orders, policies and procedure.

D. ~~Policies~~ Policy and procedure manuals.

§ 2.536 Environmental-personal health and sanitation.

K. Reporting of suspected ~~communicable~~ contagious disease.

L. Isolation for ~~communicable~~ contagious disease.

§ 2.542 Administration.

~~A. Facility's governing body.~~

~~B. Multi-county or regional facilities.~~

A.~~C.~~ Qualified fire and safety officer.

B.~~D.~~ Inventory control.

C.~~E.~~ Insurance coverage.

~~F. Private facilities only.~~

11 MCAR § 2.505 Definitions. [The definitions in this section have been alphabetized and relettered accordingly.]

U.~~D.~~ "Secure juvenile detention facility" shall mean a physically restricting facility, including a detention home ~~and county home school~~.

V.~~W.~~ "Substantially conform" as used in 11 MCAR § 2.509 ~~C.~~ D., shall mean compliance with 70 percent or more of all rules applicable to a facility's classification as stated herein and, additionally, shall mean compliance with 70 percent or more of all rules applicable to a facility's classification in each section of these rules. "Section" as used in this definition means the entire area or subject matter under a given rule, e.g., 11 MCAR § 2.501, or 2.505.

11 MCAR § 2.509 Inspections, intended use and non-conformance with rules.

A. Annual inspections. Each juvenile correctional facility required to be licensed by Minn. Stat. § 241.021 will be inspected at least once annually. Each facility and ~~it's~~ its books and records pertaining to ~~it's~~ its operation and the care, custody and protection of ~~it's~~ its residents, shall be accessible at all times for inspection by the commissioner or his designee. All reports relating to the condition of the facility and ~~it's~~ its conformity with the standards established by the commissioner will be made in accordance with these rules.

B. Intended use. No secure juvenile detention facility organized and established for the detention, care and treatment of

children and youth adjudicated to be delinquent shall be used for the temporary detention of children and youth alleged to be delinquent and awaiting the judicial process until licensed to do so by the commissioner.

C. Revocation of license for non-conformance. Revocation of license proceedings shall be commenced when conditions in the facility are likely to endanger the health, welfare or safety of the residents or staff. After revocation of ~~it's~~ its license, the facility shall not be used for the detention, care and training of children and youth, unless otherwise provided by order of the District Court, or unless relicensed.

D. Issuance of license. A license shall be granted to a county, municipality or agency thereof operating a facility, if the facility is in substantial conformance with rules stated herein or is making satisfactory progress towards substantial conformance and if the interests and well-being of children and youth received therein are protected. The license shall remain in force one year unless sooner revoked.

11 MCAR § 2.512 Variances.

A.2. The juvenile detention facility is otherwise in compliance with said standards and their general purpose and intent~~;~~.

11 MCAR § 2.515 Personnel standards.

A.3. Any staff member with a ~~communicable~~ contagious disease shall not be permitted to work in the facility until such time that a physician certifies that the staff member's condition will permit his return to work without endangering the health of other staff and residents.

A.4. The facility administrator shall require that a staff member have a medical examination when there is reason to believe a ~~communicable~~ contagious disease exists.

~~B.4. Service personnel other than facility staff, including offenders from adult correctional institutions, may perform work in the facility only under direct and continuous supervision of facility staff when such personnel are in areas permitting contact with juveniles.~~

B.4. Any service personnel other than facility staff, including offenders from adult correctional institutions, occasionally performing work in the facility shall perform services only intermittently and under direct and continuous supervision of facility staff when such personnel are in areas permitting contact with juveniles.

B.6. Recruitment standards shall set forth the basic requirements as to age, ability, preparatory experience~~,~~ and physical condition ~~and character~~.

D. Extra duty. No employee shall be ~~assigned to~~ scheduled for duty for two (2) consecutive work periods except in a documented emergency, or where unusual circumstances require reasonable and prudent exception.

E.2.a. Facility administrator: There shall be a single administrator or chief executive of each facility. Where the average daily population of residents exceeds fifty (50), the administrator shall have an assistant. In the absence of the facility administrator, a staff person shall be designated as person in charge. The facility shall not be left without such on-site supervision.

~~E.2.a.(1) Person in charge. In the absence of the facility administrator, a staff person shall be designated as person in charge. The facility shall not be left without such on-site supervision.~~

~~E.2.a.(2) Persons in charge shall be certified in writing by the facility administrator as physically able, competent, capable and prepared by training to act in an emergency.~~

E.2.e. ~~Maintenence~~ Maintenance personnel. Maintenance personnel shall be employed to perform preventive, routine and emergency maintenance functions.

E.2.f. There is a staffing plan which provides increased ~~youth care staffing~~ staff during program periods; there are a minimum of two ~~youth care workers~~ staff on duty at all times in the facility, one of whom is female when females are housed in the facility.

~~E.2.h. Recreation staff. Each facility with an approved bed capacity of fifty (50) or more shall have a minimum of~~

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~~one (1) staff person designated to develop, implement and coordinate recreational programs for the residents. Such person shall have training and/or experience appropriate to required responsibilities. Facilities with approved bed capacities of less than fifty (50) shall designate a staff person to act as a liaison between the facility and existing community recreational resource agencies or individuals. Such staff person in consultation with such resource agencies or individuals shall develop, implement and coordinate the facilities' recreation programs. Such staff person may serve full or part-time in this capacity at the discretion of the facility administrator.~~

E.2.i. [Relettered as E.2.h.]

E.2.j. [Relettered as E.2.i.]

11 MCAR § 2.518 Staff training.

A.2. In-service training plans shall be prepared annually and orientation training plans reviewed and revised as necessary to adjust to changing conditions.

11 MCAR § 2.527 Resident welfare.

B. Classification. Such criteria as sex, age, delinquent sophistication, assaultiveness, degree of security or escape risk, and other criteria designed to provide for the protection and safety of the residents, staff, and the community will be used at the discretion of the facility administrator. The established criteria used will be in writing and available for review at the time of annual inspection.

~~B.1. Juvenile detention facilities shall screen all admissions at intake for the purpose of determining the classification of the new resident which will dictate the living unit assignment and the activities and programs he/she will be permitted to participate in.~~

~~B.2. Such criteria as sex, age, delinquent sophistication, assaultiveness, degree of security or escape risk, and other criteria designed to provide for the protection and safety of the residents, staff, and the community will be used at the discretion of the facility administrator. The established criteria used will be in writing and available for review at the time of annual inspection.~~

D. Administrative segregation. Each facility administrator shall develop and implement policies and procedures for the use of administrative segregation.

~~D.a. Each facility administrator shall develop and implement policies and procedures for the use of administrative segregation.~~

D.~~b.~~1. Administrative segregation shall consist of separate and secure housing, but shall not involve any deprivation of amenities or privileges~~,~~ normally afforded other residents, except to the extent that the protection of the resident, staff or public justify the necessity of such deprivation.

D.c. [Reletter as D.2.]

D.2. [Reletter as D.3.]

D.~~2.~~3.b. The facility administrator shall include in the disciplinary plan a system of due process which has been reviewed and approved by the appropriate legal advisor for the detention ~~centers'~~ center's governing body.

D.3. [Reletter as D.4.]

~~D.4. Disciplinary isolation.~~

~~D.4.a. Such resident shall be place in isolation only with the approval of the facility administrator or the designated person in charge — shift supervisor.~~

~~D.4.b. Medical opinion on placement and retention shall be secured within twenty-four (24) hours of placement.~~

~~D.4.c. Intermittent visual supervision shall be provided at least every half hour.~~

~~D.4.d. No resident shall be held in disciplinary isolation for a period longer than twenty-four (24) hours without on-site review by the facility administrator or his designee. If continued isolation is deemed necessary, the reason(s), therefore, shall be documented, as shall each subsequent on-site review every twenty-four (24) hours.~~

D.6.b. The facility administrator shall develop written policies and procedures to govern the use of restraints ~~and chemical agents~~.

E.4. Education program. Education programs shall be consistent with State Department of Education rules ~~and regulations~~ and statutory requirements governing juvenile education.

E.7.b. Provisions for a minimum of two (2) hours daily of organized and supervised physical exercise and

recreational activities and leisure time activities, excluding time spent watching television, for all residents. Organized and supervised means pre-planned exercise or activities supervised by staff qualified to direct same;

~~E.8.a. All facilities shall have provisions for leisure time activities that include television, radio, table games, hobby craft items and library materials. Provisions shall be provided consistent with:~~

~~E.8.a.(1) The facility's rated capacity;~~

~~E.8.a.(2) The security needs of residents detained. Amenities shall be consistent with resident needs and may be in accordance with established reasonable and necessary facility regulations to protect the facility's security and the welfare of residents.~~

~~E.8.b. the facility administrator shall develop and implement in-room programs for those residents confined to their rooms as a result of disciplinary action.~~

~~F. Visiting.~~

F.1. [Relettered as F.]

F.1.a. [Relettered as F.1.]

F.1.b. [Relettered as F.2.]

F.1.c. [Relettered as F.3.]

F.1.c.(1) [Relettered as F.3.a.]

F.1.c.(2) [Relettered as F.3.b.]

F.1.c.(3) [Relettered as F.3.c.]

F.1.c.(4) [Relettered as F.3.d.]

F.1.c.(5) [Relettered as F.3.e.]

F.~~1.d.~~4. Visits shall be allowed for identified members of a resident's immediate family, his counsel, clergyman, and ~~friends as deemed appropriate by the facility administrator or his designee~~ others who would be helpful in planning for the child.

F.1.e. [Relettered as F.5.]

F.1.f. [Relettered as F.6.]

F.1.g. [Relettered as F.7.]

F.1.h. [Relettered as F.8.]

~~H.1.c. All offenders admitted to the facility who are assigned to living units are to be issued a set of facility clothing.~~

~~H.1.c.(1) Their personal clothing shall be returned after laundering.~~

~~H.1.c.(2) The clothing issued shall consist of clean socks, and suitable outer and undergarments.~~

~~H.1.c.(3) Residents not admitted to living units who are detained in holding rooms utilized solely for the purpose of intake and release processing need not be issued clothing. Such rooms shall be kept in sanitary condition.~~

~~H.4.e. Blankets shall not be issued to another resident without first being laundered.~~

I.8.d. Written plans governing space arrangements and procedures to follow in the event of a group arrest that exceeds the maximum capacity of the juvenile detention facility shall be developed; these plans are to be reviewed at least annually and updated if necessary.

I.9.d. Records of a deceased resident shall be retained for a period of time in accordance with law ~~and the requirements of the State Records Center~~.

11 MCAR § 2.530 Food service.

B.1. Any food service provided in a correctional facility shall be in accordance with the provisions of the Minnesota Department of Health ~~regulations~~ rules (7 MCAR §§ 1.161-1.165) governing food service and beverage service establishments.

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B.3. When food is catered into the facility, it shall be obtained from a source acceptable to the Minnesota Department of Health ~~and transported, handled and served in accordance with provisions of applicable rules of the Department of Health~~ pursuant to 7 MCAR §§ 1.161-1.165.

C. Dietary service. The food and nutritional needs of residents shall be met ~~in accordance with their needs and shall meet the dietary allowances as stated in the Recommended Dietary Allowances, Food and Nutrition Research Council, National Academy of Sciences, 9th Edition, 1980.~~ Providing each resident the specific serving per day from each of the following four food groups will satisfy this requirement.

~~L. Canteen.~~

~~L.1. All facilities with approved capacities of twenty-five (25) or less shall provide residents with a printed list of approved canteen items to be purchased by a facility staff member at local stores if the facility does not operate a canteen in the facility.~~

~~L.2. All facilities with approved capacities over twenty-five (25) shall establish, maintain and operate a canteen in the facility.~~

~~L.3. Each resident shall have an opportunity to purchase from the canteen at least twice per week.~~

L. Canteen services shall be available to residents on a twice per week basis. Facilities which do not operate a canteen shall implement a system whereby residents have the opportunity to purchase or obtain sundry items on a twice per week basis.

