

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

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

Version 3
August 20, 2018

Our File No. 741

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 10/12
DATE FOR REVIEW
DATE DUE 10/19

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

Approved 10/26 Disapproved ____ Returned to Agency 10/27

Resubmitted ____ Due ____
Approved ____ Disapproved ____ Returned to Agency ____

Date filed w/Secretary of State 10/27 Revisor approved ✓ 10.23.81
disapproved ____

- ✓ Rule as Adopted
- ✓ Rule as Proposed see SR
- ✓ Order Adopting 10.9.81 Date
- ____ Notice of Intent to Solicit Outside Opinion
- ✓ Order for rulemaking
  N/A Date of Hearing
- N/A Certificate of Board's Authorizing Resolution
- ____ Notice of rulemaking
  ____ Sufficiency
- ____ Affidavit of Mailing Notice of rulemaking
  ____ At least 30 days prior to hearing/adoption
- ✓ Mailing list Certificate
- ✓ Publication in State Register
  9.7.81 At least 30/20 days prior to hearing/adoption
- NA Hearing Examiner's Report
- ____ 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
- N/A 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
- N/A Affidavit of Mailing Notice of Submission to Attorney General
- ✓ Notice of Submission to the Attorney General

SF-00006-02

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT ATTORNEY GENERAL

TO : MARK MASON
Director
Minnesota Energy Agency

DATE: October 26, 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 Proposed Adoption of Temporary Rules of the Minnesota Energy Agency Governing the Petroleum Products State Set-Aside Program, 6 MCAR §§ 2.007-2.015.

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/cae

Enc.

cc: Kathy Burek
Duane Harves

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

WARREN SPANNAUS
ATTORNEY GENERAL

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

October 26, 1981

Mr. Ted A. Martinez
Special Assistant Attorney General
G-25 Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Adoption of Temporary Rules of the Minnesota Energy Agency Governing the Petroleum Products State Set-Aside Program, 6 MCAR §§ 2.007-2.015.

Dear Sir:

Enclosed pursuant to your memorandum of October 19, 1981, are the following documents required to be submitted for the review and approval of the above-entitled resubmitted rules.

Temporary Rules as Adopted - original and two copies. The rules include the changes required by you and the Revisor to be adopted. The Revisor provided the copies, dated 10/20/81.
Supplemental Order ReAdopting Temporary Rules - original and one copy.

Two copies of the rules as adopted have been supplied to the Revisor of Statutes.

Sincerely,

DWIGHT S. WAGENIUS
Special Assistant
Attorney General

DSW:cl
Enclsoures

cc: Ann Bateson, Deputy Revisor
Chris Gilchrist

AN EQUAL OPPORTUNITY EMPLOYER

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

WARREN SPANNAUS
ATTORNEY GENERAL

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

October 12, 1981

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

Re: In the Matter of the Proposed Adoption of Temporary Rules of the Minnesota Energy Agency Governing the Petroleum Products State Set-Aside Program, 6 MCAR §§ 2.007-2.015.

Dear Sir:

Enclosed pursuant to Minn. Stat. § 15.0412, subd. 5, are the following documents required by 1 MCAR § 1.204 to be submitted for the review and approval of the above-entitled rules.

Temporary Rules as Adopted - original and three copies. The rules were unchanged from proposed to adopted. The Revisor provided the four copies, dated 10/8/81.
Order Adopting Temporary Rules - original and one copy.
Order for Publication.
Rules as Proposed. (6 S.R. 347-53) I also enclose a photocopy of the Revisor's certification of incorporation by reference.
Written comments on the rules. I have attached a copy of the Agency's response to each comment received.
Certificate of Compliance With Rulemaking Procedures.

Sincerely,

DWIGHT S. WAGENIUS
Special Assistant
Attorney General

DSW:cl
Enclosures

AN EQUAL OPPORTUNITY EMPLOYER

Temporary Rules as Adopted

6 MCAR S 2.007 (Temporary) Authority. Rules 6 MCAR SS 2.007-2.015 (Temporary) are authorized by Laws of 1981, ch. 356, S 136, subd. 7.

6 MCAR S 2.008 (Temporary) Purpose. Rules 6 MCAR SS 2.007-2.015 (Temporary) govern the administration of the state petroleum product set-aside program. The state set-aside program provides emergency petroleum supplies to relieve the hardship caused by shortages of refined petroleum products, or other emergencies. The purpose of the program is to minimize the adverse impacts of shortages and dislocations on the state's citizens and economy.

6 MCAR S 2.009 (Temporary) Definitions.

A. Applicability. For the purposes of 6 MCAR SS 2.007-2.015 (Temporary) the terms defined in this rule have the meanings given them.

B. Agriculture. "Agriculture" means certain activities in food production, processing, and sales as set out in the Standard Industrial Classification Manual, 1972 edition.

1. Included activities are:

a. Those listed in Division A, Agriculture, Forestry and Fishing, except those excluded by B.2.;

b. Those listed in Division D, Manufacturing,

including grain and seed drying under Major Group 20, Food and Kindred Products, except those excluded by B.2.;

c. Those listed in codes 1475, 2141, 2411, 2421, 2873, 2874, 2875, 2879, and 5462; and

d. Only potash mining of code 1474, dicalcium phosphate of code 2819, farm to market hauling and log trucking of code 4212, and farm irrigation systems of code 4971.

2. Excluded activities are:

a. Classification codes 0742, 0752, 0781, 0782, 0849, and non-food producing activities of codes 0271 and 0279 within Division A, Agriculture, Forestry, and Fishing; and

b. Classification codes 2047, 2067, and 2085 within Major Group 20, Food and Kindred Products of Division D, Manufacturing.

C. Assignment. "Assignment" means an order by the office or the board to a prime supplier to release state set-aside product to a specific person.

D. Average product use. "Average product use" means the volume of product purchased during the same month last year.

E. Board. "Board" means the state set-aside appeals board.

F. Cargo and freight hauling. "Cargo and freight hauling" means hauling by any truck with a gross vehicle weight of 20,000 pounds or more and the shipping of goods by rail or water.

G. Director. "Director" means the Director of the Minnesota Energy Agency.

H. Current month requirement. "Current month requirement" means the volume of product needed by an end user to meet its supply need for the present month.

I. Decision. "Decision" means the ruling of the board about any appeal.

J. Agency. "Agency" means the Minnesota Energy Agency.

K. Emergency services. "Emergency services" means activities immediately necessary to preserve the health or safety of the citizens. Emergency services include: ambulance; city, county, state and federal law enforcement; firefighting; mobilized national guard; and Red Cross.

L. End user. "End user" means a final consumer of motor gasoline or middle distillate.

M. Energy production. "Energy production" means the manufacturing, processing, storage, or transportation of primary energy sources including electricity, natural gas, or petroleum products. Energy production excludes electric utilities whose needs for electrical energy can be met by purchase from members of the Mid-Continent Area Power Pool.

N. Essential services. "Essential services" means activities that provide continuing public health and safety services. They include: energy production; government services; maintenance vehicles for telecommunication services; postal services; sanitation services; and cargo and freight hauling.

O. Fuel coordinator. "Fuel coordinator" means city council or county board appointed individuals who verify state set-aside applications.

P. Government services. "Government services" ~~include~~ includes: activities of the judicial branch of government; jail and prison activities; meetings of elected political officials; the Division of Emergency Services Operations Center activities; hearings of mobilized Local Energy Conservation Boards; the Office of Administrative Hearings; and minimum services to provide Aid For Dependent Children, food stamps, Social Security Income, and Social Security checks.

Q. Middle distillates. "Middle distillates" means distillates obtained between kerosene and lubricating oil fractions in the refining process, including kerosene, number one and number two heating oil, and number one and number two diesel fuel.

R. Motor gasoline. "Motor gasoline" means a liquid mixture of hydrocarbons produced by the distillation of petroleum and used chiefly as a fuel in internal combustion engines.

S. Office. "Office" means the unit within the agency responsible for the state set-aside program.

T. Officer. "Officer" means the individual who manages the

office and who has authority to sign orders and documents for state set-aside.

U. Order. "Order" means a written document signed by the officer or the director directing a prime supplier to release a product for an assignment. The office may telephone an order to the prime supplier, but the office shall promptly send the written order to the prime supplier's representative. The order is effective the day it is signed by the officer or director.

V. Passenger transportation. "Passenger transportation" means conventional public transit service which operates on a fixed route and is available to the public for a fare, intercity bus transportation, van pools, subscription buses, tour and charter bus transportation, bus transportation of pupils for educational purposes, taxicabs licensed to conduct business in a municipality, rail passenger transportation, aviation ground support for regularly scheduled airlines, and special transportation services for the elderly or handicapped.

W. Person. "Person" means an individual and any legally existing business, government unit, or institution.

X. Plant protection. "Plant protection" means sufficient heat and power to keep from freezing pipes and damaging equipment.

Y. Postal service. "Postal service" means the delivery of first, second, or third class United States mail.

Z. Prime supplier. "Prime supplier" means the producer or supplier now or hereafter making the first sale of middle distillates or motor gasoline subject to the state set-aside for consumption within the state.

AA. Prime supplier's representative. "Prime supplier's representative" means an individual who is authorized to act as liaison for the prime supplier in regular activities of state set-aside.

BB. Retail outlet. "Retail outlet" means a person who sells refined petroleum products from fixed tanks in a fixed location to end users in retail volumes.

CC. Sanitation services. "Sanitation services" means the

activities of a person who supplies water to the public through public utilities, or collects or disposes gaseous, liquid, or solid wastes for the public.

DD. Service. "Service" means personal service or service by certified United States mail, postage prepaid, and addressed to a person at the person's last known address.

EE. Shortfall. "Shortfall" means the amount by which demand exceeds supply of crude oil or refined petroleum products during any month.

FF. State. "State" means Minnesota.

GG. State set-aside. "State set-aside" means the amount of middle distillates or motor gasoline required to be made available by a prime supplier for utilization by the director to resolve or mitigate emergencies or hardships due to shortages of supply.

HH. Supplier. "Supplier" means a person, other than the United States Department of Defense, who furnishes a refined petroleum product or crude oil to end users, other suppliers, wholesale purchaser-consumers, or wholesale purchaser-resellers.

II. Wholesale purchaser-consumer. "Wholesale purchaser-consumer" means an end user who purchases truck transport volumes of middle distillate or motor gasoline or both from a prime supplier.

JJ. Wholesale purchaser-reseller. "Wholesale purchaser-reseller" means a person who obtains petroleum product from a supplier and, without additional refining, sells or transfers the product to other purchasers.

6 MCAR S 2.010 (Temporary) Prime supplier's obligations.

A. Monthly reports. Each prime supplier and producer or supplier making the first sale of propane or residual fuel oil within the state shall submit to the office a monthly report. The report shall be submitted in time to be received by the office each month no later than the 25th day of the month. The report shall include actual volumes of product sold in the previous month and the forecasted volumes of product to be

delivered in the month following the month in which the report is submitted.

1. The following petroleum products shall be included in each monthly report:

a. Unleaded gasoline;

b. Leaded gasoline;

c. Gasohol;

d. Aviation gasoline;

e. Naphtha jet fuel;

f. Kerosene-based jet fuel;

g. Number one heating oil and kerosene;

h. Number two heating oil;

i. Diesel fuel oil;

j. Other middle distillates;

k. Number four fuel oil;

l. Residual fuel oil with sulfur content equal to or less than one percent;

m. Residual fuel oil with sulfur content greater than one percent; and

n. Propane.

2. Every prime supplier doing business in the state during calendar year 1980 shall include the following in each monthly report:

a. The gallon amount of gasoline sold within the state during the corresponding month of 1980; and

b. The gallon amount of middle distillate sold within the state during the corresponding month of 1980.

3. The monthly reports shall be submitted in a standardized form approved by the office.

B. Prime supplier's representative. Each prime supplier shall report to the office the name, mailing address, and telephone number of a representative to act for the company regarding state set-aside. The duties of this representative shall include:

1. Confirming monthly state set-aside volumes; and

2. Accepting and processing state set-aside orders.

C. Nonpublic data. Reports submitted pursuant to this rule are nonpublic data in accordance with Laws of 1981, ch. 85, S 1.

6 MCAR S ~~2.0111~~ 2.011 (Temporary) Applications.

A. Who may apply. The following persons may apply for state set-aside if they are supplied middle distillate or motor gasoline or both directly by a prime supplier:

1. A wholesale purchaser-consumer or an end user seeking an assignment because of hardship or emergency; and

2. Wholesale purchaser-resellers seeking assignments to supply their traditional wholesale-purchaser and end user accounts because of hardship or emergency.

B. Form of application. An ~~application~~ applicant shall submit an application to the office for each month of hardship or emergency.

1. Except as provided in 2., applications shall be submitted in writing on forms approved by the office and signed by the applicant. Each application shall be verified and signed by a fuel coordinator attesting to the applicant's need for state set-aside product. The office may request reasonable additional information from an applicant as needed to support the claim of hardship or emergency.

2. An application may be made orally when extraordinary circumstances make it impossible for the applicant to submit a written application. When an oral application is made, the fuel coordinator shall orally certify to the office that the applicant has an emergency or hardship situation. It is the responsibility of the applicant to insure both that the fuel coordinator contacts the office and that the written application is submitted within five days following the oral application. If the written application is not submitted within five days following the oral application, the office may refuse to accept future oral requests from that applicant.

6 MCAR S 2.012 (Temporary) Evaluation criteria.

A. Middle distillates. The amount of middle distillates available for state set-aside is a volume equal to four percent

of all prime suppliers' monthly Minnesota sales volumes in the corresponding month of 1980. Applicants shall specify the gallons requested for each end user category and the reason for any need of volumes in excess of contract volumes. All assignments shall be based on the following priorities:

1. First priority middle distillate users include:

a. Agriculture;

b. Emergency services;

c. Essential services;

d. Heating customers with no alternate source of fuel, including hospitals, multi-unit housing, nursing homes, and residences;

e. Major industrial and commercial activities whose continued operation is essential to the economic well-being of an area, including auto manufacturing and mining;

f. Minimum plant and building protection; and

g. Passenger transportation.

2. Second priority middle distillate users are heating customers on interruptible natural gas or another primary source of fuel. They include:

a. Hospitals;

b. Multi-unit housing;

c. Nursing homes; and

d. Residences.

3. Third priority middle distillate users include:

a. Heating government buildings;

b. Industrial and commercial activities not included in 1.; and

c. Schools.

B. Motor gasoline. The volume of motor gasoline available for state set-aside is a volume equal to three percent of all prime suppliers' monthly Minnesota sales of motor gasoline in the corresponding month of 1980. The office may assign state set-aside motor gasoline volumes, when the applicant submits accurate and complete documentation, based on the following criteria.

1. Agricultural motor gasoline shortfall.

a. If the traditional supplier of an agricultural operation is unable to supply average motor gasoline use, the office may release amounts of state set-aside equal to the shortfall. The office may require the applicant to list the name, telephone number, and average motor gasoline use of the ultimate consumer.

b. If unusual weather conditions, natural disasters, or other extreme occurrences require more than average motor gasoline use, the office may make a state set-aside assignment to satisfy the greater requirement. In these cases, the applicant shall provide the office with the current monthly requirement and a justification for the request.

2. Community or area hardship.

a. If a supplier pullout produces a shortfall of motor gasoline in a local area, a wholesale purchaser-reseller in the area may apply for a state set-aside assignment. The applicant shall submit the name, address, and approximate gallons per month sold by the supplier who has pulled out.

b. State set-aside may be assigned to alleviate a shortfall caused by the closing of a motor gasoline retail outlet in a community. The applicant must certify that residents would have to drive 20 or more miles round trip to obtain motor gasoline between the hours of 7:00 a.m. and 8:00 ~~a.m.~~ p.m. and provide the office with the name, address, and approximate gallons per month sold of all retail outlets which have opened or closed in the last calendar year within a ten-mile radius of the retail outlet requesting the state set-aside assignment.

c. A wholesale purchaser-reseller may receive an assignment on the basis of unusual growth if the applicant can demonstrate the existence of a shortfall because of a population increase in the community of over ten percent since 1980, new business in the community employing 500 or more employees since 1980, or relocation of a highway since 1980.

d. The office may assign state set-aside motor

gasoline to a retail outlet that has historically remained open 24 hours a day and provided emergency road service.

3. The office may assign state set-aside motor gasoline to alleviate a shortage of motor gasoline due to a natural disaster including: floods; blizzards; fire; high winds; and tornadoes. Applicants shall state the nature of the disaster, the number of gallons sold, and to whom.

4. The office may assign state set-aside motor gasoline to meet the requirements of certain priority vehicles because of a shortfall. Applicants may apply for state set-aside to make up the difference between 100 percent of contract volume and the amount of supply currently available for the following types of priority vehicles:

a. Emergency services;

b. Essential services; and

c. Passenger transportation services.

6 MCAR S 2.013 (Temporary) Application processing procedures.

A. Investigations. The office may initiate an investigation of any statement in an application and utilize in its evaluation of the application any relevant facts obtained by the investigation. The office may solicit and accept information from third persons relevant to any application, provided that the applicant is afforded an opportunity to respond.

B. Additional information. If the office determines that the application does not have sufficient information to support a decision, it may request the necessary additional information from the applicant. If the applicant repeatedly or willfully fails to supply additional information, the office may deny the application.

C. Processing. The office shall process applications each month for that month as follows:

1. Applications made by wholesale purchaser-consumers or by wholesale purchaser-resellers on behalf of wholesale purchaser-consumers or end users shall be processed within five working days after receipt;

2. Except when the applicant applies for state set-aside under 6 MCAR S 2.012 B.2. or 3. (Temporary), applications that are made by or on the behalf of retail outlets shall be processed within five working days after the 15th day of the month; and

3. Applications needing additional information shall be processed within five working days after receipt of the requested information.

D. Implementation. State set-aside assignments shall be implemented as follows:

1. Upon approval or modification of a request for state set-aside product, the office shall issue an order authorizing the assignment and serve it on the prime supplier from whom the state set-aside product is to be drawn.

a. An order issued by the office is effective the date it is signed by the officer or the director, unless stayed, modified, suspended, or rescinded.

b. The order represents a call upon the prime supplier's state set-aside volume for the month of issuance even if delivery cannot be made until the following month.

c. The applicant shall arrange for receipt of the product within ten days from the date of the order.

2. Upon denial of an application, the office shall notify the applicant in writing, stating the reason for denial.

6 MCAR S 2.014 (Temporary) Appeals process.

A. Applicability. Within ten days after the effective date of an order or the mailing date of a denial, any person aggrieved may appeal in writing to the director. The written appeal shall include:

1. The reason for the appeal, including why the action by the office is deemed unwise or unjust;

2. The names, addresses, and telephone numbers of any ~~person~~ persons whom it is believed might be injured by the order being appealed; and

3. The objective of the appeal, including reversal of the

office action, modification of the action, or other remedies.

B. Director's action. Within five days of receipt of the appeal, the director shall:

1. Set a hearing date at least ten days after initiation of the appeal;

2. Serve all interested parties with a copy of the appeal and notice of the time and place of the hearing; and

3. Issue a stay of the order if:

a. It appears probable that a party may suffer serious injury;

b. The order appears in conflict with Laws of 1981, ch. 356, S 136, or other law; or

c. It appears probable that the board will grant the appeal.

C. State set-aside appeals board. The state set-aside appeals board shall consist of:

1. The director or the director's designee, as chairperson;

2. The Commissioner of the Minnesota Department of Agriculture or designee thereof;

3. The Director of the Office of Consumer ~~Affairs~~ Services of the Minnesota Department of Commerce or designee thereof;

4. The Director of the Office of Emergency Services of the Minnesota Department of Public Safety or designee thereof; and

5. The Commissioner of the Minnesota Department of Public Service or designee thereof.

D. Decisions on appeals. The Director of the Minnesota Energy Agency plus any two or more additional members may hear and decide appeals.

E. Informal disposition. At any time during the proceedings, the affected parties may conclude a mutually acceptable settlement of the appeal.

6 MCAR S 2.015 (Temporary) Hearings.

A. Rights of the parties to the hearing. Affected parties have a right to:

1. A hearing before the board;

2. Representation by an attorney;

3. Present public evidence;

4. Present witnesses who will testify under oath;

5. Cross-examine witnesses; and

6. Present rebuttal testimony and argument.

B. Rules of evidence.

1. The board shall admit and consider any reasonable evidence.

2. The board may exclude evidence it determines to be immaterial, irrelevant, or repetitious.

3. The board shall consider only the evidence which is entered into the public record of the hearing.

4. If the board desires to use technical facts within its specialized knowledge or publicly accepted facts that were not part of the evidence presented, the board shall notify the parties and give them an opportunity to rebut those facts. After the rebutting evidence is received and reviewed, the board shall review all the evidence when making the decision.

C. Public record of the hearing. The board shall prepare an official record which shall include:

1. All pleadings, motions, and intermediate rulings;

2. Evidence received or considered;

3. A statement of facts not introduced in evidence but considered by the board and questions of those facts by affected persons including rebuttals and objections;

4. Proposed findings and exceptions;

5. Any decision, opinion, or report by the board; and

6. All memoranda or data submitted to the board by the office except advice of the office's attorney.

D. Verbatim record. The board shall make a verbatim record of the hearing on recording equipment. Any party may request that a court reporter make the record, but that person shall pay the court reporter's fee. The board shall transcribe the record

only upon request and only if the requestor agrees to pay for the cost of transcribing.

E. Hearing procedure.

1. If the appellant fails to appear, the board may declare a default and deny the appeal.

2. After opening the hearing, the chairperson shall read the rights of the parties to the hearing and the rules regarding evidence from A. and B. The chairperson shall also call for the parties to present any written matter that they wish to introduce as an exhibit and offer as evidence.

3. A representative of the office shall introduce the jurisdictional exhibits including the written appeal received by the director, the notice of hearing, and any agreements entered into by the parties to the appeal.

4. The appellant may make an opening statement. Other parties may make statements in the order determined by the board.

5. After opening statements, the appellant may present its case. Other parties may present their cases in the order determined by the board.

6. The board shall determine the order for cross-examining witnesses.

7. The parties may next give oral or written rebuttal evidence and final arguments in the order determined by the board.

8. After final arguments, the board may: close the hearing; announce the time and place of the next hearing; or, continue the hearing to some future time. The board shall give a five day written notice to all parties prior to holding a continued hearing.

F. Decorum. The chairperson may take action to insure the orderly conduct of public business at the hearing, as authorized by Minn. Stat. S 624.72, subd. 3.

G. Decision.

1. Within five days after the hearing is closed, the board shall issue its decision on the appeal.

2. The decision shall state that the denial or order of

the office was modified, reversed, or upheld. If modified or reversed, the decision must state exactly what action is required. The decision shall state the conclusions of fact and law used to reach the ruling.

3. The commissioner shall, by the close of the working day following the decision, serve a copy of the decision on the parties to the hearing.

Temporary repealer. Rules EA 101-107 are repealed during the time temporary rules 6 MCAR SS 2.007-2.015 are effective.

OFFICE OF THE REVISOR OF STATUTES

Certificate of Approval of Adopted Rules

Agency: Minnesota Energy Agency

Rule Numbers: 6 MCAR S 2.007-2.015

Rule Title: Adopted Rules Governing the State Petroleum Products Set-aside Program.

Type of Rules: Permanent_____

Temporary X

Documents Incorporated by Reference: Standard Industrial Classification Manual, 1972 edition.

The attached Rules are approved as to form.

Steven C. Cross
Revisor of Statutes

APPROVED AS TO LEGALITY
October 26 1981
WARREN SPANNAUS, ATTORNEY GENERAL
BY Ted A. Mathews
SPECIAL ASSISTANT ATTORNEY GENERAL

Name: Ann L. Bateson
Ann L. Bateson

Title: Deputy Revisor

Phone: 296-1536

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 27 1981
Joan Anderson Growe
Secretary of State
9:00 AM

OFFICE OF THE REVISOR OF STATUTES
Disapproval of Form of Rules

10/20/81
RD54

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

Page 1, lines 5 and 13, after "2.015" insert "(Temporary)"

Page 3, line 17, strike "include" and insert "includes"

Page 4, line 35, correct the misspelled "santitation"

Page 7, line 2, after 6 MCAR S insert and strike "2.0111" which appeared in the State Register. Underline "2.011"

Page 7, line 11, underline "applicant" and before it insert and strike "application" which appeared in the State Register

Page 10, line 4, after "floods" insert and strike a comma which appeared in the State Register. Underline the semicolon

Page 11, line 32, strike "person" and insert "persons"

Steven C. Cross
Revisor of Statutes

Name: Ann L. Bateson
Ann L. Bateson

Title: Deputy Revisor

Phone: 296-1536

____ The changes requested by the revisor are approved by the agency.

____ The changes requested by the revisor are not approved by the agency

Agency's Representative

____ The attorney general agrees that the changes requested by the revisor are form changes, not substantive changes.

Assistant Attorney General

OFFICE OF THE REVISOR OF STATUTES
PROPOSED RULES

Agency Minnesota Energy Agency

Division

Agency Contact Chris Gilchrist Phone Number 296-1732

Title: Proposed Temporary Rules Governing the Petroleum Product Set-Aside Program

Type of Rules: Permanent_____ Temporary X

Incorporations by References:

Rule Number		
	Material Incorporated	Standard Industrial Classification
	Author	Manual, 1972 ed.
	Title	Executive office of the President
	Place	Office of Management and Budget
	Publisher	
	Date	
	Cost	
	Places Available	State Law Library and many public libraries

See Additional references on back Yes___ No___

Duplication of Statutory Language

Rule Number	Statutory Section Duplicated

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: P. E. R.
Paul E. Rohde

Title: Senior Assistant Revisor

Phone: 296-0953

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Temporary Rules of the Minnesota Energy Agency Governing the Petroleum Products State Set-Aside Program, 6 MCAR §§ 2.007-2.015.

SUPPLEMENTAL ORDER ADOPTING TEMPORARY RULES

The temporary rules proposed for adoption in the above-entitled matter were rejected by the Attorney General on October 19, 1981, and the Revisor of Statutes on October 20, 1981, based on oversights in form. After reviewing the comments of the Attorney General and the Revisor, having accepted all corrective suggestions made, and determining that the above-captioned rules as corrected are needed and reasonable,

NOW, THEREFORE, IT IS ORDERED that these rules identified as temporary rules for the administration of the Petroleum Products State Set-Aside Program are hereby readopted this twenty-sixth day of October, 1981, pursuant to authority vested in me by Laws of Minnesota 1981, Chapter 356, Section 136, Subdivision 7.

MINNESOTA ENERGY AGENCY

MARK MASON
Director

AG copy

Temporary Rules as Adopted

6 MCAR S 2.007 (Temporary) Authority. Rules 6 MCAR SS 2.007-2.015 (Temporary) are authorized by Laws of 1981, ch. 356, S 136, subd. 7.

6 MCAR S 2.008 (Temporary) Purpose. Rules 6 MCAR SS 2.007-2.015 govern the administration of the state petroleum product set-aside program. The state set-aside program provides emergency petroleum supplies to relieve the hardship caused by shortages of refined petroleum products, or other emergencies. The purpose of the program is to minimize the adverse impacts of shortages and dislocations on the state's citizens and economy.

6 MCAR S 2.009 (Temporary) Definitions.

A. Applicability. For the purposes of 6 MCAR SS 2.007-2.015 the terms defined in this rule have the meanings given them.

B. Agriculture. "Agriculture" means certain activities in food production, processing, and sales as set out in the Standard Industrial Classification Manual, 1972 edition.

1. Included activities are:

a. Those listed in Division A, Agriculture, Forestry and Fishing, except those excluded by B.2.;

b. Those listed in Division D, Manufacturing, including grain and seed drying under Major Group 20, Food and

Kindred Products, except those excluded by B.2.;

c. Those listed in codes 1475, 2141, 2411, 2421, 2873, 2874, 2875, 2879, and 5462; and

d. Only potash mining of code 1474, dicalcium phosphate of code 2819, farm to market hauling and log trucking of code 4212, and farm irrigation systems of code 4971.

2. Excluded activities are:

a. Classification codes 0742, 0752, 0781, 0782, 0849, and non-food producing activities of codes 0271 and 0279 within Division A, Agriculture, Forestry, and Fishing; and

b. Classification codes 2047, 2067, and 2085 within Major Group 20, Food and Kindred Products of Division D, Manufacturing.

C. Assignment. "Assignment" means an order by the office or the board to a prime supplier to release state set-aside product to a specific person.

D. Average product use. "Average product use" means the volume of product purchased during the same month last year.

E. Board. "Board" means the state set-aside appeals board.

F. Cargo and freight hauling. "Cargo and freight hauling" means hauling by any truck with a gross vehicle weight of 20,000 pounds or more and the shipping of goods by rail or water.

G. Director. "Director" means the Director of the Minnesota Energy Agency.

H. Current month requirement. "Current month requirement" means the volume of product needed by an end user to meet its supply need for the present month.

I. Decision. "Decision" means the ruling of the board about any appeal.

J. Agency. "Agency" means the Minnesota Energy Agency.

K. Emergency services. "Emergency services" means activities immediately necessary to preserve the health or safety of the citizens. Emergency services include: ambulance; city, county, state and federal law enforcement; firefighting; mobilized national guard; and Red Cross.

L. End user. "End user" means a final consumer of motor

gasoline or middle distillate.

M. Energy production. "Energy production" means the manufacturing, processing, storage, or transportation of primary energy sources including electricity, natural gas, or petroleum products. Energy production excludes electric utilities whose needs for electrical energy can be met by purchase from members of the Mid-Continent Area Power Pool.

N. Essential services. "Essential services" means activities that provide continuing public health and safety services. They include: energy production; government services; maintenance vehicles for telecommunication services; postal services; sanitation services; and cargo and freight hauling.

O. Fuel coordinator. "Fuel coordinator" means city council or county board appointed individuals who verify state set-aside applications.

P. Government services. "Government services" include: activities of the judicial branch of government; jail and prison activities; meetings of elected political officials; the Division of Emergency Services Operations Center activities; hearings of mobilized Local Energy Conservation Boards; the Office of Administrative Hearings; and minimum services to provide Aid For Dependent Children, food stamps, Social Security Income, and Social Security checks.

Q. Middle distillates. "Middle distillates" means distillates obtained between kerosene and lubricating oil fractions in the refining process, including kerosene, number one and number two heating oil, and number one and number two diesel fuel.

R. Motor gasoline. "Motor gasoline" means a liquid mixture of hydrocarbons produced by the distillation of petroleum and used chiefly as a fuel in internal combustion engines.

S. Office. "Office" means the unit within the agency responsible for the state set-aside program.

T. Officer. "Officer" means the individual who manages the office and who has authority to sign orders and documents for

state set-aside.

U. Order. "Order" means a written document signed by the officer or the director directing a prime supplier to release a product for an assignment. The office may telephone an order to the prime supplier, but the office shall promptly send the written order to the prime supplier's representative. The order is effective the day it is signed by the officer or director.

V. Passenger transportation. "Passenger transportation" means conventional public transit service which operates on a fixed route and is available to the public for a fare, intercity bus transportation, van pools, subscription buses, tour and charter bus transportation, bus transportation of pupils for educational purposes, taxicabs licensed to conduct business in a municipality, rail passenger transportation, aviation ground support for regularly scheduled airlines, and special transportation services for the elderly or handicapped.

W. Person. "Person" means an individual and any legally existing business, government unit, or institution.

X. Plant protection. "Plant protection" means sufficient heat and power to keep from freezing pipes and damaging equipment.

Y. Postal service. "Postal service" means the delivery of first, second, or third class United States mail.

Z. Prime supplier. "Prime supplier" means the producer or supplier now or hereafter making the first sale of middle distillates or motor gasoline subject to the state set-aside for consumption within the state.

AA. Prime supplier's representative. "Prime supplier's representative" means an individual who is authorized to act as liaison for the prime supplier in regular activities of state set-aside.

BB. Retail outlet. "Retail outlet" means a person who sells refined petroleum products from fixed tanks in a fixed location to end users in retail volumes.

CC. Sanitation services. "Sanitation services" means the activities of a person who supplies water to the public through

public utilities, or collects or disposes gaseous, liquid, or solid wastes for the public.

DD. Service. "Service" means personal service or service by certified United States mail, postage prepaid, and addressed to a person at the person's last known address.

EE. Shortfall. "Shortfall" means the amount by which demand exceeds supply of crude oil or refined petroleum products during any month.

FF. State. "State" means Minnesota.

GG. State set-aside. "State set-aside" means the amount of middle distillates or motor gasoline required to be made available by a prime supplier for utilization by the director to resolve or mitigate emergencies or hardships due to shortages of supply.

HH. Supplier. "Supplier" means a person, other than the United States Department of Defense, who furnishes a refined petroleum product or crude oil to end users, other suppliers, wholesale purchaser-consumers, or wholesale purchaser-resellers.

II. Wholesale purchaser-consumer. "Wholesale purchaser-consumer" means an end user who purchases truck transport volumes of middle distillate or motor gasoline or both from a prime supplier.

JJ. Wholesale purchaser-reseller. "Wholesale purchaser-reseller" means a person who obtains petroleum product from a supplier and, without additional refining, sells or transfers the product to other purchasers.

6 MCAR S 2.010 (Temporary) Prime supplier's obligations.

A. Monthly reports. Each prime supplier and producer or supplier making the first sale of propane or residual fuel oil within the state shall submit to the office a monthly report. The report shall be submitted in time to be received by the office each month no later than the 25th day of the month. The report shall include actual volumes of product sold in the previous month and the forecasted volumes of product to be delivered in the month following the month in which the report

is submitted.

1. The following petroleum products shall be included in each monthly report:

a. Unleaded gasoline;

b. Leaded gasoline;

c. Gasohol;

d. Aviation gasoline;

e. Naphtha jet fuel;

f. Kerosene-based jet fuel;

g. Number one heating oil and kerosene;

h. Number two heating oil;

i. Diesel fuel oil;

j. Other middle distillates;

k. Number four fuel oil;

l. Residual fuel oil with sulfur content equal to or less than one percent;

m. Residual fuel oil with sulfur content greater than one percent; and

n. Propane.

2. Every prime supplier doing business in the state during calendar year 1980 shall include the following in each monthly report:

a. The gallon amount of gasoline sold within the state during the corresponding month of 1980; and

b. The gallon amount of middle distillate sold within the state during the corresponding month of 1980.