11 MCAR § 2.533 Security.

B.2. No juvenile shall be received by the staff of a facility until the arresting or escorting officer has produced proper credentials and/or until the proper documents have been completed identifying the purpose for detention. The arresting or escorting officer shall be required to sign his name and title on a form which is part of the intake and record.

F.2. Materials which can be ~~deliterious~~ deleterious to security, safety and health shall be properly secured, inventoried and dispensed.

11 MCAR § 2.536 Environmental-personal health and sanitation.

~~C.2. Juveniles' medical complaints are monitored and responded to daily by medically trained personnel.~~

C.3. [Relettered as C.2.]

C.4. [Relettered as C.3.]

J.1. Delivery of medicine shall be conducted only by licensed medical~~,~~ or nursing personnel or by facility staff members who have ~~successfully completed a Minnesota Department of Corrections approved training program on the "Delivery of Medicine by Unlicensed Personnel"~~ been trained in the delivery of medications.

J.7. Methadone programs shall not be made available unless in compliance with all existing laws ~~and regulations~~ governing such programs.

K. Reporting suspected ~~communicable~~ contagious disease. When no physician is in attendance, it shall be the duty of the facility administrator, or other person in charge of any institution or any other person having knowledge of any individual believed to have or suspected of having any disease, presumably ~~communicable~~ contagious, to report immediately the name and address of any such person to the local health officer. Until official action on such has been taken, strict isolation shall be maintained.

L. Isolation for ~~communicable~~ contagious disease.

L.1. Residents who are suspected of having a ~~communicable~~ contagious disease shall be detained in isolation for only that period of time necessary to obtain advice and consultation from a physician concerning the resident's status and recommendations for care. Continuation of such isolation shall be determined by the attending physician.

M.2. If the facility administrator or his designee determines a resident to be mentally ill, ~~a certified consulting psychologist or~~ a licensed physician's opinion (preferably a psychiatrist) shall be secured as soon as possible, but not more than eight (8) hours after such ~~segregation~~ determination.

M.3. If a ~~certified consulting psychologist or~~ licensed physician's opinion is supportive of the facility administrator or his designee, and if practical and feasible, such resident shall be transferred to a medical facility designated by the county and approved by the State Department of Health for diagnosis, treatment, and evaluation of such suspected mental illness pursuant to Minn. Stat. § 253A.04, Emergency Hospitalization of Mentally Ill and Mentally Deficient Persons.

M.5.a. The facility administrator in cooperation with the facility's governing body shall develop policies and

procedures designed to detect building and equipment deterioration, safety hazards and unsanitary conditions in the early stages of their development and provide for their repair, correction or modification so that such conditions are eliminated to the extent required by ~~regulations~~ rules contained herein.

11 MCAR § 2.539 Juvenile detention programs.

A. Statement of program objectives. Each facility administrator shall prepare in written form a statement of program objectives and goals. Such objectives and goals shall be developed with the input of local juvenile justice personnel including judges, probation officers and others as deemed appropriate by the ~~facilities~~ facility's governing body and administrator. A copy of the statement of program objectives shall be retained on file in the facility.

B. Program plan. Each facility administrator shall develop and implement a plan for programming and service consistent with its~~'~~ stated program objectives.

E.19. Drivers license number, social security number and ~~medicade~~ medicaid number;

E.22. Space for remarks (to include notation of any open wounds or sores requiring treatment, evidence of disease or body vermin, or tattoos); and

F.2.i. ~~Vistors~~ Visitors' names and dates of visits;

11 MCAR § 2.542 Administration.

~~A. Facility's governing body. The facility's governing body, county board, city council, or other such governmental unit legally responsible for the facility shall be responsible for its management, control and operation.~~

~~B. Multi-county or regional facilities. The governing body of any multi-county, regional facility or similar such facility operating under a joint powers agreement, regional development plan, community corrections act or similar provision shall develop written bylaws. The bylaws shall provide for and clearly state the following:~~

~~B.a. Membership in the agency, including the types of membership, and the rights and duties of the members.~~

~~B.b. Provisions for a governing body.~~

~~B.c. Number of members in the governing body.~~

~~B.d. Method of selecting members of the governing body.~~

~~B.e. Terms of office for members of the governing body.~~

~~B.f. Provisions for officers of the governing body.~~

~~B.g. Method of selection of officers.~~

~~B.h. Term of office for the officers.~~

~~B.i. Specification of duties of officers and members.~~

~~B.j. Provisions for standing committees.~~

~~B.k. Provisions for regular and special meetings.~~

~~B.l. Establishment of a quorum for meetings of the governing body. (In no case may the agency bylaws allow for less than on third (1/3) of the members then in office to constitute a quorum.)~~

~~B.m. Responsibilities of the governing body.~~

~~B.n. Use of parliamentary procedures.~~

~~B.o. Provisions for recording minutes of meetings of the governing body.~~

~~B.p. Methods of amending the bylaws.~~

~~B.q. Provisions against conflict of interest of members of the governing body and the agency.~~

~~B.r. Specification of the relationship of the facility administrator to the governing body.~~

A. ~~C.~~ The ~~facility~~ administration ~~has~~ shall have available to it the services of a qualified fire and safety officer ~~who~~ to ~~reviews~~ review all policies and procedures related to safety and fire prevention.

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B.~~D.~~ Written policy and procedure shall govern inventory control of property, ~~stores~~ equipment and other assets.

C.~~E.~~ There ~~is~~ shall be a procedure to provide insurance coverage ~~for the facility, which includes coverage~~ for the physical plant- and equipment, ~~and~~ as well as personal and property injury to employees, volunteers, residents, and third parties.

~~F. Private facilities only.~~

~~F.1. The facility must operate under a constitution or articles of incorporation which meets all of the legal requirements of the governmental jurisdiction in which the facility is located.~~

~~F.2. The facility must have a local governing authority or advisory board which is representative of the community in which the facility is located.~~

~~F.3. The facility or its parent agency must identify, document and publicize its tax status with the internal revenue service.~~

~~F.4. The facility must have bylaws, approved by the governing authority, which shall be filed with the appropriate local, state and/or federal body.~~

~~F.5. At a minimum, the facility bylaws must include for the governing authority: Membership (types, qualifications, community representation, rights, duties); size of the governing body; method of selection; terms of office; duties and responsibilities of officers, times authority will meet; committees; quorums; parliamentary procedures; recording of minutes; method of amending the bylaws; conflict of interest provisions; and specification of the relationship of the chief executive to the governing body.~~

~~F.6. The governing authority of the facility must hold meetings as prescribed in the bylaws.~~

~~F.7. A permanent record shall be kept of meetings of the governing authority.~~

Department of Economic Security
Training and Community Services Division

Adopted Temporary Rule Governing Emergency Residential Heating Grants

Notice is hereby given by the Department of Economic Security that the following temporary rule has been adopted and approved pursuant to the provisions of Laws of 1980, ch. 579, § 22. All interested persons may comment in writing on this rule to:

R. Jane Brown
Energy Assistance Programs
Minnesota Department of Economic Security
690 American Center Building
150 E. Kellogg Boulevard
St. Paul, Minnesota 55101

Written comments submitted for consideration must be received by March 23, 1981. The temporary rule may be amended on the basis of comments received.

Temporary Rules as Adopted

8 MCAR § 4.4012 Emergency residential heating grants for low income households.

A. Policy.

1. The purpose of these rules is to govern the administration of grants to low income households pursuant to Laws 1980, ch. 579, to supplement the federal Low Income Energy Assistance Program, 42 USC §§ 8601-8612.

2. Unless otherwise stated in these rules, this program shall be administered in the same manner and form as the federal Low Income Energy Assistance Program.

3. This program does not entitle any household to a certain amount and/or form of assistance.

B. Definitions. The following terms used in this rule shall have the meaning given them.

1. "Building operator" means an owner or owner's representative of a residential building who provides housing to low income households.

2. "Commissioner" means the Commissioner of the Minnesota Department of Economic Security of his/her designated representative.

3. "Eligible household" means any household that a grantee has determined to be eligible for assistance. Eligibility shall be based on annualized household income during not more than 12 months nor less than the 90-day period preceding the request for assistance.

4. "Grant" means the approved written agreement entered into between the grantee and the State.

5. "Grantee" means the local administering agency.

6. "Heating degree days" means the result of the following calculation: for each day in a year's time on which the day's mean temperature in a given locality is less than 65 degrees F., the difference between each day's mean temperature and 65 degrees F. is totaled for the year. The result is the "heating degree days" for that locality.

7. "Household" means any individual or group of individuals who are living together as one economic unit and for whom residential energy is customarily purchased in common, or who make undesignated payments for energy in the form of rent.

8. "Landlord Agreement" means a signed written agreement between the grantee and the landlord of a SEAP applicant household assuring that rent will not be raised as a direct result of the applicant's participation in SEAP and identifying that portion of the applicants rent applied to energy costs.

9. "Law" means Laws of 1980, ch. 579.

10. "Local administering agency" means a county human service office, community action agency, or a public or private non-profit agency which has been granted funds in accordance with these rules.

11. "Low Income Energy Assistance Program", or "LIEAP," is the federally funded energy assistance program, 42 USC §§ 8601-8612.

12. "Medicare" means that program established by the 1965 amendments to the Social Security Act to provide hospital care and medical insurance to persons age 65 and over.

13. "State" means the State of Minnesota acting through the Department of Economic Security (DES).

14. "State Energy Assistance Program" (SEAP) means the Emergency Residential Heating Assistance Program.

15. "Vendor" means a supplier of energy.

16. "Vendor Agreement" means that document signed by an energy supplier and a grantee that details the terms and conditions under which the energy supplier agrees to participate in LIEAP.

17. "Vulnerable household" means a household that is not fully protected against increases in home energy costs under any government program.

C. Local administering agencies.

1. In order to be awarded a grant a local administering agency must be a deliverer of LIEAP.

2. Allocations to local administering agencies shall be made on the basis of the number of income eligible households in the area served by the agency adjusted by the cost of fuel and degree days. Unexpended funds in one grantee area may be reallocated to another area of the state.

3. All grants shall be in writing stating the obligations of the grantee and the amount of the grant.

D. Serving clients.

1. Grantees shall work with other local human service programs to locate and notify potential program participants. They shall also work with other human service providers to establish decentralized intake and certification systems.

2. Grantees shall publicize information regarding the availability of assistance under this program.

3. Any resident of Minnesota except those assisted by LIEAP may apply for this program.

4. Only applications for assistance taken after December 1, 1980 shall be used to determine eligibility under this program.

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5. No application for assistance under this program shall be taken after June 15, 1981.

6. If an agency anticipates an inability to fully assist all eligible applicants because of a lack of funds, the agency shall develop a priority plan which must be submitted to the State for approval. Priority must be given to households with the lowest income and highest energy burden.

7. Grantees shall have, and provide to all applicants, procedures for review of partial or complete denial of assistance under this program.

E. Forms of assistance. Forms of assistance on behalf of eligible households shall be the same as those used to provide assistance to eligible households for LIEAP.

F. Eligibility.

1. Assistance shall be made on behalf of eligible households whose annualized household income does not exceed the following limits:

Size of household	Not more than
1	$ 6,367
2	8,417
3	10,466
4	12,516
5	14,566
6	16,615

(For each additional household member add $2,050).

2. In determining household income, a household may deduct documented medical expenses that exceed three percent of the household income and that are not reimbursed by insurance or other sources. Payments by a member of a household on behalf of a household member to a nursing home for basic residential care are considered medical expenses. Insurance premiums, with the exception of Medicare payments automatically deducted from social security checks, are not allowable medical expenses.

3. Grantees shall require proof of income from applicants for heating assistance. The period for determining eligibility shall be not more than 12 months nor less than the 90-day period preceding the request for assistance. Grantees are required to verify all income.

4. Payments under this program shall not be considered as income or resources under any other public or publicly assisted income tested program.

G. Limitation on payments.

1. Assistance amounts shall be based on household income, degree days, and primary energy costs. The maximum amount of assistance to eligible households shall in no case exceed heating costs incurred between October 15, 1980, and April 15, 1981, or the assistance amount indicated on the Eligibility Table, whichever is less. If federal money is not available to assist LIEAP eligible applicants, SEAP funds are available to serve those applicants that meet the SEAP eligibility guidelines up to the level of assistance computed under LIEAP.

2. Assistance to households shall be based on the household's primary energy source.

3. Households that receive assistance from federal LIEAP are not eligible to receive assistance under this program. Households denied eligibility for LIEAP because of the lack of federal funds may receive assistance from SEAP. When additional LIEAP funds become available they shall be used to reimburse these SEAP assistance payments.

4. Vulnerable households may be eligible for assistance under this program. Assistance payments shall not be made to households that are fully protected, by any government programs, against increased costs of home energy costs.

5. Money paid to vendors for the purpose of establishing lines of credit for eligible households that is unspent as of May 30, 1981 shall be returned to the grantee.

6. Assistance made available under this program must first be directed to the payment of past due energy bills.

7. Assistance provided on behalf of eligible households to secondary vendors shall be limited to the amounts due vendors by eligible households prior to determination of eligibility.

8. Direct cash assistance to eligible households may be provided as reimbursement for actual primary heating expenses paid prior to receipt of assistance and after October 15, 1980.

9. Households that supply their own wood for primary heat may receive direct cash assistance on a reimbursement basis

for the fair market value of wood used between October 15, 1980, and April 15, 1981, or the amount indicated on the eligibility table, whichever is less.

10. Households that rent and pay energy costs as an undesignated portion of their rent may receive assistance. When a landlord agreement can be secured the amount of assistance shall be based on the portion of rent considered payment for energy costs but must not exceed 25 percent of actual rent paid over a six month period. The landlord must agree, in writing, not to raise the rent as a direct result of the household's receiving energy assistance. When a landlord agreement cannot be secured the portion of rent designated for heat may be determined by local precedent but must also be limited to 25 percent of actual rent paid over a six-month period and a direct payment may be made to the household. Assistance to households that rent shall not exceed the assistance amount as computed on the Eligibility Table.

H. Coordination with vendors. Vendor agreements developed and executed for LIEAP shall be considered valid agreements for this program. Any new vendor secured for this program is required to enter into a vendor agreement.

I. Termination of the program. This program shall terminate on June 30, 1981. Obligations for assistance under this program may not be made after that date. Unobligated funds must be returned to the state by July 31, 1981.

J. Program costs.

1. Grantees shall be provided an allocation for administrative costs in relation to available administrative dollars and their total allocation for SEAP. If the grantee incurs expenditures in excess of its total allocation, the amount of the over-expenditure must be absorbed by the grantee. Costs incurred from December 1, 1980 to program end in the administration of this program are allowable costs.

2. Two percent of the state's appropriation for fiscal year 1981 and the unused portion allocated for fiscal year 1980 for administration by the state may be used by the state for administrative costs including audit.

K. Reporting.

1. Grantees shall report monthly to the state from the date of their grant through June 30, 1981. A final report shall be due July 31, 1981. Data to be included in the reports shall be the same as that required under LIEAP. A subgrantee invoice, reporting accrued expenditures, shall be required from grantees at least once per month to receive funds under this program.

L. Monitoring and audit.

1. The Department of Economic Security shall have the right to monitor the delivery of this program at the local level.

2. Charges reported to the State related to poor administration, faulty or inadequate eligibility certification, duplication and/or fraud shall be investigated immediately by the State. Failure to correct problems may result in termination of the grant.

3. An accounting firm shall be contracted by the State to conduct audits of grantees. The legislative auditor shall approve the selection of the auditors and the scope of the audit.

4. Grantees shall cooperate fully with the monitoring and auditing process.

M. Miscellaneous.

1. Assistance under this program shall not be available to assist households for minor repairs or for consumer goods.

2. Building operators are not eligible to apply for funds under this program.

3. Assistance under this program is not available to pay cooling costs.

N. Severability. The provisions of this rule shall be severable and if any phrase, clause, sentence, or provision is declared illegal or of no effect, the validity of the remainder of this rule and the applicability thereof to any person or circumstances shall not be affected thereby.

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.

ELIGIBILITY TABLE
EMERGENCY RESIDENTIAL HEATING GRANTS

Household Size	Non-SMSA's			St. Cloud-Rochester Duluth-Moorhead SMSA			St. Paul Minneapolis-SMSA		
1	$ 6,367	$ 5,685	$4,738	$ 6,367	$ 5,685	$4,738	$ 6,367	$ 5,685	$4,738
2	8,417	7,515	7,220	8,417	7,515	7,430	8,417	7,550	*
3	10,466	9,910	*	10,466	10,210	*	10,466	10,360	*
4	12,516	12,240	*	*12,516	*	*	*12,516	*	*
5	14,566	14,440	*	*14,566	*	*	*14,566	*	*
6	*16,615	*	*	*16,615	*	*	*16,615	*	*
	**			**			**		
Cost Per Million Delivered BTU									
NORTH									
$ 0-4	50	50		50	50				
4-6	60	160		60	160				
6-8	150	275		150	275				
8-10	200	355		200	355				
10 & over	250	430		250	430				
CENTRAL									
$ 0-4	50	50		50	50		50	50	
4-6	50	95		50	95		50	95	
6-8	140	240		140	240		140	240	
8-10	175	310		175	310		175	310	
10 & over	215	380		215	380		215	380	
SOUTH									
$ 0-4	50	50		50	50		50	50	
4-6	50	50		50	50		50	50	
6-8	100	200		100	200		100	200	
8-10	150	270		150	270		150	270	
10 & over	190	330		190	330		190	330	

*Eligible for federal LIEAP. Households with incomes less than the amounts listed and unserved by LIEAP because of a lack of federal funds may be eligible to receive SEAP assistance up to the levels of assistance computed under LIEAP. SEAP funds shall be applied to primary heating costs only except for amounts due secondary vendors prior to the date of determination of eligibility.

**For each additional household member add $2,050.

COST PER MILLION BTU CONVERSION TABLE

Cost Per Million Delivered BTU	LP $/gal	Oil $/gal	NG $/CCF	Elec $/KWH	Coal $/ton	Wood Hard $/cord	Wood Soft $/cord	Municipal Steam Heat $/1000 lbs
$ 4	0.24	0.33	0.26	0.014	50.80	33.6	20.00	4.60
6	0.36	0.50	0.39	0.020	76.40	50.4	30.00	6.90
8	0.48	0.66	0.52	0.027	101.90	67.2	40.00	9.20
10	0.60	0.83	0.65	0.034	127.40	84.0	50.00	11.50

State Board of Education
Department of Education
School Management Services Division
Special Services Division

Repeal of Rules Governing Financial Accounting Reporting Requirements and School Administrators

EDU 8, EDU 330 and 5 MCAR § 1.0765 as proposed for repeal and published at *State Register,* Volume 2, Number 33, pp. 1539-1541, February 20, 1978, (2 S.R. 1539) were repealed by the State Board of Education on July 10, 1978, approved by the Office of the Attorney General and filed in the Office of the Secretary of State on August 14, 1978.

Minnesota State Agricultural Society
Minnesota State Fair

Adopted Rules Governing the Operation and Management of the Minnesota State Fair and Minnesota State Fairgrounds

The Minnesota State Agricultural Society board of managers adopted the following rules and rule changes Jan. 20, 1981, at a general business session. The following rules are additions and amendments to those published in the *State Register* Monday, March 10, 1980, pages 1462-1468. Because the Minnesota State Agricultural Society is not an agency of state-wide jurisdiction, these rules will not be contained in the Minnesota Code of Agency Rules (MCAR) and are published here as official public notice.

New rules:

S.F. 1.18 Pets. No dogs or other pets, other than seeing-eye dogs, shall be permitted on the State Fairgrounds during the annual State Fair. This prohibition does not apply to the State Fair Campgrounds or any other area expressly designated by the secretary-general manager, nor does it apply to animals on display in competitive or commercial exhibits.

S.F. 1.19 Roller Skates and skateboards. Roller skates or skateboards shall not be permitted on the State Fairgrounds during the annual State Fair, except in an exhibit contracted by the society.

S.F. 1.20 Practice driving. The State Fairgrounds may not be used by any person, organization or firm to conduct lessons for or to practice driving automobiles or other motor vehicles, unless such person, organization or firm has entered into a contract with the society to engage in such activity.

Changes/amendments to existing rules:

S.F. 3.3. ~~Livestock Sanitary Board~~ Board of Animal Health. The exhibition of livestock shall be under the supervision of the ~~Minnesota Livestock Sanitary Board~~ Minnesota Board of Animal Health and its applicable rules and regulations will be complied with in full. Health requirements for individual departments will be set forth in their respective premium books.

S.F. 3.4 General entry requirements. Competitive exhibitors must file proper entry blanks with any applicable fees prior to the designated closing date for entries. The State Fair reserves the right to refuse entries or prohibit the exhibition of animals or articles entered if the showing of such animals or articles is contrary to law, or violative of the fair's valid interest in providing for the health, safety and protection of the fairgoing public. Exhibits entered in the wrong lot or category may be transferred prior to judging at the discretion of the department superintendent to the proper lot or category of competition. Deception of any type by an exhibitor, as determined by the judge or department superintendent, will ban the exhibitor from any further

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competition and result in the forfeiture of all premiums. Mechanical or artistic articles must be entered in the name of the artist, inventor, manufacturer or maker. No officer of the society or member of the board of managers or State Fair employee or department superintendent or member of such person's family, shall be permitted, directly or indirectly, to make a competitive entry in any department over which that person has supervisory responsibility or in which that person is employed.

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

State of Minnesota
County of Scott

Wayne C. McCutcheon and Patricia A. McCutcheon, Art Berens and Sons, Inc., and City of Shakopee,

Petitioners,

v.

State of Minnesota and County of Scott,

Defendants,

and

State of Minnesota, by Warren Spannaus, its Attorney General, and Metropolitan Council,

Defendants-Intervenor.

Tax Court
First Judicial District

File Nos. TC - 123
TC - 124
TC - 125

Findings of Fact, Conclusions of Law and Order for Judgment

The above petitions were consolidated for trial and came on for hearing on the 15th day of April, 1980 at the Scott County Courthouse, Shakopee, Minnesota before the Honorable Earl B. Gustafson, Judge of the Minnesota Tax Court. Testimony was closed on the 21st day of April, 1980 and was submitted to the Court on written post-trial briefs on the 2nd day of September, 1980.

Phillip R. Krass of Krass, Meyer & Kanning Chartered appeared representing petitioners. D. Douglas Blanke, Special Assistant Attorney General and William P. Donohue, Special Assistant Attorney General, appeared representing the State of Minnesota. Karen Schafer, Assistant Staff Counsel, appeared representing the Metropolitan Council.

The Court, having heard and considered the evidence adduced and being fully advised now makes the following:

Findings of Fact

1. The above matters were transferred from District Court to the Minnesota Tax Court. All jurisdictional and statutory requirements have been complied with, and the Court has jurisdiction over the subject matter of the action and the parties thereto.

2. On January 2, 1975 all petitioners were owners or had an interest in real property situated in the City of Shakopee, County of Scott, State of Minnesota, described in these petitions.

3. The petitioners Wayne C. McCutcheon and Patricia A. McCutcheon owned homestead (Class 3c) property in the City of

Shakopee which had an assessor's estimated market value on the assessment date of January 2, 1974 for taxes payable in 1975 of $30,285.00 and an assessed value of $10,314.00 resulting in taxes of $854.30.