3. The monthly reports shall be submitted in a standardized form approved by the office.

B. Prime supplier's representative. Each prime supplier shall report to the office the name, mailing address, and telephone number of a representative to act for the company regarding state set-aside. The duties of this representative shall include:

1. Confirming monthly state set-aside volumes; and

2. Accepting and processing state set-aside orders.

C. Nonpublic data. Reports submitted pursuant to this rule

are nonpublic data in accordance with Laws of 1981, ch. 85, S 1.

6 MCAR S 2.011 (Temporary) Applications.

A. Who may apply. The following persons may apply for state set-aside if they are supplied middle distillate or motor gasoline or both directly by a prime supplier:

1. A wholesale purchaser-consumer or an end user seeking an assignment because of hardship or emergency; and

2. Wholesale purchaser-resellers seeking assignments to supply their traditional wholesale-purchaser and end user accounts because of hardship or emergency.

B. Form of application. An applicant shall submit an application to the office for each month of hardship or emergency.

1. Except as provided in 2., applications shall be submitted in writing on forms approved by the office and signed by the applicant. Each application shall be verified and signed by a fuel coordinator attesting to the applicant's need for state set-aside product. The office may request reasonable additional information from an applicant as needed to support the claim of hardship or emergency.

2. An application may be made orally when extraordinary circumstances make it impossible for the applicant to submit a written application. When an oral application is made, the fuel coordinator shall orally certify to the office that the applicant has an emergency or hardship situation. It is the responsibility of the applicant to insure both that the fuel coordinator contacts the office and that the written application is submitted within five days following the oral application. If the written application is not submitted within five days following the oral application, the office may refuse to accept future oral requests from that applicant.

6 MCAR S 2.012 (Temporary) Evaluation Criteria.

A. Middle distillates. The amount of middle distillates available for state set-aside is a volume equal to four percent of all prime suppliers' monthly Minnesota sales volumes in the

corresponding month of 1980. Applicants shall specify the gallons requested for each end user category and the reason for any need of volumes in excess of contract volumes. All assignments shall be based on the following priorities:

1. First priority middle distillate users include:

a. Agriculture;

b. Emergency services;

c. Essential services;

d. Heating customers with no alternate source of fuel, including hospitals, multi-unit housing, nursing homes, and residences;

e. Major industrial and commercial activities whose continued operation is essential to the economic well-being of an area, including auto manufacturing and mining;

f. Minimum plant and building protection; and

g. Passenger transportation.

2. Second priority middle distillate users are heating customers on interruptible natural gas or another primary source of fuel. They include:

a. Hospitals;

b. Multi-unit housing;

c. Nursing homes; and

d. Residences.

3. Third priority middle distillate users include:

a. Heating government buildings;

b. Industrial and commercial activities not included in 1.; and

c. Schools.

B. Motor gasoline. The volume of motor gasoline available for state set-aside is a volume equal to three percent of all prime suppliers' monthly Minnesota sales of motor gasoline in the corresponding month of 1980. The office may assign state set-aside motor gasoline volumes, when the applicant submits accurate and complete documentation, based on the following criteria.

1. Agricultural motor gasoline shortfall.

a. If the traditional supplier of an agricultural operation is unable to supply average motor gasoline use, the office may release amounts of state set-aside equal to the shortfall. The office may require the applicant to list the name, telephone number, and average motor gasoline use of the ultimate consumer.

b. If unusual weather conditions, natural disasters, or other extreme occurrences require more than average motor gasoline use, the office may make a state set-aside assignment to satisfy the greater requirement. In these cases, the applicant shall provide the office with the current monthly requirement and a justification for the request.

2. Community or area hardship.

a. If a supplier pullout produces a shortfall of motor gasoline in a local area, a wholesale purchaser-reseller in the area may apply for a state set-aside assignment. The applicant shall submit the name, address, and approximate gallons per month sold by the supplier who has pulled out.

b. State set-aside may be assigned to alleviate a shortfall caused by the closing of a motor gasoline retail outlet in a community. The applicant must certify that residents would have to drive 20 or more miles round trip to obtain motor gasoline between the hours of 7:00 a.m. and 8:00 a.m. and provide the office with the name, address, and approximate gallons per month sold of all retail outlets which have opened or closed in the last calendar year within a ten-mile radius of the retail outlet requesting the state set-aside assignment.

c. A wholesale purchaser-reseller may receive an assignment on the basis of unusual growth if the applicant can demonstrate the existence of a shortfall because of a population increase in the community of over ten percent since 1980, new business in the community employing 500 or more employees since 1980, or relocation of a highway since 1980.

d. The office may assign state set-aside motor gasoline to a retail outlet that has historically remained open

24 hours a day and provided emergency road service.

3. The office may assign state set-aside motor gasoline to alleviate a shortage of motor gasoline due to a natural disaster including: floods; blizzards; fire; high winds; and tornadoes. Applicants shall state the nature of the disaster, the number of gallons sold, and to whom.

4. The office may assign state set-aside motor gasoline to meet the requirements of certain priority vehicles because of a shortfall. Applicants may apply for state set-aside to make up the difference between 100 percent of contract volume and the amount of supply currently available for the following types of priority vehicles:

a. Emergency services;

b. Essential services; and

c. Passenger transportation services.

6 MCAR S 2.013 (Temporary) Application processing procedures.

A. Investigations. The office may initiate an investigation of any statement in an application and utilize in its evaluation of the application any relevant facts obtained by the investigation. The office may solicit and accept information from third persons relevant to any application, provided that the applicant is afforded an opportunity to respond.

B. Additional information. If the office determines that the application does not have sufficient information to support a decision, it may request the necessary additional information from the applicant. If the applicant repeatedly or willfully fails to supply additional information, the office may deny the application.

C. Processing. The office shall process applications each month for that month as follows:

1. Applications made by wholesale purchaser-consumers or by wholesale purchaser-resellers on behalf of wholesale purchaser-consumers or end users shall be processed within five working days after receipt;

2. Except when the applicant applies for state set-aside

under 6 MCAR S 2.012 B.2. or 3. (temporary), applications that are made by or on the behalf of retail outlets shall be processed within five working days after the 15th day of the month; and

3. Applications needing additional information shall be processed within five working days after receipt of the requested information.

D. Implementation. State set-aside assignments shall be implemented as follows:

1. Upon approval or modification of a request for state set-aside product, the office shall issue an order authorizing the assignment and serve it on the prime supplier from whom the state set-aside product is to be drawn.

a. An order issued by the office is effective the date it is signed by the officer or the director, unless stayed, modified, suspended, or rescinded.

b. The order represents a call upon the prime supplier's state set-aside volume for the month of issuance even if delivery cannot be made until the following month.

c. The applicant shall arrange for receipt of the product within ten days from the date of the order.

2. Upon denial of an application, the office shall notify the applicant in writing, stating the reason for denial.

6 MCAR S 2.014 (Temporary) Appeals process.

A. Applicability. Within ten days after the effective date of an order or the mailing date of a denial, any person aggrieved may appeal in writing to the director. The written appeal shall include:

1. The reason for the appeal, including why the action by the office is deemed unwise or unjust;

2. The names, addresses, and telephone numbers of any person whom it is believed might be injured by the order being appealed; and

3. The objective of the appeal, including reversal of the office action, modification of the action, or other remedies.

B. Director's action. Within five days of receipt of the appeal, the director shall:

1. Set a hearing date at least ten days after initiation of the appeal;

2. Serve all interested parties with a copy of the appeal and notice of the time and place of the hearing; and

3. Issue a stay of the order if:

a. It appears probable that a party may suffer serious injury;

b. The order appears in conflict with Laws of 1981, ch. 356, S 136, or other law; or

c. It appears probable that the board will grant the appeal.

C. State set-aside appeals board. The state set-aside appeals board shall consist of:

1. The director or the director's designee, as chairperson;

2. The Commissioner of the Minnesota Department of Agriculture or designee thereof;

3. The Director of the Office of Consumer Affairs of the Minnesota Department of Commerce or designee thereof;

4. The Director of the Office of Emergency Services of the Minnesota Department of Public Safety or designee thereof; and

5. The Commissioner of the Minnesota Department of Public Service or designee thereof.

D. Decisions on appeals. The Director of the Minnesota Energy Agency plus any two or more additional members may hear and decide appeals.

E. Informal disposition. At any time during the proceedings, the affected parties may conclude a mutually acceptable settlement of the appeal.

6 MCAR S 2.015 (Temporary) Hearings.

A. Rights of the parties to the hearing. Affected parties have a right to:

1. A hearing before the board;

2. Representation by an attorney;

3. Present public evidence;

4. Present witnesses who will testify under oath;

5. Cross-examine witnesses; and

6. Present rebuttal testimony and argument.

B. Rules of evidence.

1. The board shall admit and consider any reasonable evidence.

2. The board may exclude evidence it determines to be immaterial, irrelevant, or repetitious.

3. The board shall consider only the evidence which is entered into the public record of the hearing.

4. If the board desires to use technical facts within its specialized knowledge or publicly accepted facts that were not part of the evidence presented, the board shall notify the parties and give them an opportunity to rebut those facts. After the rebutting evidence is received and reviewed, the board shall review all the evidence when making the decision.

C. Public record of the hearing. The board shall prepare an official record which shall include:

1. All pleadings, motions, and intermediate rulings;

2. Evidence received or considered;

3. A statement of facts not introduced in evidence but considered by the board and questions of those facts by affected persons including rebuttals and objections;

4. Proposed findings and exceptions;

5. Any decision, opinion, or report by the board; and

6. All memoranda or data submitted to the board by the office except advice of the office's attorney.

D. Verbatim record. The board shall make a verbatim record of the hearing on recording equipment. Any party may request that a court reporter make the record, but that person shall pay the court reporter's fee. The board shall transcribe the record only upon request and only if the requestor agrees to pay for the cost of transcribing.

E. Hearing procedure.

1. If the appellant fails to appear, the board may declare a default and deny the appeal.

2. After opening the hearing, the chairperson shall read the rights of the parties to the hearing and the rules regarding evidence from A. and B. The chairperson shall also call for the parties to present any written matter that they wish to introduce as an exhibit and offer as evidence.

3. A representative of the office shall introduce the jurisdictional exhibits including the written appeal received by the director, the notice of hearing, and any agreements entered into by the parties to the appeal.

4. The appellant may make an opening statement. Other parties may make statements in the order determined by the board.

5. After opening statements, the appellant may present its case. Other parties may present their cases in the order determined by the board.

6. The board shall determine the order for cross-examining witnesses.

7. The parties may next give oral or written rebuttal evidence and final arguments in the order determined by the board.

8. After final arguments, the board may: close the hearing; announce the time and place of the next hearing; or, continue the hearing to some future time. The board shall give a five day written notice to all parties prior to holding a continued hearing.

F. Decorum. The chairperson may take action to insure the orderly conduct of public business at the hearing, as authorized by Minn. Stat. S 624.72, subd. 3.

G. Decision.

1. Within five days after the hearing is closed, the board shall issue its decision on the appeal.

2. The decision shall state that the denial or order of the office was modified, reversed, or upheld. If modified or reversed, the decision must state exactly what action is

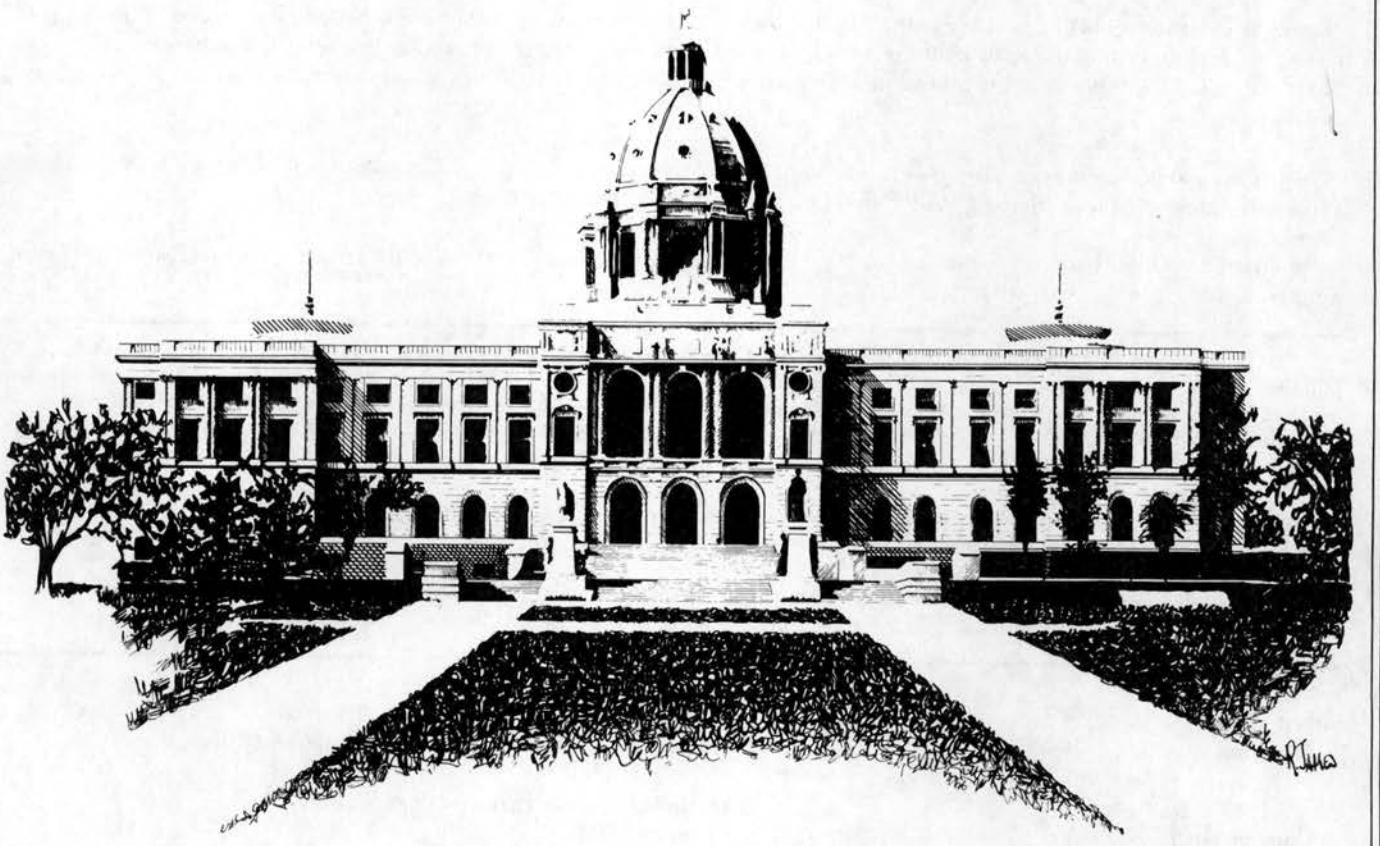
required. The decision shall state the conclusions of fact and law used to reach the ruling.

3. The commissioner shall, by the close of the working day following the decision, serve a copy of the decision on the parties to the hearing.

Temporary repealer. Rules EA 101-107 are repealed during the time temporary rules 6 MCAR SS 2.007-2.015 are effective.

STATE REGISTER

STATE OF MINNESOTA



VOLUME 6, NUMBER 10

September 7, 1981

Pages 333-428

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 6		
11	Monday Aug 31	Friday Sept 4	Monday Sept 14
12	Friday Sept 4	Friday Sept 11	Monday Sept 21
13	Monday Sept 14	Monday Sept 21	Monday Sept 28
14	Monday Sept 21	Monday Sept 28	Monday Oct 5

*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 $130.00 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 $3.00 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

David Zunker
Information Officer

Paul Hoffman, Robin PanLener, Jean Walburg
Editorial Staff

Debbie Kobold
Circulation Manager

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

CONTENTS

MCAR AMENDMENTS AND ADDITIONS

Inclusive listing for Issues 1-10. 336

EXECUTIVE ORDERS

Executive Order No. 81-7
Providing for the Establishment of a Governor's Task Force on Health Care. 338

Emergency Executive Order No. 81-8
Providing for Emergency Assistance to County Officials of Minnesota. 339

Executive Order No. 81-9
Amending Executive Order No. 79-23 (Creating Ten Governor's Committees on Judicial Nominations); Providing for the Establishment of a Governor's Committee on Supreme Court Nominations 339

PROPOSED RULES

Administration Department
Cable Communications Board
Restrictions on Interests in or Ownership, Operation, and Control of Cable Communications Systems [notice of room change for public hearing] 344

State Board of Education
Department of Education
Instruction Division
Minimum Clock Hour Requirements for Junior High Science [notice of hearing] 344

Minnesota Energy Agency
Data and Analysis Division
Petroleum State Set-Aside Program [request for public comment on proposed temporary rules] 347

Minnesota Environmental Quality Board
Environmental Review Program [notice of hearing] 354

ADOPTED RULES

Administrative Hearings Office
Workers' Compensation Section
Workers' Compensation [temporary rules] 394

State Board of Education
Education Department
School Management Services Division
Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth Who Are Handicapped 410

State Board of Education
Department of Education
Special Services Division
Prohibition of Discriminatory Practices in Athletic Programs in Public and Private Elementary and Secondary Schools 411

TAX COURT

State of Minnesota, Tax Court, County of Hennepin, Regular Division. St. Louis Park Medical Center Research Foundation, Appellant, v. The Commissioner of Revenue, Respondent. Findings of Fact, Conclusions of Law, and Order for Judgment. Order dated 8-21-81. Docket No. 3256 . . . 412

State of Minnesota, Tax Court, James H. and Lois Garfunkel, Appellants, v. The Commissioner of Revenue, Appellee. In the Matter of the Appeal from the Commissioner's Order dated November 17, 1978, relating to the income tax of James H. and Lois Garfunkel for the taxable period from January 1, 1974, through December 31, 1975. Order dated August 24, 1981. Docket No. 2818 413

SUPREME COURT

Decisions Filed Friday, August 28, 1981
51636/30 State of Minnesota, by Warren Spannaus, its Attorney General, v. Century Camera, Inc., *et al.*, Appellants, Propper Oil and Auto Supply Warehouse Distributing Co., Inc., d.b.a. 1000 Auto Parts, *et al.*, Defendants. Hennepin County . . . 417

51656/30 Rose Gawel v. Two Plus Two, Inc., Foresight Security, Inc., petitioner, Appellant. Ramsey County 417

51500/Sp. In re the Marriage of: Lawrence E. Schmitz, petitioner, Appellant, v. Violet E. Schmitz. Hennepin County 417

51878/Sp. Sidney R. Baldwin, Relator, v. Commissioner of Revenue. Tax Court 418

50269/Sp. Bernard A. Teske v. Dale Young, d.b.a. Young Painting Contractor, *et al.*, Relators, and State Treasurer, Custodian of the Special Compensation Fund. Workers' Compensation Court of Appeals 418

50737 In re the Marriage of: Pedro DeLa Rosa, petitioner, Appellant, v. Elena DeLa Rosa. Hennepin County 418

51123/Sp. Clint Schwingler v. Robert Doebel, *et al.*, Defendants, Earl McQuiston and Savage Enterprises, Inc., Appellants. Scott County 418

51481/Sp. State of Minnesota v. Robert Michael Lindahl, Appellant. Aitkin County 418

51180/25 Sheldon Pratt v. State of Minnesota, Department of Natural Resources, by Robert L. Herbst, Its Commissioner, Appellant. Crow Wing County 418

STATE CONTRACTS

Economic Security Department
Office of Audit Coordination
Auditing Services Related to State and Federal Weatherization and Fuel Assistance Grants 419

Economic Security Department
Minnesota Balance of State Private Industry Council, Inc.
Market Survey for Color Video Cassette Tape Occupational Information Series 419

Energy Agency
Alternative Energy Development Division
District Heating Activity
Engineering Design Services 419

OFFICIAL NOTICES

Administration Department
Cable Communications Board
Public Comment Requested Regarding Award of a Franchise by the City of St. Paul for a Municipal Cable Communications System to Be Operated by a Non-profit Corporation 420

State Board of Education
Department of Education
School Management Services Division
Outside Opinion Solicited Regarding Proposed New Rules Governing Maximum Effort School Aid 421

Metropolitan Council
Public Hearing on the Proposed Amendment to the Capital Improvement Program for Regional Parks and Recreation Open Space 421

Pollution Control Agency
Outside Opinion Solicited Concerning Proposed Amendments to Rules Affecting the Management of Solid Waste in the State of Minnesota 421

Pollution Control Agency
Public Input Sought on Pollution Control Objectives . . 422

Pollution Control Agency
Recommendation by the Director to Certify Proposed Solid Waste Disposal Sites in Hennepin County as Intrinsically Suitable [notice of hearing] . . 422

Public Utilities Commission
Extension of Time for Comments on Proposed Rule Governing Variances 425

Transportation Department
Petitions of the Cities of Fairmont, Richfield, and St. Paul, and the County of Hennepin, for a Variance from State Aid Standards for Street Width 425

NOTICE

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

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

The PROPOSED RULES section contains:

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

The ADOPTED RULES section contains:

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

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

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

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

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

MCAR AMENDMENTS AND ADDITIONS

TITLE 1 CONSTITUTIONAL OFFICES

Part 2 Secretary of State
1 MCAR § 2.001 (Temporary) (proposed) 71
1 MCAR § 2.001 (Temporary) (adopted) 280

TITLE 2 ADMINISTRATION

Part 1 Administration Department
2 MCAR §§ 1.201-1.206 (adopted) 265
2 MCAR §§ 1.207-1.208 (withdrawn) 265
2 MCAR §§ 1.209-1.216 (adopted) 265
2 MCAR §§ 1.218-1.221 (adopted) 265
Advisory Forms A-E (adopted) 265
Advisory Form F (withdrawn) 265

TITLE 3 AGRICULTURE

Part 1 Agriculture Department
3 MCAR §§ 1.0260-1.0263, 1.0270-1.0282 (proposed) 129

TITLE 4 COMMERCE

Part 3 Public Service Department
4 MCAR § 3.0600 (proposed) 37

Part 4 Cable Communications Board
4 MCAR § 4.100 (proposed) 185

Part 6 Accountancy Board
4 MCAR §§ 6.001-6.009, 6.040-6.046, 6.050, 6.053, 6.060, 6.070-6.075, 6.110, 6.150, 6.160, 6.200 (adopted) 262

Part 7 Board of Architecture, Engineering, Land Surveying and Landscape Architecture
4 MCAR §§ 7.004, 7.009-7.010, 7.012-7.015, 7.017, 7.019, 7.021 (proposed) 102

Part 11 Board of Electricity
4 MCAR § 11.032 (proposed) 157
4 MCAR § 11.032 (adopted) 233

Part 14 Small Business Finance Agency
4 MCAR §§ 14.001, 14.005-14.006, 14.020-14.023 (adopted) 281

TITLE 5 EDUCATION

Part 1 Education Department
5 MCAR §§ 1.0040 (EDU 40) (proposed) 344
5 MCAR § 1.0127 (adopted) 412
5 MCAR §§ 1.0667-1.0672 (adopted) 413

TITLE 6 ENVIRONMENT

Part 2 Energy Agency
6 MCAR §§ 2.001 (Temporary)-2.006 (Temporary) (proposed) 136
6 MCAR § 2.007 (Temporary)-2.015 (Temporary) (proposed) 347
EA 101-107 (proposed repeal) 347

Part 3 Environmental Quality Board
6 MCAR §§ 3.001-3.036 (proposed) 354
6 MCAR §§ 3.024-3.032, 3.040, 3.047 (proposed for repeal) 354

Part 4 Pollution Control Agency
6 MCAR § 4.0041 (withdrawn) 218
6 MCAR § 4.0041 (proposed) 218

Part 8 Waste Management Board
6 MCAR §§ 8.001, 8.002, 8.005, 8.009, 8.010, 8.011, 8.014 (adopted) 49

MCAR AMENDMENTS AND ADDITIONS

TITLE 7 HEALTH

Part 6 Nursing Home Administrators Board

7 MCAR §§ 6.010, 6.013 (adopted) 21
NH 22-23 (proposed repeal withdrawn) 21

TITLE 8 LABOR

Part 1 Labor and Industry Department

8 MCAR § 1.7001 (MOSHC1) (proposed) 218

Part 4 Economic Security Department

8 MCAR § 4.0012 (proposed) 5

TITLE 9 LAW

Administrative Hearings Office

9 MCAR §§ 2.301-2.305, 2.307-2.325 (adopted) 396
9 MCAR § 2.306 (withdrawn) 396

TITLE 12 SOCIAL SERVICE

Part 2 Public Welfare Department

12 MCAR § 2.027 (proposed) 235
12 MCAR § 2.036 (proposed repeal) 249
12 MCAR § 2.036 (proposed) 249
12 MCAR § 2.079 (proposed) 13

Part 3 Housing Finance Agency

12 MCAR §§ 3.002, 3.133 (proposed temporary) 69
12 MCAR §§ 3.002, 3.133 (proposed temporary, notice of correction) 159
12 MCAR § 3.002 (proposed) 213
12 MCAR § 3.133 (proposed) 214
12 MCAR §§ 3.053, 3.054 (proposed) 216

TITLE 14 TRANSPORTATION

Part 1 Transportation Department

14 MCAR § 1.5050 (withdrawn) 38

EXECUTIVE ORDERS

Executive Order No. 81-7

Providing for the Establishment of a Governor's Task Force on Health Care

I, Albert H. Quie, Governor of the State of Minnesota, by virtue of the authority vested in me by the Constitution and applicable statutes, including but not limited to Minnesota Statutes, §§ 4.035 and 15.093 (1980), do hereby issue this Executive Order:

WHEREAS, it is vital for state government to provide publicly funded health care programs within limited fiscal resources; and

WHEREAS, to achieve this goal requires a concerted effort to improve the existing health service delivery systems of state, federal and local levels of government and may require development of new approaches to addressing health care issues; and

WHEREAS, there exist a multitude of agencies and institutions involved in the delivery of these services in Minnesota; and

WHEREAS, no single state agency presently has been designated to coordinate the delivery of health care services for which the state is responsible; and

WHEREAS, participation of health care industry representatives and interdepartmental cooperation can improve the coordination, quantity, and quality of services delivered.

NOW, THEREFORE, I Order:

1. The establishment of a Governor's Task Force on Health Care pursuant to Minnesota Statutes § 15.093 and other applicable statutes. The Task Force shall consist of fifteen (15) members appointed by the Governor.

2. The Task Force shall invite appropriate public and private organizations to participate in its deliberations and to provide assistance to all of the activities of the Task Force and its subcommittees.

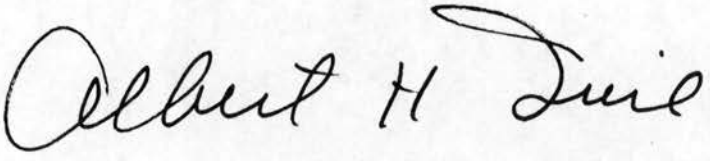
3. The Task Force shall, pursuant to Laws of 1981, ch. 360, art. 1, § 2, conduct a study of publicly funded health care programs and make specific recommendations to the Governor regarding changes which are needed to limit expenditures for such programs to the amount authorized by the biennial budget for fiscal years 1982 and 1983.

4. The cooperation of all state departments and agencies with the Task Force.

5. The terms of Task Force members and representatives to the Task Force shall coincide with the terms of this Executive Order.

Pursuant to Minnesota Statutes, § 4.035, this Order shall be effective fifteen (15) days after its publication in the *State Register* and filing with the Secretary of State and shall remain in effect until it is rescinded by proper authority or expires in accordance with the provisions of § 4.035, subd. 3.

IN TESTIMONY WHEREOF, I have hereunto set my hand on this 10th day of July, 1981.



Emergency Executive Order No. 81-8

Providing for Emergency Assistance to County Officials of Minnesota

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, officials of St. Louis County of Minnesota have requested assistance in the search for a missing airplane; and

WHEREAS, the dense brush and natural cover contained in the area in which the airplane is presumed lost precludes an effective search within available resources of St. Louis County officials;

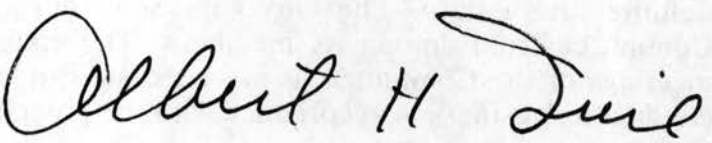
NOW, THEREFORE, I Order:

1. The Adjutant General of Minnesota shall order to active duty on and after August 8, 1981, in service of the State such elements of the military forces of the State as are necessary to assist local officials in the search for the missing airplane. Those forces shall be utilized for such a reasonable period of time as is necessary to complete a thorough search for the missing airplane.

2. The costs of subsistence, transportation, fuel, and pay and allowances of individuals ordered to active duty by the Adjutant General shall be defrayed from the general fund of the State as provided for in Minnesota Statutes, §§ 192.49, subd. 1; 192.51, subd. 2; and 192.52.

This Order is retroactively effective to August 7, 1981, and shall remain in force until such date as elements of the military forces of the State are no longer required in the judgment of the Adjutant General.

IN TESTIMONY WHEREOF, I have hereunto set my hand this 10th day of August, 1981.



Executive Order No. 81-9

Amending Executive Order No. 79-23 (Creating Ten Governor's Committees on Judicial Nominations); Providing for the Establishment of a Governor's Committee on Supreme Court Nominations

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, Executive Order No. 79-23, creating ten Governor's Committees on Judicial Nominations and establishing new rules and procedures for their operation, was issued on May 10, 1979; and

WHEREAS, the Governor's Committees on Judicial Nominations have succeeded in seeking out and recommending to the Governor extremely well-qualified persons for appointment to vacancies occurring in the trial courts of Minnesota; and

WHEREAS, it is desirable that the concept of merit selection of judges through the use of a judicial nominating committee be extended to assist the Governor in filling vacancies which occur on the Minnesota Supreme Court; and

WHEREAS, it is necessary to amend Executive Order No. 79-23 to amend and revise the rules and procedures for Governor's Committees on Judicial Nominations and the Governor's Committee on Supreme Court Nominations;

NOW, THEREFORE, I order:

That Executive Order No. 79-23 be amended to read as follows:

I. Establishment of the Governor's Committee on Supreme Court Nominations.

There is hereby created a Governor's Committee on Supreme Court Nominations. It shall be the duty of this Committee to seek out, evaluate, and recommend to the Governor outstanding persons who are learned in the law to fill vacancies which may occur on the Minnesota Supreme Court.

This Committee shall be composed of eight members, including the following:

A. Four members appointed by the Governor.

B. The President of the Minnesota District Judges Association, or a district judge designated by the President.

C. The President of the Minnesota County Court Judges Association, or a county or municipal court judge designated by the President.

D. Two attorneys selected by the Board of Governors of the Minnesota State Bar Association.

The Governor's Committee on Supreme Court Nominations shall be constituted by the Governor each time a vacancy on the Minnesota Supreme Court occurs or will occur at a definite future date. The Governor shall designate the chairman of the Supreme Court Committee from among its members. The chairman shall be responsible for calling such meetings of the Committee as are necessary to carry out its functions. The Committee shall conduct its business in accordance with the procedures established in Sections V and VI of this Order.

When a vacancy occurs in the Office of Chief Justice of the Minnesota Supreme Court, the Governor may appoint an Associate Justice of the Court to the position of Chief Justice without constituting the Governor's Committee on Supreme Court Nominations.

II. Establishment of Committees on Judicial Nominations.

There are hereby created ten Governor's Committees on Judicial Nominations, one in each of the ten judicial districts of the State. It shall be the duty of these Committees to seek out, evaluate, and recommend to the Governor outstanding persons learned in the law to fill vacancies which may, from time-to-time, occur on the district, county, municipal or probate court benches in their districts.

Each Committee shall be composed of six permanent members and two special members, who shall be selected in the following manner:

A. Two permanent members shall be residents of the district appointed by the Governor for terms which shall be concurrent with the term of the Governor.

B. Two permanent members shall be attorneys who reside in or have their principal

place of business in the district. They shall be elected by the members of the bar associations in the district for terms of four years and shall be elected in alternate odd-numbered years.

C. Two permanent members shall be residents of the district elected by the district, county, municipal and probate court judges in the district for terms of four years, who shall be elected in alternate odd-numbered years.

D. Two special members shall be residents of the county in which a county or municipal court vacancy occurs or residents of the district in which a district court vacancy occurs and shall be appointed by the Governor each time a judicial vacancy occurs, but shall serve only until that vacancy is filled.

Members shall attend Committee meetings and consider each candidate for a judicial vacancy in an impartial and objective manner. They shall actively seek out and encourage qualified individuals to apply for judicial office. Committee members shall not be entitled to payment of per diem or expenses.

III. Committee Officers

The Governor shall designate the Chairman of each Committee on Judicial Nominations from among the members of the Committee. The Chairman shall be responsible for calling such meetings of the Committee as are necessary to carry out its functions and shall preside at those meetings.

Each Committee shall select from among its own members a Secretary who shall prepare the minutes of all meetings of the Committee, keep a record of its official actions and maintain a list of names considered for each vacancy.

Each Committee shall also select from among its members who are attorneys a Candidate Solicitor who shall be primarily responsible for actively seeking out candidates for vacancies as they occur.

IV. Procedures When Vacancies Occur or Will Occur in the Future.

Within ten days after a judicial vacancy occurs in the district, county, municipal or probate court in the judicial districts, the Governor shall notify the Chairman of the Committee on Judicial Nominations in that district of that vacancy. The Governor shall advise the Chairman of the names of the two persons appointed to serve as special members of the Committee on Judicial Nominations for the purpose of considering candidates to fill that vacancy. The Chairman shall notify the members of the Committee that a vacancy has occurred and shall call a meeting of the Committee to consider the candidates for the vacancy to be held not less than 15 days nor more than 20 days after notification of the vacancy by the Governor.

When it is known that a future vacancy will occur on a definite date, the Governor shall so notify the Chairman of the Committee on Judicial Nominations in the judicial district in which the vacancy is to occur. The Governor shall advise the Chairman of the names of the two persons appointed to serve as special members of the Committee on Judicial Nominations for the purpose of considering candidates to fill that vacancy. The Chairman shall call a meeting of the Committee to consider candidates for the vacancy to be held not more than 45 days before the vacancy is to occur nor less than 15 days after he takes the actions described in Section A herein.

Upon receiving notice from the Governor that a judicial vacancy has occurred or will occur at a definite future date, the officers of the Committee on Judicial Nominations shall follow these procedures:

A. The Chairman shall immediately issue a news release stating that a judicial vacancy has occurred or will occur; that applications from qualified persons are being accepted by the Committee; that application forms may be obtained from the Secretary of the Committee at a specified address or by calling a specified telephone number; that application forms must be returned to the Secretary of the Committee by a specified date (which shall be three days before the first meeting of the Committee called by the Chairman to consider candidates for nomination); and that any names submitted will be kept in strict confidence by the Committee until the names of nominees are transmitted to the Governor.