4. The petitioner Art Berens & Sons, Inc., owned a supermarket (Class 4) property in the City of Shakopee which had an assessor's estimated market value on the assessment date of January 2, 1974 for taxes payable in 1975 of $113,200.00 and an assessed value of $42,441.00 resulting in taxes of $5,296.02.

5. The petitioner City of Shakopee owned non-exempt right of way (Class 4) property in the City of Shakopee which had an assessor's estimated market value on the assessment date of January 2, 1974 for taxes payable in 1975 of $9,325.00 and an assessed value of $3,730 resulting in taxes of $426.50.

6. A portion of petitioners' 1975 real estate taxes were levied against petitioners' property as a result of Chapter 24, Minnesota Extra Session Laws, 1971 (Chapter 473F Minnesota Statutes 1980) commonly known as the Fiscal Disparities Act.

7. Petitioners claim said Fiscal Disparities Act should be declared invalid as a violation of the Fourteenth Amendment to the United States Constitution and Article 10, Section 1 of the Minnesota Constitution.

8. The Fiscal Disparities Act bears a reasonable relation to permitted legislative purposes.

9. The Fiscal Disparities Act as applied to petitioners does not result in hostile and oppressive discrimination.

Conclusions of Law

1. The Fiscal Disparities Act does not violate either the Fourteenth Amendment to the United States Constitution nor Article 10, Section 1 of the Minnesota Constitution.

2. Petitioners' claims for relief should be denied and the petitions dismissed.

3. The attached Memorandum is made a part of these Findings of Fact and Conclusions of Law.

LET JUDGEMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

February 12, 1981.

Earl B. Gustafson
Tax Court Judge

Memorandum

This case is an attack on the constitutionality of Minnesota's Fiscal Disparities Act, Minn. Stat. ch. 473 F, by the petitioning taxpayers and the City of Shakopee. The constitutional validity of the statute has already been upheld by both the Minnesota Supreme Court and the United States Supreme Court in the case of *Burnsville v. Onischuk,* 301 Minn. 137, 222 N.W. 2d 523 (1974), app. dis., 420 U.S. 916 (1975). Petitioners, not being parties to the *Burnsville v. Onischuk* case, are not barred by res judicata in bringing this action. They are, however, severely limited by the doctrine of stare decisis in attempting to litigate anew legal issues already authoritively decided. There is, of course, additional evidence available to all parties because of the passage of time. *Burnsville v. Onischuk* was heard by the trial court in 1972 and the Act did not go into effect until 1975 after all appeals were concluded. This case was tried in 1980.

After *Burnsville v. Onischuk, supra,* the sole issue that remained open and the sole issue that has now been litigated and is before this Court is whether the Act in its application to the petitioners constitutes "hostile and oppressive" discrimination. In *Burnsville v. Onischuk, supra,* our Minnesota Supreme Court cited with approval the United States Supreme Court decision in *San Antonio School District v. Rodriquez,* for 11 U.S. 1, 93 S.Ct. 1278, (1973):

We have concluded that the statutory scheme for revenue sharing embodied in c. 24 reaches a constitutional accommodation between the tax burdens imposed and the benefits derived therefrom to a degree which satisfies the requirements of the uniformity provisions of Minn. Const. art. 9, § 1. In reaching our decision, we echo and paraphrase what was said in *Rodriquez.* The legislature enjoys a familiarity with the problems of fiscal disparities which is denied the courts. *The presumption of constitutionality which the statute enjoys has not been overcome by any explicit demonstration that its application results in a "hostile and oppressive discrimination"* against the residents of particular units of government. (Emphasis added)

In the recent case of *In the Matter of the Petition of McCannel To Review Objections to Real Estate Taxes* ____ N.W. 2d, § ____ (Sept. 5, 1980) the Minnesota Supreme Court addressed the standard of review applicable to equal protection claims in property tax classifications. After discussing *Burnsville v. Onischuk*, supra, *San Antonio School District v. Rodriquez*, supra, and other cases the court said:

The reasoning exemplified by the decisions discussed above makes it clear that in the instant cases, the property tax classifications contained in § 273.11, subd. 2, *must be upheld* against an equal protection challenge *if a rational basis for the legislature's distinctions can be found.* Moreover, we cannot strike down the classification unless there is palpable error, *an explicit demonstration* that the classification results from arbitrary discrimination. *Petition of McCannel*, slip opinion at Pg. 11. (Emphasis added)

Petitioners, therefore, must overcome the strong presumption of constitutionality by explicit proof that the Fiscal Disparities Act, as applied, results in a hostile and oppressive discrimination against these particular petitioning taxpayers and no rational basis for the legislature's distinctions can be found. It is our decision and finding that the evidence presented by petitioners in this case does not meet these rigorous standards and the petition should therefore be dismissed.

The municipalities in Minnesota depend primarily upon ad valorem property taxation for their revenues. This is less true of school districts because of larger state aids but they, too, depend upon property taxes for a substantial amount of their revenues. The ability of local government and school districts to provide services is therefore largely dependent on the property tax base available to them. To the extent a local government can add to its tax base without adding correspondingly to the demand for services, it benefits. This is true for each of the approximately 200 municipalities in the seven county metropolitan area.

Local governments are therefore encouraged to seek development which will "pay its own way." From this narrow perspective, local governments are most interested in attracting large commercial and industrial developments which will produce the maximum addition to the property tax base with a minimum number of new residents. They are less willing to accept residential development, particularly housing of modest value, which does relatively little to increase the tax base and which brings substantial demand for local services and public education.

In looking at the metropolitan area the legislature saw that municipalities with the greatest preponderance of residential property and corresponding demand for services, often might have insufficient commercial and industrial tax base. In a neighboring community, due to a new industrial park, power plant or regional shopping center the opposite might be true.

Because commercial-industrial growth is fiscally attractive and residential is relatively unattractive, there has occurred "an ill-advised competitive scramble by individual units of government within the 7-county area for commercial-industrial development to improve their tax base . . ." *The Village of Burnsville v. Onischuk*, 301 Minn. at 140, 22 N.W. 2d at 525.

Large commercial-industrial developments whether factories, regional shopping centers, industrial parks, or corporate headquarters are regional rather than local in nature. Their location in the metropolitan area is in large measure due to the presence of a metropolitan market and other metropolitan resources such as transportation, distribution facilities and proximity to buyers. However, such developments occur in only limited numbers and cannot be placed in each of the many local governments which make up the metropolitan community. Under this "winner take all" system the particular municipalities which happen to "win" receive the entire windfall of the value of any new plant or commercial facility. An example is the construction of NSP's Allen S. King Power Plant in Oak Park Heights which gave that small city a commercial-industrial tax base of more than $14,000 per capita in the tax year 1975, while the nearby City of Oakdale, had only $314 per capita commercial-industrial tax base available or approximately one-fiftieth of that available to Oak Park Heights.

Recognizing these inequities and the regional nature of large new developments, the legislature in the Fiscal Disparities Act takes 40% of the increases in the commercial-industrial valuation throughout the entire metropolitan area after 1971 and puts this into a metropolitan pool to be shared on the basis of population. 60% is retained by the individual municipalities. Increases in the value of residential or agricultural property are not pooled and shared, only commercial-industrial valuation. Under this arrangement, all units of government receive some distribution of the area-wide tax base. As conditions change, some units will contribute more to the metropolitan pool than will be distributed back to them.

The effect of this system is to re-allocate a portion of the area-wide tax base to all municipalities in direct relation to their need and an inverse relation to fiscal capacity. To the extent a municipality contributes more tax base value to the metropolitan pool than it receives it could be considered a "net loser." As different metropolitan communities grow and mature and the location of new commercial and industrial developments change, a "net loser" might change into a "net gainer" and vice versa. Each local government, however, is assured a portion of any commercial-industrial growth in the region. This sharing of tax base serves to moderate the extreme disparities in tax base wealth between some metropolitan communities.

The Fiscal Disparities Act is grounded upon and accepts the reality that, in many respects, the metropolitan area is a single community. In this respect the parties have stipulated:

Stipulation of Fact 9.

(a) The seven county metropolitan area, including the City of Shakopee, is socially, politically, and economically interdependent.

(b) The majority of the working population of the seven county metropolitan area resides in one of 108 transportation planning districts, as those districts are defined by the Metropolitan Council, and works in another such district. The majority of the working population residing in the City of Shakopee works in another municipality.

(c) Most commercial-industrial property, and virtually all C/I with a market value over one million dollars, utilizes markets and other resources which are greater than local in character.

(d) Citizens of the metropolitan area, including Shakopee, regularly utilize commercial, industrial and public resources located in governmental units other than the one in which they reside and pay property taxes. These resources include highways, shopping centers, lakes, parks, stadiums, hospitals, power plants, amusement parks, and cultural institutions.

We now return to the sole and original issue in this case. Does the Fiscal Disparities Act as applied to petitioners and the City of Chakopee result in "hostile and oppressive discrimination"? There is no dispute that the City of Shakopee contributes more to the metropolitan pool than it receives. In other words, it has been a "net loser." This is true because Shakopee has had a substantial gain in its commercial-industrial valuation since 1971—an increase greater than most other metropolitan cities. Much of this increase in commercial-industrial tax base resulted from Shakopee's successful effort to consolidate with an area known as Eagle Creek Township which contains a large industrial park. Its entire assessed value jumped almost $10,000,000 from 1974 to 1975, from $24,962,297 to $34,171,328. As a result of the Fiscal Disparities Act, Shakopee was required to pay into the metropolitan pool 40% of the increase in its commercial-industrial base and after receiving its distribution back from the metropolitan pool its assessed value for tax purposes dropped from $34,171,328 to $30,019,597 or a net loss of approximately 12% of its entire tax base. Is this ground to declare the Act unconstitutional? We think not. *Burnsville v. Onischuk, supra*, has already held that although some municipalities lose more commercial-industrial tax base than others this fact alone is not enough to have the Act declared invalid on constitutional grounds. Petitioners must prove more—that there is no rational basis for different treatment among municipalities and that this different or unequal treatment results in "oppressive and hostile discrimination."

The evidence shows that even after the sharing required by the Act, Shakopee retains more commercial-industrial tax base per capita than most other communities in the metropolitan area. Of the 45 municipalities over 9,000 persons in the metropolitan area, Shakopee ranked 16th in 1971 in per capita commercial-industrial assessed valuation. This was prior to the enactment of the Fiscal Disparities Act. After the Act became opperative, Shakopee has never ranked below 6th among these municipalities in per capita commercial-industrial tax base even after making its contribution to the metropolitan pool. In Shakopee's case the Act has only worked to reduce a very large addition to its commercial-industrial tax base it acquired when it consolidated with Eagle Creek Township which has left the City with substantially more commercial-industrial tax base than most other metropolitan communities. For instance, in 1975, after the Act went into effect, Shakopee had $442 more in tax base per capita than St. Paul and $139 more than Minneapolis. The gap between Shakopee and these two cities has widened each year. In 1980, Shakopee had $690 per capita more than St. Paul and $410 more than Minneapolis. Even with the Fiscal Disparities Act in operation, Shakopee continues to be comparatively wealthy in tax base and continues to be gaining, on a net basis, commercial-industrial valuation per capita each year.

When comparisons are made for the metropolitan communities with greater than 2,500 in population and taxes are estimated on a typical $25,000 homestead in 1975, Shakopee is 80th out of 88 communities indicating that property taxes are near the lowest in the metropolitan area while Minneapolis was first and St. Paul was eighth. Assuming equal tax assessment practices, if the petitioners McCutcheons' homestead were located in Minneapolis they would pay $224 more in real estate taxes in 1980. If moved to St. Paul they would pay $332 more.

The obvious goal of the Fiscal Disparities Act was to spread commercial and industrial tax base in a more equal manner. To some extent this purpose has been achieved. Citizens League studies show that the ratio of per capita commercial and industrial assessed valuation between the metropolitan communities with the highest and with the lowest have been narrowing. In 1971 the ratio was 10:1, while in 1975 after the implementation of the Act, the ratio was reduced to 6:1. After five years of operation, in 1980, the actual ratio was 5.4:1. Without the Act the ratio would have been 10.7:1 in 1980. This reduction in per capita commercial-industrial ratios shows that the Act is functioning as intended by the legislature to reduce partially and gradually the extremes of inequality in distribution of tax base.

Although petitioners have raised seventeen objections to the Fiscal Disparities Act, most of these objections were ruled upon in the case of *Burnsville v. Onischuk, supra*, and under the doctrine of stare decisis should no longer be considered by us. In addition, many of these objections are either misdirected or trivial in nature and we will undertake no extensive discussion of each individual objection other than to state that all have been reviewed and fall short, both individually and collectively, of amounting to "hostile and oppressive discrimination."

At the trial the petitioners devoted a great deal of attention to their allegation that the Fiscal Disparities Act is unconstitutional because, in the calculation of contributions, the statute contains no factor to compensate for variations in local assessment levels. Their basic contention was that most other local governments were not assessing their real property at market value, whereas, Shakopee was consistently valuing its real property at 100% of actual market value and this caused it to contribute more than it should to the metropolitan pool. This contention is not sustained by the evidence. State sales ratio studies show that the commercial-industrial property in Shakopee were assessed at approximately 85.5% of actual market value in 1974 for taxes payable in 1975. This sales ratio was slightly less than the 88.8% average sales ratio for all communities in the metropolitan area. Petitioner's witness Leroy Houser, the former City Assessor, asserted that the true level of assessment for commercial-

industrial property in Shakopee had been "in the neighborhood of 90 to 100%." Assuming, arguendo, this were true, the ultimate impact on the City of Shakopee and its taxpayers would be minimal, at best, and again would fall far short of "hostile and oppressive discrimination," the test we are constrained to apply.

For the reasons stated the petitions should be dismissed.

E.B.G.

State of Minnesota

County of Dakota

Richard A. & Phyllis J. Hanson,

Appellants,

v.

The Commissioner of Revenue,

Appellee.

Tax Court

Regular Division

In the Matter of an Appeal from the Commissioner's Order dated August 3, 1979 Relating to the Income Tax Liability of $544.82 for the taxable year 1978.

Docket No. 2962
Order dated February 20, 1981.

The above matter was submitted to the Honorable Carl A. Jensen, Judge of the Minnesota Tax Court, on the basis of a Stipulation of Facts and Briefs filed by the parties.

Mr. Thomas K. Robinson, Attorney, appeared for appellants.

Mr. Paul R. Kempainen, Special Assistant Attorney General, appeared for appellee.

Both appearances were made only by the filing of briefs.

Issue

The issue is whether the State of Minnesota can collect income tax derived from the rental of farm property in North Dakota which is owned by a resident of Minnesota.

Decision

The Order of the Commissioner assessing income taxes against income from the rental of farm property in North Dakota is affirmed.

From all the files, records and proceedings herein and from a Stipulation of Facts entered into by and between the parties hereto the Court finds as follows:

Findings of Fact

1. The appellants are cash basis calendar year taxpayers. They are currently Minnesota residents and have been Minnesota residents since June of 1960.

2. During the taxable year 1978 appellants were employed in the State of Minnesota.

3. Appellants owned in 1978 and have owned since 1970, a one-third interest in a farm in North Dakota which is rented out for agricultural purposes.

4. In 1978 the appellants received $3,679 as rental income from their farm in North Dakota.

5. The appellants timely filed a 1978 Minnesota Income Tax Return. On that they subtracted the $3,679 income from the North Dakota farm from their federal adjusted gross income. In addition they claimed and were given credit for $33 in income taxes paid to the State of North Dakota on their North Dakota income.

6. On August 3, 1979 the appellee, Commissioner of Revenue, issued an Order assessing additional taxes against the appellants for the year 1978. This assessment was based on disallowance of the $3,679 subtraction from federal adjusted gross income. Credit was given for income taxes paid by the appellants to North Dakota in the amount of $33.00. The additional assessment was for $542.00 plus interest.

7. Appellants filed a timely appeal with the Minnesota Tax Court.

8. The sole issue in this appeal is whether the appellants' 1978 income from a North Dakota farm is taxable by the State of Minnesota.

9. The only issues raised by the appellants in their brief are the claims that the statutes involved are unconstitutional on the basis that they impair the right of contract and are an unconstitutional burden on interstate commerce.

Conclusions of Law

1. Minnesota statutes assessing Minnesota income tax against a Minnesota resident for income received by that resident from farm property owned by the resident in another state are constitutional and the Order of the Commissioner of Revenue assessing such income taxes should be affirmed.

Order for Judgment

The Commissioner's Order determining tax liability dated August 3, 1979 is hereby affirmed and appellants are ordered to pay the additional tax of $542.00 plus interest. LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

MINNESOTA TAX COURT
Carl A. Jensen, Judge

Memorandum

The only issues raised by the appellants were the constitutionality of the statutes assessing Minnesota income tax against income received by a Minnesota resident from farm property owned by that resident in another state. Appellant contended that the statutes were unconstitutional on the basis that they impaired the right of contract and were an unreasonable burden on interstate commerce.

Constitutional law is well settled that all states have the right to tax all income from whatever source received by their resident citizens. *People of the State of New York ex rel. Cohn v. Graves*, 300 U.S. 308, 57 S. Ct. 466, 81 L. Ed. 666 (1937); *Lawrence v. State Tax Commission of Mississippi*, 286 U.S. 276, 52 S. Ct. 556, 76 L. Ed. 1102 (1932); *Hillstrom v. Commissioner of Revenue*, 270 N.W. 2d 265, 268 (Minn., 1978); *Bolier v. Commissioner of Taxation*, 233 Minn. 72, 75, 45 N.W. 2d 802, 804 (1951).

The cases are clear that all contracts are entered into subject to the sovereign power of taxation inherent in the states and such taxes do not impair the freedom of contract. *Barwise v. Sheppard*, 299 U.S. 33, 50 S. Ct. 70, 81 L. Ed. 23 (1936); *State ex rel Graff v. Probate Court*, 128 Minn. 371, 150 N.W. 1094 (1915); and *Belco Petroleum Corp. v. State Board of Equalization*, 587 P. 2d 204 (Wyo., 1978).

Minnesota Statutes do not violate the Interstate Commerce Clause of the Federal Constitution since they are non-discriminatory. *Northwestern States Portland Cement Co. v. Minnesota*, 358 U.S. 450, 79 S. Ct. 357, 3 L. Ed. 2d 421 (1959).

We are aware of the Minnesota Supreme Court decision in *Lee Guilliams etal v. The Commissioner of Revenue* filed October 24, 1980 ruling that the Minnesota Tax Court does not have jurisdiction to determine the constitutionality of tax statutes when the case originates in the Minnesota Tax Court and has not been referred to the Tax Court from the District Court. We are making these rulings on the constitutionality issues in this case because the case was filed prior to October 24, 1980.

EXECUTIVE ORDERS

Executive Order No. 81-2

Restricting State Hiring, Procurement and Expenditures

I, ALBERT H. QUIE, Governor of the State of Minnesota, by virtue of the authority vested in me by the Constitution and applicable statutes, do hereby issue this Executive Order:

WHEREAS, the national and state economies have not yet recovered from the recent recession and revenues realized to date are less than previously estimated; and

WHEREAS, prudent management requires that timely measures be taken to provide for the possibility that revenues realized for the balance of the current fiscal year will be less than anticipated; and

WHEREAS, it is the policy of this administration that the State of Minnesota conclude the current fiscal year with a balanced budget;

NOW, THEREFORE, I Order:

1. No appointing authority in the Executive Branch of State government shall employ any person to fill a vacant position (classified or unclassified) which is paid from the General Fund during the pendency of this order except as provided in paragraph 2.

2. This prohibition on hiring shall not extend to positions to be filled by persons who:

a. Will be providing direct care to patients at state institutions;

b. Will be providing direct supervision of inmates at correctional facilities;

c. Will be performing services necessary to the maintenance of public safety or otherwise essential to the operation of state government as determined by the Commissioner of Finance;

d. Will provide direct instructional services to students in the state's post-secondary institutions;

e. Are on leave from a state position and elect to continue employment with the state;

f. Will perform services as inmate, resident or student employees of state institutions; or

g. Have received confirmation of appointment to state positions previous to the effective date of this Order.

3. No person in the Executive Branch shall execute on behalf of any State agency during the pendency of this Order a contract for the performance of consultant services as defined by Minn. Stat. § 16.098 and to be paid from the General Fund unless the Commissioner of Administration determines that the services to be performed are essential to the maintenance of public safety or are otherwise essential to the operation of state government.

4. No procurement transactions shall be processed on behalf of any agency of state government against the General Fund unless the Commissioner of Administration determines that the goods or services to be purchased are essential to the operation of state government.

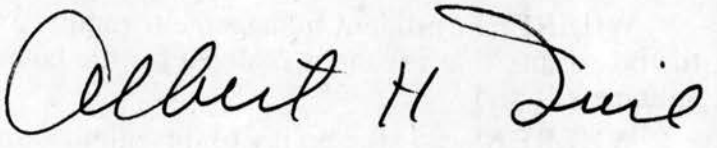
5. No person in the Executive Branch shall engage in out-of-state travel to be paid from the General Fund unless the Commissioner of Finance determines that such travel is essential to the operation of state government.

6. None of the foregoing provisions shall be interpreted to invalidate any legal or contracted obligations of the state.

7. All commissioners and department heads shall take steps to limit such expenditures as are not otherwise limited by the above provisions. Each department head shall review and certify any request for exemption from the provisions of this Order before such request is submitted to the Commissioner of Administration or Finance.

8. Because of the need to take immediate action, this Order shall be effective at 12:01 p.m. March 2, 1981.

IN TESTIMONY WHEREOF, I hereunto set my hand on this 2nd day of March, 1981.



SUPREME COURT

Decisions Filed Friday, February 27, 1981

Compiled by John McCarthy, Clerk

52068/16 In the Matter of the Election of R. Douglas (Doug) Ryan to the Anoka County Commission, 5th District, in the General Election of November 4, 1980. William V. Menkevich, Francis Fogerty, Joseph D. Moriarty, Marilyn M. Buchman and Jerome Petron, v. Charles Lefebvre, Anoka County Auditor, Contestee, R. Douglas (Doug) Ryan, Appellant. Anoka County.

In an election contest not involving a seat to the Minnesota legislature, Minn. Stat. § 204A.54, subd. 2 (1980) forbids issuance of a certificate of election until after final judicial resolution of the contest.

Appellant's placement of small lettering reading "Secretary 47 Sen. Dist." between large capital block letters that state "DFL" and "LABOR ENDORSED" on the same line in his campaign literature falsely implied to the average voter that appellant had the support or endorsement of the DFL party in violation of Minn. Stat. § 210A.02 (1980).

Appellant's conduct was knowing and was a deliberate, serious, and material violation of Minnesota election law.

Although it appears, under the circumstances of this case, that appellant's violation did not arise from any want of good faith and it would be unjust to impose the penalty of removal from office, in the future, our opinion in this case will cause claims of good faith to be less likely of success.

Reversed. Sheran, C. J.

50243/88 Loren Hage, etc., Appellant, Joan B. Ben, Trustee for Natural Guardian of the Heirs and Next-of-Kin of Marvin P. Ben, Appellant, v. Catherine A. Stade, deceased, d.b.a. Stratford Hotel, *et al.*, Minnesota Department of of Public Safety, *et al.* Wilkin County.

Claims against the state, its agencies and employees, based upon alleged negligent performance of fire inspection duties at a hotel were properly dismissed under the doctrine of *Cracraft v. City of St. Louis Park*, 279 N.W.2d 801 (Minn. 1979).

Affirmed. Todd, J. Dissenting, Scott, J., Sheran, C. J., Yetka, J., and Wahl, J.