B. The Chairman shall immediately distribute the news release to all media serving the county or judicial district in which the vacancy has occurred or will occur and shall transmit copies of the news release to the presidents of the bar associations in the county or judicial district. The Candidate Solicitor shall encourage the local bar associations, where practical, to directly contact their members and advise them of the procedures to be followed if attorneys wish to apply for consideration by the Committee.

C. The Chairman, Secretary and members of the Committee shall provide application forms to all interested persons and shall accept completed application forms on behalf of the Committee. Three days before the first meeting of the Committee called by the Chairman to consider candidates for nomination, the Secretary shall transmit to each member of the Committee copies of all completed application forms received.

V. Committee Procedures.

The Chairman of the Committee on Judicial Nominations or the Committee on Supreme Court Nominations shall convene and preside over all meetings of the Committee. The Chairman shall designate a member of the Committee to preside at meetings if the Chairman is absent.

A quorum for Committee meetings shall be six members.

Each person to be considered by the Committee must complete the application supplied by the Committee. Should the Committee require any further information in addition to that supplied by the application in order to evaluate candidates, it may take whatever steps it deems appropriate to obtain it.

Each Committee may establish its own rules and procedures for evaluating candidates. The Committee may conduct preliminary screening on the basis of data contained in the applications and such other information as may be brought to the attention of the Committee. The Committee need not interview all candidates. However, personal interviews with the most serious candidates should be conducted and no candidate should be nominated for appointment by the Governor without a personal interview conducted by the Committee. The Committee may, in its discretion, continue to accept applications for candidates until its nominees are selected and transmitted to the Governor.

The Committee shall recommend to the Governor no more than five or fewer than three candidates for each vacancy, unless there are fewer than three candidates available, in which case the Committee shall transmit those names to the Governor in the manner described in Article VII herein. The Committee shall not rank the candidates submitted to the Governor. The recommendations of the Committee to the Governor shall be advisory.

VI. Standards for Evaluation of Candidates.

In evaluating candidates, the Committee shall give consideration to the following factors, as well as such other factors as the Committee members deem important:

A. Integrity and moral courage;

B. Legal education and training;

C. Legal and trial experience;

D. Patience and courtesy;

E. Common sense and sound, mature judgment;

F. Ability to be objective and impartial;

G. Capacity for work;

H. Mental and physical health as they would affect the candidate's ability to perform judicial duties;

I. Good personal habits compatible with judical dignity and deportment;

J. Knowledge and understanding of human nature; and

K. Cooperativeness and ability to work with others.

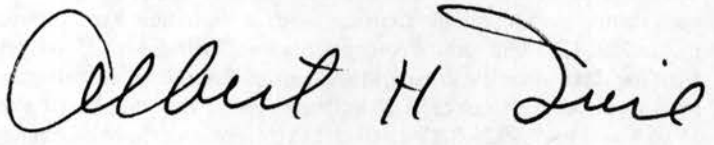
VII. Transmittal of Nominees to Governor.

Within 30 days after the Governor has notified the Chairman of the Committee on Judicial Nominations or the Committee on Supreme Court Nominatios that a vacancy has occurred or when the Committee has completed its work before a future vacancy is to occur, the Secretary shall transmit to the Governor the names of nominees for the vacancy selected by the Committee. The names of the nominees shall be listed in alphabetical order. The Secretary shall transmit to the Governor all of the applications submitted to the Committee. No other information shall be transmitted to the Governor, except that the members of the Committee may consult with the Governor at his request and may provide him with any other information gathered by the Committee during its deliberations.

If a vacancy occurs in the office of judge within six months after the Governor has made an appointment to the same court from among nominees certified to him by the appropriate Committee on Judicial Nominations or Committee on Supreme Court Nominations, the Governor may appoint a person from the list of nominees presented to him by the Committee for the earlier vacancy without following the procedures set forth in this Executive Order.

Pursuant to Minnesota Statutes, § 4.035, this Order shall be effective 15 days after its publication in the *State Register* and filing with the Secretary of State and shall remain in effect until it is superseded or rescinded by proper authority or it expires in accordance with Minnesota Statutes 1980, Section 4.035.

IN TESTIMONY WHEREOF, I hereunto set my hand this 12th day of August, 1981.



PROPOSED RULES

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

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

and

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

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

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Administration Cable Communications Board

Proposed Rule Repealing Certain Restrictions on Interests in or Ownership, Operation, and Control of Cable Communications Systems

Notice of Room Change

A notice appeared in the August 17, 1981 *State Register* on page 185 indicating that the above captioned matter will be held at 500 Rice Street. Due to a scheduling conflict, the public hearing will take place in Conference Room D, Fifth Floor, Veterans Service Building, 20 W. 12th Street at Columbus Avenue in the Saint Paul Capitol Complex. The date and time remain the same: 9:00 a.m. on September 29, 1981 and continuing until all persons have had the opportunity to be heard.

State Board of Education Department of Education Instruction Division

Proposed Rules Governing Minimum Clock Hour Requirements for Junior High Science

Notice of Hearing

A public hearing concerning the proposed rule will be held at the Capitol Square Building (Room 716B), 550 Cedar Street, St. Paul, Minnesota 55101 on October 12, 1981, commencing at 9:00 a.m. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing all interested or affected persons will have an opportunity to ask questions and make comments. Statements will be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Richard C. Luis, Hearing Examiner, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone (612) 296-8114 either before the hearing or within five working days after the close of the hearing. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.113 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of Administrative Hearings. The 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 rule or rules. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

The purpose of the proposed rule amendment is to raise the minimum clock hours required for the three year period of grades 7, 8 and 9, from 240 hours to 360 hours, effective for the 1983-84 school year.

The agency intends to present only a short summary of the Statement of Need and Reasonableness at the hearing, but will answer questions raised by interested persons. You are therefore urged to review the statement of need and reasonableness before the hearing. Additional copies will be available at the hearing.

The board's statutory authority to promulgate the proposed rules is provided by Minn. Stat. § 121.11, subds. 7 and 12.

The board anticipates that there will be some cost to local school districts in the state to implement the rule for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7. However, because costs would vary from school to school depending on staff licensure, local requirements, and clock hours currently required for science, the Department is unable to project an accurate cost estimate. The following are some of the factors that must be considered when attempting to derive a cost impact:

- 49% of the secondary schools currently exceed 360 clock hours.
- 70% exceed 300 clock hours.
- 20 of the secondary schools fall between 300 and 360 clock hours.
- Those schools most impacted are those not now meeting the 240 clock hour rule (9%).
- In schools impacted, there are teachers who are licensed in science but not currently teaching science.
- Some teachers will be hired due to the increased science requirement.
- Some cooperative sharing and pairing between districts and schools will occur.

The department estimates that the total cost to the state will range from $500,000 to $700,000.

A copy of the proposed rules is attached hereto. One free copy may be obtained by writing to Richard C. Clark, Specialist, Science Education, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. If you have any questions on the content of the proposed rules, contact Richard Clark.

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

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

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any one 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, Minnesota 55155, telephone (612) 296-5615.

August 12, 1981

John Feda, Secretary
State Board of Education

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.

Fiscal Statement

The board anticipates that there will be some cost to local school districts in the state to implement the rule for the two years immediately following its adoption within the meaning of Minn. Stat. § 15.0412, subd. 7. However, because costs would vary from school to school depending on staff licensure, local requirements, and clock hours currently required for science, the Department is unable to project an accurate cost estimate. The following are some of the factors that must be considered when attempting to derive a cost impact:

- 49% of the secondary schools currently exceed 360 clock hours
- 70% exceed 300 clock hours
- 20 of the secondary schools fall between 300 and 360 clock hours
- Those schools most impacted are those not now meeting the 240 clock hour rule (9%)
- In schools impacted, there are teachers who are licensed in science but not currently teaching science
- Some teachers will be hired due to the increased science requirement
- Some cooperative sharing and pairing between districts and schools will occur

The department estimates that the total cost to the state will range from $500,000 to $700,000.

Rule as Proposed

~~EDU 40~~ 5 MCAR § 1.0040 **Program of studies.**

A. Curriculum, general requirements.

3. Constants. The specific program of constants to be maintained for all pupils in any type of secondary school shall be as follows:

a. Junior secondary period. The minimum total pupil load for the three year period of grades seventh, eighth, and ninth, shall be 3,150 clock hours consisting of required and elective subjects. Of this minimum total, there shall be ~~1,950~~ 2,070 required (constant) clock hours and ~~1,200~~ 1,080 elective clock hours. Elective clock hours shall be utilized to provide additional time for required and/or elective subjects.

Subject Area	Minimum clock hours	~~Elective clock hours~~
Art	90	~~Plus 1,200 additional or elective clock hours~~
Communication Skills	360	
Health	60	
Home Economics or Industrial Education	150	
Mathematics	360	
Music	90	
Physical Education	240	
Science	~~240~~ 360	
Social Studies	360	
Required (constant) clock hours	~~1,950~~ 2,070	
Elective clock hours	~~1,200~~ 1,080	
Total clock hours	3,150	

Period length and grade placement of the above required (constant) and elective clock hours shall be left to the discretion of the local school board.

Effective date. The amendments to 5 MCAR § 1.0040 A.3.a. are effective for the 1983-1984 school year.

Minnesota Energy Agency
Data and Analysis Division

Proposed Temporary Rules Governing Petroleum State Set-Aside Program

Request for Public Comment

Notice is hereby given that the Minnesota Energy Agency is proposing to adopt temporary rules to govern the administration of the petroleum products state set-aside program authorized by Minn. Laws of 1981, ch. 356, § 136 and to temporarily repeal Minn. Rules EA 101-107. The temporary rules as proposed appear following this notice. For 20 days following the date of publication any person may submit data and views on the Agency's proposed actions by writing to Minnesota Energy Agency, ATTN: Mr. Chris Gilchrist, 980 American Center Building, 160 East Kellogg Boulevard, Saint Paul, Minnesota 55101. The proposed temporary rules may be modified if the modifications are supported by the data and views submitted to the Agency.

Temporary Rules as Proposed (all new material)

6 MCAR § 2.007 (Temporary) Authority. Rules 6 MCAR §§ 2.007-2.015 (Temporary) are authorized by Laws of 1981, ch. 356, § 136, subd. 7.

6 MCAR § 2.008 (Temporary) Purpose. Rules 6 MCAR §§ 2.007-2.015 govern the administration of the state petroleum product set-aside program. The state set-aside program provides emergency petroleum supplies to relieve the hardship caused by shortages of refined petroleum products, or other emergencies. The purpose of the program is to minimize the adverse impacts of shortages and dislocations on the state's citizens and economy.

6 MCAR § 2.009 (Temporary) Definitions.

A. Applicability. For the purposes of 6 MCAR §§ 2.007-2.015 the terms defined in this rule have the meanings given them.

B. Agriculture. "Agriculture" means certain activities in food production, processing, and sales as set out in the Standard Industrial Classification Manual, 1972 edition.

1. Included activities are:

a. Those listed in Division A, Agriculture, Forestry and Fishing, except those excluded by B.2.;

b. Those listed in Division D, Manufacturing, including grain and seed drying under Major Group 20, Food and Kindred Products, except those excluded by B.2.;

c. Those listed in codes 1475, 2141, 2411, 2421, 2873, 2874, 2875, 2879, and 5462; and

d. Only potash mining of code 1474, dicalcium phosphate of code 2819, farm to market hauling and log trucking of code 4212, and farm irrigation systems of code 4971.

2. Excluded activities are:

a. Classification codes 0742, 0752, 0781, 0782, 0849, and non-food producing activities of codes 0271 and 0279 within Division A, Agriculture, Forestry, and Fishing; and

b. Classification codes 2047, 2067, and 2085 within Major Group 20, Food and Kindred Products of Division D, Manufacturing.

C. Assignment. "Assignment" means an order by the office or the board to a prime supplier to release state set-aside product to a specific person.

D. Average product use. "Average product use" means the volume of product purchased during the same month last year.

E. Board. "Board" means the state set-aside appeals board.

F. Cargo and freight hauling. "Cargo and freight hauling" means hauling by any truck with a gross vehicle weight of 20,000 pounds or more and the shipping of goods by rail or water.

G. Director. "Director" means the Director of the Minnesota Energy Agency.

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.

H. Current month requirement. "Current month requirement" means the volume of product needed by an end user to meet its supply need for the present month.

I. Decision. "Decision" means the ruling of the board about any appeal.

J. Agency. "Agency" means the Minnesota Energy Agency.

K. Emergency services. "Emergency services" means activities immediately necessary to preserve the health or safety of the citizens. Emergency services include: ambulance; city, county, state and federal law enforcement; firefighting; mobilized national guard; and Red Cross.

L. End user. "End user" means a final consumer of motor gasoline or middle distillate.

M. Energy production. "Energy production" means the manufacturing, processing, storage, or transportation of primary energy sources including electricity, natural gas, or petroleum products. Energy production excludes electric utilities whose needs for electrical energy can be met by purchase from members of the Mid-Continent Area Power Pool.

N. Essential services. "Essential services" means activities that provide continuing public health and safety services. They include: energy production; government services; maintenance vehicles for telecommunication services; postal services; sanitation services; and cargo and freight hauling.

O. Fuel coordinator. "Fuel coordinator" means city council or county board appointed individuals who verify state set-aside applications.

P. Government services. "Government services" include: activities of the judicial branch of government; jail and prison activities; meetings of elected political officials; the Division of Emergency Services Operations Center activities; hearings of mobilized Local Energy Conservation Boards; the Office of Administrative Hearings; and minimum services to provide Aid For Dependent Children, food stamps, Social Security Income, and Social Security checks.

Q. Middle distillates. "Middle distillates" means distillates obtained between kerosene and lubricating oil fractions in the refining process, including kerosene, number one and number two heating oil, and number one and number two diesel fuel.

R. Motor gasoline. "Motor gasoline" means a liquid mixture of hydrocarbons produced by the distillation of petroleum and used chiefly as a fuel in internal combustion engines.

S. Office. "Office" means the unit within the agency responsible for the state set-aside program.

T. Officer. "Officer" means the individual who manages the office and who has authority to sign orders and documents for state set-aside.

U. Order. "Order" means a written document signed by the officer or the director directing a prime supplier to release a product for an assignment. The office may telephone an order to the prime supplier, but the office shall promptly send the written order to the prime supplier's representative. The order is effective the day it is signed by the officer or director.

V. Passenger transportation. "Passenger transportation" means conventional public transit service which operates on a fixed route and is available to the public for a fare, intercity bus transportation, van pools, subscription buses, tour and charter bus transportation, bus transportation of pupils for educational purposes, taxicabs licensed to conduct business in a municipality, rail passenger transportation, aviation ground support for regularly scheduled airlines, and special transportation services for the elderly or handicapped.

W. Person. "Person" means an individual and any legally existing business, government unit, or institution.

X. Plant protection. "Plant protection" means sufficient heat and power to keep from freezing pipes and damaging equipment.

Y. Postal service. "Postal service" means the delivery of first, second, or third class United States mail.

Z. Prime supplier. "Prime supplier" means the producer or supplier now or hereafter making the first sale of middle distillates or motor gasoline subject to the state set-aside for consumption within the state.

AA. Prime supplier's representative. "Prime supplier's representative" means an individual who is authorized to act as liaison for the prime supplier in regular activities of state set-aside.

BB. Retail outlet. "Retail outlet" means a person who sells refined petroleum products from fixed tanks in a fixed location to end users in retail volumes.

CC. Sanitation services. "Sanitation services" means the activities of a person who supplies water to the public through public utilities, or collects or disposes gaseous, liquid, or solid wastes for the public.

DD. Service. "Service" means personal service or service by certified United States mail, postage prepaid, and addressed to a person at the person's last known address.

EE. Shortfall. "Shortfall" means the amount by which demand exceeds supply of crude oil or refined petroleum products during any month.

FF. State. "State" means Minnesota.

GG. State set-aside. "State set-aside" means the amount of middle distillates or motor gasoline required to be made available by a prime supplier for utilization by the director to resolve or mitigate emergencies or hardships due to shortages of supply.

HH. Supplier. "Supplier" means a person, other than the United States Department of Defense, who furnishes a refined petroleum product or crude oil to end users, other suppliers, wholesale purchaser-consumers, or wholesale purchaser-resellers.

II. Wholesale purchaser-consumer. "Wholesale purchaser-consumer" means an end user who purchases truck transport volumes of middle distillate or motor gasoline or both from a prime supplier.

JJ. Wholesale purchaser-reseller. "Wholesale purchaser-reseller" means a person who obtains petroleum product from a supplier and, without additional refining, sells or transfers the product to other purchasers.

6 MCAR § 2.010 (Temporary) Prime supplier's obligations.

A. Monthly reports. Each prime supplier and producer or supplier making the first sale of propane or residual fuel oil within the state shall submit to the office a monthly report. The report shall be submitted in time to be received by the office each month no later than the 25th day of the month. The report shall include actual volumes of product sold in the previous month and the forecasted volumes of product to be delivered in the month following the month in which the report is submitted.

1. The following petroleum products shall be included in each monthly report:
   a. Unleaded gasoline;
   b. Leaded gasoline;
   c. Gasohol;
   d. Aviation gasoline;
   e. Naphtha jet fuel;
   f. Kerosene-based jet fuel;
   g. Number one heating oil and kerosene;
   h. Number two heating oil;
   i. Diesel fuel oil;
   j. Other middle distillates;
   k. Number four fuel oil;
   l. Residual fuel oil with sulfur content equal to or less than one percent;
   m. Residual fuel oil with sulfur content greater than one percent; and
   n. Propane.
2. Every prime supplier doing business in the state during calendar year 1980 shall include the following in each monthly report:
   a. The gallon amount of gasoline sold within the state during the corresponding month of 1980; and
   b. The gallon amount of middle distillate sold within the state during the corresponding month of 1980.
3. The monthly reports shall be submitted in a standardized form approved by the office.

B. Prime supplier's representative. Each prime supplier shall report to the office the name, mailing address, and telephone number of a representative to act for the company regarding state set-aside. The duties of this representative shall include:

1. Confirming monthly state set-aside volumes; and
2. Accepting and processing state set-aside orders.

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.

C. Nonpublic data. Reports submitted pursuant to this rule are nonpublic data in accordance with Laws of 1981, ch. 85, § 1.

6 MCAR § 2.0111 (Temporary) Applications.

A. Who may apply. The following persons may apply for state set-aside if they are supplied middle distillate or motor gasoline or both directly by a prime supplier:

1. A wholesale purchaser-consumer or an end user seeking an assignment because of hardship or emergency; and

2. Wholesale purchaser-resellers seeking assignments to supply their traditional wholesale-purchaser and end user accounts because of hardship or emergency.

B. Form of application. An application shall submit an application to the office for each month of hardship or emergency.

1. Except as provided in 2., applications shall be submitted in writing on forms approved by the office and signed by the applicant. Each application shall be verified and signed by a fuel coordinator attesting to the applicant's need for state set-aside product. The office may request reasonable additional information from an applicant as needed to support the claim of hardship or emergency.

2. An application may be made orally when extraordinary circumstances make it impossible for the applicant to submit a written application. When an oral application is made, the fuel coordinator shall orally certify to the office that the applicant has an emergency or hardship situation. It is the responsibility of the applicant to insure both that the fuel coordinator contacts the office and that the written application is submitted within five days following the oral application. If the written application is not submitted within five days following the oral application, the office may refuse to accept future oral requests from that applicant.

6 MCAR § 2.012 (Temporary) Evaluation Criteria.

A. Middle distillates. The amount of middle distillates available for state set-aside is a volume equal to four percent of all prime suppliers' monthly Minnesota sales volumes in the corresponding month of 1980. Applicants shall specify the gallons requested for each end user category and the reason for any need of volumes in excess of contract volumes. All assignments shall be based on the following priorities:

1. First priority middle distillate users include:

a. Agriculture;

b. Emergency services;

c. Essential services;

d. Heating customers with no alternate source of fuel, including hospitals, multi-unit housing, nursing homes, and residences;

e. Major industrial and commercial activities whose continued operation is essential to the economic well-being of an area, including auto manufacturing and mining;

f. Minimum plant and building protection; and

g. Passenger transportation.

2. Second priority middle distillate users are heating customers on interruptible natural gas or another primary source of fuel. They include:

a. Hospitals;

b. Multi-unit housing;

c. Nursing homes; and

d. Residences.

3. Third priority middle distillate users include:

a. Heating government buildings;

b. Industrial and commercial activities not included in 1.; and

c. Schools.

B. Motor gasoline. The volume of motor gasoline available for state set-aside is a volume equal to three percent of all prime suppliers' monthly Minnesota sales of motor gasoline in the corresponding month of 1980. The office may assign state set-aside motor gasoline volumes, when the applicant submits accurate and complete documentation, based on the following criteria.

1. Agricultural motor gasoline shortfall.

a. If the traditional supplier of an agricultural operation is unable to supply average motor gasoline use, the office may release amounts of state set-aside equal to the shortfall. The office may require the applicant to list the name, telephone number, and average motor gasoline use of the ultimate consumer.

b. If unusual weather conditions, natural disasters, or other extreme occurrences require more than average motor gasoline use, the office may make a state set-aside assignment to satisfy the greater requirement. In these cases, the applicant shall provide the office with the current monthly requirement and a justification for the request.

2. Community or area hardship.

a. If a supplier pullout produces a shortfall of motor gasoline in a local area, a wholesale purchaser-reseller in the area may apply for a state set-aside assignment. The applicant shall submit the name, address, and approximate gallons per month sold by the supplier who has pulled out.

b. State set-aside may be assigned to alleviate a shortfall caused by the closing of a motor gasoline retail outlet in a community. The applicant must certify that residents would have to drive 20 or more miles round trip to obtain motor gasoline between the hours of 7:00 a.m. and 8:00 a.m. and provide the office with the name, address, and approximate gallons per month sold of all retail outlets which have opened or closed in the last calendar year within a ten-mile radius of the retail outlet requesting the state set-aside assignment.

c. A wholesale purchaser-reseller may receive an assignment on the basis of unusual growth if the applicant can demonstrate the existence of a shortfall because of a population increase in the community of over ten percent since 1980, new business in the community employing 500 or more employees since 1980, or relocation of a highway since 1980.

d. The office may assign state set-aside motor gasoline to a retail outlet that has historically remained open 24 hours a day and provided emergency road service.

3. The office may assign state set-aside motor gasoline to alleviate a shortage of motor gasoline due to a natural disaster including: floods, blizzards; fire; high winds; and tornadoes. Applicants shall state the nature of the disaster, the number of gallons sold, and to whom.

4. The office may assign state set-aside motor gasoline to meet the requirements of certain priority vehicles because of a shortfall. Applicants may apply for state set-aside to make up the difference between 100 percent of contract volume and the amount of supply currently available for the following types of priority vehicles:

a. Emergency services;

b. Essential services; and

c. Passenger transportation services.

6 MCAR § 2.013 (Temporary) Application processing procedures.

A. Investigations. The office may initiate an investigation of any statement in an application and utilize in its evaluation of the application any relevant facts obtained by the investigation. The office may solicit and accept information from third persons relevant to any application, provided that the applicant is afforded an opportunity to respond.

B. Additional information. If the office determines that the application does not have sufficient information to support a decision, it may request the necessary additional information from the applicant. If the applicant repeatedly or willfully fails to supply additional information, the office may deny the application.

C. Processing. The office shall process applications each month for that month as follows:

1. Applications made by wholesale purchaser-consumers or by wholesale purchaser-resellers on behalf of wholesale purchaser-consumers or end users shall be processed within five working days after receipt;

2. Except when the applicant applies for state set-aside under 6 MCAR § 2.012 B.2. or 3. (temporary), applications that are made by or on the behalf of retail outlets shall be processed within five working days after the 15th day of the month; and

3. Applications needing additional information shall be processed within five working days after receipt of the requested information.

D. Implementation. State set-aside assignments shall be implemented as follows:

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.

1. Upon approval or modification of a request for state set-aside product, the office shall issue an order authorizing the assignment and serve it on the prime supplier from whom the state set-aside product is to be drawn.

a. An order issued by the office is effective the date it is signed by the officer or the director, unless stayed, modified, suspended, or rescinded.

b. The order represents a call upon the prime supplier's state set-aside volume for the month of issuance even if delivery cannot be made until the following month.

c. The applicant shall arrange for receipt of the product within ten days from the date of the order.

2. Upon denial of an application, the office shall notify the applicant in writing, stating the reason for denial.

6 MCAR § 2.014 (Temporary) Appeals process.

A. Applicability. Within ten days after the effective date of an order or the mailing date of a denial, any person aggrieved may appeal in writing to the director. The written appeal shall include:

1. The reason for the appeal, including why the action by the office is deemed unwise or unjust;

2. The names, addresses, and telephone numbers of any person whom it is believed might be injured by the order being appealed; and

3. The objective of the appeal, including reversal of the office action, modification of the action, or other remedies.

B. Director's action. Within five days of receipt of the appeal, the director shall:

1. Set a hearing date at least ten days after initiation of the appeal;

2. Serve all interested parties with a copy of the appeal and notice of the time and place of the hearing; and

3. Issue a stay of the order if:

a. It appears probable that a party may suffer serious injury;

b. The order appears in conflict with Laws of 1981, ch. 356, § 136, or other law; or

c. It appears probable that the board will grant the appeal.

C. State set-aside appeals board. The state set-aside appeals board shall consist of:

1. The director or the director's designee, as chairperson;

2. The Commissioner of the Minnesota Department of Agriculture or designee thereof;

3. The Director of the Office of Consumer Affairs of the Minnesota Department of Commerce or designee thereof;

4. The Director of the Office of Emergency Services of the Minnesota Department of Public Safety or designee thereof; and

5. The Commissioner of the Minnesota Department of Public Service or designee thereof.

D. Decisions on appeals. The Director of the Minnesota Energy Agency plus any two or more additional members may hear and decide appeals.

E. Informal disposition. At any time during the proceedings, the affected parties may conclude a mutually acceptable settlement of the appeal.

6 MCAR § 2.015 (Temporary) Hearings.

A. Rights of the parties to the hearing. Affected parties have a right to:

1. A hearing before the board;

2. Representation by an attorney;

3. Present public evidence;

4. Present witnesses who will testify under oath;

5. Cross-examine witnesses; and

6. Present rebuttal testimony and argument.

B. Rules of evidence.

1. The board shall admit and consider any reasonable evidence.

2. The board may exclude evidence it determines to be immaterial, irrelevant, or repetitious.

3. The board shall consider only the evidence which is entered into the public record of the hearing.

4. If the board desires to use technical facts within its specialized knowledge or publicly accepted facts that were not part of the evidence presented, the board shall notify the parties and give them an opportunity to rebut those facts. After the rebutting evidence is received and reviewed, the board shall review all the evidence when making the decision.

C. Public record of the hearing. The board shall prepare an official record which shall include:

1. All pleadings, motions, and intermediate rulings;

2. Evidence received or considered;

3. A statement of facts not introduced in evidence but considered by the board and questions of those facts by affected persons including rebuttals and objections;

4. Proposed findings and exceptions;

5. Any decision, opinion, or report by the board; and

6. All memoranda or data submitted to the board by the office except advice of the office's attorney.

D. Verbatim record. The board shall make a verbatim record of the hearing on recording equipment. Any party may request that a court reporter make the record, but that person shall pay the court reporter's fee. The board shall transcribe the record only upon request and only if the requestor agrees to pay for the cost of transcribing.

E. Hearing procedure.

1. If the appellant fails to appear, the board may declare a default and deny the appeal.

2. After opening the hearing, the chairperson shall read the rights of the parties to the hearing and the rules regarding evidence from A. and B. The chairperson shall also call for the parties to present any written matter that they wish to introduce as an exhibit and offer as evidence.

3. A representative of the office shall introduce the jurisdictional exhibits including the written appeal received by the director, the notice of hearing, and any agreements entered into by the parties to the appeal.

4. The appellant may make an opening statement. Other parties may make statements in the order determined by the board.

5. After opening statements, the appellant may present its case. Other parties may present their cases in the order determined by the board.

6. The board shall determine the order for cross-examining witnesses.

7. The parties may next give oral or written rebuttal evidence and final arguments in the order determined by the board.

8. After final arguments, the board may: close the hearing; announce the time and place of the next hearing; or, continue the hearing to some future time. The board shall give a five day written notice to all parties prior to holding a continued hearing.

F. Decorum. The chairperson may take action to insure the orderly conduct of public business at the hearing, as authorized by Minn. Stat. § 624.72, subd. 3.

G. Decision.

1. Within five days after the hearing is closed, the board shall issue its decision on the appeal.

2. The decision shall state that the denial or order of the office was modified, reversed, or upheld. If modified or reversed, the decision must state exactly what action is required. The decision shall state the conclusions of fact and law used to reach the ruling.

3. The commissioner shall, by the close of the working day following the decision, serve a copy of the decision on the parties to the hearing.

Temporary repealer. Rules EA 101-107 are repealed during the time temporary rules 6 MCAR §§ 2.007-2.015 are effective.

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.

Minnesota Environmental Quality Board

Proposed Rules Governing the Environmental Review Program

Notice of Hearing

Hearing Schedule

Notice is hereby given that a public hearing will be held pursuant to Minn. Stat. § 15.0412, subd. 4, in the above-entitled matter in the following places and commencing at the times indicated:

State Office Building Auditorium, St. Paul, Minnesota

October 20, 1981	9:00 a.m. and 1:00 p.m.
October 21, 1981	1:00 p.m. and 7:00 p.m.
October 26, 1981	1:00 p.m.

County Boardroom, St. Louis County Courthouse, Duluth, Minnesota

October 27, 1981	1:00 p.m. and 7:00 p.m.

and continuing until all representatives of associations or other interested groups or persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing.

Authority

The authority of the board to promulgate rules governing the state's Environmental Review Program is contained in Minn. Stat. §§ 116D.04, subd. 5a and 116D.045, subd. 1 (1980).

Description of Subjects Contained in the Proposed Rules

The Environmental Quality Board proposes to adopt rules relating to the following matters:

Determining the need for and the process of preparing environmental review documents including the preparation of environmental assessment worksheets (EAWs) and environmental impact statements (EISs).

Providing for alternate forms of environmental review.

Establishing mandatory categories of projects for which the preparation of EAWs and EISs are required.

Amending the early notice provisions of the Environmental Review Program Rules currently in force, 1977 edition.

Amending the provisions for assessing the cost of preparing environmental impact statements from those currently in force pursuant to the Environmental Review Program Rules, 1977 edition.

Establishing rules for the preparation of environmental review documents for certain large energy facilities.

One free copy of this notice and the proposed rules may be obtained by contacting Tom Rulland, (612) 296-2319, or Ken Kadlec, (612) 296-8253, at the Environmental Quality Board, Room 100, 550 Cedar Street, St. Paul, Minnesota, 55101. Additional copies will be available at the door on the date of the hearing.

Proposed Rules Subject to Change as a Result of Hearing Testimony

Please be advised that the proposed rules may be modified as a result of the rule hearing process. Any changes made could make the rules more stringent or less stringent. The board urges those who are interested in the proposed rules, including those who support the rules as proposed, to participate in the rule hearing process.

Hearing Examiner

The public hearing will be presided over by an independent hearing examiner, Kent Roberts, from the office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104, (612) 296-8112.

Hearing Procedures

Rules. This hearing proceeding is governed by Minn. Stat. §§ 15.0411 to 15.0417 and 15.052 (1980) and by the rules of the Office of Administrative Hearings, 9 MCAR §§ 2.101 to 2.113. Any person who has questions relating to hearing procedures may direct them to Hearing Examiner Kent Roberts.

Statement of need and reasonableness. Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the board's office (copies available at no cost) and at the Office of Administrative Hearings (which by law must make a minimal charge for copying the statement). The statement of need and reasonableness will include a summary of all the evidence and argument which the board staff anticipates presenting at the hearing to justify both the need for and the reasonableness of the proposed rules.

Presentation at hearings. The hearings will be conducted so all interested persons will have an opportunity to participate. Statements may be made orally and written material may be submitted. All persons submitting oral statements at the hearings are subject to questioning.

In addition, whether or not an appearance is made at the hearing, written statements or materials may be submitted to the hearing examiner (address above), either before the hearing or within five working days after the close of the hearing. At the hearing, the hearing examiner may order that the record be kept open for a longer period, not to exceed 20 calendar days.

The hearing may be recessed and rescheduled by the Hearing Examiner.

Hearing Examiner Recommendation

After the record is closed, the hearing examiner will prepare a report for the board, including a recommendation on whether the proposed rules should be adopted, modified or rejected.

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

Lobbyists

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

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

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

The statute provides certain exceptions. Questions concerning lobbyists or their required registration should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5615.

Fiscal Statement

The board staff estimates that there will be no cost to local bodies in the state to implement the rules for the two years immediately following their adoption within the meaning of Minn. Stat. § 15.0412, subd. 7 (1980).

Inquiries

Questions about the substance of the proposed rules and requests for copies of the notice of hearing, proposed rules, or the statement of need and reasonableness should be directed to Tom Rulland, (612) 296-2319 or Ken Kadlec, (612) 296-8253 at the Environmental Quality Board, Room 100, Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, 55101.

August 19, 1981

Arthur E. Sidner, Chairman
Environmental Quality Board

Rules as Proposed (all new material)

Chapter Eleven: Authority, Purpose, Definitions, Responsibilities

6 MCAR § 3.001 Authority, purpose and objectives.

A. Authority. Rules 6 MCAR §§ 3.001-3.036 are issued under authority granted in Minn. Stat. ch. 116D to implement the environmental review procedures established by the Minnesota Environmental Policy Act.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike~~ ~~outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike~~ ~~outs~~ indicate deletions from proposed rule language.

B. Application. Rules 6 MCAR §§ 3.001-3.036 apply to all governmental actions. Rules 6 MCAR §§ 3.001-3.036 shall apply to actions for which environmental review has not been initiated prior to the rule's effective date. For any action for which environmental review has been initiated by submission of a citizens petition, environmental assessment worksheet, environmental impact statement preparation notice, or environmental impact statement to the EQB prior to the effective date, all governmental approvals that may be required for that action shall be acted upon in accord with prior rules.