50998, 51005/Sp. Commissioner of the Minnesota Department of Economic Security 50998 v. Gillette Company, v. Margaret Auger, Relator. Lynn Wickenhouser, Relator, 51005 v. Gillette Company, Commissioner, Minnesota Department of Economic Security. Department of Economic Security.

Where the employee works at a night job with little supervision, making noncompliance largely undetectable, a single incident of sleeping on the job is willful disregard of standards of behavior which the employer has a right to expect of his employee and is, therefore, misconduct within the meaning of the unemployment compensation statute. Minn. Stat. § 268.09, subd. 1 (2) (1980).

Affirmed, Simonett, J. Dissenting, Wahl, J.

49462/392 In the Matter of the Application for the Discipline of Harold James Iverson, an Attorney at Law of the State of Minnesota. Supreme Court.

Indefinite suspension from practice of law ordered. Per Curiam. Took no part, Scott, J.

Decision Filed Wednesday, February 18, 1981

51643, 51613/Sp. State of Minnesota, Appellant (51643), Petitioner (51613), v. Bruce C. Wollan. Hennepin County.

Timely motion in trial court for clarification of pretrial order in criminal case extends period of time for appeal by prosecution from the order under Minn. R. Crim. P. 29.03.

Trial court erred in holding that prosecutor should have honored grand jury's request for evidence concerning defendant's mental state.

Reversed and remanded for trial. Sheran, C. 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.

Department of Economic Security Training and Community Services Division

Notice of Request for Proposals for Direct Placement Projects in Private Industry

The Minnesota Balance of State Private Industry Council wishes to announce the solicitation of proposals from private firms interested in conducting specialized training programs for qualified new employees.

The contact person is:

Patrick J. Cruit
PIC Coordinator
Minnesota Department of Economic Security
690 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

The last date that proposals will be accepted is June 30, 1981.

The estimated cost per employee placement should not exceed $4,500.00.

Metropolitan Council of the Twin Cities Area

Notice of Request for Proposals for Preparation of Environmental Impact Statement (EIS) during Sludge and Solid Waste Landfill Siting Process

The Metropolitan Council solicits proposals for entering into a contract for the performance of preparing EISs on the candidate sites for landfilling sludge and solid waste and landspreading sludge. The proposal should be submitted in 10 copies and mailed to the Metropolitan Council, Suite 300 Metro Square Bldg., St. Paul, Minn. 55101, Attention: Mr. Jack Frost, Contract Manager.

The council, by this RFP, does not promise to accept the lowest, or any other, proposal and specifically reserves the right to reject any or all proposals, to waive any formal proposal requirements, to investigate the qualifications and experience of any proposer, to reject any provisions in any proposal, to obtain new proposals, or to proceed to do the work otherwise. All proposals received in the council office no later than 4 p.m. on March 25, 1981 will be considered by the council; and in the event that a proposal is accepted, the council will notify the successful proposer in writing within 45 days following its consideration of the proposal.

Requests for copies of the RFP should be directed to Mr. James Frost at (612) 291-6519.

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.

State Board of Education
Department of Education
Instruction Division

Notice of Intent to Solicit Outside Opinion Regarding Rules for the Licensure of Elementary and Secondary Principals and Necessary Clerical Staff

The Department of Education is drafting rules to revise EDU 23, which requires that every elementary school shall be in immediate charge of a licensed principal. Also under revision is EDU 46, which requires that every junior, senior, six-year, and four-year secondary school shall be under the direction of a properly licensed principal. These rule changes shall include specific licensure requirements of schools with less than 200 pupil enrollment; schools with a total enrollment of 200 or more but less than 400; schools with a total enrollment of 400 or more but less thatn 900; and schools that enroll 900 or more pupils.

The Department of Education invites interested persons or groups to provide information, comment, and advice on the subject in writing or orally to:

Dr. Gerald Kleve
Assistant Commissioner of Education
Minnesota State Department of Education
657 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Telephone: 296-7834

Written statements will be made part of the public hearing record.

February 27, 1981

Gerald L. Kleve
Assistant Commissioner of Education

Environmental Quality Board

Notice of Intent to Solicit Outside Opinion in the Draft Proposed Rules Relating to Power Plant Siting

On March 19, 1981 the Environmental Quality Board will be considering a request from the board staff to authorize rulemaking. The draft proposed rules address the following:

1. Inventory of study areas for large electric power generating plants;
2. Changes in the power plant site evaluation criteria; and
3. Use of prime farmland for power plant sites.

Any person desiring to submit information or comment on the draft proposed rules may do so either orally or in writing. All statements of information, comment and written material received will become part of the record of any rules hearing held on this subject. Rulemaking, if authorized, would include public hearings.

Any person wanting a copy of the draft proposed rules and/or the proposed rules as authorized for rulemaking by the board or wanting to submit written or oral information and comment should contact:

Nancy Onkka
Power Plant Siting Program
Environmental Quality Board
Room 15
550 Cedar Street
St. Paul, Minnesota 55101
Telephone: (612) 296-2169

February 27, 1981

Environmental Quality Board

Notice of Route Designation and Issuance of Construction Permit in the Matter of Application by Northern States Power Company, United Power Association and Cooperative Power Association for a Construction Permit for a 345 kV High Voltage Transmission Line and Associated Facilities

EQB Docket No. NSP-TR-3 Sherburne-Benton County 345 kV Transmission Line

On February 19, 1981, the Minnesota Environmental Quality Board (EQB) designated a route and issued a construction permit for a 345 kilovolt (kV) high voltage transmission line (HVTL) to be constructed by Northern States Power Company (NSP). The 21 mile transmission line will connect the NSP Sherburne Substation located near the Sherco generating plant, with the NSP Benton County Substation located in Section 35 of Minden Township, Benton County. The transmission line will be constructed within the EQB designated route (illustrated on the attached county highway map) and defined by nodes 1-5-10-31-19-20-21-72-23-26-35-40.

In the EQB Findings of Fact, it was noted that the route designated would have the least environmental and human impact and would best meet EQB criteria for insuring system reliability and efficient use of resources.

In making its decision on the route, the EQB considered: the transcript and record of public hearings held during the week of August 4-8, 1980; the hearing examiner's report; the Citizens Route Evaluation Committee Report; and the Environmental Impact Statement.

In constructing, operating and maintaining the line, the utilities are required to comply with the terms and conditions of the construction permit that was issued on February 19, 1981. Terms of the permit specify conditions for: structure type; structure placement; right of way clearing and management; electrical performance; line construction; clean-up; and complaint procedures. The permit also requires that a copy of the construction permit, EQB complaint procedures, NSP complaint procedures, and construction and maintenance damage compensation procedures be provided to all affected landowners or their designees prior to NSP initiating any action to acquire right of way easements.

Where no existing rights of way are used, the width of the right of way shall not exceed 150 feet, except as may be required for guy wires or where danger trees or similar such obstructions must be removed to insure safe operation of the line.

Copies of the EQB Findings of Fact and Conclusions of Law, and Construction Permit are available for public review at the following locations: St. Cloud Library, Monticello Library, and the Santiago State Bank in Becker. Individual copies of the EQB Findings of Fact, Conclusions of Law, and Construction Permit may be obtained after April 15, 1981 by contacting John Hynes, Permit Compliance Manager, Room 15, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101.

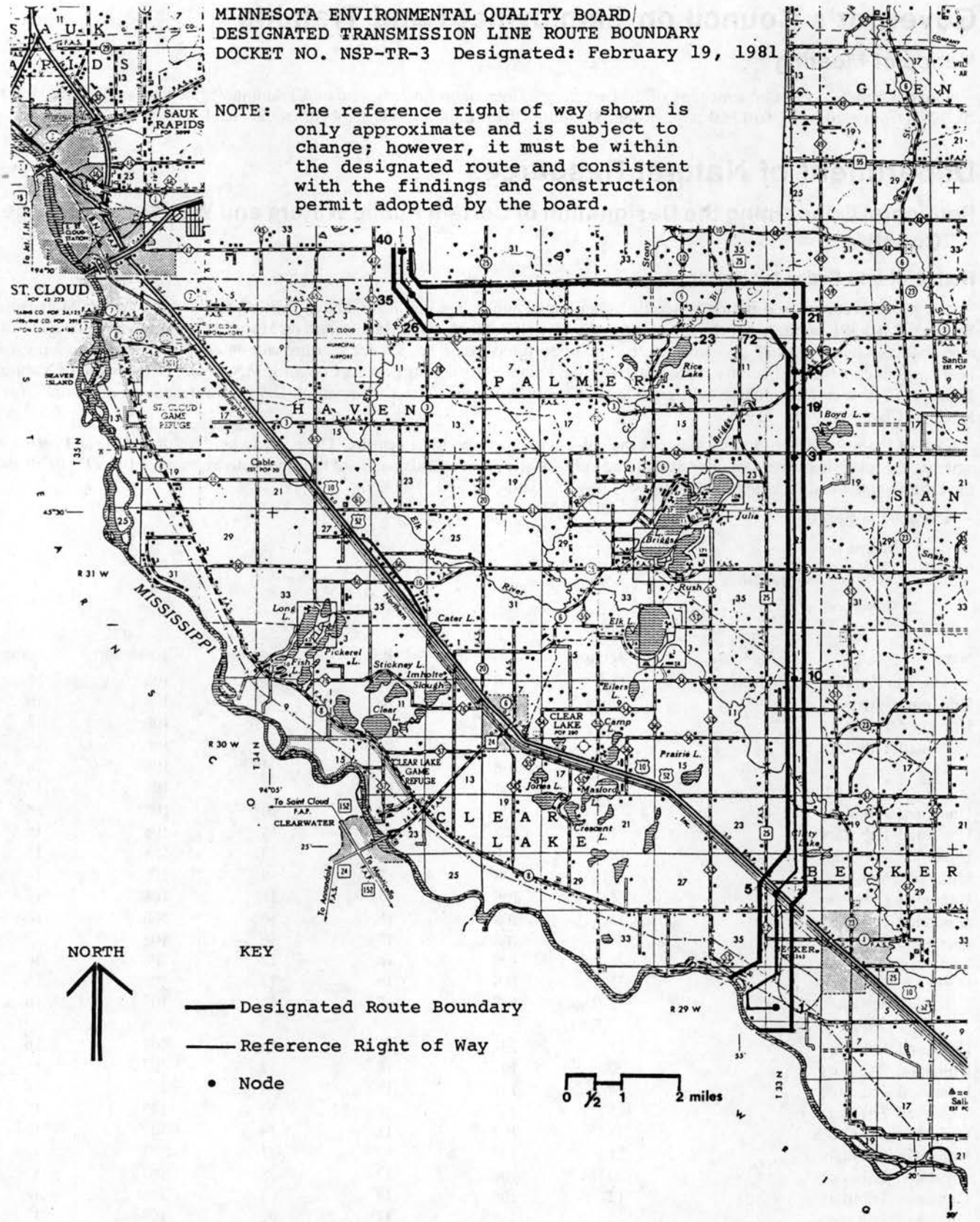
If you have any questions, please call 612/296-2871.

Dated this 25th day of February, 1981.

Arthur E. Sidner, Chairman
Environmental Quality Board

MINNESOTA ENVIRONMENTAL QUALITY BOARD
DESIGNATED TRANSMISSION LINE ROUTE BOUNDARY
DOCKET NO. NSP-TR-3 Designated: February 19, 1981

NOTE: The reference right of way shown is only approximate and is subject to change; however, it must be within the designated route and consistent with the findings and construction permit adopted by the board.



Governor's Council on Employment and Training

Notice of Meeting

Notice is hereby given that a meeting of the Governor's Council on Employment and Training will be held on Friday, March 20, 1981, from 10:00 a.m. to 12:00 p.m., Room 81, State Office Building, 435 Park Street, St. Paul.