C. Purpose. The Minnesota Environmental Policy Act recognizes that the restoration and maintenance of environmental quality is critically important to our welfare. The act also recognizes that human activity has a profound and often adverse impact on the environment.

A first step in achieving a more harmonious relationship between human activity and the environment is understanding the impact which a proposed action will have on the environment. The purpose of 6 MCAR §§ 3.001-3.036 is to aid in providing that understanding through the preparation and public review of environmental documents.

Environmental documents shall contain information which address the significant environmental issues of a proposed action. This information shall be available to governmental units and citizens early in the decision making process.

Environmental documents shall not be used to justify an action, nor shall indications of adverse environmental effects necessarily require that an action be disapproved. Environmental documents shall be used as guides in issuing, amending, and denying permits and carrying out other responsibilities of governmental units to avoid or minimize adverse environmental effects and to restore and enhance environmental quality.

D. Objectives. The process created by 6 MCAR §§ 3.001-3.036 is designed to:

1. Provide useable information to the action's proposer, governmental decision makers and the public concerning the primary environmental effects of a proposed action;

2. Provide the public with systematic access to decision makers, which will help to maintain public awareness of environmental concerns and encourage accountability in public and private decision making;

3. Delegate authority and responsibility for environmental review to the governmental unit most closely involved in the action;

4. Reduce delay and uncertainty in the environmental review process; and

5. Eliminate duplication.

6 MCAR § 3.002 Abbreviations and definitions.

A. Abbreviations. For the purpose of 6 MCAR §§ 3.001-3.036 the following abbreviations have the meanings given them.

1. "CFR" means Code of Federal Regulations.
2. "DNR" means Department of Natural Resources.
3. "DOT" means Department of Transportation.
4. "EAW" means environmental assessment worksheet.
5. "EIS" means environmental impact statement.
6. "EQB" means Environmental Quality Board.
7. "HVTL" means high voltage transmission line.
8. "LEPGP" means large electric power generating plant.
9. "MCAR" means Minnesota Code of Agency Rules.
10. "MEA" means Minnesota Energy Agency.
11. "MHD" means Minnesota Department of Health.
12. "PCA" means Pollution Control Agency.
13. "RGU" means responsible governmental unit.
14. "USC" means United States Code.

B. Definitions. For the purposes of 6 MCAR §§ 3.001-3.036, unless otherwise provided, the following terms have the meanings given them.

1. "Action" means governmental action.

2. "Activity" means the whole of a project which will directly or indirectly cause physical manipulation of the

environment. The determination of whether an action requires environmental documents shall be made by reference to the physical activity to be undertaken and not to the governmental process of approving the action.

3. "Agricultural land" means land which is or has, within the last five years, been devoted to the production for sale of livestock, dairy animals, dairy products, poultry and poultry products, fur bearing animals, horticultural and nursery stock, fruit, vegetables, forage, grains, or bees and apiary products. Wetlands, naturally vegetated lands and woodlands contiguous to or surrounded by agricultural land shall be considered agricultural lands if under the same ownership and management as that of the agricultural land during the period of agricultural use.

4. "Animal units" has the meaning given in 6 MCAR § 4.8051 B.4.

5. "Approval" means a decision by a unit of government to issue a permit or to otherwise authorize the commencement of a proposed activity.

6. "Attached units" means a group of four or more units each of which shares one or more common walls with another unit. Developments consisting of both attached and unattached units shall be considered as an unattached unit development.

7. "Biomass sources" means animal waste and all forms of vegetation, natural or cultivated.

8. "Class I dam" has the meaning given in 6 MCAR § 1.5031.

9. "Class II dam" has the meaning given in 6 MCAR § 1.5031.

10. "Collector roadway" means a road that provides access to minor arterial roadways from local streets and adjacent land uses.

11. "Construction" means any activity that directly alters the environment. It includes preparation of land or fabrication of facilities. It does not include surveying or mapping.

12. "Cumulative impact" means the impact on the environment that results from incremental effects of an action in addition to other past, present, and reasonably foreseeable future actions regardless of what person undertakes the other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

13. "Day" in counting any period of time, shall not include the day of the event from which the designated period of time begins. The last day of the period counted shall be included, unless it is a Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is 15 days or less, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the counting of days.

14. "Disposal facility" has the meaning given in Minn. Stat. § 115A.03, subd. 10.

15. "EIS actual cost" means the total of all allowable expenditures incurred by the RGU and the proposer in preparing and distributing the EIS.

16. "EIS assessed cost" means that portion of the EIS estimated cost paid by the proposer in the form of a cash payment to the EQB or to the RGU for the collection and analysis of technical data incorporated in the EIS.

17. "EIS estimated cost" means the total of all expenditures of the RGU and the proposer anticipated to be necessary for the preparation and distribution of the EIS.

18. "Emergency" means a sudden, unexpected occurrence, natural or manmade, involving a clear and imminent danger, demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services. "Emergency" includes fire, flood, windstorm, riot, accident, or sabotage.

19. "Environment" means physical conditions existing in the area which may be affected by a proposed action. It includes land, air, water, minerals, flora, fauna, ambient noise, energy resources, and manmade objects or natural features of historic, geologic or aesthetic significance.

20. "Environmental assessment worksheet" or "EAW" means a brief document which is designed to set out the basic facts necessary to determine whether an EIS is required for a proposed action or to initiate the scoping process for an EIS.

21. "Environmental document" means EAW, draft EIS, final EIS, alternate review document, and other environmental analysis documents.

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.

22. "Environmental impact statement" or "EIS" means a detailed written statement as required by Minn. Stat. § 116D.04, subd. 2a.

23. "Expansion" means an extension of the capability of a facility to produce or operate beyond its existing capacity. It excludes repairs or renovations which do not increase the capacity of the facility.

24. "Final approval" means the last action of a governmental unit necessary to authorize the commencement of an activity.

25. "Final decision" means the determination to grant or deny a permit, or to approve or not approve an action.

26. "First class city" has the meaning given in Minn. Stat. § 410.01.

27. "Flood plain" has the meaning given in rule NR 85 (c) of the Department of Natural Resources.

28. "Flood plain ordinance, state approved" means a local governmental unit flood plain management ordinance which meets the provisions of Minn. Stat. § 104.04 and has been approved by the Commissioner of the DNR pursuant to rule NR 85 of the Department of Natural Resources.

29. "Fourth class city" has the meaning given in Minn. Stat. § 410.01.

30. "Governmental action" means activities, including projects wholly or partially conducted, permitted, assisted, financed, regulated or approved by governmental units, including the federal government.

31. "Governmental unit" means any state agency and any general or special purpose unit of government in the state, including watershed districts organized under Minn. Stat. ch. 112, counties, towns, cities, port authorities, housing authorities, and the Metropolitan Council, but not including courts, school districts, and regional development commissions.

32. "Gross floor space" means the total square footage of all floors but does not include parking lots or approach areas.

32. "Ground area" means the total surface area of land that would be converted to an impervious surface by the proposed activity. It includes structures, parking lots, approaches, service facilities, appurtenant structures, and recreational facilities.

34. "Hazardous waste" has the meaning given in Minn. Stat. § 116.06, subd. 13.

35. "High voltage transmission line" or "HVTL" has the meaning given in 6 MCAR § 3.072 E.

36. "Highway safety improvement project" means a project designed to improve safety of highway locations which have been identified as hazardous or potentially hazardous. Projects in this category include the removal, relocation, remodeling, or shielding of roadside hazards; installation or replacement of traffic signals; and the geometric correction of identified high accident locations requiring the acquisition of minimal amounts of right-of-way.

37. "Large electric power generating plant" or "LEPGP" has the meaning given in 6 MCAR § 3.072 G.

38. "Local governmental unit" means any unit of government other than the state or a state agency or the federal government or a federal agency. It includes organized watershed districts, counties, towns, cities, port authorities, housing authorities, and the Metropolitan Council. It does not include courts, school districts, and regional development commissions.

39. "Marina" has the meaning given in 6 MCAR § 1.5020 D.

40. "Mineral deposit evaluation" has the meaning given in Minn. Stat. § 156A.071, subd. 9, clause (d).

41. "Mitigation" means:

a. Avoiding impacts altogether by not taking a certain action or parts of an action;

b. Minimizing impacts by limiting the degree of magnitude of the action and its implementation;

c. Rectifying impacts by repairing, rehabilitating, or restoring the affected environment;

d. Reducing or eliminating impacts over time by preservation and maintenance operations during the life of the action; or

e. Compensating for impacts by replacing or providing substitute resources or environments.

42. "Mixed municipal solid waste" has the meaning given in Minn. Stat. § 115A.03, subd. 21.

43. "Natural watercourse" has the meaning given in Minn. Stat. § 105.37, subd. 10.

44. "Negative declaration" means a written statement by the RGU that a proposed action does not require the preparation of an EIS.

45. "Open space land use" means a use particularly oriented to and using the outdoor character of an area including agriculture, campgrounds, parks and recreation areas.

46. "Permanent conversion" means a change in use of agricultural, naturally vegetated, or forest lands that impairs the

ability to convert the land back to its agricultural, natural, or forest capacity in the future. It does not include changes in management practices, such as conversion to parklands, open space, or natural areas.

47. "Permit" means a permit, lease, license, certificate, or other entitlement for use or permission to act that may be granted or issued by a governmental unit or the commitment to issue or the issuance of a discretionary contract, grant, subsidy, loan, or other form of financial assistance, by a governmental unit.

48. "Person" means any natural person, state, municipality, or other governmental unit or political subdivision or other agency or instrumentality, public or private corporation, partnership, firm, association, or other organization, receiver, trustee, assignee, agent, or other legal representative of the foregoing, and any other entity.

49. "Phased action" means two or more activities to be undertaken by the same proposer which a RGU determines:

a. Will have environmental effects on the same geographic area;

b. Are substantially certain to be undertaken sequentially over a limited period of time; and

c. Collectively have the potential to have significant adverse environmental effects.

50. "Positive declaration" means a written statement by the RGU that a proposed action requires the preparation of an EIS.

51. "Potentially permanent" means a dwelling for human habitation that is permanently affixed to the ground or commonly used as a place of residence. It includes houses, seasonal and year round cabins, and mobile homes.

52. "Preparation notice" means a written notice issued by the RGU stating that an EIS will be prepared for a proposed action.

53. "Processing", as used in 6 MCAR §§ 3.018 0.2 and 3., and 3.019 K.3., has the meaning given in Minn. Stat. § 115A.03, subd. 25.

54. "Project estimated cost" means the total of all allowable expenditures of the proposer anticipated to be necessary for the implementation of an action.

55. "Proposer" means the private person or governmental unit that proposes to undertake or to direct others to undertake an action.

56. "Protected waters" has the meaning given public waters in Minn. Stat. § 105.37, subd. 14.

57. "Protected wetland" has the meaning given wetland in Minn. Stat. § 105.37, subd. 15.

58. "Recreational development" means facilities for temporary residence while in pursuit of leisure activities. Recreational development includes, but is not limited to, recreational vehicle parks, rental or owned campgrounds, and condominium campgrounds.

59. "Related action" means two or more actions that will affect the same geographic area which a RGU determines:

a. Are planned to occur or will occur at the same time; or

b. Are of a nature that one of the actions will induce the other action.

60. "Resource recovery" has the meaning given in Minn. Stat. § 115A.03, subd. 27.

61. "Resource recovery facility" has the meaning given in Minn. Stat. § 115A.03, subd. 28.

62. "Responsible governmental unit" or RGU means the governmental unit which is responsible for preparation and review of environmental documents.

63. "Scientific and natural area" means an outdoor recreation system unit designated pursuant to Minn. Stat. § 86A.05, subd. 5.

64. "Second class city" has the meaning given in Minn. Stat. § 410.01.

65. "Sewer system" means a piping or conveyance system that conveys wastewater to a wastewater treatment plant.

66. "Sewered area" means an area:

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.

a. That is serviced by a wastewater treatment facility or a publicly owned, operated, or supervised centralized septic system servicing the entire development; or

b. That is located within the boundaries of the Metropolitan Urban Service Area, as defined pursuant to the development framework of the Metropolitan Council.

67. "Shoreland" has the meaning given in rule Cons 70 of the Department of Natural Resources.

68. "Shoreland ordinance, state approved" means a local governmental unit shoreland management ordinance which satisfies Minn. Stat. § 105.485 and has been approved by the Commissioner of the DNR pursuant to rule Cons 70 or NR 82 of the Department of Natural Resources.

69. "Sociological effects" means effects, resulting from an action, which impact the social institutions, social groupings, or systems of a community. It includes effects upon groups of individuals, families, or households. It does not include effects limited to single individuals, single families, or single households.

70. "Solid waste" has the meaning given in Minn. Stat. § 116.06, subd. 10.

71. "State trail corridor" means an outdoor recreation system unit designated pursuant to Minn. Stat. § 86A.05, subd. 4.

72. "Storage", as used in 6 MCAR § 3.018 O.4., has the meaning given in 40 CFR 260.10 (a)(66) (1980).

73. "Third class city" has the meaning given in Minn. Stat. § 410.01.

74. "Tiering" means incorporating by reference the discussion of an issue from a broader or more general EIS. An example of tiering is the incorporation of a program or policy statement into a subsequent environmental document of a more narrow scope, such as a site-specific EIS.

75. "Transfer station" has the meaning given in Minn. Stat. § 115A.03, subd. 33.

76. "Waste" has the meaning given in Minn. Stat. § 115A.03, subd. 34.

77. "Waste facility" has the meaning given in Minn. Stat. § 115A.03, subd. 35.

78. "Wastewater treatment facility" means a facility for the treatment of municipal or industrial waste water. It includes on-site treatment facilities.

79. "Wetland" has the meaning given in U.S. Fish and Wildlife Service Circular No. 39 (1971 edition).

80. "Wild and scenic rivers district" means a river, or a segment of the river, and its adjacent lands that possess outstanding scenic, recreational, natural, historical, scientific, or similar values and has been designated by the Commissioner of the DNR for inclusion within the Minnesota Wild and Scenic Rivers system pursuant to Minn. Stat. §§ 104.31-104.40 or by Congress for inclusion within the National Wild and Scenic Rivers System pursuant to 16 USC Sections 1274-1286 (1976).

81. "Wild and scenic rivers district ordinances, state approved" means a local governmental unit ordinance implementing the state management plan for the district. The ordinance must be approved by the Commissioner of the DNR pursuant to rule NR 81 of the Department of Natural Resources.

82. "Wilderness area" means an outdoor recreation system unit designated pursuant to Minn. Stat. § 86A.05, subd. 6.

6 MCAR § 3.003 General responsibilities.

A. EQB. The EQB shall monitor the effectiveness of 6 MCAR §§ 3.001-3.036 and shall take appropriate measures to modify and improve their effectiveness. The EQB shall assist governmental units and interested persons in understanding and implementing the rules.

B. RGUs. RGUs shall be responsible for verifying the accuracy of environmental documents and complying with environmental review processes in a timely manner.

C. Governmental units, private individuals, citizen groups, and business concerns. When environmental review documents are required on an action, the proposer of the action and any other person shall supply any data reasonably requested by the RGU which he has in his possession or to which he has reasonable access.

D. Appeal of final decisions. Decisions by a RGU on the need for an EAW, the need for an EIS and the adequacy of an EIS are final decisions and may be reviewed by a declaratory judgment action initiated within 30 days after the RGU makes the decision in the district court of the county where the proposed action, or any part thereof, would be undertaken.

6 MCAR § 3.004 RGU selection procedures.

A. 6 MCAR § 3.018 or 3.109 Activity. For any activity listed in 6 MCAR § 3.018 or 3.019, the governmental unit specified in those rules shall be the RGU.

B. 6 MCAR § 3.005 C.1. Order. If a governmental unit orders an EAW pursuant to 6 MCAR § 3.005 C.1., that governmental unit shall be designated as the RGU.

C. Petitioned EAW. If an EAW is ordered in response to a petition, the RGU that was designated by the EQB to act on the petition shall be responsible for the preparation of the EAW.

D. 6 MCAR § 3.005 C.3. Order. If the EQB orders an EAW pursuant to 6 MCAR § 3.005 C.3., the EQB shall, at the same time, designate the RGU for that EAW.

E. RGU selection generally. For any activity where the RGU is not listed in 6 MCAR § 3.018 or 3.019 or which falls into more than one category in 6 MCAR § 3.018 or 3.019, or for which the RGU is in question, the RGU shall be determined as follows:

1. When a single governmental unit proposes to carry out or has sole jurisdiction to approve an action, it shall be the RGU.

2. When two or more governmental units propose to carry out or have jurisdiction to approve an action, the RGU shall be the governmental unit with the greatest responsibility for supervising or approving the action as a whole. Where it is not clear which governmental unit has the greatest responsibility for supervising or approving an action or where there is a dispute about which governmental unit has the greatest responsibility for supervising or approving an action, the governmental units shall either:

a. By agreement, designate which unit shall be the RGU; or

b. Submit the question to the EQB, which shall designate the RGU based on a consideration of which governmental unit has the greatest responsibility for supervising or approving the action or has the expertise that may be relevant for the environmental review.

F. Exception. Notwithstanding A.-E., the EQB may designate a different RGU for the preparation of an EAW if the EQB determines the designee has greater expertise in analyzing the potential impacts of the action.

Chapter Twelve: Environmental Assessment Worksheet

6 MCAR § 3.005 Actions requiring an EAW.

A. Purpose of an EAW. The EAW is a brief document prepared in worksheet format which is designed to rapidly assess the environmental effects which may be associated with a proposed action. The EAW serves primarily to:

1. Aid in the determination of whether an EIS is needed for a proposed action; and

2. Serve as a basis to begin the scoping process for an EIS.

B. Mandatory EAW categories. An EAW shall be prepared for any activity that meets or exceeds the thresholds of any of the EAW categories listed in 6 MCAR § 3.018 or any of the EIS categories listed in 6 MCAR § 3.019.

C. Discretionary EAWs. An EAW shall be prepared:

1. When a governmental unit with jurisdiction or approval authority over the proposed action determines that, because of the nature or location of a proposed action, the action may have the potential for significant adverse environmental effects;

2. When a governmental unit with jurisdiction or approval authority over a proposed action determines pursuant to the petition process set forth in 6 MCAR § 3.006 that, because of the nature or location of a proposed action, the action may have the potential for significant adverse environmental effects; or

3. Whenever the EQB determines that, because of the nature or location of a proposed action, the action may have the potential for significant adverse environmental effects.

6 MCAR § 3.006 Petition process.

A. Petition. Any person may request the preparation of an EAW on an action by filing a petition that contains the signatures and mailing addresses of at least 25 individuals.

B. Content. The petition shall also include:

1. A description of the action;

2. The proposer of the action;

3. The name, address and telephone number of the representative of the petitioners;

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.

4. A brief description of the potential adverse environmental effects which will result from the action; and

5. Material evidence indicating that, because of the nature or location of the proposed action, there may be potential for significant adverse environmental effects.

C. Filing of petition. The petition shall be filed with the EQB for a determination of the RGU.

D. Notice to proposer. The petitioners shall notify the action's proposer in writing at the time they file a petition with the EQB.

E. Determination of RGU. The EQB's chairperson or designee shall determine whether the petition complies with the requirements of A. and B.1., 2., and 3. If the petition complies, the chairperson or designee shall designate an RGU and forward the petition to the RGU within five days of receipt of the petition.

F. EAW decision. The RGU shall order the preparation of an EAW if the evidence presented by the petitioners or otherwise known to the RGU demonstrates that, because of the nature or location of the proposed action, the action may have the potential for significant adverse environmental effects. The RGU shall deny the petition if the evidence presented in the petition and otherwise known to the RGU fails to demonstrate the action may have the potential for significant adverse environmental effects.The RGU shall maintain, either as a separate document or contained within the records of the RGU, a record of its decision on the need for an EAW.

G. Time limits. The RGU has 15 days from the date of the receipt of the petition to decide on the need for an EAW.

1. If the decision must be made by a board, council, or other body which meets only on a periodic basis, the time period may be extended by the RGU for an additional 15 days.

2. For all other RGUs, the EQB's chairperson may extend the 15-day period by not more than 15 additional days upon request of the RGU.

H. Notice of decision. The RGU shall promptly notify, in writing, the proposer and the petitioner's representative of its decision. If the decision is to order the preparation of an EAW, the EAW must be prepared within 25 working days of the date of that decision, unless an extension of time is agreed upon by the proposer and the RGU.

6 MCAR § 3.007 EAW content, preparation and distribution process.

A. EAW content. The EAW shall address at least the following major categories in the form provided on the worksheet:

1. Activity identification including project name, project proposer, and project location;

2. Procedural details including identification of the RGU, EAW contact person, and instructions for interested persons wishing to submit comments;

3. Activity description including a description of the project, methods of construction, quantification of physical characteristics and impacts, project site description, and land use and physical features of the surrounding area;

4. Resource protection measures that have been incorporated into the project design;

5. Major issues sections identifying potential environmental impacts and issues that may require further investigation before the project is commenced; and

6. Known governmental approvals, reviews, or financing required, applied for, or anticipated and the status of any applications made, including permit conditions that may have been ordered or are being considered.

B. EAW form.

1. The EQB shall develop an EAW form to be used by the RGU.

2. The EQB may approve the use of an alternative EAW form if an RGU demonstrates the alternative form will better accommodate the RGU's function or better address a particular type of action and the alternative form will provide more complete, more accurate, or more relevant information.

3. The EAW form shall be assessed by the EQB periodically and may be altered by the EQB to improve the effectiveness of the document.

C. Preparation of an EAW.

1. The EAW shall be prepared as early as practicable in the development of the action.

2. The EAW may be prepared by the RGU, its staff or agent, or by the proposer or its agent.

3. If the proposer or its agent prepares the EAW, whether voluntarily or pursuant to a mandatory category or RGU determination, the proposer shall submit the completed data portions of the EAW to the RGU for its consideration and

approval. The RGU shall have 30 days to add supplementary material, if necessary, and to approve the EAW. The RGU shall be responsible for the completeness and accuracy of all information and for decisions or determinations contained in the EAW.

D. Publication and distribution of an EAW.

1. The RGU shall provide one copy of the EAW to the EQB staff. This copy shall serve as notification to the EQB staff to publish the notice of availability of the EAW in the EQB Monitor. At the time of submission of the EAW to the EQB staff, the RGU shall also submit one copy of the EAW to:

a. Each member of the EQB;

b. The proposer of the action;

c. The U.S. Corps of Engineers;

d. The U.S. Environmental Protection Agency;

e. The U.S. Fish and Wildlife Service;

f. The State Historical Society;

g. The Environmental Conservation Library;

h. The Legislative Reference Library;

i. The Regional Development Commission and Regional Development Library for the region of the project site;

j. Any local governmental unit within which the action will take place; and

k. Any other person upon written request.

2. Within five days of the date of submission of the EAW to the EQB staff, the RGU shall provide a press release, containing notice of the availability of the EAW for public review, to at least one newspaper of general circulation within the area where the action is proposed. The press release shall include the name and location of the action, a brief description of the activity, the location at which copies of the EAW are available for review, the date the comment period expires, and the procedures for commenting.

3. The EQB staff shall maintain an official EAW distribution list containing the names and addresses of agencies designated to receive EAWs.

E. Comment period.

1. A 30-day period for review and comment on the EAW shall begin the day the EAW availability notice is published in the EQB Monitor.

2. Written comments shall be submitted to the RGU during the 30-day review period. The comments shall address the accuracy and completeness of the naterial contained in the EAW, potential impacts that may warrant further investigation before the action is commenced, and the need for an EIS on the proposed action.

3. The RGU may hold one or more public meetings to gather comments on the EAW. Reasonable public notice of the meetings shall be given prior to the meetings. All meetings shall be open to the public.

6 MCAR § 3.008 Decision on need for EIS.

A. When EIS needed. An EIS shall be ordered for actions which have the potential for significant adverse environmental effects.

B. Decision making process.

1. The decision on the need for an EIS shall be made in compliance with one of the following time schedules:

a. If the decision is to be made by a board, council, or other body which meets only on a periodic basis, the decision shall be made at the body's first meeting more than ten days after the close of the review period or at a special meeting but, in either case, no later than 30 days after the close of the review period; or

b. For all other RGUs the decision shall be made no later than 15 days after the close of the 30-day review period. This 15-day period may be extended by the EQB chairperson by no more than 15 additional days.

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.

2. The RGU's decision shall be either a negative declaration or a positive declaration. If a positive declaration, the decision shall include the RGU's proposed scope for the EIS. The RGU shall base its decision regarding the need for an EIS and the proposed scope on the information gathered during the EAW process and the comments received on the EAW.

3. The RGU shall maintain a record supporting its decision. This record shall either be a separately prepared document or contained within the records of the governmental unit. If measures will be incorporated in the action which will mitigate the adverse environmental impacts of the action, the determination of the need for an EIS should be based on the impacts of the action with the application of the mitigation measures.

4. The RGU's decision shall be provided to all persons on the EAW distribution list pursuant to 6 MCAR § 3.007 D., to all persons and governmental units that commented in writing during the 30-day review period, and to any person upon written request. Upon notification, the EQB staff shall publish the RGU's decision in the EQB Monitor. If the decision is a positive declaration the RGU shall also indicate in the decision the date, time and place of the scoping review meeting.

C. Standard. In deciding whether an action has the potential for significant adverse environmental effects the RGU shall compare the impacts which may be reasonably expected to occur from the action with the criteria in this rule. The criteria are not exhaustive but are indicators of the impact of the action on the environment.

D. Criteria. In deciding whether an action has the potential for significant adverse environmental effects, the following factors shall be considered:

1. Type, extent, and reversability of environmental effects;

2. Cumulative potential effects of related or anticipated future actions;

3. The extent to which the environmental effects are subject to mitigation by ongoing public regulatory authority; and

4. The extent to which environmental effects can be anticipated and controlled as a result of other environmental studies undertaken by public agencies or the project proposer, or an EIS previously prepared on similar actions.

E. Related actions. When two or more actions are related actions, they shall be considered as a single action and their cumulative potential effect on the environment shall be considered in determining whether an EIS is required.

F. Phased actions.

1. Phased actions shall be considered a single action for purposes of the determination of need for an EIS.

2. In certain phased actions it will not be possible to adequately address all the phases at the time of the initial EIS. In those cases a supplemental EIS shall be completed prior to approval and construction of each subsequent phase. The supplemental EIS shall address the impacts associated with the particular phase that were not addressed in the initial EIS.

3. For proposed actions such as highways, streets, pipelines, utility lines, or systems where the proposed action is related to a large existing or planned network, the RGU may at its option treat the present proposal as the total proposal or select only some of the future elements for present consideration in the threshold determination and EIS. These selections shall be logical in relation to the design of the total system or network. They shall not be made merely to divide a large system into exempted segments.

Chapter Thirteen: Environmental Impact Statement.

6 MCAR § 3.009 Actions requiring an EIS.

A. Purpose of an EIS. The purpose of an EIS is to provide information for governmental units, the proposer of the action, and other persons to evaluate proposed actions which have the potential for significant adverse environmental effects, to consider alternatives to the proposed actions, and to institute methods for reducing adverse environmental effects.

B. Mandatory EIS categories. An EIS shall be prepared for any activity that meets or exceeds the thresholds of any of the EIS categories listed in 6 MCAR § 3.019.

C. Discretionary EISs. An EIS shall be prepared:

1. When the RGU determines that, based on the EAW and any comments or additional information received during the EAW comment period, the proposed action has the potential for significant adverse environmental effects; or

2. When the RGU and proposer of the action agree that an EIS should be prepared.

6 MCAR § 3.010 EIS scoping process.

A. Purpose. The scoping process shall be used before the preparation of an EIS to reduce the scope and bulk of an EIS, identify only those issues relevant to the proposed action, define the form, level of detail, content, alternatives, time table for

preparation, and preparers of the EIS, and to determine the permits for which information will be developed concurrently with the EIS.

B. EAW as scoping document. All projects requiring an EIS must have an EAW filed with the RGU. The EAW shall be the basis for the scoping process.

1. For actions which fall within a mandatory EIS category or if a voluntary EIS is planned, the EAW will be used solely as a scoping document.

2. If the need for an EIS has not been determined the EAW will have two functions:

a. To identify the need for preparing an EIS pursuant to 6 MCAR § 3.008; and

b. To initiate discussion concerning the scope of the EIS if an EIS is ordered pursuant to 6 MCAR § 3.008.

C. Scoping period.

1. If the EIS is being prepared pursuant to 6 MCAR § 3.009 B. or C.2., the following schedule applies:

a. The 30-day scoping period will begin when the notice of the availability of the EAW is published in accord with 6 MCAR § 3.007 D.1. This notice shall include the time, place and date of the scoping meeting;

b. The RGU shall provide the opportunity for at least one scoping meeting during the scoping period. This meeting shall be held not less than 15 days after publication of the notice of availability of the EAW. Notice of the time, place and date of the scoping meeting shall be published in the EQB Monitor and a press release shall be provided to a newspaper of general circulation in the area where the action is proposed. All meetings shall be open to the public; and

c. A final scoping decision shall be issued within 15 days after the close of the 30-day scoping period.

2. If the EIS is being prepared pursuant to 6 MCAR § 3.009 C.1., the following schedule applies:

a. At least ten days but not more than 20 days after notice of a positive declaration is published in the EQB Monitor, a public meeting shall be held to review the scope of the EIS. Notice of the time, date and place of the scoping meeting shall be published in the EQB Monitor, and a press release shall be provided to a newspaper of general circulation in the area where the action is proposed. All meetings shall be open to the public; and

b. Within 30 days after the positive declaration is issued, the RGU shall issue its final decision regarding the scope of the EIS. If the decision of the RGU must be made by a board, council, or other similar body which meets only on a periodic basis, the decision may be made at the next regularly scheduled meeting of the body following the scoping meeting but not more than 45 days after the positive declaration is issued.

D. Procedure for scoping.

1. Written comments suggesting issues for scoping or commenting on the EAW may be filed with the RGU during the scoping period. Interested persons may attend the scoping meeting to exercise their right to comment.

2. Governmental units and other persons shall be responsible for participating in the scoping process within the time limits and in the manner prescribed in 6 MCAR §§ 3.001-3.036.

E. Scoping decision.

1. The scoping decision at the least shall contain:

a. The issues to be addressed in the EIS;

b. Time limits for preparation, if they are shorter than those allowed by 6 MCAR §§ 3.001-3.036;

c. Identification of the permits for which information will be gathered concurrently with EIS preparation;

d. Identification of the permits for which a record of decision will be required; and

e. Alternatives which will be addressed in the EIS.

2. The form of an EIS may be changed during scoping if circumstances indicate the need or appropriateness of an alternative form.

3. The scoping decision shall identify potential impact areas resulting from the action itself and from related actions which must be addressed in the EIS.

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.

4. The issues identified in scoping shall include studies requiring compilation of existing information and the development of new data if the new data can be generated within a reasonable amount of time and the costs of obtaining it are not excessive.

5. After the scoping decision is made, the RGU may not amend the decision without the agreement of the proposer unless substantial changes are made in the proposed action or substantial new information arises relating to the proposed action. If the scoping decision is amended after publication of the EIS preparation notice, notice and a summary of the amendment shall be published in the EQB Monitor within 30 days of the amendment.

F. EIS preparation notice. An EIS preparation notice shall be published within 45 days after the scoping decision is issued. The notice shall be published in the EQB Monitor, and a press release shall be provided to at least one newspaper of general circulation in each county where the action will occur. The notice shall contain a summary of the scoping decision.

G. Consultant selection. The RGU shall be responsible for expediting the selection of consultants for the preparation of the EIS.

6 MCAR § 3.011 EIS preparation and distribution process.

A. Interdisciplinary preparation. An EIS shall be prepared using an interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts. The RGU may request that another governmental unit help in the completion of the EIS. Governmental units shall provide any unprivileged data or information, to which it has reasonable access, concerning the subjects to be discussed and shall assist in the preparation of environmental documents on any action for which it has special expertise or access to information.

B. Content. An EIS shall be written in plain and objective language. An RGU shall use a format for an EIS that will encourage good analysis and clear presentation of the proposed action including alternatives to the action. The standard format shall be:

1. Cover sheet. The cover sheet shall include:

a. The RGU;

b. The title of the proposed action that is the subject of the statement and, if appropriate, the titles of related actions, together with each county or other jurisdictions, if applicable, where the action is located;

c. The name, address, and telephone number of the person at the RGU who can supply further information;

d. A designation of the statement as a draft, final or supplement;

e. A one paragraph abstract of the EIS; and

f. If appropriate, the date of the public meeting on the draft EIS and the date following the meeting by which comments on the draft EIS must be received by the RGU.

2. Summary. The summary shall stress the major findings, areas of controversy, and the issues to be resolved including the choice among alternatives.

3. Table of contents. The table shall be used to assist readers to locate material.

4. List of preparers. This list shall include the names and qualifications of the persons who were primarily responsible for preparing the EIS or significant background papers.

5. Project description. The proposed action shall be described with no more detail than is absolutely necessary to allow the public to identify the purpose of the action, its size, scope, environmental setting, geographic location, and the anticipated phases of development.

6. Governmental approvals. This section shall contain a comprehensive listing of all known governmental permits and approvals required for the proposed action including identification of the governmental unit which is responsible for each permit or approval. In addition, those permits for which all necessary information has been gathered and presented with the EIS shall be identified.

7. Alternatives. Based on the analysis of the proposed action's impacts, the alternatives section shall compare the environmental impacts of the proposal with any other reasonable alternatives to the proposed action. Reasonable alternatives may include locational considerations, design modifications including site layout, magnitude of the action, and consideration of alternative means by which the purpose of the action could be met. Alternatives that were considered but eliminated shall be discussed briefly and the reasons for their elimination shall be stated. The alternative of no action shall be addressed.

8. Environmental, economic, employment and sociological impacts. For the proposed action and each major alternative there shall be a thorough but succinct discussion of any direct or indirect, adverse or beneficial effect generated. The discussion shall concentrate on those issues considered to be significant as identified by the scoping process. Data and analyses shall be

commensurate with the importance of the impact, with less important material summarized, consolidated or simply referenced. The EIS shall identify and briefly discuss any major differences of opinion concerning impacts of the proposed action and the effects the action may have on the environment.

9. Mitigation measures. This section shall identify those measures that could reasonably eliminate or minimize any adverse environmental, economic, employment or sociological effects of the proposed action.

10. Appendix. If a RGU prepares an appendix to an EIS the appendix shall include, when applicable:

a. Material prepared in connection with the EIS, as distinct from material which is not so prepared and which is incorporated by reference;

b. Material which substantiates any analysis fundamental to the EIS; and

c. Permit information that was developed and gathered concurrently with the preparation of the EIS.

The information may be presented on the permitting agency's permit application forms. The appendix may reference information for the permit included in the EIS text or the information may be included within the appendix, as appropriate. If the permit information cannot conveniently be incorporated into the EIS, the EIS may simply indicate the location where the permit information may be reviewed.

C. Incorporation by reference. A RGU shall incorporate material into an EIS by reference when the effect will be to reduce bulk without impeding governmental and public review of the action. The incorporated material shall be cited in the EIS, and its content shall be briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by interested persons within the time allowed for comment.

D. Incomplete or unavailable information. When a RGU is evaluating significant adverse effects on the environment in an EIS and there is scientific uncertainty or gaps in relevant information, the RGU shall make clear that the information is lacking. If the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the cost of obtaining it is excessive or the information cannot be obtained within the time periods specified in G.4. or the information relevant to adverse impacts is important to the decision and the means to obtain it are beyond the state of the art, the RGU shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. The EIS shall, in these circumstances, include a worst case analysis and an indication of the probability or improbability of its occurrence.

E. Draft EIS.

1. A draft EIS shall be prepared in accord with the scope decided upon in the scoping process. The draft statement shall satisfy to the fullest extent possible the requirements of B.

2. When the draft EIS is completed, the RGU shall make the draft EIS available for public review and comment and shall hold an informational meeting in the county where the action is proposed.

3. The entire draft EIS with appendices shall be provided to:

a. Any governmental unit which has authority to permit or approve the proposed action;

b. The proposer of the action;

c. The EQB and EQB staff;

d. The Environmental Conservation Library;

e. The Legislative Reference Library;

f. The Regional Development Commission and Regional Development Library;

g. A public library or public place where the draft will be available for public review in each county where the action will take place; and

h. To the extent possible, to any person requesting the entire EIS.

4. The summary of the draft EIS shall be provided to:

a. All members of the EAW distribution list that do not receive the entire draft EIS;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

b. Any person that submitted substantive comments on the EAW that does not receive the entire draft EIS; and

c. Any person requesting the summary.

5. The copy provided to the EQB staff shall serve as notification to publish notice of availability of the draft EIS in the EQB Monitor.

6. The RGU shall supply a press release to at least one newspaper of general circulation within the area where the action is proposed.

7. The notice of availability in the EQB Monitor and the press release shall contain notice of the date, time, and place of the informational meeting, notice of the location of the copy of the draft EIS available for public review, and notice of the date of termination of the comment period.

8. The informational meeting must be held not less than 15 days after publication of the notice of availability in the EQB Monitor. A typewritten or audio-recorded transcript of the meeting shall be made.

9. The record shall remain open for public comment not less than ten days after the last date of the informational meeting. Written comments on the draft EIS may be received any time during the comment period.

10. The RGU shall respond to the timely substantive comments received on the draft EIS and prepare the final EIS. Late comments need not be considered in preparation of the final EIS.

F. Final EIS.

1. The final EIS shall respond to the timely substantive comments on the draft. The RGU shall discuss at appropriate points in the final EIS any responsible opposing views which were not adequately discussed in the draft EIS and shall indicate the RGU's response to the views.

2. If only minor changes in the draft EIS are suggested in the comments on the draft, the written comments and the responses may be attached to the draft or bound as a separate volume and circulated as the final EIS. If other than minor changes are required, the draft text shall be rewritten so that necessary changes in the text are incorporated in the appropriate places.

3. The RGU shall provide copies of the final EIS to:

a. All persons receiving copies of the entire draft EIS pursuant to E.3.;

b. Any person who submitted substantive comments on the draft EIS; and

c. To the extent possible, to any person requesting the final EIS.

4. The copy provided to the EQB staff shall serve as notification to publish notice of availability of the final EIS in the EQB Monitor.

5. The RGU shall supply a press release to at least one newspaper of general circulation within the area where the action is proposed.

6. The notice of availability in the EQB Monitor and the press release shall contain notice of the location of the copy of the final EIS available for public review and notice of the opportunity for public comment on the adequacy of the final EIS.

G. Determination of adequacy.

1. The RGU shall make the determination of adequacy on the final EIS unless notified by the EQB within 60 days after publication of the preparation notice in the EQB Monitor that the EQB will make the determination. In making the decision to intervene in the determination of adequacy, the EQB shall consider:

a. A request for intervention by the RGU;

b. A request for intervention by the proposer of the action;

c. A request for intervention by interested parties;

d. The ability of the RGU to address complex issues of the EIS; and

e. Whether the action is multi-jurisdictional.

2. Interested persons may submit written comments on the adequacy of the final EIS to the RGU or the EQB, if applicable, at any time prior to the final determination of adequacy.

3. The determination of adequacy of the final EIS shall be made at least ten days after publication in the EQB Monitor of the notice of availability of the final EIS.

4. The determination of adequacy of the final EIS shall be made within 280 days after the preparation notice was published in the EQB Monitor unless the time is extended by consent of the parties or by the Governor for good cause.

5. The final EIS shall be determined adequate if it:

a. Addresses the issues raised in scoping so that all questions for which information can be reasonably obtained have been answered;

b. Provides responses to the substantive comments received during the draft EIS review concerning issues raised in scoping; and

c. Was prepared in substantial compliance with the procedures of the act and 6 MCAR § 3.001-3.036.

6. If the RGU or the EQB determine that the EIS is inadequate, the RGU shall have 60 days in which to prepare an adequate EIS. The revised EIS shall be circulated in accord with F.3.

7. The RGU shall notify all persons receiving copies of the final EIS pursuant to F.3. of its adequacy decision within five days of the adequacy decision. Public notice of the decision shall be published in the EQB Monitor.

H. Permit decisions in cases requiring an EIS.

1. Within 90 days after the determination of adequacy of a final EIS, final decisions shall be made by the appropriate governmental units on those permits which were identified as required in the scoping process and for which information was developed concurrently with the preparation of the EIS. The 90-day period may be extended with the consent of the permit applicant or where a longer period is required by federal law or state statute.

2. At the time of its permit decision, for those permits which were identified during the scoping process as requiring a record of decision, each permitting unit of government shall prepare a concise public record of how it considered the EIS in its decision. That record shall be supplied to the EQB for the purpose of monitoring the effectiveness of the process created by 6 MCAR § 3.001-3.036 and to any other person requesting the information. The record may be integrated into any other record prepared by the permitting unit of government.

3. The RGU or other governmental unit shall, upon request, inform commenting governmental units and interested parties on the progress in carrying out mitigation measures which the commenting governmental units have proposed and which were adopted by the RGU making the decision.

I. Supplemental EIS.

1. A RGU shall prepare a supplement to a final EIS whenever the RGU determines that:

a. Substantial changes have been made in the proposed action that affect the potential significant adverse environmental effects of the action; or

b. There is substantial new information or new circumstances that significantly affect the potential environmental effects from the proposed action which have not been considered in the final EIS or that significantly affect the availability of prudent and feasible alternatives with lesser environmental effects.

2. A supplement to an existing EIS shall be utilized in lieu of a new EIS for expansions of existing projects for which an EIS has been prepared if the RGU determines that a supplement can adequately address the environmental impacts of the project.

3. A RGU shall prepare, circulate, and file a supplemental EIS in the same manner as a draft and final EIS unless alternative procedures are approved by the EQB.

6 MCAR § 3.012 Prohibition on final actions and decisions.

A. EAW filed or required. On any action for which a petition for an EAW is filed or an EAW is required or ordered under 6 MCAR §§ 3.001-3.036, no final governmental decision to grant or deny a permit or other approval required, or to commence the action shall be made until either a petition has been dismissed, a negative declaration has been issued, or a determination of adequacy of the EIS has been made.

B. EIS adequate or filed. Except for projects under D. or E., for any action for which an EIS is required, no final governmental decision to grant or deny a permit or other approval required, or to commence the action shall be made until the RGU or the EQB has determined the final EIS is adequate. Where public hearings are required by law to precede issuance of a permit, public hearings shall not be held until after filing of a draft EIS.

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.

C. Construction prohibited, exceptions. No physical construction of a project shall occur for any project subject to review under 6 MCAR §§ 3.001-3.036 until a petition has been dismissed, a negative declaration has been issued, or until the final EIS has been determined adequate by the RGU or the EQB, unless the action is an emergency under E. or a variance is granted under D. The EQB's statutory authority to halt actions or impose other temporary relief is in no way limited by this paragraph.

D. Variance. Construction may begin on an activity if the proposer applies for and is granted a variance from C. A variance for certain governmental approvals to be granted prior to completion of the environmental review process may also be requested.

1. A variance may be requested at any time after the commencement of the 30-day review period following the filing of an EAW.

2. The proposer shall submit an application for a variance to the EQB together with:

a. A detailed explanation of the construction proposed to be undertaken or the governmental approvals to be granted;

b. The anticipated environmental effects of undertaking the proposed construction or granting the governmental approvals;

c. The reversibility of the anticipated environmental effects;

d. The reasons necessitating the variance; and

e. A statement describing how approval would affect subsequent approvals needed for the action and how approval would affect the purpose of environmental review.

3. The EQB chairperson shall publish a notice of the variance application in the EQB Monitor within 15 days after receipt of the application.

4. The EQB chairperson shall issue a press release to at least one newspaper of general circulation in the area where the action is proposed. The notice and press release shall summarize the reasons given for the variance application and specify that comments on whether a variance should be granted must be submitted to the EQB within 20 days after the date of publication in the EQB Monitor.

5. At its first meeting more than ten days after the comment period expires, the EQB shall grant or deny the variance. A variance shall be granted if:

a. The RGU consents to a variance; and

b. On the basis of the variance application and the comments, construction is necessary in order to avoid excessive and unusual economic hardship, or avoid a serious threat to public health or safety.

6. The EQB shall set forth in writing its reasons for granting or denying each request for a variance.

7. Only the construction or governmental approvals necessary to avoid the consequences listed in 5. shall be undertaken or granted.

E. Emergency action. In the rare situation when immediate action by a governmental unit or person is essential to avoid or eliminate an imminent threat to the public health or safety or a serious threat to natural resources, a proposed action may be undertaken without the environmental review which would otherwise be required by 6 MCAR §§ 3.001-3.036. The governmental unit or person must demonstrate to the EQB chairperson, either orally or in writing, that immediate action is essential and must receive authorization from the EQB chairperson to proceed. Authorization to proceed shall be limited to those actions necessary to control the immediate impacts of the emergency. Other actions remain subject to review under 6 MCAR §§ 3.001-3.036.

6 MCAR § 3.013 Review of state actions or projects.

A. Applicability. This rule applies to any project wholly or partially conducted by a state agency if an EIS or a generic EIS has been prepared for that project.

B. Prior notice required. At least seven working days prior to the final decision of any state agency concerning an action subject to this rule, that agency shall provide the EQB with notice of its intent to issue a decision. The notice shall include a brief description of the action, the date the final decision is expected to be issued, the title and date of EIS prepared on the agency action and the name, address and phone number of the project proposer and parties to any proceeding on the action. If the action is required by the existence of a public emergency advance notice shall not be required. If advance notice is precluded by public emergency or statute notice shall be given at the earliest possible time but not later than three calendar days after the final decision is rendered.

C. Decision to delay implementation. At any time prior to or within ten days after the issuance of the final decision on an action, the chairperson of the EQB may delay implementation of the action by notice to the agency, the project proposer and

interested parties as identified by the governmental unit. Notice may be verbal, however, written notice shall be provided as soon as reasonably possible. The chairperson's decision to delay implementation shall be effective for no more than ten days by which time the EQB must affirm or overturn the decision.

D. Basis for decision to delay implementation. The EQB, or the chairperson of the EQB, shall delay implementation of an action where there is substantial reason to believe that the action or approval is inconsistent with the policies and standards of Minn. Stat. §§ 116D.01-116D.06.

E. Notice and hearing. Promptly upon issuance of a decision to delay implementation of an action, the EQB shall order a hearing. When the hearing will determine the rights of any private individual, the hearing shall be conducted pursuant to Minn. Stat. § 15.0418. In all other cases, the hearing shall be conducted as follows:

1. Written notice of the hearing shall be given to the governmental unit, the proposer, and parties, as identified by the governmental unit, no less than seven days in advance. To the extent reasonably possible, notice shall be published in the EQB Monitor and a newspaper of general circulation in each county in which the action is to take place. The notice shall identify the time and place of the hearing, and provide a brief description of the action and final decision to be reviewed and a reference to the EQB's authority to conduct the hearing. The hearing may be conducted by the EQB chairperson or a designee;

2. Any person may submit written or oral evidence tending to establish the consistency or inconsistency of the action with the policies and standards of Minn. Stat. §§ 116D.01-116D.06. Evidence shall also be taken of the governmental unit's final decision; and

3. Upon completion of the hearing, the EQB shall determine whether to affirm, reverse, or modify the governmental unit's decision. if modification is required, the EQB shall specifically state those modifications. If the EQB fails to act within 45 days of notice given pursuant to C. the agency's decision shall stand as originally issued.

Chapter Fourteen:
Substitute Forms of Environmental Review

6 MCAR § 3.014 Alternative review.

A. Implementation. The EQB may approve the use of an alternative form of environmental review for categories of projects which undergo review under other governmental processes. The governmental processes must address substantially the same issues as the EAW and EIS process and use procedures similar in effect to those of the EAW and EIS process. To qualify as an alternative form of review the governmental unit shall demonstrate to the EQB that its review process meets the following conditions:

1. The process identifies the potential environmental impacts of each proposed action;

2. The process addresses substantially the same issues as an EIS and uses procedures similar to those used in preparing an EIS but in a more timely or more efficient manner;

3. Alternatives to the proposed action are considered in light of their potential environmental impacts;

4. Measures to mitigate the potential environmental impacts are identified and discussed;

5. A description of the proposed action and analysis of potential impacts, alternatives and mitigating measures are provided to other affected or interested governmental units and the general public;

6. The governmental unit shall provide notice of the availability of environmental documents to the general public in at least the area affected by the action. A copy of environmental documents on actions reviewed under an alternative review procedure shall be submitted to the EQB. The EQB shall be responsible for publishing notice of the availability of the documents in the EQB Monitor;

7. Other governmental units and the public are provided with a reasonable opportunity to request environmental review and to review and comment on the information concerning the action; and

8. The process must routinely develop the information required in 1.-5. and provide the notification and review opportunities in 6. and 7. for each action that would be subject to environmental review.

B. Exemption from rules. If the EQB accepts a governmental unit's process as an adequate alternative review procedure, actions reviewed under that alternative review procedure shall be exempt from environmental review under 6 MCAR §§ 3.006,

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.

3.007, 3.008, 3.010 and 3.011. On approval of the alternative review process, the EQB shall provide for periodic review of the alternative procedure to ensure continuing compliance with the requirements and intent of these environmental review procedures. The EQB shall withdraw its approval of an alternative review procedure if review of the procedure indicates that the procedure no longer fulfills the intent and requirements of the Minnesota Environmental Policy Act and 6 MCAR §§ 3.001-3.036. A project in the process of undergoing review under an approved alternative process shall not be affected by the EQB's withdrawal of approval.

6 MCAR § 3.015 Model ordinance.

A. Application. The model ordinance, set out in C. may be utilized by any local governmental unit which adopts the ordinance in lieu of 6 MCAR §§ 3.005-3.012 for projects which qualify for review under the ordinance.

B. Approval.

1. If a local governmental unit adopts the ordinance exactly as set out in C. it shall be effective without prior approval by the EQB. A copy of the adopted ordinance shall be forwarded to the EQB.

2. If a local governmental unit adopts an environmental review ordinance which differs from the ordinance set out in C. the EQB must determine whether the ordinance provides for the consideration of appropriate alternatives and ensures that decisions are made in accord with the policies and purposes of the Minnesota Environmental Policy Act. If the EQB determines the proposed ordinance meets these requirements, the EQB shall approve the ordinance for adoption and shall periodically review its implementation.

3. Notice of adoption of the model ordinance pursuant to 1. and 2. shall be made in the EQB Monitor.

4. If the EQB determines that the proposed local ordinance does not meet its requirements, the local governmental unit shall be notified of the reasons for this decision in writing within 30 days.

C. Model ordinance.

AN ORDINANCE RELATING TO THE PREPARATION AND
REVIEW OF ENVIRONMENTAL ANALYSIS

The (county board) (town board) (city council) (watershed board) of _____ ordains:

Section 1. Application. This ordinance shall apply to all actions which:

a. Are consistent with any applicable comprehensive plan;

b. Do not require a state permit; and

c. The (board) (council) determines that, because of the nature or location of the action, the action may have the potential for significant adverse environmental effects; or

d. Are listed in a mandatory EAW or EIS category of the state environmental review program, 6 MCAR §§ 3.018 and 3.019, one copy of which is on file with the (county auditor) (town clerk) (city clerk) (watershed district board of managers).

This ordinance shall not apply to actions which are exempted from environmental review by 6 MCAR § 3.021 or to projects which the (board) (council) determines are so complex or have potential environmental effects which are so significant that review should be completed under the state environmental review program, 6 MCAR §§ 3.001-3.036.

Section 2. Preparation. Prior to or together with any application for a permit or other form of approval for an activity, the proposer of the action shall prepare an analysis of the action's environmental effects, reasonable alternatives to the project and measures for mitigating the adverse environmental effects. The analysis should not exceed 25 pages in length. The (board) (council) shall review the information in the analysis and determine the adequacy of the document. The (board) (council) shall use the standards of the state's environmental review program rules in its determination of adequacy. If the (board) (council) determines the document is inadequate, it shall return the document to the proposer to correct the inadequacies.

Section 3. Review. Upon filing the analysis with the (board) (council), the (board) (council) shall publish notice in a newspaper of general circulation in the (county) (city) (town) (district) that the analysis is available for review. A copy of the analysis shall be provided to any person upon request. A copy of the analysis shall also be provided to every local governmental unit within which the proposed project would be located and to the EQB. The EQB shall publish notice of the availability of the analysis in the EQB Monitor.

Comments on the analysis shall be submitted to the (board) (council) within 30 days following the publication of the notice of availability. The (board) (council) may hold a public meeting to receive comments on the analysis if it determines that a meeting is necessary or useful. The meeting may be combined with any other meeting or hearing for a permit or other approval for the activity. Public notice of the meeting to receive comments on the analysis shall be provided at least ten days before the meeting.

Section 4. Decision. In issuing any permits or granting any other required approvals for an activity subject to review under

this ordinance, the (board) (council) shall consider the analysis and the comments received on it. The (board) (council) shall, whenever practicable and consistent with other laws, require that mitigation measures identified in the analysis be incorporated in the project's design and construction.

6 MCAR § 3.016 Generic EIS. A generic EIS may be ordered by the EQB to study types of actions that are not adequately reviewed on a case-by-case basis.

A. Criteria. A generic EIS may be ordered for any type of action for which one or more of the following criteria applies:

1. Basic research is needed to understand the impacts of the action;

2. Decision makers or the public have need to be informed of the potential impacts of the action;

3. Information to be presented in the generic EIS is needed for governmental or public planning;

4. The cumulative impacts of the action may have the potential for significant adverse environmental effects;

5. The regional or statewide significance of the impacts cannot be adequately addressed on a project-by-project basis; or

6. Governmental policies are involved that will result in a series of actions that will cause physical manipulation of the environment and may have the potential for significant adverse environmental effects.

B. EQB as RGU. If the EQB orders a generic EIS, the EQB shall be the RGU for the generic EIS.

C. Public requests for generic EIS. A governmental unit or any other person may request the EQB to order a generic EIS.

D. Timing. Time deadlines for the preparation of a generic EIS shall be set at the scoping meeting.

E. Application of criteria. In determining the need for a generic EIS, the EQB shall consider:

1. If the review of a type of action can be better accomplished by a generic EIS than by project specific review;

2. If the possible effects on the human environment from a type of action are highly uncertain or involve unique or unknown risks; and

3. If a generic EIS can be used for tiering in a subsequent project specific EIS.

F. Scoping. The generic EIS shall be scoped. Scoping shall be coordinated by the RGU and shall identify the issues and geographic areas to be addressed in the generic EIS. Scoping procedures shall follow the procedures in 6 MCAR § 3.010 except for the identification of permits for which information is to be gathered concurrently with the EIS preparation, the preparation and circulation of the EAW, and the time requirements.

G. Content. In addition to any issues that may be addressed in the scoping process, the generic EIS shall contain the following:

1. Any new data that has been gathered or the results of any new research that has been undertaken as part of the generic EIS preparation;

2. A description of the possible impacts and likelihood of occurrence, the extent of current use, and the possibility of future development for the type of action; and

3. Alternatives including recommendations for geographic placement of the type of action to reduce environmental harm, different methods for construction and operation, and different types of actions that could produce the same or similar results as the subject type of action but in a less environmentally harmful manner.

H. Relationship to project specific review. Preparation of a generic EIS does not exempt specific activities from project specific environmental review. Project specific environmental review shall use information in the generic EIS by tiering and shall reflect the recommendations contained in the generic EIS if the EQB determines that the generic EIS remains adequate at the time the specific project is subject to review.

I. Relationship to projects. The fact that a generic EIS is being prepared shall not preclude the undertaking and completion of a specific project whose impacts are considered in the generic EIS.

6 MCAR § 3.017 Joint federal and state EIS.

A. Cooperative processes. Governmental units shall cooperate with federal agencies to the fullest extent possible to reduce duplication between Minn. Stat. ch. 116D and the National Environmental Policy Act, 42 USC Sections 4321-4361 (1976).

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

B. Joint responsibility. Where a joint federal and state EIS is prepared, the RGU and one or more federal agencies shall be jointly responsible for preparing the EIS. Where federal laws have EIS requirements in addition to but not in conflict with those in Minn. Stat. § 116D.04, governmental units shall cooperate in fulfilling these requirements as well as those of state laws so that one document can comply with all applicable laws.

C. Federal EIS as draft EIS. If a federal EIS will be or has been prepared for an action, the RGU shall utilize the draft or final federal EIS as the draft state EIS for the action if the federal EIS addresses the scoped issues and satisfies the standards set forth in 6 MCAR § 3.008 B.

Chapter Fifteen: Mandatory Categories

6 MCAR § 3.018 Mandatory EAW categories. An EAW must be prepared for activities that meet or exceed the threshold of any of A.-DD.

A. Nuclear fuels and nuclear waste.

1. Construction or expansion of a facility for the storage of high level nuclear waste. The EQB shall be the RGU.

2. Construction or expansion of a facility for the storage of low level nuclear waste for one year or longer. The MHD shall be the RGU.

3. Expansion of a high level nuclear waste disposal site. The EQB shall be the RGU.

4. Expansion of a low level nuclear waste disposal site. The MHD shall be the RGU.

5. Expansion of an away-from-reactor facility for temporary storage of spent nuclear fuel. The EQB shall be the RGU.

6. Construction or expansion of an on-site pool for temporary storage of spent nuclear fuel. The EQB shall be the RGU.

B. Electric generating facilities. Construction of an electric power generating plant and associated facilities designed for or capable of operating at a capacity of 25 megawatts or more. The EQB shall be the RGU.

C. Petroleum refineries. Expansion of an existing petroleum refinery facility which increases its capacity by 10,000 or more barrels per day. The PCA shall be the RGU.

D. Fuel conversion facilities.

1. Construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid, or solid fuels if that facility has the capacity to utilize 25,000 dry tons or more per year of input. The PCA shall be the RGU.

2. Construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 5,000,000 or more gallons per year of alcohol produced. The PCA shall be the RGU.

E. Transmission lines. Construction of a transmission line at a new location with a nominal capacity of 70 kilovolts or more with 20 or more miles of its length in Minnesota. The EQB shall be the RGU.

F. Pipelines.

1. Construction of a pipeline, greater than six inches in diameter and having more than 50 miles of its length in Minnesota, used for the transportation of coal, crude petroleum fuels, or oil or their derivates. The EQB shall be the RGU.

2. Construction of a pipeline for transportation of natural or synthetic gas at pressures in excess of 200 pounds per square inch with 50 miles or more of its length in Minnesota. The EQB shall be the RGU.

G. Transfer facilities.

1. Construction of a facility designed for or capable of transferring 300 tons or more of coal per hour or with an annual throughput of 500,000 tons of coal from one mode of transportation to a similar or different mode of transportation; or the expansion of an existing facility by these respective amounts. The PCA shall be the RGU.

2. Construction of a new facility or the expansion by 50 percent or more of an existing facility for the bulk transfer of hazardous materials with the capacity of 10,000 or more gallons per transfer, if the facility is located in a shoreland area, delineated flood plain, or a state or federally designated wild and scenic rivers district. The PCA shall be the RGU.

H. Underground storage.

1. Expansion of an underground storage facility for gases or liquids that requires a permit, pursuant to Minn. Stat. § 84.57. The DNR shall be the RGU.

2. Expansion of an underground storage facility for gases or liquids, using naturally occurring rock materials, that requires a permit pursuant to Minn. Stat. § 84.621. The DNR shall be the RGU.

I. Storage facilities.

1. Construction of a facility designed for or capable of storing more than 7,500 tons of coal or with an annual throughput of more than 125,000 tons of coal; or the expansion of an existing facility by these respective amounts. The PCA shall be the RGU.

2. Construction of a facility on a single site designed for or capable of storing 1,000,000 gallons or more of hazardous materials. The PCA shall be the RGU.

3. Construction of a facility designed for or capable of storing on a single site 100,000 gallons or more of liquified natural gas or synthetic gas. The PCA shall be the RGU.

J. Metallic mineral mining and processing.

1. Mineral deposit evaluation of metallic mineral deposits other than natural iron ore and taconite. The DNR shall be the RGU.

2. Expansion of a stockpile, tailings basin, or mine by 320 or more acres. The DNR shall be the RGU.

3. Expansion of a metallic mineral plant processing facility that is capable of increasing production by 25 percent per year or more, provided that increase is in excess of 1,000,000 tons per year in the case of facilities for processing natural iron ore or taconite. The DNR shall be the RGU.

K. Nonmetallic mineral mining.

1. Development of a facility for the extraction or mining of peat which will result in the excavation of 160 or more acres of land during its existence. The DNR shall be the RGU.

2. Development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 40 or more acres of land to a mean depth of ten feet or more during its existence. The local government unit shall be the RGU.

L. Paper or pulp processing mills. Expansion of an existing paper or pulp processing facility that will increase its production capacity by 50 percent or more. The PCA shall be the RGU.

M. Industrial, commercial and institutional facilities.

1. Construction of a new or expansion of an existing industrial, commercial, or institutional facility equal to or in excess of the following thresholds, expressed as gross floor space:

a. Unincorporated area—100,000 square feet

b. Third or fourth class city—200,000 square feet

c. Second class city—300,000 square feet

d. First class city—400,000 square feet

The local government unit shall be the RGU.

2. Construction of a new or expansion of an existing industrial, commercial, or institutional facility of 20,000 or more square feet of ground area, if the local governmental unit has not adopted approved shoreland, flood plain, or wild and scenic rivers land use district ordinances, as applicable, and either:

a. The activity involved riparian frontage; or

b. Twenty thousand or more square feet of ground area to be developed is within a shoreland area, delineated flood plain, or state or federally designated wild and scenic rivers district. The local government unit shall be the RGU.

N. Air pollution.

1. Construction of a stationary source facility that generates 100 tons or more per year of any single air pollutant after installation of air pollution control equipment. The PCA shall be the RGU.

2. Construction of a new parking facility for 1,000 or more vehicles. The PCA shall be the RGU.

O. Hazardous waste.

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.

1. Construction or expansion of a hazardous waste disposal facility. The PCA shall be the RGU.

2. Construction of a hazardous waste processing facility which sells processing services to generators, other than the owner and operator of the facility, of 1,000 or more kilograms per month capacity, or expansion of the facility by 1,000 or more kilograms per month capacity. The PCA shall be the RGU.

3. Construction of a hazardous waste processing facility of 1,000 or more kilograms per month capacity or expansion of a facility by 1,000 or more kilograms per month capacity if the facility is located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, or in an area characterized by soluble bedrock. The PCA shall be the RGU.

4. Construction of a facility for the storage of hazardous waste of 5,000 or more gallons capacity or expansion of a facility by 5,000 gallons or more capacity, if the facility is located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, or in an area characterized by soluble bedrock. The PCA shall be the RGU.

P. Solid waste.

1. Construction of a mixed municipal solid waste disposal facility for up to 100,000 cubic yards of waste fill per year. The PCA or metropolitan council shall be the RGU.

2. Expansion by 25 percent or more of previous capacity of a mixed municipal solid waste disposal facility for up to 100,000 cubic yards of waste fill per year. The PCA or metropolitan council shall be the RGU.

3. Construction or expansion of a mixed municipal solid waste transfer station for 300,000 or more cubic yards per year. The PCA or metropolitan council shall be the RGU.

4. Construction or expansion of a mixed municipal solid waste resource recovery facility for 100 or more tons per day of input. The PCA or metropolitan council shall be the RGU.

5. Expansion by at least ten percent but less than 25 percent of previous capacity of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste per year. The PCA or metropolitan council shall be the RGU.

Q. Sewage systems.

1. Construction of a new wastewater treatment facility or sewer system with a capacity of 30,000 gallons per day or more. The PCA shall be the RGU.

2. Expansion of an existing wastewater treatment facility or sewer system by an increase in capacity of 50 percent or more over existing capacity or by 50,000 gallons per day or more. The PCA shall be the RGU.

R. Residential development.

1. Construction of a permanent or potentially permanent residential development of:

a. Fifty or more unattached or 75 or more attached units in an unsewered area;

b. One hundred or more unattached or 150 or more attached units in a third or fourth class city or sewered unincorporated area;

c. One hundred and fifty or more unattached or 225 or more attached units in a second class city; or

d. Two hundred or more unattached or 300 or more attached units in a first class city.

The local government unit shall be the RGU.

2. Construction of a permanent or potentially permanent residential development of 20 or more unattached units or of 30 or more attached units, if the local governmental unit has not adopted state approved shoreland, flood plain, or wild and scenic rivers land use district ordinances, as applicable, and either:

a. The activity involves riparian frontage; or

b. Five or more acres of the development is within a shoreland, delineated flood plain, or state or federally designated wild and scenic rivers district.

The local government unit shall be the RGU.

S. Recreational development. Construction of a seasonal or permanent recreational development, accessible by vehicle, consisting of 50 or more sites. The local government unit shall be the RGU.

T. Airport projects. Construction of a runway extension that would upgrade an existing airport runway to permit usage by aircraft over 12,500 pounds that are at least three decibels louder than aircraft currently using the runway. The DOT or local government unit shall be the RGU.

U. Highway projects.

1. Constructon of a road on a new location over one mile in length that will function as a collector roadway. The DOT or local government unit shall be the RGU.

2. Construction of additional travel lanes on an existing road for a length of one or more miles. The DOT or local government unit shall be the RGU.

3. The addition of one or more new interchanges to a completed limited access highway. The DOT or local government unit shall be the RGU.

V. Barge fleeting. Construction of a new or expansion of an existing barge fleeting facility. The DOT or port authority shall be the RGU.

W. Water appropriation and impoundments.

1. A new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30,000,000 gallons per month, or exceeding 2,000,000 gallons in any day during the period of use; or a new appropriation of either ground water or surface water for irrigation of 540 acres or more in one continuous parcel from one source of water. The DNR shall be the RGU.

2. A new or additional permanent impoundment of water creating a water surface of 160 or more acres. The DNR shall be the RGU.

3. Construction of a Class II dam. The DNR shall be the RGU.

X. Marinas. Construction or cumulative expansion of a marina or harbor project which results in a total of 20,000 or more square feet of temporary or permanent water surface area used for docks, docking, or maneuvering of watercraft. The local government unit shall be the RGU.

Y. Stream diversion. The diversion or channelization of a designated trout stream or a natural watercourse with a total watershed of ten or more square miles, unless exempted by 6 MCAR § 3.021 P. The local government unit shall be the RGU.

Z. Wetlands and protected waters.

1. Actions that will change or diminish the course, current, or cross section of one acre or more of any protected water or protected wetland except for those to be drained without a permit pursuant to Minn. Stat. § 105.391, subd. 3. The local government unit shall be the RGU.

2. Actions that will change or diminish the course, current, or cross section of 40 percent or more of five or more acres of a Type 3 through 8 wetland of 2.5 acres or more, excluding protected wetlands, if any part of the wetland is within a shoreland area, delineated flood plain or a state or federally designated wild and scenic rivers district. The local government unit shall be the RGU.

AA. Agriculture and forestry.

1. Harvesting of timber for commercial purposes on public lands within a state park, historical area, wilderness area, scientific and natural area, wild and scenic rivers district or critical area that does not have an approved plan under Minn. Stat. § 86A.09 or 116G.07. The DNR shall be the RGU.

2. A clearcutting of 80 or more contiguous acres of forest, any part of which is located within a shoreland area and within 100 feet of the ordinary high water mark of the lake or river. The DNR shall be the RGU.

3. Actions resulting in the conversion of 640 or more acres of forest or naturally vegetated land to a differing open space land use. The local government unit shall be the RGU.

4. Actions resulting in the permanent conversion of 80 or more acres of agricultural, forest, or naturally vegetated land to a more intensive, developed land use. The local government unit shall be the RGU.

BB. Animal feedlots. The construction of an animal feedlot facility with a capacity of 1,000 animal units or more or the expansion of an existing facility by 1,000 animal units or more. The PCA shall be the RGU if the feedlot is in a shoreland, delineated flood plain or Karst area; otherwise the local unit of government shall be the RGU.

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.

CC. Natural areas. Actions resulting in the permanent physical encroachment on lands within a national park, state park, wilderness area, scientific and natural area, or state trail corridor when the encroachment is inconsistent with the management plan prepared for the recreational unit. The DNR or local government unit shall be the RGU.

DD. Historical places. Destruction of a property that is listed on the national register of historic places. The permitting state agency or local unit of government shall be the RGU.

6 MCAR § 3.019 Mandatory EIS categories. An EIS must be prepared for activities that meet or exceed the threshold of any of A.-S.

A. Nuclear fuels and nuclear waste.

1. The construction or expansion of a nuclear fuel processing facility, including fuel fabrication facilities, reprocessing plants, and uranium mills. The DNR for uranium mills, otherwise the PCA shall be the RGU.