Department of Natural Resources

Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Dodge 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 City Hall, Mantorville, Minnesota, on March 31, 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 Alan Knobel, Rural Route, West Concord, MN 55985, Department of Natural Resources representative John Chell, and Dodge County Soil and Water Conservation District representative Donald Gray, Route 2, Claremont, MN 55924.

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, § 105.391 (1979) and the criteria contained in Minnesota Statutes, § 105.37, subds. 14 and 15 (1979):

A. Public Waters

1. Basins

None are petitioned.

2. Watercourses

	From			To		
Name	Section	Township	Range	Section	Township	Range
Middle Fk. Zumbro R. (MFZR)	31	108	18	12	108	16
Unnamed Tributary	7	108	16	17	108	16
Unnamed Tributary	12	108	17	13	108	17
Unnamed Tributary	6	108	18	5	108	18
	5	108	18	4	108	18
	4	108	18	7	108	17
Unnamed Tributary	18	108	18	16	108	18
Unnamed Tributary	13	108	18	14	108	18
Unnamed Tributary	18	108	17	23	108	17
Milliken Creek	33	108	18	9	108	16
Unnamed Tributary	34	108	17	35	108	17
Unnamed Tributary	35	108	18	36	108	18
Unnamed Tributary	36	108	17	36	108	17
Unnamed to MFZR	23	108	16	12	108	16
Harkcom Creek	32	108	16	12	108	16
S. Branch MFZR	7 (Basin 74-1)	107	18	13	107	16
Unnamed Tributary	11	107	16	14	107	16
Unnamed Tributary	20	107	18	18	107	18
Unnamed Tributary	14	107	18	13	107	18
Unnamed Tributary	25	107	18	17	107	17
Dodge Center Creek	33	107	18	14	107	17
Unnamed Tributary	21	107	17	15	107	17
Unnamed Tributary	30	107	17	29	107	17
Unnamed Tributary	12	106	18	1	106	18
Unnamed Tributary	20	106	17	32	107	17

Henslin Creek	4	106	17	5	106	17
Unnamed to SBMFZR	25	107	17	18	107	16
Unnamed to SBMFZR	30	107	16	17	107	16
Unnamed to SBMFZR	29	107	16	21	107	16
Masten Creek	1	106	17	22	107	16
Spring Tompkins Creek	24	107	16	24	107	16
Cascade Creek	36	107	16	36	107	16
Salem Creek	26	106	17	24	106	16
Unnamed Tributary	12	106	16	13	106	16
Unnamed Tributary	16	106	17	23	106	16
Unnamed Tributary	24	106	17	29	106	16
Unnamed Tributary	32	106	16	28	106	16
Unnamed Tributary	33	106	16	28	106	16
Unnamed Tributary	26	106	16	23	106	16
S. Fk. Zumbro River	24	105	17	12	105	16
Unnamed Tributary	1	105	16	1	105	16
Unnamed Tributary	2	105	17	8	105	16
Unnamed Tributary	21	105	16	12	105	16
Unnamed Tributary	25	105	16	24	105	16
Cedar River	36	105	17	33	105	18
Unnamed Tributary	23	105	17	29	105	17
Unnamed Tributary	9	105	17	26	105	18
Little Cedar River	2	105	18	28	105	18
Unnamed Tributary	12	105	18	16	105	18
Unnamed Tributary (Westfield Ripley Ditch)	34	106	18	9	105	18
Unnamed to Cedar River	7	105	18	29	105	18

B. Wetlands

There are none in Dodge County.

Within 60 days of 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

March 2, 1981

Joseph N. Alexander, Commissioner
Department of Natural Resources

Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Rice 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 Court House, Faribault, Minnesota, on March 19, 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 Warren Babcock, Route 1, Nerstrand, MN 55053, Department of Natural Resources representative John Chell, and Rice County Soil and Water Conservation District representative Lincoln Paulson, Route 5, Faribault, MN 55021.

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, § 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
66-5: Macklewain Lake	29,32	111	20
66-20: Unnamed	24	110	21
66-46: Pooles Lake	31,32	109	22
*66 95: Lyman Lakes	31	112	19
*66-102: Unnamed	NE 9	110	22
*66-109: Unnamed	10	110	22

2. Watercourses

Name	From Section	From Township	From Range	To Section	To Township	To Range
Unnamed to Shields Lake	28 (Basin 60)	111	22	34 (Basin 55)	111	22
Knowles Creek	24 (MLW ST. PP RR)	112	21	35 (Basin 32)	112	21
	27	112				
Waterville Creek	33	109	22	31	109	22

B. Wetlands

Number and Name	Section	Township	Range
66-60: Unnamed	28	111	22
*66-92: Unnamed	33	109	22
*66-93: Unnamed	10	109	22
*66-94: Unnamed	18	109	20
*66-96: Unnamed	23	112	21
*66-97: Unnamed	19,20	112	21
*66-98: Unnamed	35	112	22
*66-99: Unnamed	6	111	22
*66-100: Unnamed	7,18	111	21
*66-101: Unnamed	27,34	111	22
*66-103: Unnamed	7,8	110	21
*66-104: Unnamed	8	110	21
*66-105: Unnamed	30,31	110	21
*66-106: Unnamed	31;36	110	21;22
*66-107: Unnamed	11	110	21
*66-108: Unnamed	23	112	21
*66-110: Unnamed	7,8,17,18	110	20

* petitioned to be added

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, § 105.392, 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
St. Paul, MN 55101
Telephone: 612/297-2835

February 24, 1981

Joseph N. Alexander, Commissioner
Department of Natural Resources

Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Stevens 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 Court House, Morris, Minnesota, on March 24, 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 Bob Stevenson, 610 Atlantic Avenue, Morris, MN 56267, Department of Natural Resources representative Merlyn Wesloh, and Stevens County Soil and Water Conservation District representative Clarence Ettesvold, Route 1, Morris, MN 56267.

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, § 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
75-55: Unnamed	1;36	125;126	41
75-186: Unnamed	2,11	124	43

2. Watercourses

	From			To		
Name	Section	Township	Range	Section	Township	Range
Unnamed Tributary	25	126	41	25	126	41

B. Wetlands

Number and Name	Section	Township	Range
75-58: Unnamed	3,10	126	41
75-93: Unnamed	22	123	42
75-179: Unnamed	27	123	43
75-180: Unnamed	27,34	123	43
75-204: Unnamed	28	124	43
75-221: Unnamed	8,9	125	43

75-222: Unnamed	9	125	43
75-257: Unnamed	11	126	43
75-330: Unnamed	11	125	41
75-331: Unnamed	13	125	41
75-345: Unnamed	8	125	43
75-368: Unnamed	1;36	126;127	41

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
St. Paul, MN 55101
Telephone: 612/297-2835

February 27, 1981

Joseph N. Alexander, Commissioner
Department of Natural Resources

Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Wilkin 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, Breckenridge, Minnesota, on March 27, 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 Raymond Packer, Route 2, Barnesville, MN 56514, Department of Natural Resources representative Merlyn Wesloh, and Wilkin County Soil and Water Conservation District representative Robert Wetherbee, Fairmount, North Dakota 58030.

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, § 105.391 (1979) and the criteria contained in Minnesota Statutes, § 105.37, subds. 14 and 15 (1979):

A. Public Waters

2. Watercourses

		From			To	
Name	Section	Township	Range	Section	Township	Range
Unnamed tributary	36	132	47	16	132	47
Unnamed tributary	30	131	45	34	131	46
Willow Creek	2	132	47	3	132	47
Unnamed to OR	24	134	45	4	134	4
Unnamed to OR	23	132	46	22	132	46

Unnamed tributary	17	134	47	13	134	48
Unnamed tributary	18	134	45	28	134	46
Wolverton Creek	35	136	48	4	136	48
S. Br. Buffalo River	11	135	46	2	136	47
Unnamed tributary	33	134	47	19	134	47
Unnamed tributary	7	135	46	23	136	47
Unnamed tributary	24	136	45	28	136	45
Unnamed tributary	8	136	46	6	136	46

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
St. Paul, MN 55101
Telephone: 612/297-2835

February 27, 1981

Joseph N. Alexander, Commissioner
Department of Natural Resources

Petition(s) Concerning the Designation of Certain Public Waters and Wetlands in Swift 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 District Court Room, Court House, Benson, Minnesota, on March 20, 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 hearing unit consisting of county representative John Halpin, DeGraff, MN 56233, Department of Natural Resources representative Maynard Nelson, and Swift County Soil and Water Conservation District representative Joel Lee, Route 1, Benson, MN 56215

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, § 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
76-43 : Unnamed	28	122	37
76-68 : Unnamed	34, 35	122	38
76-69 : Unnamed	SE 34, 35	122	38
76-104: Unnamed	17	121	40

76-117: Unnamed	31	120	42
76-133: Unnamed	3, 4	121	43
76-147: Unnamed	3, 34	121; 122	43
76-149: South Drywood Lake	7, 8	122	43
76-169: South Drywood Lake	5, 6; 32	122; 123	43
76-186: Unnamed	21	120	42
76-206: Unnamed	16	121	40
76-209: Unnamed	1	121	40
76-211: Unnamed	5-8, 17; 30-32	121; 122	40
76-232: Unnamed	35, 36	122	39
76-234: Unnamed	24	121	39
76-243: Unnamed	24-28, 33-35; 19, 30	122	37; 38
76-245: Unnamed	29-32	122	38

2. Watercourses

Name	Beginning Section	From Township	Range	Outletting Section	Township	Range
Trib. to C.D. # 10	5 (Basin 148)	121	43	21	121	43
Unnamed to PdTR	22 (Basin 161)	122	43	30	122	42
Unnamed to PdTR	26	122	42	22	122	42
Unnamed	17 (Basin 188)	120	42	35	120	42
Unnamed tributary	9	120	42	28	120	41
Unnamed tributary	3	121	42	21	120	41
Unnamed tributary	6	121	41	14	121	42
Unnamed tributary	16 (Basin 197)	122	41	2	121	41
Unnamed tributary	29 (Basin 196)	122	41	2	121	41
Unnamed tributary	9 (Basin 86)	122	39	29	122	39
Unnamed to Mud Creek	34	122	37	30 (Basin 122 243)		38
Unnamed to EBCR	10	121	38	33 (Basin 122 243)		38

B. Wetlands

Number and Name	Section	Township	Range
76-6 : Unnamed	23, 26	120	37
76-7 : Unnamed	27	120	37
76-9 : Unnamed	1, 2, 11, 12	121	37
76-16 : Unnamed	11, 12	121	37
76-18 : Unnamed	13, 14	121	37
76-24 : Unnamed	27	121	37
76-26 : Unnamed	31, 32	121	37
76-44 : Unnamed	23	122	37
76-51 : Unnamed	1, 2	122	37
76-58 : Unnamed	3	121	38
76-61 : Unnamed	29	121	38
76-103: Unnamed	4	121	40
76-109: Unnamed	19	120	41
76-110: Unnamed	3, 4	121	41
76-113: Unnamed	18	122	41
76-114: Unnamed	19; 24	121	41; 42
76-115: Byrne Lake	6, 7; 1	122	41; 42
76-125: Unnamed	31; 36	120	42; 43
76-126: Unnamed	19; 24	122	42; 43
76-134: Unnamed	NW 4	121	43
76-135: Unnamed	4	121	43
76-143: Unnamed	21	121	43
76-145: Unnamed	25, 36	121	43
76-152: Unnamed	13	122	43
76-165: Unnamed	SW 29, 30	122	43

76-184: Unnamed	19; 24	120	42; 43
76-187: Unnamed	17	120	42
76-188: Unnamed	17	120	42
76-189: Unnamed	14, 23	120	42
76-198: Unnamed	32	121	41
76-216: Unnamed	17	122	40
76-228: Unnamed	21, 28	122	39
76-239: Unnamed	34	122	38
76-253: Unnamed	13; 18	122	37; 38
76-255: Unnamed	17, 18	122	37
76-267: Unnamed	NW 24	121	37
76-268: Unnamed	SW 24	121	37
76-277: Unnamed	SW 3	121	41

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
St. Paul, MN 55101
Telephone: 612/297-2835

February 24, 1981

Joseph N. Alexander, Commissioner
Department of Natural Resources

Pollution Control Agency
Water Quality Division

Notice of Intent to Solicit Applicants to Serve on Advisory Committee to Assist in Developing Rules for Certification of Individuals Operating and Inspecting Various Classes of Solid Waste Disposal Facilities

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) is establishing an advisory committee to assist in developing standards of competence for persons operating and inspecting various classes of solid waste disposal facilities pursuant to Minnesota Statutes, § 116.41, subd. 2. The statute requires that all operators and inspectors of facilities obtain a certificate of competence, and that the agency conduct training courses, examinations and recertification at reasonable time intervals.