2. Construction of a high level nuclear waste disposal site. The EQB shall be the RGU.

3. Construction of an away-from-reactor facility for temporary storage of spent nuclear fuel. The EQB shall be the RGU.

4. Construction of a low level nuclear waste disposal site. The MHD shall be the RGU.

B. Electric generating facilities. Construction of a large electric power generating plant pursuant to 6 MCAR § 3.035. The EQB shall be the RGU.

C. Petroleum refineries. Construction of a new petroleum refinery facility. The PCA shall be the RGU.

D. Fuel conversion facilities.

1. Construction of a facility for the conversion of coal, peat, or biomass sources to gaseous, liquid or solid fuels if that facility has the capacity to utilize 250,000 dry tons or more per year of input. The PCA shall be the RGU.

2. Construction or expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by 50,000,000 or more gallons per year of alcohol produced. The PCA shall be the RGU.

E. Transmission lines. Construction of a high voltage transmission line pursuant to 6 MCAR § 3.036. The EQB shall be the RGU.

F. Underground storage.

1. Construction of an underground storage facility for gases or liquids that requires a permit pursuant to Minn. Stat. § 84.57. The DNR shall be the RGU.

2. Construction of an underground storage facility for gases or liquids, using naturally occurring rock materials, that requires a permit pursuant to Minn. Stat. § 84.621. The DNR shall be the RGU.

G. Metallic mineral mining and processing.

1. Mineral deposit evaluation involving the extraction of 1,000 tons or more of material that is of interest to the proposer principally due to its radioactive characteristics. The DNR shall be the RGU.

2. Construction of a new facility for mining metallic minerals or for the disposal of tailings from a metallic mineral mine. The DNR shall be the RGU.

3. Construction of a new metallic mineral processing facility. The DNR shall be the RGU.

H. Nonmetallic mineral mining.

1. Development of a facility for the extraction or mining of peat which will utilize 320 acres of land or more during its existence. The DNR shall be the RGU.

2. Development of a facility for the extraction or mining of sand, gravel, stone, or other nonmetallic minerals, other than peat, which will excavate 160 acres of land or more to a mean depth of ten feet or more during its existence. The local government unit shall be the RGU.

I. Paper or pulp processing. Construction of a new paper or pulp processing mill. The PCA shall be the RGU.

J. Industrial, commercial and institutional facilities.

1. Construction of a new or expansion of an existing industrial, commercial, or institutional facility equal to or in excess of the following thresholds, expressed as gross floor space:

a. Unincorporated area — 250,000 square feet;

b. Third or fourth class city — 500,000 square feet;

c. Second class city — 750,000 square feet;

d. First class city — 1,000,000 square feet.

The local government unit shall be the RGU.

2. Construction of a new or expansion of an existing industrial, commercial, or institutional facility of 100,000 or more square feet of ground area, if the local governmental unit has not adopted state approved shoreland, flood plain, or wild and scenic rivers land use district ordinances, as applicable, and either:

a. The activity involves riparian frontage, or

b. One hundred thousand or more square feet of ground area to be developed is within a shoreland area, delineated flood plain, or state or federally designated wild and scenic rivers district.

The local government unit shall be the RGU.

K. Hazardous waste.

1. Construction or expansion of a hazardous waste disposal facility for 1,000 or more kilograms per month. The PCA shall be the RGU.

2. The construction or expansion of a hazardous waste disposal facility in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, or in an area characterized by soluble bedrock. The PCA shall be the RGU.

3. Construction or expansion of a hazardous waste processing facility which sells processing services to generators other than the owner and operator of the facility, if the facility is located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, or in an area characterized by soluble bedrock. The PCA shall be the RGU.

L. Solid waste.

1. Construction of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year. The PCA or metropolitan council shall be the RGU.

2. Construction or expansion of a mixed municipal solid waste disposal facility in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, or in an area characterized by soluble bedrock. The PCA or metropolitan council shall be the RGU.

3. Construction or expansion of a mixed municipal solid waste resource recovery facility for 500 or more tons per day of input. The PCA or metropolitan council shall be the RGU.

4. Expansion by 25 percent or more of previous capacity of a mixed municipal solid waste disposal facility for 100,000 cubic yards or more of waste fill per year. The PCA or metropolitan council shall be the RGU.

M. Residential development.

1. Construction of a permanent or potentially permanent residential development of:

a. One hundred or more unattached or 150 or more attached units in an unsewered area;

b. Four hundred or more unattached or 600 or more attached units in a third or fourth class city or sewered unincorporated area;

c. Six hundred or more unattached or 900 or more attached units in a second class city; or

d. Eight hundred or more unattached or 1,200 or more attached units in a first class city.

The local government unit shall be the RGU.

2. Construction of a permanent or potentially permanent residential development of 40 or more unattached units or of 60 or more attached units, if the local governmental unit has not adopted state approved shoreland, flood plain, or wild and scenic rivers land use district ordinances, as applicable, and either:

a. The activity involves riparian frontage, or

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

b. Ten or more acres of the development is within a shoreland, delineated flood plain, or state or federally designated wild and scenic rivers district.

The local government unit shall be the RGU.

N. Airport projects. Construction of a paved and lighted airport runway of 5,000 feet of length or greater. The DOT or local government unit shall be the RGU.

O. Highway projects. Construction of a road on a new location which is four or more lanes in width and two or more miles in length. The DOT or local government unit shall be the RGU.

P. Barge fleeting facilities. Construction of a barge fleeting facility at a new off-channel location that involves the dredging of 1,000 or more cubic yards. The DOT or port authority shall be the RGU.

Q. Water appropriation and impoundments. Construction of a Class I dam. The DNR shall be the RGU.

R. Marinas. Construction of a new or expansion of an existing marina, harbor, or mooring project on a state or federally designated wild and scenic river. The local government unit shall be the RGU.

S. Wetlands and protected waters. Actions that will eliminate a protected water or protected wetland except for those to be drained without a permit pursuant to Minn. Stat. § 105.391, subd. 3. The local government unit shall be the RGU.

6 MCAR § 3.020 Discretionary EAW. A governmental unit with jurisdiction may order the preparation of an EAW for any activity that does not exceed the mandatory thresholds designated in 6 MCAR § 3.018 or 3.019 if the governmental unit determines that because of the nature or location of the proposed action the action may have the potential for significant adverse environmental effects, and the primary purpose of the action is not exempted pursuant to 6 MCAR § 3.021.

6 MCAR § 3.021 Exemptions. Activities within A.-Y. are exempt from 6 MCAR §§ 3.001-3.036.

A. Standard exemptions.

1. Activities for which no governmental action is required.

2. Activities for which all governmental action has been completed.

3. Activities for which, and so long as, a public agency has denied a required governmental approval.

4. Activities for which a substantial portion of the activity has been completed and an EIS would not influence remaining implementation or construction.

5. Activities for which environmental review has already been initiated under the prior rules or for which environmental review is being conducted pursuant to 6 MCAR § 3.014 or 3.015.

B. Electric generating facilities. Construction of an electric generating plant or combination of plants at a single site with a combined capacity of less than five megawatts.

C. Fuel conversion facilities. Expansion of a facility for the production of alcohol fuels which would have or would increase its capacity by less than 500,000 gallons per year of alcohol produced.

D. Transmission lines. Construction of a transmission line with a nominal capacity of 69 kilovolts or less.

E. Transfer facilities. Construction of a facility designed for or capable of transferring less than 30 tons of coal per hour or with an annual throughput of less than 50,000 tons of coal from one mode of transportation to a similar or different mode of transportation; or the expansion of an existing facility by these respective amounts.

F. Storage facilities. Construction of a facility designed for or capable of storing less than 750 tons of coal or more, with an annual throughput of less than 12,500 tons of coal; or the expansion of an existing facility by these respective amounts.

G. Mining.

1. General mine site evaluation activities that do not result in a permanent alteration of the environment, including mapping, aerial surveying, visual inspection, geologic field reconnaissance, geophysical studies, and surveying, but excluding exploratory borings.

2. Expansion of metallic mineral plant processing facilities that are capable of increasing production by less than ten percent per year, provided the increase is less than 100,000 tons per year in the case of facilities for processing natural iron ore or taconite.

3. Scram mining operations.

H. Paper or pulp processing facilities. Expansion of an existing paper or pulp processing facility that will increase its production capacity by less than ten percent.

I. Industrial, commercial and institutional facilities.

1. Construction of a new or expansion of an existing industrial, commercial, or institutional facility of less than the following thresholds, expressed as gross floor space, if no part of the development is within a shoreland area, delineated flood plain, or state or federally designated wild and scenic rivers district:

a. Third or fourth class city or unincorporated area—50,000 square feet;

b. Second class city—75,000 square feet; or

c. First class city—100,000 square feet.

2. The construction of an industrial, commercial, or institutional facility with less than 4,000 square feet of gross floor space, and with associated parking facilities designed for 20 vehicles or less.

3. Construction of a new parking facility for less than 100 vehicles if the facility is not located in a shoreland area, delineated flood plain, or state or federally designated wild and scenic rivers district.

J. Sewage systems. Construction of a new wastewater treatment facility or sewer system with a capacity of less than 3,000 gallons per day or the expansion of an existing facility by less than that amount.

K. Residential development.

1. Construction of a sewered residential development, no part of which is within a shoreland area, delineated flood plain or state or federally designated wild and scenic rivers district, of:

a. Less than ten units in an unincorporated area;

b. Less than 20 units in a third or fourth class city;

c. Less than 40 units in a second class city; or

d. Less than 80 units in a first class city.

2. Construction of a single residence or multiple residence with four dwelling units or less and accessory appurtenant structures and utilities.

L. Airport projects.

1. Runway, taxiway, apron, or loading ramp construction or repair work including reconstruction, resurfacing, marking, grooving, fillets and jet blast facilities, except where the action will create environmental impacts off airport property.

2. Installation or upgrading of airfield lighting systems, including beacons and electrical distribution systems.

3. Construction or expansion of passenger handling or parking facilities including pedestrian walkway facilities.

4. Grading or removal of obstructions and erosion control activities on airport property except where the activities will create environmental impacts off airport property.

M. Highway projects.

1. Highway safety improvement projects.

2. Installation of traffic control devices, individual noise barriers, bus shelters and bays, loading zones, and access and egress lanes for transit and paratransit vehicles.

3. Modernization of an existing roadway or bridge by resurfacing, restoration, or rehabilitation which may involve the acquisition of minimal amounts of right-of-way.

4. Roadway landscaping, construction of bicycle and pedestrian lanes, paths, and facilities within existing right-of-way.

5. Any stream diversion or channelization within the right-of-way of an existing public roadway associated with bridge or culvert replacement.

6. Reconstruction or modification of an existing bridge structure on essentially the same alignment or location which may involve the acquisition of minimal amounts of right-of-way.

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.

N. Water impoundments. A new or additional permanent impoundment of water creating a water surface of less than ten acres.

O. Marinas. Construction of private residential docks for use by four or less boats and utilizing less than 1,500 square feet of water surface.

P. Stream diversion. Routine maintenance or repair of a drainage ditch within the limits of its original construction flow capacity, performed within 20 years of construction or major repair.

Q. Agriculture and forestry.

1. Harvesting of timber for maintenance purposes.

2. Public and private forest management practices, other than clearcutting or the application of pesticides, that involve less than 20 acres of land.

R. Animal feedlots. The construction of an animal feedlot facility of less than 100 animal units or the expansion of an existing facility by less than 100 animal units no part of either of which is located within a shoreland area, delineated flood plain, or state or federally designated wild and scenic rivers district.

S. Utilities. Utility extensions as follows: Water service mains of 500 feet or less and one and a half inches diameter or less; sewer lines of 500 feet or less and eight inch diameter or less; local electrical service lines; gas service mains of 500 feet or less and one inch diameter or less; and telephone services lines.

T. Construction activities.

1. Construction of accessory appurtenant structures including garages, carports, patios, swimming pools, agricultural structures, excluding feedlots, or other similar buildings not changing land use or density.

2. Accessory signs appurtenant to any commercial, industrial, or institutional facility.

3. Operation, maintenance, or repair work having no substantial impact on existing structures, land use or natural resources.

4. Restoration or reconstruction of a structure provided that the structure is not of historical, cultural, architectural, archeological, or recreational value.

5. Demolition or removal of buildings and related structures except where they are of historical, archeological, or architectural significance.

U. Land use.

1. Individual land use variances including minor lot line adjustments and side yard and setback variances, not resulting in the creation of a new subdivided parcel of land or any change in land use character or density.

2. Minor temporary uses of land having negligible or no permanent effect on the environment.

3. Maintenance of existing landscaping, native growth, and water supply reservoirs, excluding the use of pesticides.

V. Research and data collection. Basic data collection, training programs, research, experimental management, and resource evaluation projects which do not result in an extensive or permanent disturbance to an environmental resource, and do not constitute a substantial commitment to a further course of action having potential for significant adverse environmental effects.

W. Financial transactions.

1. Acquisition or disposition of private interests in real property, including leaseholds, easements, right-of-way, or fee interests.

2. Purchase of operating equipment, maintenance equipment, or operating supplies.

X. Licenses.

1. Licensing or permitting decisions related to individual persons or activities directly connected with an individual's household, livelihood, transportation, recreation, health, safety, and welfare, such as motor vehicle licensing or individual park entrance permits.

2. All licenses required under electrical, fire, plumbing, heating, mechanical and safety codes and regulations, but not including building permits.

Y. Governmental actions.

1. Proposals and enactments of the legislature.

2. Rules or orders of governmental units.

3. Executive orders of the Governor, or their implementation by governmental units.
4. Judicial orders.
5. Submissions of proposals to a vote of the people of the State.

Amendments as Proposed

Chapter ~~Fourteen~~ Sixteen: Early Notice Rules

6 MCAR § ~~3.033~~ 3.022 Authority and purpose.

A. Bulletin. To provide early notice of impending actions which may have significant adverse environmental effects, the ~~Council~~ EQB shall, pursuant to Minn. Stat. § 116D.04, subd. 8 ~~(1974)~~, publish a bulletin with the name of "~~EQC~~ EQB Monitor" containing all notices as specified in 6 MCAR § ~~3.035~~ 3.024. The ~~Council~~ EQB may prescribe the form and manner in which the ~~agencies~~ governmental units submit any material for publication in the ~~EQC~~ EQB Monitor, and the ~~Chairman of the Council~~ EQB Chairperson may withhold publication of any material not submitted according to the form or procedures the ~~Council~~ EQB has prescribed.

B. Purpose. These Rules are intended to provide a procedure for notice to the ~~MEQC~~ EQB and to the public of natural resource management and development permit applications, and impending governmental and private actions that may have significant adverse environmental effects. The notice through the early notice procedures is in addition to public notices otherwise required by law or regulations.

6 MCAR § ~~3.034~~ 3.023 Exemptions.

A. EPA permit exception. All National Pollutant Discharge Elimination System Permits granted by the ~~Minnesota Pollution Control Agency~~ PCA, under the authority given ~~it~~ by the Environmental Protection Agency~~, of the United States of America~~, shall be exempt from ~~these Rules~~ 6 MCAR §§ 3.001-3.036 unless otherwise provided by resolution of the ~~Council~~ EQB.

B. Governmental unit, non-strict observance. Where, in the opinion of any ~~public agency~~ governmental unit, strict observance of 6 MCAR §§ ~~3.033-3.035~~ 3.022-3.026 would jeopardize the public health, safety, or welfare, or would otherwise generally compromise the public interest, the ~~agency~~ governmental unit shall comply with these rules as far as practicable. In such cases, the ~~agency~~ governmental unit shall carry out alternative means of public notification and shall communicate the same to the ~~Council Chairman~~ EQB chairperson.

C. Federal permits, exemption. Any federal permits for which review authority has been delegated to a non-federal ~~public agency~~ governmental unit by the federal government may be exempted by resolution of the ~~Council~~ EQB.

6 MCAR § ~~3.035 EQC~~ 3.024 EQB Monitor publication requirements.

A. Governmental units, required notices. ~~Public agencies~~ Governmental units are required to publish ~~the following~~ notice of the items listed in 1.-15. in the ~~EQC~~ EQB Monitor except that this ~~section~~ rule constitutes a request and not a requirement with respect to federal agencies.

1. ~~Notice of receipt of applications or government proposals for the natural resources management and development permits listed below.~~ When an action has been noticed pursuant to 6 MCAR § ~~3.035~~ 3.024 A.3. separate notice of individual permits required by that action need not be made unless changes in the action are proposed which will involve new and potentially significant adverse environmental effects not considered previously. No decision granting or denying a permit application for which notice is required to be published by this rule shall be effective until 30 days following publication of the notice.

~~a. Navigational obstructions within designated state or federal Wild and Scenic River land use districts.~~

~~b. Commercial and industrial wharves used for cargo transfer.~~

~~c. Channelization of one or more miles of designated Class I or II public water courses.~~

~~d. Any marina and harbor project of more than 20,000 square feet of water surface area.~~

~~e. Any new or additional impoundment of water creating a water surface in excess of 200 acres.~~

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.

~~f. Filling of ten or more acres of public waters.~~

~~g. Dredging of ten or more acres of public waters.~~

~~h. All public hearings conducted pursuant to water resources permit applications (Minn. Stat. ch. 105 (1974)).~~

~~i. A new appropriation for commercial or industrial purposes of either surface water or ground water averaging 30 million gallons per month, or exceeding two million gallons in any day during the period of use; or a new appropriation of either ground water or surface water for irrigation of 640 acres or more in one continuous parcel from one source of water.~~

~~j. Application for the underground storage of gas or liquids.~~

~~k. County, state or federal auctions for sale of publicly owned timber on any tract adjacent to a public highway.~~

~~l. County, state or federal auctions for sale of publicly owned timber on any tract adjacent to public waters of the State.~~

~~m. County, state or federal auctions for sale of publicly owned timber on any tract, any part of which is within one quarter (¼) mile of an organized public, private or non-profit recreation area or camp.~~

~~n. Notice of all public permit and lease sales for state permits and leases to prospect for and mine iron ore, copper nickel, or other minerals as required by Minn. Stat. §§ 93.16, 93.335, and 93.351 (1974) and Copper-Nickel Rules and Regulations.~~

~~o. Permits and leases for iron ore in non-mechantable deposit areas (Minn. Stat. 93.283).~~

~~p. New leases and permits for use of state forest lands for summer cabins, commercial recreational facilities and gravel pits.~~

~~q. Roads through state forest lands exceeding five miles in length.~~

~~r. Facility plans for new or expansion of industrial treatment works not covered by NPDES permits (Minn. Stat. § 115.07 subd. 1 (1974)).~~

~~s. Facility plans for new or expansion of liquid storage facilities equal to or exceeding 50,000 gallons (Minn. Stat. § 155.43, subd. 3(2)(1974).~~

~~t. New or expansion of solid waste disposal systems handling 100 cubic yards or more of solid waste per day (Minn. Stat. § 116.07, 4A (1974)).~~

~~u. Installation permit application for new or expansion of incinerators with capacity equal to or in excess of one ton per hour of solid waste (Minn. Stat. § 116.07, subd. 4A (1974)).~~

~~v. Installation permit application for new or expansion of an emission facility emitting 100 tons or more per year of any restricted air contaminant (Minn. Stat. § 116.07, subd. 4A (1974)).~~

~~w. New or expansion of a feedlot designed for 1,000 cattle or more equivalent animals units (Minn. Stat. § 116.07, subd. 7 (1974)).~~

~~x. Construction of a public use airport (Minn. Stat. § 360.018, subd. 6 (1974)).~~

a. Filling of ten or more acres of public waters. Work in the beds of public waters, Minn. Stat. § 105.42. The DNR is the permitting authority.

b. Dredging of ten or more acres of public waters. Work in the beds of public waters, Minn. Stat. §105.42. The DNR is the permitting authority.

c. All public hearings conducted pursuant to water resources permit applications, Minn. Stat. ch. 105. The DNR is the permitting authority.

d. Permit to mine or lease to prospect for iron ore, copper-nickel, or other materials, Minn. Stat. §§ 93.16, 93.335, 93.351. The DNR is the permitting authority.

e. Earth removal lease, Minn. Stat. § 92.50. The DNR is the permitting authority.

f. Section 401 certifications, 33 USC Section 1341 (1976); Minn. Stat. § 115.03. The PCA is the permitting authority.

g. Construction of a public use airport, Minn. Stat. § 360.018, subd. 6. The DOT is the permitting authority.

h. Special local need registration for pesticides, Minn. Stat. § 18A.23; 3 MCAR § 1.0338 B. The Department of Agriculture is the permitting authority.

2. Impending actions proposed by state agencies when the proposed action may have the potential for significant adverse environmental effects.

3. Notice of the availability of a completed EAW pursuant to 6 MCAR § 3.007 D.1.

4. RGU's decision on the need to prepare an EIS pursuant to 6 MCAR § 3.008 A.4.

5. Notice of the time, place and date of the EIS scoping meeting pursuant to 6 MCAR § 3.010 C.1.b. and C.2.a.

~~3.~~ 6. EIS Preparation Notices ~~and Negative Declaration Notices~~ pursuant to 6 MCAR § 3.010 F.

7. Amendments to the EIS scoping decision pursuant to 6 MCAR § 3.010 E.5.

8. Availability of draft and final EIS pursuant to 6 MCAR § 3.011 E.5. and F.4.

~~4.~~ 9. Notice of draft EIS informational meetings ~~or hearings~~ to be held pursuant to 6 MCAR § ~~3.029 A.6.~~ 3.011 E.7.

10. RGU's adequacy decision of the final EIS pursuant to 6 MCAR § 3.011 G.7.

11. Notice of activities undergoing environmental review under alternative review processes pursuant to 6 MCAR § 3.014 A.6.

12. Adoption of model ordinances pursuant to 6 MCAR § 3.015 B.1. and 2.

13. Environmental analyses prepared under adopted model ordinances pursuant to 6 MCAR § 3.015 C.

~~5.~~ 14. Notice of other actions that the ~~Council~~ EQB may specify by resolution.

~~6.~~ 15. Notice of the application for a Certificate of Need for a large energy facility, pursuant to Minn. Stat. § 116H.03 ~~(1974)~~.

B. Governmental units, optional notices. ~~Public agencies~~ Governmental units may publish notices of general interest or information in the ~~EQC~~ EQB Monitor~~, including notices of consolidated state permit applications, the latter to be commenced at the discretion of the Council~~.

C. Required EQB notices. The ~~MEQC~~ EQB is required to publish the following in the ~~EQC~~ EQB Monitor:

1. Receipt of a valid ~~petitions, pursuant to 6 MCAR § 3.032,~~ petition and assignment of a ~~Responsible Agency therefore.~~ RGU pursuant to 6 MCAR § 3.006 C. and E.;

2. ~~Receipt of Draft or Final EIS.~~ Decision by the EQB that it will determine the adequacy of a final EIS pursuant to 6 MCAR § 3.011 G.1.;

3. EQB's adequacy decision of the final EIS pursuant to 6 MCAR § 3.011 G.7;

4. Receipt by the EQB of an application for a variance pursuant to 6 MCAR § 3.012 D.3;

~~3.~~ 5. Notice of any public hearing held pursuant to ~~Minn. Stat. § 116D.04, subd. 9 (1974).~~ 6 MCAR § 3.013 E.1;

~~4. Receipt by the Council of notice of objections to a negative declaration by petitioners or a public agency, and the time and place at which the Council will review the matter, including notice of public hearings, if any.~~

~~5.~~ 6. The ~~Council's~~ EQB's decision to hold public hearings on a recommended Critical Area pursuant to Minn. Stat. § 116G.06, subd. 1, clause (c) ~~(1974) (Critical Areas Act, 1973).~~

~~6.~~ 7. Notice of application for a Certificate of ~~Corridor Compatibility or~~ Site Compatibility~~,~~ or a High-Voltage Transmission Line Construction Permit pursuant to Minn. Stat. §§ 116C.51 ~~et seq. (Power Plant Siting Act of 1973).~~ 116C.69; and

8. Receipt of a consolidated permit application pursuant to 6 MCAR § 3.102 A.

6 MCAR § ~~3.036~~ 3.025 **Content of notice.**

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.

~~A.~~ The information to be included in the notice for natural resources management and development permit applications and other items in 6 MCAR § ~~3.035~~ 3.024 A.1. and 2. shall be submitted by the ~~public agency~~ governmental unit on a form approved by the ~~Council~~ EQB. This information shall include but not be limited to:

~~1.~~ A. Identification of applicant, by name and mailing address.

~~2.~~ B. The location of the proposed project, or description of the area affected by the action by county, minor civil division, public land survey township number, range number, and section number.

~~3.~~ C. The name of the permit applied for, or a description of the proposed project or other action to be undertaken in sufficient detail to enable other state agencies to determine whether they have jurisdiction over the proposed action.

~~4.~~ D. A statement of whether the agency intends to hold public hearings on the proposed action, along with the time and place of the hearings if they are to be held in less than 30 days from the date of this notice.

~~5.~~ E. The identification of the ~~agency~~ governmental unit publishing the notice, including the manner and place at which comments on the action can be submitted and additional information can be obtained.

6 MCAR § ~~3.037~~ 3.026 Statement of compliance. Each governmental permit or agency authorizing order subject to the requirements of ~~these Rules~~ 6 MCAR § 3.024 A.1. issued or granted by a ~~public agency~~ governmental unit shall contain a statement by the ~~agency~~ unit concerning whether ~~these rules~~ the provisions of 6 MCAR §§ 3.022-3.026 have been complied with, and publication dates of the notices, if any, concerning that permit or authorization.

6 MCAR § ~~3.038~~ 3.027 Publication.

~~A.~~ The ~~Council~~ EQB shall publish the ~~EQC~~ EQB Monitor whenever it is necessary, except that material properly submitted to the ~~Council~~ EQB shall not remain unpublished for more than ~~ten~~ 13 working days.

~~B. The EQC Monitor shall have a distinct and permanent masthead with the title "EQC Monitor" and the words "State of Minnesota" prominently displayed. All issues of the EQC Monitor shall be numbered and dated.~~

6 MCAR § ~~3.039~~ 3.028 Cost and distribution.

A. Government publication, costs. When ~~an agency~~ a governmental unit properly submits material to the ~~Council~~ EQB for publication, the ~~Council~~ EQB shall then be accountable for the publication of the same in the ~~EQC~~ EQB Monitor. The ~~Council~~ EQB shall require each ~~agency~~ governmental unit which is required to publish material or requests the publication of material in the ~~EQC~~ EQB Monitor, including the ~~Council~~ EQB itself, to pay its proportionate cost of the ~~EQC~~ EQB Monitor unless other funds are provided and are sufficient to cover the cost of the ~~EQC~~ EQB Monitor.

~~B. The Council may organize and distribute contents of the EQC Monitor according to such categories as will provide economic publication and distribution and will offer easy access to information by any interested party.~~

~~C.~~ B. Distribution. The ~~Council~~ EQB may further provide at least one copy to the Documents Division for the mailing of the ~~EQC~~ EQB Monitor to any person, ~~agency~~ governmental unit, or organization if so requested~~, provided that~~. The EQB may assess reasonable costs ~~are borne by~~ to the requesting party. Ten copies of each issue of the ~~EQC~~ EQB Monitor, however, shall be provided without cost to the legislative reference library and ten copies to the state law library, and at least one copy to designated ~~MEQC~~ EQB depositories.

~~D. The MEQC shall provide adequate office space, personnel, and supply necessary equipment for the operation of the EQC Monitor without cost to the agencies.~~

~~Chapter Fifteen~~ Chapter Seventeen:
Assessing the Cost of Preparing Environmental Impact Statements.

6 MCAR § ~~3.041~~ 3.029 Actions requiring an assessment of the EIS preparation cost.

When a private person proposes to undertake an action, and the final determination has been made that an EIS will be prepared by a ~~public agency~~ governmental unit on that action, the proposer shall be assessed for the reasonable costs of preparing and distributing that EIS in accord with 6 MCAR §§ ~~3.042-3.046~~ 3.030-3.034.

6 MCAR § ~~3.042~~ 3.030 Determining the EIS assessed cost.

A. Proposer and RGU agreement. Within 30 days after the ~~final determination has been made that an EIS will be prepared~~ EIS preparation notice has been issued, the ~~Responsible Agency~~ RGU shall submit to the ~~Council~~ EQB a written agreement signed by the proposer and the ~~Responsible Agency~~ RGU. The agreement shall include the EIS estimated cost, the EIS assessed cost, and a brief description of the tasks and the cost of each task to be performed by each party in preparing and distributing the EIS. Those items identified in 6 MCAR § ~~3.043~~ 3.031 A. and B. may be used as a guideline in determining the EIS estimated cost. The EIS assessed cost shall identify the proposer's costs for the collection and analysis of technical data to

be supplied to the ~~Responsible Agency~~ RGU and the costs which will result in a cash payment by the proposer to the ~~Council~~ EQB if a state agency is the ~~Responsible Agency~~ RGU or to a local ~~Agency~~ governmental unit when it is the ~~Responsible Agency~~ RGU. If an agreement cannot be reached, the ~~Responsible Agency~~ RGU shall so notify the ~~Council~~ EQB within 30 days after the final determination has been made that an EIS will be prepared.

B. EIS assessed cost limits. The EIS assessed cost shall not exceed the following amounts unless the proposer agrees to an additional amount.

1. There shall be no assessment for the preparation and distribution of an EIS for an action which has a project estimated cost of one million dollars or less.

2. For an action whose project estimated cost is more than one million dollars but is ten million dollars or less, the EIS assessed cost shall not exceed .3 percent of the project estimated cost except that the project estimated cost shall not include the first one million dollars of such cost.

3. For an action whose project estimated cost is more than ten million dollars but is 50 million dollars or less, the EIS assessed cost shall not exceed .2 percent of each dollar of such cost over ten million dollars in addition to the assessment in ~~(2) above~~.

4. For an action whose project estimated cost is more than 50 million dollars, the EIS assessed cost shall not exceed .1 percent of each dollar of such cost over 50 million dollars in addition to the assessment in ~~(2) and (3) above~~.

C. Data costs. The proposer and the ~~Responsible Agency~~ RGU shall include in the EIS assessed cost the proposer's costs for the collection and analysis of technical data which the ~~Responsible Agency~~ RGU incorporates into the EIS. The amount included shall not exceed one-third of the EIS assessed cost unless a greater amount is agreed to by the ~~Responsible Agency~~ RGU. When practicable, the proposer shall consult with the ~~Responsible Agency~~ RGU before incurring such costs.

D. Federal/state EIS. When a joint federal/state EIS is prepared pursuant to 6 MCAR § ~~3.025 F. 4.~~ 3.017 and the ~~Council~~ EQB designates a non-federal agency as the ~~Responsible Agency~~ RGU, only those costs of the state ~~Responsible Agency~~ RGU may be assessed to the proposer. The ~~Responsible Agency~~ RGU and the proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the ~~Council~~ EQB in accord with ~~these rules~~ 6 MCAR §§ 3.001-3.036.

E. Related actions EIS. When specific actions are included in a related actions EIS, only the portion of the EIS estimated cost that is attributable to each specific action may be used in determining the EIS assessed cost for its proposer. The ~~Responsible Agency~~ RGU and each proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the ~~Council~~ EQB in accord with ~~these rules~~ 6 MCAR §§ 3.001-3.036.

6 MCAR § ~~3.043~~ 3.031 Determining the EIS estimated cost, the EIS actual cost and the project estimated cost.

A. EIS estimated or actual costs; inclusions. In determining the EIS estimated cost of the EIS actual cost, the following items shall be included:

1. The cost of the ~~Responsible Agency's~~ RGU's staff time including direct salary and fringe benefit costs.

2. The cost of consultants hired by the ~~Responsible Agency~~ RGU.

3. The proposer's costs for the collection and analysis of technical data expended for the purpose of preparing the EIS.

4. Other direct costs of the ~~Responsible Agency~~ RGU for the collection and analysis of information or data necessary for the preparation of the EIS. These costs shall be specifically identified.

5. Indirect costs of the ~~Responsible Agency~~ RGU not to exceed the ~~Responsible Agency's~~ RGU's normal operating overhead rate.

6. The cost of printing and distributing the draft EIS and the final EIS.

7. The cost of any public hearings or public meetings held in conjunction with the preparation of the final EIS.

B. EIS estimated or actual costs; exclusions. The following items shall not be included in determining the EIS estimated cost or the EIS actual cost:

1. The cost of collecting and analyzing information and data incurred before the final determination has been made that an EIS will be prepared unless the information and data were obtained for the purpose of being included in the EIS~~.~~;

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.

2. Costs incurred by a private person other than the proposer or a ~~public agency~~ governmental unit other than the ~~Responsible Agency~~ RGU, unless the costs are incurred at the direction of the ~~Responsible Agency~~ RGU for the preparation of material to be included in the EIS~~.~~; and

3. The capital costs of equipment purchased by the ~~Responsible Agency~~ RGU or its consultants for the purpose of establishing a data collection program, unless the proposer agrees to include such costs.

C. Project estimated costs. The following items shall be included in determining the project estimated cost:

1. The current market value of all the land interests, owned or to be owned by the proposer, which are included in the boundaries of the action. The boundaries shall be those defined by the action which is the subject of the EIS preparation notice~~.~~;

2. Costs of architectural and engineering studies for the design or construction of the action~~.~~;

3. Expenditures necessary to begin the physical construction or operation of the action~~.~~;

4. Construction costs required to implement the action including the costs of essential public service facilities where such costs are directly attributable to the proposed action~~.~~; and

5. The cost of permanent fixtures.

6 MCAR § ~~3.044~~ 3.032 Revising the EIS assessed cost.

A. Proposer alters scope of action. If the proposer substantially alters the scope of the action after the final determination has been made that an EIS will be prepared and the EIS assessed cost has been determined, the proposer shall immediately notify the ~~Responsible Agency~~ RGU and the ~~Council~~ EQB.

1. If the change will likely result in a net change of greater than ~~5%~~ five percent in the EIS assessed cost, the proposer and the ~~Responsible Agency~~ RGU shall make a new determination of the EIS assessed cost. The determination shall give consideration to costs previously expended or irrevocably obligated, additional information needed to complete the EIS and the adaptation of existing information to the revised action. The ~~Responsible Agency~~ RGU shall submit either a revised agreement or a notice that an agreement cannot be reached following the procedures of 6 MCAR § ~~3.042~~ 3.030 A. except that such agreement or notice shall be provided to the ~~Council~~ EQB within 20 days after the proposer notifies the ~~Responsible Agency~~ RGU and the ~~EQC~~ EQB of the change in the action. If the changed action results in a revised project estimated cost of one million dollars or less, the proposer shall not be liable for further cash payments to the ~~Council~~ EQB or to the local ~~Agency~~ governmental unit beyond what has been expended or irrevocably obligated by the ~~Responsible Agency~~ RGU at the time it was notified by the proposer of the change in the action.

2. If the proposer decides not to proceed with the proposed action, the proposer shall immediately notify the ~~Responsible Agency~~ RGU and the ~~Council~~ EQB. The ~~Responsible Agency~~ RGU shall immediately cease expending and obligating the proposer's funds for the preparation of the EIS.

a. If cash payments previously made by the proposer exceed the ~~Responsible Agency's~~ RGU's expenditures or irrevocable obligations at the time of notification, the proposer may apply to the ~~Council~~ EQB or to the local ~~Agency~~ governmental unit for a refund of the overpayment. The refund shall be paid as expeditiously as possible.

b. If cash payments previously made by the proposer are less than the ~~Responsible Agency's~~ RGU's expenditures or irrevocable obligations at the time of notification, the ~~Responsible Agency~~ RGU shall notify the proposer and the ~~Council~~ EQB within ~~10~~ ten days after it was notified of the project's withdrawal. Such costs shall be paid by the proposer within 30 days after the ~~Responsible Agency~~ RGU notifies the proposer and the ~~Council~~ EQB.

B. New significant environmental problem. If, after the EIS assessed cost has been determined, the ~~Responsible agency~~RGU or the proposer uncovers a significant environmental problem that could not have been reasonably foreseen when determining the EIS assessed cost, the party making the discovery shall immediately notify the other party and the ~~Council~~ EQB. If the discovery will likely result in a net change of greater than ~~5%~~ five percent in the EIS assessed cost, the proposer and the ~~Responsible Agency~~ RGU shall make a new determination of the EIS assessed cost. The ~~Responsible Agency~~ RGU shall submit either a revised agreement or a notice that an agreement cannot be reached following the procedures of 6 MCAR § ~~3.042~~ 3.030 A. except that such agreement or notice shall be provided to the ~~Council~~ EQB within 20 days after both parties and the ~~Council~~ EQB were notified.

6 MCAR § ~~3.045~~ 3.033 Disagreements regarding the EIS assessed cost.

A. Notice to EQB, information disagreement. If the proposer and the ~~Responsible Agency~~ RGU disagree about the information to be included in the EIS or the EIS assessed cost, the proposer and the ~~Responsible Agency~~ RGU shall each submit a written statement to the ~~Council~~ EQB identifying the information each recommends be included in the EIS, the EIS

estimated cost, and the project estimated cost within ~~10~~ ten days after the ~~Responsible Agency~~ RGU notifies the ~~Council~~ EQB that an agreement could not be reached. The s statements shall include a discussion of the need to include the information in the EIS, the identification of the information and data to be provided by each party, the EIS preparation costs identified in 6 MCAR § ~~3.043~~ 3.031 A. and B. as they pertain to the information to be included in the EIS, a brief explanation of the costs, and a discussion of alternative methods of preparing the EIS and the costs of those alternatives.

B. Estimated cost disagreement, process. If the proposer and the ~~Responsible Agency~~ RGU disagree about the project estimated cost, the proposer shall submit in writing a detailed project estimated cost in addition to the requirements of ~~section~~ A. ~~above.~~ The ~~Responsible Agency~~ RGU may submit a written detialed project estimated cost in addition to the requirements of ~~section~~ A. ~~above.~~ The statements shall be submitted to the ~~Council~~ EQB within ~~10~~ ten days after the ~~Responsible Agency~~ RGU notifies the ~~Council~~ EQB that an agreement could not be reached. The project estimated cost shall include the costs as identified in 6 MCAR § ~~3.043~~ 3.031 C. and a brief explanation of the costs. The estimates shall be prepared according to the categories in 6 MCAR § ~~3.043~~ 3.031 so as to allow a reasonable examination as to their completeness.

C. EIS assessed cost revision. If the proposer and the ~~Responsible Agency~~ RGU disagree about a revision of the EIS assessed cost prepared following the procedures in 6 MCAR § ~~3.044~~ 3.032, the proposer and the ~~Responsible Agency~~ RGU shall use the applicable procedures described in ~~6 MCAR § 3.045~~ A. or B. in resolving their disagreement except that all written statements shall be provided to the ~~Council~~ EQB within ~~10~~ ten days after the ~~Responsible Agency~~ RGU notifies the ~~Council~~ EQB that an agreement cannot be reached.

D. EIS actual cost. If the proposer and the ~~Responsible Agency~~ RGU disagree about the EIS actual cost as determined by 6 MCAR § ~~3.046~~ 3.034 B., the proposer and the ~~Responsible Agency~~ RGU shall prepare a written statement of their EIS actual cost and an estimate of the other party's EIS actual cost. The items included in 6 MCAR § ~~3.043~~ 3.031 A. and B. shall be used in preparing the EIS actual cost statements. These statements shall be submitted to the ~~Council~~ EQB and the other party within 20 days after the ~~Council has accepted the~~ final EIS has been accepted as adequate by the RGU or the EQB.

E. EQB determination. The ~~Council~~ EQB at its first meeting held more than 15 days after being notified of a disagreement shall make any determination required by ~~sections A through D above~~ A.-D. The ~~Council~~ EQB shall consider the information provided by the proposer and the ~~Responsible Agency~~ RGU and may consider other reasonable information in making its determination. This time limit shall be waived if a hearing is held pursuant to ~~6 MCAR § 3.045~~ F.

F. Hearing. If either the proposer or the ~~Responsible Agency~~ RGU so requests, the ~~Council~~ EQB shall hold a hearing to facilitate it in making its determination. ~~The hearing shall follow the procedures outlined in 6 MCAR § 3.028 A.3.~~

G. Half cash payment, EIS preparation. Nothing in ~~sections A through F above~~ A.-F. shall prevent the proposer from making one half of the cash payment as recommended by the ~~Responsible Agency's~~ RGU's proposed EIS assessed cost for the purpose of commencing the EIS process. If the proposer makes the above cash pyament, preparation of the EIS shall immediately begin. If the required cash payment is altered by the ~~Council's~~ EQB's determination, the remaining cash payments shall be adjusted accordingly.

6 MCAR § ~~3.046~~ 3.034 Payment of the EIS assessed cost.

A. Schedule of payments. The proposer shall make all cash payments to the ~~Council~~ EQB or to the local ~~Agency~~ governmental unit according to the following schedule:

1. At least one-half of the proposer's cash payment shall be paid within 30 days after the EIS assessed cost has been submitted to the ~~Council~~ EQB pursuant to 6 MCAR § ~~3.042~~ 3.030 A. or has been determined by the ~~Council~~ EQB pursuant to 6 MCAR § ~~3.045~~ 3.033 E. or F.

2. At least three-fourths of the proposer's cash payment shall be paid within 30 days after the draft EIS has been submitted to the ~~Council~~ EQB.

3. The final cash payment shall be paid within 30 days after the ~~Council has accepted the~~ final EIS has been submitted to the EQB.

a. The proposer may withhold final cash payment of the EIS assessed cost until the ~~Responsible Agency~~ RGU has submitted a detailed accounting of its EIS actual cost to the proposer and the ~~Council~~ EQB. If the proposer chooses to wait, the remaining portion of the EIS assessed cost shall be paid within 30 days after the EIS actual cost statement has been submitted to the proposer and the ~~Council~~ EQB.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

b. If the proposer has withheld the final cash payment of the EIS assessed cost pending resolution of a disagreement over the EIS actual cost, such payment shall be made within 30 days after the ~~Council~~ EQB has determined the EIS actual cost.

B. Refund. The proposer and the ~~Responsible Agency~~ RGU shall submit to each other and to the ~~Council~~ EQB a detailed accounting of the actual costs incurred by them in preparing and distributing the EIS within ~~10~~ ten days after the ~~Council has accepted the~~ final EIS has been submitted to the EQB. If the cash payments made by the proposer exceed the ~~Responsible Agency's~~ RGU's EIS actual cost, the proposer may apply to the ~~Council~~ EQB or to the local ~~Agency~~ governmental unit for a refund of the overpayment. The refund shall be paid as expeditiously as possible.

C. State agency as RGU. If the ~~Responsible Agency~~ RGU is a state agency, the proposer shall make all cash payments of the EIS assessed cost to the ~~Council~~ EQB which shall deposit such payments in the state's general fund.

D. Local government unit as RGU. If the ~~Responsible Agency~~ RGU is a local ~~Agency~~ governmental unit, the proposer shall make all cash payments of the EIS assessed cost directly to the local ~~Agency~~ governmental unit.

~~1.~~ The local ~~Agency~~ governmental unit shall notify the ~~Council~~ EQB in writing of receipt of each payment within ~~10~~ ten days following its receipt.

E. Payment prerequisite to EIS. No ~~Responsible Agency~~ RGU shall commence with the preparation of an EIS until at least one-half of the proposer's required cash payment of the EIS assessed cost has been paid. ~~Notwithstanding other sections of these Rules, the Responsible Agency shall prepare and file the Draft EIS within 120 days of the date of this payment. This time limitation may be extended by the Council only for good cause upon written request by the Responsible Agency.~~

F. Notice of final payment. Upon receipt or notice of receipt of the final payment by the proposer, the ~~Council~~ EQB shall notify each state agency having a possible governmental permit interest in the action that the final payment has been received.

~~1.~~ Other laws notwithstanding, a state agency shall not issue any governmental permits for the construction or operation of an action for which an EIS is prepared until the required cash payments of the EIS assessed cost for that action or that portion of a related actions EIS have been paid in full.

G. Time period extension. ~~Except as provided in 6 MCAR § 3.046 E.~~ All time periods included in 6 MCAR §§ ~~3.042-3.046~~ 3.030-3.034 may be extended by the ~~Council Chairman~~ EQB chairperson only for good cause upon written request by the proposer or the ~~Responsible Agency~~ RGU.

Rules as Proposed (all new material)

Chapter Eighteen:
Special Rules for Certain Large Energy Facilities

6 MCAR § 3.035 Special rules for LEPGP.

A. Applicability. Environmental review for LEPGP as defined in Minn. Stat. § 116C.52, subd. 4 shall be conducted according to the procedures set forth in this rule. Environmental review shall consist of an environmental report at the certificate of need stage and an EIS at the site certificate stage. Energy facilities subject to Minn. Stat. § 116H.13 but excluded under Minn. Stat. § 116C.52, subd. 4, shall not be subject to this rule. Except as expressly provided in this rule, 6 MCAR §§ 3.004-3.016 shall not apply to facilities subject to this rule. No EAW need be prepared for any facilities subject to this rule.

B. Environmental report at certificate of need stage.

1. The MEA shall be responsible for preparation of an environmental report on a LEPGP subject to this rule.

2. The environmental report shall be prepared for inclusion in the record of certificate of need hearings conducted under Minn. Stat. § 116H.13. The report and comments thereon shall be included in the record of the hearings.

3. The environmental report on the certificate of need application shall include:

a. A brief description of the proposed facility;

b. An identification of reasonable alternative facilities including, as appropriate, the alternatives of different sized facilities, facilities using different fuels, different facility types, and combinations of alternatives;

c. A general evaluation, including the availability, estimated reliability, and economic, employment and environmental impacts, of the proposal and alternatives; and

d. A general analysis of the alternatives of no facility, different levels of capacity, and delayed construction of the facility. The analysis shall include consideration of conservation and load management measures that could be used to reduce the need for the proposed facility.

4. The environmental report need not be as exhaustive or detailed as an EIS nor need it consider site-differentiating factors.

5. Upon completion of the draft environmental report, the report shall be circulated as provided in 6 MCAR § 3.011 E.3. In addition, one copy shall go to each regional development commission in the state. At least one copy shall be available for public review during the hearings conducted under Minn. Stat. § 116H.13.

6. The MEA shall provide notice of the date and locations at which the draft environmental report shall be available for public review. Notice shall be provided in the manner used to provide notice of public hearings conducted under Minn. Stat. § 116H.13 and may be provided in the notice of the hearings.

7. Comments on the draft environmental report shall be received during and entered into the record of hearing conducted under Minn. Stat. § 116H.13.

8. The draft environmental report and any comments received during the hearings shall constitute the final environmental report.

9. Preparation and review of the report, including submission and distribution of comments, shall be completed in sufficient time to enable the Director of the MEA to take final action pursuant to Minn. Stat. § 116H.13 within the time limits set by that statute.

10. Upon completion of a final environmental report, notice thereof shall be published in the EQB Monitor. Copies of the final environmental report shall be distributed as provided in 5.

11. The MEA shall not make a final determination of need for the project until the final environmental report has been completed.

12. A supplement to an environmental report may be required pursuant to 6 MCAR § 3.011 I. if a determination pursuant to Minn. Stat. § 116H.13 is pending before the MEA.

C. EIS at certificate of site compatibility stage.

1. The EQB shall be responsible for preparation of the EIS on a LEPGP subject to this rule.

2. The draft of the EIS shall be prepared for inclusion in the record of the hearings to designate a site for a LEPGP under Minn. Stat. § 116C.58. The draft EIS and final EIS shall be included in the record of the hearing.

3. The draft EIS shall conform to 6 MCAR § 3.011 B. It shall contain a brief summary of the environmental report and the certificate of need decision relating to the project, if available. Alternatives shall include those sites designated for public hearings pursuant to Minn. Stat. § 116C.57, subd. 1 and rules promulgated thereunder. Significant issues to be considered in the EIS shall be identified by the EQB in light of the citizen evaluation process established in Minn. Stat. § 116C.59 rather than through a formal scoping process.

The EIS need not consider need for the facility and other issues determined by the MEA nor contain detailed data which are pertinent to the specific conditions of subsequent construction and operating permits and which may be reasonably obtained only after a specific site is designated.

4. Upon completion, the draft EIS shall be distributed as provided in 6 MCAR § 3.011 E.3. In addition, one copy shall go to each regional development commission representing a county in which a site under consideration is located. At least one copy shall be available for public review during the hearings conducted under Minn. Stat. § 116C.58.

5. The EQB shall provide notice of the date and location at which the draft EIS shall be available for public review. The notice shall be provided in the manner used to provide notice of the public hearings conducted under Minn. Stat. § 116C.58 and may be provided in the notice of the hearings.

6. The EQB or a designee shall conduct a meeting to receive comments on the draft EIS. The meeting may but need not be conducted in conjunction with hearings conducted under Minn. Stat. § 116C.58. Notice of the meeting shall be given at least ten days before the meeting in the manner provided in B.6. and may be given with the notice of hearing.

7. The EQB shall establish a final date for submission of written comments after the meeting. After that date comments need not be accepted.

8. Within 60 days after the last day for comments, the EQB shall prepare responses to the comments and shall make necessary revisions in the draft. The draft EIS as revised shall constitute the final EIS. The final EIS shall conform to 6 MCAR § 3.011 F.

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.

9. Upon completion of a final EIS, notice thereof shall be published in the EQB Monitor. Copies of the final EIS shall be distributed as provided in 4.

10. Prior to submission of the final EIS into the record of a hearing under Minn. Stat. § 116C.58, the EQB shall determine the EIS to be adequate pursuant to 6 MCAR § 3.011 G.

11. A supplement to an EIS may be required pursuant to 6 MCAR § 3.011 I.

12. The EQB shall make no final decision designating a site until the final EIS has been found adequate. No governmental unit having authority to grant approvals subsequent to a site designation shall grant any final approval for the construction or operation of a facility subject to this rule until the final EIS has been found adequate.

D. Cooperative processes. 6 MCAR §§ 3.008 E., 3.012 D. and E., 3.016 and 3.017 shall apply to energy facilities subject to this rule. Variance applications may be submitted without preparation of an EAW.

6 MCAR § 3.036 Special rules for HVTL.

A. Applicability. Environmental review for a HVTL as defined in Minn. Stat. § 116C.52, subd. 3, unless exempted pursuant to Minn. Stat. § 116C.57, subd. 5, shall be conducted according to the procedures set forth in this rule. Environmental review shall consist of an environmental report at the certificate of need stage and an EIS at the route designation and construction permit stage. Energy facilities subject to Minn. Stat. § 116H.13 but excluded under Minn. Stat. § 116C.52, subd. 3, or exempted under Minn. Stat. § 116C.57, subd. 5 shall not be subject to this rule. Except as expressly provided in this rule, 6 MCAR §§ 3.004-3.016 shall not apply to facilities subject to this rule. No EAW need be prepared for any facilities subject to this rule.

B. Environmental report at certificate of need stage.

1. The MEA shall be responsible for preparation of an environmental report on an HVTL subject to this rule.

2. The environmental report shall be prepared for inclusion in the record of the certificate of need hearings conducted under Minn. Stat. § 116H.13. The report and comments thereon shall be included in the record of the hearings.

3. The environmental report on the certificate of need application shall include:

a. A brief description of the proposed facility;

b. An identification of reasonable alternatives of a different sized facility, a transmission line with different endpoints, upgrading existing transmission lines, and additional generating facilities;

c. A general evaluation, including the availability, estimated reliability, and economic, employment and environmental impacts, of the proposal and alternatives; and

d. A general analysis of the alternatives of no facility and delayed construction of the facility. The analysis shall include consideration of conservation and load management measures that could be used to reduce the need for the proposed facility.

e. The environmental report need not be as exhaustive or detailed as an EIS nor need it consider factors that depend upon specific routes or facility designs.

f. The report shall be reviewed in the manner provided in 6 MCAR § 3.035 B.5.-12.

C. EIS at route designation and construction permit stage.

1. The EQB shall be responsible for preparation of an EIS on a HVTL subject to this rule.

2. The draft of the EIS shall be prepared for inclusion in the record of the hearings to designate a route for a HVTL under Minn. Stat. § 116C.58. The draft EIS and final EIS shall be included in the record of the hearing.

3. The draft shall conform to 6 MCAR § 3.011 B. It shall contain a brief summary of the environmental report and the certificate of need decision relating to the project, if applicable. Alternatives shall include those routes designated for public hearing pursuant to Minn. Stat. § 116C.57, subd. 2 and rules promulgated thereunder. Significant issues to be considered in the EIS shall be identified by the EQB in light of the citizen evaluation process established pursuant to Minn. Stat. § 116C.59 rather than through a formal scoping process. Need for the facility and other issues determined by the MEA need not be considered in the EIS.

4. The draft EIS shall be reviewed in the manner provided in 6 MCAR § 3.035 C.4.-11.

5. The EQB shall make no final decision designating a route until the final EIS has been found adequate. No governmental unit having authority to grant approvals subsequent to a route designation shall grant any final approval for the construction or operation of a facility subject to this rule until the final EIS has been found adequate.

D. Review of HVTL requiring no certificate of need. An EIS for a HVTL subject to Minn. Stat. §§ 116C.51-116C.69 but not

subject to Minn. Stat. § 116H.13 shall consist of an EIS to be prepared as provided in C. The alternative of no action shall be considered.

E. Cooperative processes. 6 MCAR §§ 3.008 E., 3.012 D. and E., 3.016 and 3.017 shall apply to facilities subject to this rule. Variance applications may be submitted without preparation of an EAW.

Repealer. Rules 6 MCAR §§ 3.024-3.032, 3.040 and 3.047 as existing on the day before the effective date of these proposed rules are repealed.

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.

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.

Office of Administrative Hearings
Workers' Compensation Section

Adopted Temporary Rules Governing Workers' Compensation

The temporary rules proposed and published at *State Register*, Volume 5, Number 52, pp. 2093-2107 (5 S.R. 2093) were adopted with the following changes by the Attorney General on Wednesday, August 19, 1981 and filed with the Secretary of State on that same date. Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 5, the rules became effective upon approval of the Attorney General and will remain in effect until replaced by permanent rules or until February 15, 1982 (180 days), whichever occurs first.

Temporary Rules as Adopted

9 MCAR § 2.301 Scope and purpose.

The procedures contained herein shall govern all hearings required to be conducted pursuant to the provisions of the Minnesota Workers' Compensation Laws, Laws of 1981, ch. 346, § 52 and Minn. Stat. §§ ~~176.001 to~~ 176.011-176.82, and the Minnesota Administrative Procedure Act, Minn. Stat. §§ 15.0411 ~~to~~-15.052, as those provisions might apply.

9 MCAR § 2.302 General authority and definitions.

A. Assignment or transfer of cases. The chief hearing examiner has full responsibility for the assignment of cases for trial to the compensation judges. The chief hearing examiner may transfer to another compensation judge the proceedings on any case in the event of the death, extended absence, or disqualification of the compensation judge to whom it has been assigned, and may otherwise reassign such cases if necessary to expedite the proceedings if no oral testimony has been received therein. ~~To the extent practicable, supplemental proceedings (rehearings) shall be assigned to the compensation judge who heard the original proceedings except where the rehearing has been granted by the Workers' Compensation Court of Appeals contrary to the compensation judge's initial order, in which instance the rehearing may be assigned to another compensation judge.~~

B. Authority of compensation judges. In any case which has been regularly assigned to him/her for trial, a compensation judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented to him/her and to issue such interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case.

C. Definitions.

~~1. "Applicant" means the party initiating an application by the serving and filing of a petition.~~

~~2.~~ 1. "Calendar judge" means a workers' compensation judge from the Office of Administrative Hearings.

~~3.~~ 2. "Chief hearing examiner" means the Chief Hearing Examiner of the Office of Administrative Hearings.

~~4.~~ 3. "Commissioner" means the Commissioner of the @ Department of Labor and Industry.

~~5.~~ 4. "Compensation judge" means a workers' compensation judge from the Office of Administrative Hearings.

~~6.~~ 5. "Division" means the Workers' Compensation Division of the Department of Labor and Industry.

~~7.~~ 6. "Petition" means ~~an application~~ a claim filed by or on behalf of an injured or deceased employee, employer or insurer which initiates a contested workers' compensation case requiring assignment for hearing.

7. "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf or an employee or insurer.

8. "Settlement ~~judges~~ judge" means a workers' compensation judge from the Department of Labor and Industry.

9 MCAR § 2.303 Joinder of parties.

~~A. Necessary parties. In all cases except cases arising from the death of an employee, any person, other than the injured employee, initiating a proceeding must join the injured person as a party, including in the petition the injured party's address, if known, and if not known, a statement of that fact.~~

~~For purposes of these rules, the following shall be deemed necessary parties:~~

~~1. The employee or dependents;~~

~~2. All insurers or self-insured named in the petition;~~

~~3. Any employer who is uninsured or whose insurer for the date of the alleged injury in that employment is unknown;~~

~~4. The State Treasurer, as custodian of the Special Compensation Fund, if petition is made pursuant to Minn. Stat. § 176.191, subd. 2.~~

~~B. Parties applicant. Any person in whom any right to relief is alleged to exist may appear, or be joined, as a party applicant, in any case or controversy before a settlement or compensation judge.~~

~~C. Parties defendant. Any person or insurer against whom the right to relief is alleged to exist shall be named or joined as a defendant.~~

~~D. Parties in death cases. In death cases, all persons who might be considered dependents should either join or be joined as parties applicant or defendant so that the entire liability of the employer or the insurer may be determined in one proceeding.~~

~~E. Joinder of parties.~~

~~1.~~ A. Upon a motion of any party or upon his/her own motion, a settlement or ~~compensation~~ calendar judge may order the joinder of additional parties necessary for the full adjudication of the case. A party not present or represented at the time of joinder shall forthwith be served by the party requesting joinder with copies of the order of joinder~~, the summary of evidence, if any,~~ and ~~the~~ all pleadings in the case.

~~2.~~ B. Any party requesting joinder of additional parties shall ~~make a motion for such joinder,~~ serve a copy of the ~~motion~~ request on all existing parties, and the party to be joined, and file the original with proof of service with the settlement or calendar judge no later than ~~45~~ 10 days prior to the ~~hearing~~ date pre-trial or settlement conference, unless the ~~calendar~~ judge allows a shorter time when the moving party has shown that the party is a necessary party, that the moving party was unable, through due diligence, to previously ascertain the name of or necessity of joining the party, and that the joinder is necessary to a full and final determination of the rights or liabilities of all persons. When this ~~motion~~ request is served on the party to be joined, it shall be accompanied by copies of all pleadings and ~~a~~ the notice of the date, time and place set for a settlement conference~~,~~ or prehearing conference ~~or hearing~~.

~~3.~~ C. When a party requests joinder less than ~~45~~ 10 days prior to the ~~hearing~~ pre-trial or settlement conference date, the ~~motion~~ request shall include an affidavit of the ~~moving~~ requesting party stating the facts necessary to show cause why the lesser time should be allowed.

~~4.~~ D. In cases where the settlement or calendar judge has denied the joinder because of the ~~moving~~ requesting party's failure to meet the ~~45-day~~ 10-day time requirement, the case shall not be stricken, continued or otherwise delayed for the purposes of joinder, unless the ~~applicant or applicant's~~ attorney for the employee or dependent consents thereto.

~~5.~~ E. All motions for joinder shall contain at least the following:

~~a.~~ 1. The party to be joined and its insurer, if any;

~~b.~~ 2. The date and nature of the claimed personal injury or impairment;

~~c.~~ 3. The detailed circumstances, in affidavit form, showing that the party to be joined is a necessary party;

~~d.~~ 4. The supporting medical opinions relied upon, if applicable; ~~or~~

~~e.~~ 5. If the party to be joined is the Special Compensation Fund, the detailed circumstances, in affidavit form, showing the specific basis claimed for joinder, including the date of registration of prior impairment or injury where applicable.

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.

~~6.~~ F. A party contesting joinder under these rules may do so by objection filed with the settlement or calendar judge within 10 days of service, requesting a hearing thereon; otherwise, an ex parte order may be issued granting or denying this joinder.

9 MCAR § 2.304 Pleadings.

A. Commencement of proceedings. Original proceedings for the adjudication of compensation rights and liabilities are commenced by the service ~~and filing~~ of a petition as provided by Minn. Stat. § 176.305 ~~and which shall be on forms provided by the commissioner. The petition~~ Any petition filed on behalf of an employee or his/her dependents shall certify that ~~the~~ prior notice of intention to initiate proceedings has been sent to the adverse party, pursuant to Minn. Stat. § 176.271, subd. 2, and the date of that notice. Supporting medical reports shall be attached to the petition.

B. ~~Separate petitions for each injury. A separate petition shall be filed for each separate injury for which benefits are claimed even though the employer be the same in each case. Separate pleadings shall be filed in each case.~~

~~C.~~ Consolidation of claims. ~~All claims of all persons arising out of the same injury to the same employee shall be filed in the same proceeding~~ Claims by several employees arising out of the same accident may be consolidated in one proceeding only by consent of all parties or by order on appropriate motion.

~~D.~~ C. Forms of petition. Petitions shall conform to the ~~forms~~ format heretofore prescribed by the commissioner ~~and provided by the division~~.

~~E. Declaration of Readiness to Proceed.~~

~~1. At the time the petition is filed with the commissioner, a Declaration of Readiness to Proceed shall be included. The declaration shall have been previously served either personally or by first class mail on all other parties.~~

~~2. Objections. Any objection to the proceedings requested by a Declaration of Readiness to Proceed shall be served and filed with the commissioner within ten (10) days after service of the declaration.~~

~~3. The Declaration of Readiness to Proceed shall be on a form provided by the Division and shall contain the following information.~~

~~a. The names of all parties applicant or defendant;~~

~~b. The geographic location requested for the hearing;~~

~~c. Whether a settlement conference is requested and the reasons therefor;~~

~~d. What issues remain to be determined;~~

~~e. Whether the applicant is presently receiving compensation payments;~~

~~f. The number of witnesses expected to be presented, divided between lay and medical witnesses;~~

~~g. An estimate of the number of hours necessary to complete the hearing;~~

~~h. A statement that all medical reports in the applicant's possession have been provided to the defendant(s);~~

~~i. A proof of service of the declaration; and~~

~~j. The typed or hand printed name of the person filing the declaration, together with the address and telephone number where the person filing can be reached between the hours of 8:00 a.m. and 4:30 p.m.~~

D. Unless otherwise provided by law, all requests for action by the commissioner, a settlement, calendar or compensation judge after the filing of a petition shall contain the title and appropriate identification number of the case and shall indicate the type of action requested.

9 MCAR § 2.305 Settlement judge review and settlement conferences.

A. Upon the filing of a petition ~~and a Declaration of Readiness to Proceed~~, the commissioner, within 10 days, shall refer the ~~case~~ matter to a settlement judge who shall review the filing to determine whether a settlement conference is appropriate~~, which determination shall be made within twenty (20) days of the date of filing~~.

B. If a settlement conference has been requested or is deemed appropriate by the settlement judge, he/she shall notify all parties of the date, time and place, where the settlement conference will be conducted. The settlement ~~conferences~~ conference shall be completed within sixty (60) days of the date ~~of the filing~~ of referral of the petition ~~and the Declaration of Readiness to Proceed~~ by the commissioner. If a settlement conference has not been requested or is deemed to be inappropriate, the settlement judge shall ~~return the file to the commissioner who shall refer~~ certify the ~~file~~ matter to the chief hearing examiner ~~within 10 calendar days of receipt of the file from the settlement judge~~.

C. If the settlement conference cannot be concluded within sixty (60) days, the settlement judge shall ~~return the file to the commissioner who shall refer~~ certify the ~~file~~ matter to the chief hearing examiner~~.~~; provided, however, that with the ~~written~~ consent of the ~~applicant~~ petitioner or his/her representative, the settlement judge may retain jurisdiction for an additional ~~thirty (30)~~ sixty (60) days for the purposes of receiving a full settlement of all issues.

D. ~~If the settlement judge determines that a settlement conference will not resolve the issues in the case or that, because the number of cases filed or scheduled for settlement conferences are such that a settlement conference cannot be concluded within the required time, the settlement judge shall return the file to the commissioner who shall refer the file to the chief hearing examiner within 10 calendar days of receipt of the file from the settlement judge.~~

~~E.~~ Nothing contained in this rule shall preclude any party from requesting that a settlement conference be scheduled at any time prior to a hearing by a compensation judge, nor shall it prohibit the chief hearing examiner or calendar judge from setting a settlement conference on their own motion once the ~~file~~ matter has been received from the commissioner.

~~F.~~ E. At any settlement conference conducted before a settlement, calendar or compensation judge, all parties shall attend and shall, if they are a representative of a party, be authorized to reach a full settlement on all or any issues in the case.

~~G.~~ F. If, following a settlement conference, a ~~full and final~~ settlement has not been reached but the parties have reached agreement on any facts, legal or medical issues, or levels of benefits, the settlement, calendar or compensation judge presiding over the settlement conference shall, if he/she approves of those matters ~~settled~~ agreed upon, issue an order confirming and approving those matters ~~settled~~ agreed upon, which oder shall be binding on any compensation judge who may subsequently be assigned to hear the case. Issues once ~~settled~~ agreed upon and approved may be reopened by the compensation judge only upon motion of any party on the basis of newly discovered evidence ~~or a material change in circumstances~~ which was not reasonably discoverable at the earlier time.

9 MCAR § 2.306 ~~Motions to compensation judge.~~ [Reserved for future use.]

~~A. Generally. All requests for action by the commissioner, a settlement, calendar of compensation judge other than petitions or answers shall be called motions. The caption of each motion shall contain the title and number of the case and shall indicate the type of relief sought.~~

~~B. Motion to reopen. Motions requesting that a matter be reopened shall set forth specifically and in detail the facts relied upon to establish good cause for reopening.~~

~~C. Motion to discontinue compensation.~~

~~1. A motion to discontinue compensation for temporary total disability filed pursuant to Minn. Stat. § 176.241 shall conform to the form provided by the division and shall contain the information required by law or rule of the commissioner.~~

~~2. Objections; hearing; interim order.~~

~~a. Written objections shall be filed with and contain the information required by law or rule of the commissioner.~~

~~b. Upon such timely objection and where it appears to the commissioner that the right to compensation may not have terminated, the motion to discontinue shall be referred to the chief hearing examiner who shall set the matter for hearing on a priority basis not less then ten (10) nor more than thirty (30) days from the date of the receipt of the motion and objection from the commissioner.~~

~~c. If complete disposition of the motion to discontinue cannot be made at such hearing, the compensation judge assigned thereto, based on the record before him/her including the allegations of the motion, the objection thereto, and the evidence (if any) at said hearing, shall forthwith issue an interim order directing whether compensation shall or shall not continue during the pendency of proceedings on the motion to discontinue. Said interim order shall not be considered a final order, and will not preclude a complete adjudication of the issues raised by the motion upont he full hearing of the case, after notice in the regular course and full opportunity to prepare.~~

~~d. Following the issuance of an interim order upon the motion to discontinue, the case shall be set by the chief hearing examiner in the customary manner upon the filing of an appropriate Declaration of Readiness by the employer or insurer.~~

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.

9 MCAR § 2.307 Answers.

A. An answer to each petition shall be served and filed within twenty (20) days after service of the application unless a waiver has been obtained pursuant to Minn. Stat. § 176.321, subd. 3.

B. ~~The answer used by parties shall conform to the form prescribed by the commissioner. A general denial is not an answer within this rule.~~ The answer shall be accompanied by ~~an affidavit~~ proof of service upon the opposing parties. ~~Evidence upon matters and affirmative defenses not pleaded by answer will be allowed only upon such terms and conditions as the compensation judge shall impose.~~

C. The answer shall contain the following:

1. Specific responses to allegations regarding the date and nature of the injury, the employment status, notice, wage, relationship of the injury to employment, insurance, benefits paid, matters in dispute, affirmative defenses and additional matters as deemed necessary by the answering party;

2. Any medical report upon which the answer is based, if available;

3. If a medical examination by ~~the employer or insurer's doctor~~ a doctor chosen by the employer or insurer has not already been completed, the date, time and place for the exam which shall be scheduled to take place within 75 days from the date of service of the ~~petition~~ notice of intent to initiate proceedings. Any request for an extension ~~in~~ of time for scheduling the examination shall be subject to the approval of the calendar or settlement judge, whichever has jurisdiction of the matter at the time the request is made.

~~D. Requests for an extension of time within which to answer shall be made to a settlement judge who shall act on such requests on behalf of the commissioner.~~

9 MCAR § 2.308 Service.

A. Service by state. The commissioner, the chief hearing examiner, and settlement, calendar or compensation judges shall serve all notices, findings, orders, decisions or awards upon the parties or their attorneys or agents of record by first class mail at their addresses of record or by personal service. ~~Service may also be satisfied by placing the materials to be served with the Central Mailing Section of the Department of Administration.~~

B. Service by parties. A party may accomplish service of any document either by first class mail or by personal service. Service of any document required to be served by a party may be served by the party's attorney or authorized agent. Upon filing of the document served, it shall be accompanied by an affidavit or proof of service which shall be in the form ~~accepted by~~ acceptable to the district courts.