All interested or affected persons or groups who desire to participate on this committee are requested to respond by March 31, 1981. Please send comments and statements of application to:

Clarence Manke or Art Dunn
Operations/Training Unit
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
(612) 297-3717 or 297-3716

Pollution Control Agency

Notice of Intent to Solicit Outside Opinion Concerning A Proposed Rule to Regulate Sewage Sludge Disposal

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) is developing a rule to govern the land disposal of sewage sludge. This rule is being developed pursuant to the Waste Management Act (Minnesota Laws of 1980, Chapter 564, Article XI, Section 6, Subdivision 4) which requires that the MPCA develop rules and standards regarding sewage sludge disposal.

The agency must consider the following factors in the development of the rule:

The intrinsic suitability of land.

The volume and rate of application of sewage sludge of various degrees of intrinsic hazard.

Design of disposal facilities.

Operation of disposal facilities and disposal sites.

The agency may write rules and standards relating to collection, transportation, processing, disposal, equipment, location, procedures, methods, systems or techniques, or any other matter relevant to the prevention, abatement or control of water, air and land pollution.

Interested persons should review the proposed temporary rule governing sewage sludge disposal published at *State Register*, Volume 5, Number 23, December 8, 1980 (5 S.R. 935), which provides an example of the requirements being considered by the agency. This proposed temporary rule is being modified prior to final publication in April 1981, and should only be referred to for general information. An additional source of information which may be useful is the report *An Evaluation of Sewage Sludge Disposal on Land*, prepared by the MPCA for the Legislative Committee on Waste Management.

The agency invites all interested persons or groups to submit information or comments on this subject to:

Steve A. Stark
Water Quality Division
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113

Oral statements will be accepted during regular business hours over the telephone at (612) 296-7769. All statements and comments must be received by April 13, 1981.

Any written or oral information and comments will be reviewed by agency staff and considered in development of this rule. Any written material received by the agency will become part of the hearing record on this rule.

Louis J. Breimhurst, Executive Director
Pollution Control Agency

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 Building, St. Paul 55155; (612) 296-7876.

Application deadline is March 31, 1981.

DEPARTMENT OF ECONOMIC DEVELOPMENT ADVISORY COMMITTEE has one vacancy open immediately for a public member. The committee advises the Commissioner of Economic Development on the budget and operations of the department. Members are appointed by the commissioner and receive $35 per diem. For specific information contact, Department of Economic Development Advisory Committee, Hanover Bldg., 480 Cedar St., St. Paul 55101; (612) 296-5005.

METROPOLITAN WASTE CONTROL COMMISSION has one vacancy open immediately for a public member. The commission establishes and controls a regional wastewater system; adopts rules and regulations relating to operation of metropolitan wastewater treatment works. Members are appointed by the Metropolitan Council and receive $50 per diem. For specific information contact, Metropolitan Waste Control Commission, 350 Metro Square Bldg., St. Paul 55101; (612) 222-8423.

State Planning Agency

Notice of Renewal of Designation as the State Health Planning and Development Agency

The State Planning Agency is applying to renew full designation as the State Health Planning and Development Agency pursuant to P.L. 96-79, the National Health Planning and Resources Development Act. The agency has available March 11, for public examination and copying, its proposed State Administrative Program, according to which the agency proposes to administer the required health planning and review functions.

Oral and written comments on the proposed State Administrative Program will be received at the March 18 meeting of the Minnesota Statewide Health Coordinating Council scheduled for 1:00 p.m. at the Veterans Service Building, 20 W. 12th Street and Columbus Avenue, St. Paul, Minnesota. Written statements may also be submitted to the State Planning Agency, Room 101 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101 by March 18, 1981. For additional information, call (612) 296-2407.

STATE OF MINNESOTA

OFFICE OF THE STATE REGISTER

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

ORDER FORM

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Telephone_____

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.

On August 21, 1978, NSP submitted its application regarding the timing of Sherco 3, requesting an in-service date of May 1984. After an extensive public hearing process, including thrity-three days of hearings conducted in 1978 and early 1979 and extensive briefing by the parties, the agency issued an amended certificate in October 1979 for Sherco 3 as an 800-megawatt coal-fired unit to be in operation by May 1, 1985. The forecast on which that timing determination was based was neither NSP's, nor the agency staff's nor that of any other party; rather, the forecast was derived from the record as a whole.

On August 12, 1980, NSP informed the agency that the forecast NSP was preparing for submission to the agency according to Minn. Stat. § 116H.10 would indicate a lower electric peak demand growth rate and an increased energy demand growth rate. NSP expressed its conclusion that Sherco 3 should be completed by 1985 and that joint ownership of the facility should be explored. No quantification of the change in forecasts was included in the letter. On September 15, 1980, NSP and other utilities serving Minnesota jointly filed an Advance Forecast Report to the Agency. NSP forecast a lower peak demand for 1985 than it had earlier projected.

Current Issue. On September 18, NSP submitted to the agency its Request for Modification of the Sherco 3 Certificate of Need changing the ownership, but not changing the certified size, type or timing. NSP discussed its new peak demand forecasts which, for 1985, are 560 megawatts lower than NSP's 1978 forecasts and 238 megawatts lower than the alternate forecast on which the Agency's 1979 recertification was based. NSP also referred to three other energy supply concerns as support for retaining a 1985 in-service date: uncertainties regarding its oil-fired capacity, the age of its existing capacity, and the potential for premature shutdown of NSP's nuclear facilities.

NSP seeks to modify the Sherco 3 Certificate of Need to reflect the proposed sharing of that facility's capacity with the Southern Minnesota Municipal Power Agency (SMMPA) and the United Minnesota Municipal Power Agency (UMMPA). The specific proposal would permit SMMPA to own 300 megawatts and UMPPA 49 megawatts, leaving 450 megawatts of the Sherco 3 capacity for NSP. Separate letters of intent between NSP and SMMPA and between NSP and UMMPA to negotiate for joint ownership of Sherco 3 and to coordinate licensing procedures were also submitted to the Agency.

The Purpose of the Meeting. At the meeting to be held at the date, time and place set out above, the Agency will receive comment on the scope of the certification of need proceeding arising out of the Request for Modification. NSP, SMMPA, UMMPA, the Agency Staff, parties to past proceedings and any interested person are invited to participate in the meeting.

Certain issues have already been determined by the agency, and comments on those issues are not requested. The agency has decided to require SMMPA to justify its asserted need for 300 megawatts of capacity whether it be a share of Sherco 3 or another alternative. That justification must include consideration of a full range of alternative means of satisfying the asserted need. The agency also has decided to require NSP to justify the proposed 350-megawatt reduction in its share of Sherco 3. Included in that justification must be a showing of UMMPA's need for a minimum share of 49 megawatts.

Certain other specific issues have not yet been resolved by the agency. The purpose of the meeting is to receive comment on these remaining issues: the range of alternatives available to NSP which should be considered in the further proceeding in addition to the alternative proposed by NSP; the extent to which changes in NSP's forecast must be considered in the proceeding; and the extent of the need justification to be required of UMMPA.

Oral statements limited to the issues stated above will be received at the meeting. Written submissions similarly limited will be received prior to the meeting, at the meeting, and for a period of one week after the hearing, i.e., on or before October 20, 1980. Written statements should be addressed to Minnesota Energy Agency, c/o David L. Jacobson, 980 American Center Building, 150 East Kellogg Boulevard, St. Paul, Minnesota 55101.

September 30, 1980

James H. Main
Deputy Director

Energy Agency
Conservation Division

Notice of Intent to Solicit Outside Opinion Concerning Rules Governing the Administration and Distribution of Community Energy Planning Grants

Notice is hereby given that the Minnesota Energy Agency is seeking information or opinions from sources outside the agency in preparing to propose the adoption of rules governing the administration and distribution of Community Energy Planning Grants.

The proposed rules are authorized by Minn. Laws of 1980, ch. 579, § 7(Codified as Minn. Stat. § 116H.089) which reads as follows:

§ 7. (116H.089) (Community Energy Planning: Grants.) Subdivision 1. (Purpose.) In order to improve the energy planning capabilities of local governments, the energy agency shall make grants to counties and cities, however organized. The energy agency

when making grants shall give priority to those units of government that submit proposals that could result in significant savings of traditional energy sources, development of renewable energy systems, and broad community involvement. The director shall give priority to local units of government that provide staff or other support for a program and who request grants for programs which can be duplicated by other local governments. The grants may be used to purchase materials, employ staff or contract with other units of government or qualified consultants.

The director shall not make grants of more than 45 percent of the amount appropriated for those purposes to cities and counties located within the seven county metropolitan area. A single grant to a city or county shall not exceed $50,000.

Subd. 2. (Qualifying Expenditures.) Community energy planning grants may be used for the following purposes:

(a) To gather, monitor, and analyze local energy supply, demand, and cost information;

(b) To prepare comprehensive community energy plans;

(c) To implement comprehensive energy plans that the unit of government is authorized to undertake for the management of problems resulting from: (1) rising energy cost; (2) lack of efficient public and private transportation; (3) lack of community conservation efforts; (4) lack of widespread renewable energy sources; and (5) lack of energy components in comprehensive plans and local ordinances;

(d) To assist neighborhood organizations in counties and cities to do energy planning by making grants to the local unit of government; and

(e) Any other purposes deemed appropriate by the director of the energy agency.

Subd. 3. (Administration.) The energy agency shall determine priorities pursuant to subdivisions 1 and 2, and shall promulgate rules for the submission and review of applications in accordance with the provisions of chapter 15. For this purpose the energy agency may adopt temporary rules pursuant to the provisions of section 15.0412, subdivision 5.

It should be specifically noted that a single grant shall not exceed $50,000.

The purpose of these rules for state grants for the development of community energy plans would be to adopt procedures including, but not limited to, establishing: project priority; requirements for local matching funds; number of grant cycles; whether the grant process should be competitive; applicant eligibility; distrubution of money; allowable costs; percentage of grant allowed for administration; due dates; reporting requirements; length of grant period; and grant ranking criteria.

Any interested persons may submit data or views on these subjects in writing or orally to:

Jay Brunner
Senior Grants Analyst
Conservation Division
Minnesota Energy Agency
980 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101

Oral statements will be received during regular business hours (8:00 a.m. to 4:30 p.m.) over the telephone at (612) 297-3562 and in person at the above address. All statements of information and comments must be received by November 21, 1980. Any written material received by the Agency shall become part of the hearing record.

Board of Examiners for Nursing Home Administrators

Notice of Intent to Obtain Information From Nonagency Sources on Rules for Nursing Home Administrators

Notice is hereby given, pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6 (1978), that the Minnesota Board of Examiners for Nursing Home Administrators (hereinafter "board"), will propose the adoption of new rules and the amendment and revision of existing rules.

All interested parties desiring to submit data or views relating to the proposed adoption, amendment or revision of the rules related to the subject matters noted below should address their comments (either written or oral) to Mr. Phillip C. Newberg, in care of the Board, Room 340, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440, telephone: (612) 296-5406. Material and comments submitted for consideration should be pertinent to the matter at hand. Any material received by the board pursuant to this notice will become part of the hearing record of any formal hearing held to promulgate rules.