C. Service by mail. Service of all documents and pleadings may be made by first class United States mail upon all parties to a proceeding whether residents of the same city, town or otherwise. Computation of time in such instances shall be in accordance with the provisions of Minn. Stat. § 645.15.

~~D. Service on attorney or agent. Service, except as may otherwise be provided by any law or other rules, shall be made only on attorneys or agents of record, unless the party is unrepresented, in which event service shall be made on such party.~~

~~E. Proof of service by parties. Proof of service by parties may be made by:~~

~~1. An affidavit of service in the form acceptable to the district courts; or~~

~~2. A written statement enclosed upon the document served and signed by the party making the statement; or~~

~~3. A letter of transmittal.~~

~~In each case, there shall be set forth the names and addresses of persons served, the fact as to whether such service was made personally or by mail, the date of service, the place of personal service or the address to which mailing was made.~~

9 MCAR § 2.309 Hearings.

A. Definition of hearing. For the purposes of these rules, a hearing may be ~~either~~ called a settlement conference, a prehearing conference, or a regular hearing. Nothing contained herein is intended to change the statutory requirement that hearings, as defined by statute, be conducted by compensation judges from the Office of Administrative Hearings.

1. A settlement conference is a hearing ~~set~~ conducted by a settlement judge. It is ~~set~~ for the primary purpose of providing assistance to the parties in resolving disputes and securing a settlement of all issues, and for the secondary purpose of assisting the parties in narrowing the issues and of expediting preparation and trial of ~~a regular hearing if necessary~~ the matter. The conference may be conducted by telephone and in those cases wherein the location of the settlement conference would require any party to travel more than 50 miles to attend, it shall be conducted by telephone unless all parties agree otherwise. Written notice of this hearing shall be given at least 20 days prior to the date of the hearing.

2. A prehearing conference may be required whether or not a settlement conference has been held and may be conducted by telephone. The purpose of a prehearing conference is to ascertain if there are genuine disputes requiring resolution by a calendar or compensation judge, of providing assistance to the parties in resolving disputes, of narrowing the issues, and of expediting preparation and trial if a regular hearing is necessary. A prehearing conference is conducted by a calendar or compensation judge. It ~~may~~ shall be conducted by telephone if the location set for the prehearing conference would require any party to travel more than 50 miles to attend. Written notice of this hearing shall be given at least 20 days prior to the date of the hearing.

3. A regular hearing is a hearing set for the purpose of receiving evidence and is conducted by a compensation judge.

B. Notice of hearing. Notice of the time and place for hearing shall be provided to all parties to a case as required by 9 MCAR § 2.308 A. except that oral or written notification of the date, time and place for a regular hearing which is given to the parties by a settlement, calendar or compensation judge at the time of a settlement or prehearing conference shall be sufficient notice. ~~Such notice~~ Each attorney receiving notice of the hearing date at a settlement or prehearing conference shall be responsible for notifying each party he/she represents of the hearing date. When a written notice is required, it shall be given at least ~~ten (10)~~ five (5) days prior to the date of hearing, except:

1. Where notice is waived by all parties;

2. Where a different time is expressly agreed to by all parties; or

3. Where the notice is governed by contrary law or rule.

~~D.~~ C. Continuances.

1. Requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious and are, therefore, not favored and will be granted only upon a clear showing of good cause. The parties are expected to submit for decision all matters in controversy at a single hearing and to produce at such hearing all necessary evidence, including witnesses, documents, medical reports, payroll statements and all other matters considered essential in the proof of a party's claim or defense.

2. When a continuance is to be requested prior to the hearing date, the party requesting the continuance shall have first contacted all other parties to determine whether mutual agreement to the continuance can be reached~~,~~ and, if the continuance be granted, the availability of all parties for hearing at future specific dates. When all parties are in agreement with the request for continuance and have agreed to a date for a future hearing, ~~if~~ which date has been approved by the compensation, calender or settlement judge before whom the matter is pending, and when the continuance request is made no less than ten (10) working days prior to the hearing date, the continuance shall be granted.

3. If all parties have not agreed to a continuance, requests for continuances shall be made to the compensation, calendar or settlement judge ~~designated as the calendar judge~~ before whom the matter is pending. ~~If all parties have not agreed to the continuance,~~ When made more than ten (10) working days prior to the hearing date, the request shall be in writing in the form of a motion for continuance, and shall be served on all parties~~, and shall set a date, time and place for a hearing on the motion before the calendar judge when more then ten (10) working days prior to the regular hearing date.~~ If less than ten (10) working days remain prior to the ~~regular~~ hearing date, notice of the motion may be made orally. A hearing on the motion shall be conducted only if ordered by the settlement, compensation or calendar judge to whom the motion is made.

4. Good cause shall not include:

a. When an insurer retains more than one counsel on its own payroll who practices in the field of workers' compensation law, unavailability of the counsel assigned to the case because of engagement in another court or otherwise unless all such counsel are committed elsewhere;

b. Where a law firm consists of more than one member who practice in the field of workers' compensation law, unavailability of the counsel assigned to the case because of engagement in another court or otherwise unless all such counsel are committed elsewhere;

c. Unavailability of an individual law practitioner because of engagement in another court, if he has failed to notify

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.

the judge in charge of the trial court calendar of that court that he has been assigned to a date and time certain in a workers' compensation case;

d. Unavailability of a medical or other witness if the witness' deposition could have been taken between the time of receipt of the notice of the hearing date and the date of the hearing.

9 MCAR § 2.310 Intervention.

A. Any person desiring to intervene in a workers' compensation case as a party shall submit a timely motion to intervene to the settlement judge unless the ~~case~~ matter has been ~~submitted~~ referred to the chief hearing examiner for assignment, in which case the motion shall be submitted to the compensation judge to whom the case has been assigned or to the calendar judge if the case has not yet been assigned. The motion shall be served on all parties either personally or by first class mail. Timeliness will be determined by the settlement, calendar or compensation judge in each case based on circumstances at the time of filing. The motion shall show how the moving party's legal rights, duties or privileges may be determined or affected by the case, shall set forth the grounds and purposes for which intervention is sought and shall indicate the moving party's statutory right to invervene if one should exist. The motion shall be accompanied by the following ~~information~~, if applicable~~.~~:

1. An itemization of disability payments showing the period during which the payments were or are being made, the weekly or monthly rate of the payments and the amount of reimbursement claimed;

2. A summary of the medical or treatment payments, broken down by medical or treatment creditor, showing the total bill submitted, the period of treatment covered by that bill, the amount of payment on that bill, and to whom the payment was made;

3. Copies of all medical or treatment bills on which some payment was made;

4. Copies of the worksheets or other information setting forth how the payments on medical or treatment bills were calculated;

5. A copy of the relevant policy or contract provisions upon which the claim for reimbursement is based~~.~~;

6. A proposed order allowing intervention with sufficient copies to serve on all parties;

7. A proof of service.

B. Objection. Any party may object to the motion for intervention by serving and filing an objection with the appropriate judge within ~~seven~~ twenty (20) days of service of the motion, which objection shall state the party's reasons for objection. If no objection is filed, the intervention shall be deemed granted.

C. The party requesting intervention or his/her attorney or representative shall attend all settlement or prehearing conferences ~~and~~. The requesting party shall also attend the regular hearing unless a written stipulation, signed by all parties, is filed with the ~~appropriate~~ compensation judge stating that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the case, and that, if the ~~applicant~~ petitioner is successful in proving the compensability of the claim, it is agreed that the sum shall be reimbursed to the intervenor. ~~If no objection is filed, the intervention shall be deemed granted.~~

D. If an objection to intervention remains following settlement and prehearing conferences, the calendar judge shall enter an order ruling on the intervention which order shall be binding on the compensation judge to whom the case is assigned for a regular hearing.

E. At the regular hearing on the claim petition where intervention has been granted, the intervenor shall present his/her evidence in support of his/her claim after the ~~applicant~~ petitioner has rested, unless otherwise ordered by the compensation judge, in order that the issue of intervention may be promptly determined with no undue delay that may prejudice the rights of the original parties.

F. Failure to comply with any provision of this rule shall result in a denial of the claim for reimbursement unless the compensation judge determines that the error or mistake is technical in nature and that the denial for this reason would result in unjust enrichment to the party from whom reimbursement is sought.

9 MCAR § 2.311 Consolidation.

A. Consolidation of two or more related cases may be ordered for the purpose of receiving evidence. Consolidation may be ordered upon motion by any party to the calendar or compensation judge or upon the calendar or compensation judge's own motion if the calendar or compensation judge determines:

1. That separate cases present substantially the same issues of fact and law;

2. That a holding in one case would ~~effect~~ affect the rights of the parties in ~~another~~ the other case; and

3. That the consolidation would not substantially prejudice any party.

Notwithstanding the requirements of this rule, the parties may stipulate and agree to such consolidation.

B. Under consolidation, all documentary evidence previously received in an individual case shall be reintroduced in the ~~consolidation~~ consolidated proceedings under a master file if the compensation judge assigned to try the case designates one file as a master file. When so adduced, such evidence shall be deemed part of the record of each of the several consolidated cases. Evidence received subsequent to the order of consolidation shall be similarly received with like force and effect.

C. Notice of order. Following the granting of an order for consolidation, the calendar or compensation judge shall forthwith serve on all parties and the commissioner a copy of the order for consolidation. The order shall contain, among other things:

1. A description of the cases for consolidation;

2. The reasons for consolidation;

3. Notification of a consolidated prehearing conference if one has been requested.

D. Objection to consolidation.

1. Motion for severance. Any party may object to consolidation by filing with the ~~calendar~~ appropriate judge, and serving upon all parties at least seven days prior to the regular hearing in the case, a motion for severance from consolidation, setting forth the petitioner's name and address, the title of his case prior to consolidation, and the reasons for his petition.

2. Determination. If the ~~calendar~~ appropriate judge finds that consolidation would prejudice the party moving for severance, he/she shall order such severance or other relief as he/she deems necessary.

E. Service of pleadings and decisions. Separate pleadings shall be filed and separate findings, orders, decisions and awards will be made and filed in each case consolidated for hearing.

9 MCAR § 2.312 Disqualification. A compensation judge shall withdraw from participation in a case at any time if he/she deems himself/herself disqualified, prejudiced or biased for any reason. Proceedings to disqualify a compensation judge shall be initiated by the filing of a motion for disqualification supported by affidavit or declaration under penalty of perjury stating in detail facts establishing grounds for disqualification of the compensation judge to whom a case or proceeding has been assigned. If the compensation judge assigned to hear the matter and the grounds for disqualification are known, the motion for disqualification shall be filed with the chief hearing examiner not more than ten (10) days after the moving party has received notice of the assignment of the judge to the hearing. In no event shall any such motion be entertained after the swearing of the first witness. The motion shall be determined by the chief hearing examiner or his designee. The fact that a compensation judge has previously determined a similar case contrary to the interests of the moving party in the pending case shall not be grounds for disqualification.

9 MCAR § 2.313 Prehearing procedures.

A. All cases shall be subject to a settlement conference or a prehearing conference whenever possible, at which all parties shall attend or be represented, unless a settlement judge or calendar judge orders otherwise. If parties are represented by attorneys, the attorneys ~~who will actually appear at the hearing shall attend the settlement or prehearing conference, bringing~~ shall bring with them their appointment calendars. If a party is not represented by an attorney, the party shall appear personally and shall be prepared to arrange agreeable dates for the regular hearing. Parties or their attorneys attending a settlement or prehearing conference must have authority to settle their respective claims.

B. Prior to any settlement or prehearing conference, the parties shall discuss the possibility of settlement if they deem that a reasonable basis for settlement exists. Parties or attorneys appearing at a settlement or prehearing conference shall be prepared to participate in ~~a~~ settlement ~~conference~~ discussions.

C. At the settlement or prehearing conference:

1. All parties shall be prepared to state the issues;

2. All parties shall state the names, and addresses if known, of all witnesses they intend to call;

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.

3. All parties shall give notice of any amendments to pleadings that may still be necessary;

4. All parties shall file copies of all medical reports not already on file. Reports of medical examinations completed after any settlement conference or prehearing conference shall be filed as soon as available prior to the regular hearing;

5. Each party shall state what exhibits, including, but not limited to, photographs, motion picture films, video tapes and documentary evidence, are intended to be used at the hearing, and copies of these exhibits shall be made available to opposing counsel no later than 10 days prior to the date of the regular hearing~~,~~; provided, however, that if any party requests showing of motion picture films or video tapes prior to the regular hearing, ~~they~~ it shall pay the expense for such showing and may tax this expense in the same manner as other ~~costs and~~ disbursements;

6. If the employee plans to introduce hospital records into evidence, the employee or his attorney shall bring to the settlement or prehearing conference written authorizations for opposing counsel to examine those records if such authorizations have not previously been provided;

7. If the employee is claiming medical or other treatment expenses, the employee or the attorney shall state those expenses at the time of the settlement or prehearing conference, and shall furnish opposing counsel with copies of itemized bills for such expenses at least 10 days prior to the settlement or prehearing conference;

8. If the employee is claiming temporary total disability, the employee or attorney shall state at the settlement or prehearing conference the dates of time lost from work;

9. If the employee is claiming temporary partial disability, the employee or attorney shall state the dates of such claim, the approximate amount of such claim, and the names and addresses of the employers for whom the employee worked during the period of such claim; authorizations to permit opposing counsel to confirm wages earned in those employments shall have been furnished at least 10 days prior to the scheduled settlement or prehearing conference; and, an itemized breakdown of the claim for temporary partial disability shall be submitted to the ~~settlement or calendar~~ compensation judge and opposing counsel at least 10 days prior to the time of the ~~settlement or prehearing conference~~ regular hearing;

10. The ~~applicant or attorney for the applicant~~ parties or their attorneys shall state whether payment for disability benefits, on medical or treatment expenses, or on funeral expenses has been made by any party other than the workers' compensation carrier ~~for disability benefits, on medical or treatment expenses, or on funeral expenses~~. If payment has been made, the name and address of the party making payment shall be furnished to the settlement or calendar judge ~~at the settlement or prehearing conference~~, together with any identifying policy or claim numbers;

11. If a dispute exists on the wage rate at the time of the injury, the attorney for the employer and insurer shall furnish to opposing counsel at least 10 days prior to the settlement or prehearing conference, copies of the relevant wage records of the employee;

12. The ~~applicant or~~ attorney for the ~~applicant~~ employee or dependents shall furnish to the settlement or calendar judge~~, at the settlement or prehearing conference,~~ a copy of his retainer agreement with the employee or dependents and shall state the amount of retainer fee paid. He shall be prepared at the time of hearing or settlement to show the reasonableness of any attorney's fees or costs, in accordance with Minn. Stat. § 176.081.

D. At the time a case is first set for a settlement or prehearing conference, if the information is not already on file, the settlement judge or calendar judge may order the parties to complete, serve on each other and file a prehearing statement which shall contain any of the items in C. above, which the settlement or calendar judge deems appropriate. In making a determination on the requirement of the preparation of prehearing statements, the settlement or calendar judge shall take into consideration the number of parties involved in the case, the nature and extent of the medical issues, and the nature ~~and~~, extent ~~of the~~ and type of disability claimed.

9 MCAR § 2.314 Discovery.

A. Demand. Each party shall, within ~~10~~ 30 days of a demand by another party, disclose or furnish the following:

1. The names and addresses of all witnesses that a party intends to call at the regular hearing. All witnesses unknown at the time of said disclosure shall be disclosed as soon as they become known if a prior demand has been made.

2. Any relevant written or recorded statements made ~~by the party or~~ by witnesses on behalf of a party. The demanding party shall be permitted to inspect and reproduce any such statements which reproduction shall be at the expense of the party requesting reproduction. Any party unreasonably failing upon demand to make the disclosure required by this rule, upon proper motion made to the compensation judge~~, shall~~ at the time of trial, may be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

3. Medical privilege shall be deemed waived as to the injuries or conditions alleged in the petition by the filing of the petition alleging injury or ~~illness~~ occupational disease. Medical authorizations shall be furnished, upon demand, to adverse

parties. Likewise, any and all medical reports shall be provided, upon demand, to all adverse parties. ~~Written interrogatories may be utilized for the purposes of discovering medical information. When interrogatories are utilized, the Rules of Civil Procedure for the District Courts in the State of Minnesota shall apply~~ Upon demand, the petitioner shall disclose the names and addresses of all persons who have treated the petitioner in the past for injuries or conditions identical or similar to those alleged in the petition, the dates of the treatment, and shall provide medical authorization for each.

B. ~~Requests for admissions. A party may serve upon any other party a written request for the admission of relevant facts or opinions, or of the application of law to relevant facts or opinions, including the genuineness of any document. The request must be served at least 15 days prior to the regular hearing and it shall be answered in writing by the party to whom the request is directed within 10 days of receipt of the request. The written answer shall either admit or deny the truth of the matters contained in the request or shall make a specific objection thereto. Failure to make a written answer shall result in the subject matter of the request being deemed admitted.~~

~~C.~~ Depositions. Pursuant to the provisions of Minn. Stat. § 176.411, subd. 2, depositions may be taken in the manner which the law provides for depositions in civil actions in the district courts for the state, except where a compensation judge orders otherwise. When a party has objected to the taking of a deposition, the party requesting the deposition shall bring a motion before the settlement, compensation or calendar judge, before whom the case is pending at the time of the motion, who shall determine whether the deposition should go forward. The settlement, compensation or calendar judge shall order the deposition to proceed if he/she finds that the request for the taking of the deposition has been shown to be needed for the proper presentation of a party's case, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive discovery.

Depositions for the purpose of preserving testimony or for presenting medical testimony due to the unavailability of the doctor shall be allowed. ~~Such deposition testimony shall be taken prior to the regular hearing~~ Unless, for good cause shown, the party taking such deposition has obtained the permission of the calendar judge, or compensation judge if the case has been assigned for hearing, to take such deposition subsequent to the hearing, it shall be taken sufficiently in advance of the hearing so that the deposition is filed prior to the regular hearing or, at the latest, on the day of the regular hearing.

The original copy of any deposition taken for purposes of presenting testimony in the case shall be filed with the settlement judge if the case is still pending before the settlement judge or with the Office of Administrative Hearings if the matter has been referred to the chief hearing examiner for assignment. The original copy of any deposition taken solely for purposes of discovery shall be sealed and filed as in the case of evidentiary depositions but shall not be reviewed or utilized in any fashion by the compensation judge unless the deposition shall be formally entered as evidence in the case.

~~D.~~ C. Motions for additional discovery. Upon the motion of any party, the settlement, compensation or calendar judge having jurisdiction at the time of the motion may order discovery of any other relevant material or information, recognizing all privileges recognized by law. The ~~calendar~~ judge may order any means of discovery available pursuant to the Rules of Civil Procedure for the District Courts of the State of Minnesota provided that the request for such discovery can be shown to be needed for the proper presentation of a party's case, ~~are~~ is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive discovery.

~~E.~~ D. Penalties. Upon the failure of a party to reasonably comply with these rules relating to discovery or with an order of ~~the~~ a settlement, compensation or calendar judge made pursuant to this rule, upon a motion properly made at the time of the hearing, the compensation judge assigned to the regular hearing ~~shall~~ may make a further order as follows:

1. An order that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the proposes of the case in accordance with the claim of the party requesting the order~~,~~; or

2. An order refusing to allow the party failing to comply to support or oppose designated claims or defenses, or prohibiting him/her from introducing designated matters in evidence.

~~F.~~ E. Proprietary information. When a party is asked to reveal material which he/she considers to be proprietary information or trade secrets, he/she shall bring the matter to the attention of the appropriate judge, who shall make such protective orders as are reasonable and necessary or as otherwise provided by law.

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.

9 MCAR § 2.315 ~~Motions~~ Petitions for contribution or reimbursement.

A. ~~Motions~~ Petitions for contribution or reimbursement shall set forth in detail the allegations showing the basis of the claim for contribution or reimbursement against the additional employer or insurer named therein, or of the claim for reimbursement against the State Treasurer, Custodian of the Special Compensation Fund. The petition shall be supported by medical evidence, and shall be signed and verified. The original ~~motion~~ petition shall be filed with the settlement judge if the matter is pending before the division or with the chief hearing examiner if the matter has been referred for assignment, together with proof of service upon the employee or his attorney and all additional ~~employers or insurers~~ parties named therein.

B. In all cases where a claim petition or other form of action is pending, ~~said motion~~ a petition for contribution or reimbursement shall be filed no later than ~~30~~ 10 days prior to a settlement or prehearing conference, and copies of all pleadings, including any notice of settlement or prehearing conference shall be served upon the additional employers or insurers by the party bringing said ~~motion~~ petition. In cases where no action is pending, the filing of the ~~motion~~ petition for contribution or reimbursement with the division shall initiate proceedings.

C. Within ~~10~~ 20 days after being served with a copy of ~~the motion~~ a petition for ~~reimbursement or~~ contribution or reimbursement, employers or their insurers, other than the ~~paying~~ petitioning party, may file a verified answer to the ~~motion~~ petition in accordance with the provisions of Minn. Stat. § 176.321 and, if not already set for settlement or prehearing conference, the matter shall be set for a settlement or prehearing conference in accordance with these rules.

D. The employee shall be ~~deemed a necessary party to~~ notified of all of the proceedings and should be represented by an attorney of his/her choice. A copy of all motions or answers shall be duly served upon the employee and/or his/her attorney in accordance with Minn. Stat. § 176.321.

9 MCAR § 2.316 Subpoenas. Subpoenas may be obtained without charge from the Workers' Compensation Division or the Office of Administrative Hearings. The name and address and telephone number of the party or attorney requesting service of the subpoena will be included on the subpoena before service is made. When service is made, service and witness fees shall be tendered in accordance with Minn. Stat. § 357.22.

Upon motion promptly made, and in any event at or before the time specified in the subpoena for compliance therewith, the calendar judge or compensation judge, if the case has been assigned for regular hearing, may quash or modify the subpoena if he/she finds that it is unreasonable or oppressive.

9 MCAR § 2.317 The hearing.

A. A place, date and time certain will be assigned to each case. Notice of the hearing will be given as soon as the assigned date is known, but shall be given at least ~~10~~ 5 days in advance of the hearing. The notice will include the place of hearing and the amount of time allowed for the hearing. Cases will be set for one location only, which shall be that most convenient for the petitioner, and adequate time will be allowed so that the case may be completely heard in one setting. In the event that an additional hearing date is required, it shall be set by agreement of all parties and the compensation judge. If the parties cannot agree, the compensation judge shall set the hearing as provided herein.

B. As soon as the parties are apprised of the date scheduled for hearing, they shall immediately notify all medical witnesses in writing and arrange for their presence or for the taking of their deposition pursuant to 9 MCAR § 2.314 ~~C~~ B.

C. The production of medical evidence in the form of written reports, by stipulation of the parties, is encouraged. These reports should include:

1. The date of the examination;
2. The history of the injury;
3. The patient's complaints;
4. The source of all facts set forth in the history and ~~complaint~~ complaints;
5. Findings on examination;
6. Opinion as to the extent of disability and work limitations, if any;
7. The cause of the disability and, if applicable, whether the work injury was a substantial contributing factor toward such disability;
8. The medical treatment indicated;
9. Opinion as to whether or not permanent disability has resulted from the injury and whether or not ~~it is stationary~~ the condition has stabilized. If ~~stationary~~ stabilized, a description of the disability with a complete evaluation; and

10. The reason or reasons for the opinion or opinions.

D. Rights of parties. All parties shall have the right to present evidence, to cross-examine witnesses, and to present rebuttal testimony ~~and argument with respect to the issues~~.

E. Witnesses. Any party may be a witness or may present witnesses on his behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation. At the request of a party or upon his own motion for good cause, the compensation judge may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

F. Rules of evidence.

1. Pursuant to Minn. Stat. § 176.411, subd. 1, the compensation judge is bound neither by the common law or statutory rules of evidence nor by technical or formal rules of pleading or procedure.

2. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of any party, or a true and correct photocopy thereof, shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case. Any independent investigation by the compensation judge pursuant to the provisions of Minn. Stat. § 176.391, subd. 1, shall be part of the record provided all parties are aware of the investigation and have had an opportunity to participate in it.

3. Documentary evidence. Documentary evidence in the form of copies of excerpts may be received or incorporated by reference upon agreement of the parties or if ordered by the compensation judge.

4. Notice of facts. The compensation judge may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

5. Examination of adverse party. A party may call an adverse party or his managing agent or employees or an officer, director, managing agent or an employee of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate them by leading questions and contradict and impeach them on material matters in all respects as if they had been called by the adverse party. The adverse party may be examined by his counsel upon the subject matter of his/her examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the testimony.

G. The record.

1. The compensation judge shall maintain the official record, other than the stenographic notes of a hearing reporter if one was used, in each case until the issuance of his/her final order~~, at which time the record shall be maintained by the Office of Administrative Hearings until the time for appeal of the compensation judge's order has elapsed at which time the record shall be referred to the department~~.

2. The record in a compensation case shall contain:

a. All pleadings, motions and orders, including the judgment roll and the entire record from any previous hearing which is relevant to the issues under consideration;

b. Evidence received or considered unless, through agreement of the parties or by order of the compensation judge, custody of an exhibit is given to one of the parties;

c. Those parts of the official file on the matter at the division which the compensation judge incorporates;

~~c.~~ d. Offers of proof, objections and rulings thereon;

~~d.~~ e. The compensation judge's ~~findings of fact, conclusions and~~ order;

~~e.~~ f. All memoranda or data submitted by any party in connection with the case; ~~and~~

~~f.~~ g. A transcript of the hearing, if one was prepared~~.~~; and

~~g.~~ h. The audio-magnetic recording tapes, if that device was used to record the hearing.

3. The transcript. The verbatim record shall be transcribed if requested by a party. If a transcription is made, the chief hearing examiner shall require the requesting person and other persons who request copies of the transcript to pay a reasonable

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.

charge therefor if transcribed by the office. ~~The charge shall be set by the chief hearing examiner and all monies received for transcripts prepared by the Office of Administrative Hearings shall be payable to the State Treasurer and shall be deposited in the State Office of Administrative Hearings' account in the State Treasury.~~

H. Continuances during the hearing. If it appears in the interests of justice that further testimony should be received, the compensation judge, in his/her discretion, may continue the hearing to a future date and such oral notice on the record shall be sufficient if given at the time of the original hearing. Otherwise, the notice of the date for the continued hearing date shall be in writing and served on all parties.

I. Hearing procedure.

1. Compensation judge conduct. The compensation judge shall not communicate, directly or indirectly, in connection with any issue of fact or law with any party concerning any pending case, except upon notice and opportunity for all parties to participate.

2. Unless the compensation judge determines that the ~~public interest will be equally served otherwise~~ substantial rights of the parties will be ascertained better in some other manner, the hearing shall be conducted substantially in the following manner:

a. After opening the hearing, the compensation judge shall, unless all parties are represented by counsel, state the procedural rules for the hearing.

b. Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing shall be entered into the record.

c. If the compensation judge requests opening statements, the party with the burden of proof ~~may make an opening statement~~ shall proceed first. All other parties ~~may~~ shall make such statements in a sequence determined by the compensation judge.

d. After any opening statements, the party with the burden of proof shall begin the presentation of evidence. That party shall be followed by the other parties in a sequence determined by the compensation judge.

e. Cross-examination of witnesses shall be conducted in a sequence determined by the compensation judge.

f. When all parties and witnesses have been heard, if the compensation judge believes that legal issues remain unresolved, opportunity ~~shall~~ may be afforded to present final argument, in a sequence determined by the compensation judge. Final argument may, in the discretion of the compensation judge, be in the form of written memoranda or oral argument, or both. Oral final argument shall not be recorded, unless requested by a party or upon the order of the compensation judge. Written memoranda shall, when allowed, be submitted simultaneously or sequentially and within such time periods as the compensation judge shall prescribe. Final arguments shall be limited to legal issues only.

g. After final argument, if any, the hearing shall be closed or continued if ordered by the compensation judge. If continued, it shall be either continued to a certain time and day, which shall be announced at the time of the hearing and made a part of the record, or continued to a date to be determined later, which must be upon not less than ~~five~~ 15 days written notice to the parties.

h. The record of the case shall be closed upon receipt of the final written memorandum, transcript, if any, or late-filed exhibits which the parties and the compensation judge have agreed should be received into the record, whichever occurs ~~latest~~ last.

J. Disruption of hearing.

1. Cameras. No television, newsreel, motion picture, still or other camera, and no mechanical recording devices, other than those provided by the Office of Administrative Hearings, shall be operated in the hearing room during the course of the hearing unless permission is obtained from the compensation judge and then subject to such conditions as the compensation judge may impose to avoid disruption of the hearing.

2. Other conduct. Pursuant to and in accordance with the provisions of Minn. Stat. § 624.72, no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the compensation judge shall read this rule to those persons causing such interference or disruption and thereafter proceed as he/she deems appropriate.

9 MCAR § 2.318 The compensation judge decision.

A. Basis for the decision.

1. The record. No factual information or evidence which is not a part of the record shall be considered by the compensation judge in the determination of the case.

2. Administrative notice. The compensation judge may take administrative notice of general, technical or scientific facts within his/her specialized knowledge in conformance with the requirements of Minn. Stat. § 15.0419, subd. 4 provided that notice of the taking of such administrative notice is given ~~an~~ and opportunity ~~and~~ has been provided to all parties to rebut the facts sought to be noticed.

B. Compensation judge decisions.

1. Following the close of the record, the compensation judge shall prepare his/her decision and, upon completion, ~~a copy of said decision shall be served upon all parties by personal service, by first class mail, or by depositing it with the Central Mailing Section, Publications Division, Department of Administration~~ shall immediately file it with the commissioner who shall serve it on all parties as required by Minn. Stat. § 176.281.

2. The compensation judge's decision shall contain the following:

a. The date~~, time~~ and location of the hearing and the compensation's judge's name.

b. Appearances by parties, if pro se, or their attorneys, giving the full name and mailing address (including zip code) of each.

c. The date on which the record of the hearing closed.

d. A notice of the right of parties to appeal~~,~~ and how the appeal can be perfected~~, and a notice that a request for rehearing or reconsideration may be made and how such request can be accomplished~~.

e. ~~A statement of the issues. This shall be a brief statement or the reason or reasons the hearing was necessary. This statement may be broken into sub-issues.~~

~~f.~~ The decision shall contain findings of fact, conclusions and a ~~decision~~ determination on each issue raised. In cases involving a multiplicity of issues, the compensation judge may organize the ~~findings of fact, conclusions and~~ decision by major sub-issues if he/she determines that organizing the decision in that manner will aid the reader in understanding the contents thereof.

~~C. Findings of fact.~~

~~1. Undisputed facts shall be included in the decision but may be disposed of a summary finding.~~

~~2. There shall be specific findings on all major, disputed facts.~~

~~3. Findings shall be express rather than inferential.~~

~~4. Findings shall be clear, concise and based solely on the evidence in the record before the compensation judge.~~

~~5. All facts necessary to reach a conclusion of law shall be included and shall be specific.~~

~~6. Findings shall not be a summarization of the position of parties but shall be a statement of the compensation judge's decision on what the facts are.~~

~~D. Conclusions.~~

~~1. Conclusions shall be based upon the specific findings of fact and the applicable law and shall not set forth new facts.~~

~~2. Conclusions shall be clear, concise and specific.~~

~~3. Conclusions shall not rest upon a point which was not raised at the hearing or in briefs or argument. If the compensation judge determines that some unexplored issue may be dispositive, he/she shall request supplementary briefs or memorandum.~~

~~4. Conclusions shall be stated with respect to all legal issues involved, whether disputed or not.~~

~~E. Order. The order shall be clear, concise and specific, and shall include a decision on all issues raised by the hearing.~~

~~F. Memorandums. In each case, the compensation judge shall file a memorandum as part of his order which shall state the~~

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

~~rationale and support of the findings, conclusions and decisions on each issue in dispute. Memorandums shall include, where appropriate, the compensation judge's determination on credibility of witnesses.~~

~~G.~~ C. Compensation judge decisions shall be clear and concise and shall be written in a prose style which can be read and understood by persons of average intelligence. English rather than Latin terms shall be used unless it is necessary to utilize the Latin terminology.

~~H.~~ D. Any party may file a proposed decision with the compensation judge before the record is closed. Any proposed decision submitted shall conform to the provisions of these rules, shall be served on all other parties and shall be in a form which would allow the compensation judge to sign and issue the decision if it is acceptable.

9 MCAR § 2.319 Rehearing ~~and/or reconsideration~~.

~~A.~~ When a compensation judge has issued his/her findings, conclusions and decision, his/her jurisdiction over the case shall end ~~after the time in which to appeal to the Workers' Compensation Court of Appeals has expired~~, except for taxation of disbursements or awarding of attorney's fees, unless the matter is re-referred to the compensation judge by the Court of Appeals ~~or~~ and the chief hearing examiner for supplemental findings, taking of additional testimony, rehearing, or ~~the correction of a clerical error~~ other action; provided that compensation judges may correct clerical errors in decisions at any time prior to appeal.

~~B. Motions for rehearing or reconsideration shall be filed with the compensation judge who heard the case if the time for appeal to the Court of Appeals has not expired, otherwise it shall be filed with the calendar judge. A motion for rehearing or reconsideration shall be denied if it contains no more than allegations of the statutory grounds for reconsideration, unsupported by specific references to the record and principles of law involved. The motion shall be served on all other parties who have been joined in the proceedings at the same time the motion is filed with the judge. Failure to provide proof of such service shall constitute valid grounds for dismissing the motion.~~

~~C. Newly discovered evidence and fraud allegations. Where reconsideration is sought upon the ground of newly discovered evidence which could not with reasonable diligence have theretofore been produced or on the ground that the decision had been procured by fraud, the motion must contain an offer of proof, specific and detailed, providing:~~

~~1. The names of witnesses to be produced;~~

~~2. A summary of the testimony to be elicited from such witnesses;~~

~~3. A description of such documentary evidence as is to be offered;~~

~~4. The effect it is contended such evidence will have on the record and on the prior decision;~~

~~5. As to newly discovered evidence, a full and accurate statement of the reasons why such testimony or exhibits could not reasonably have been discovered or produced before the filing of the decision.~~

~~A motion for reconsideration shall be denied if it fails to meet the requirements of this rule or if it is based upon cumulative evidence.~~

~~D. Where rehearing or reconsideration has been granted, and the case referred to a compensation judge for hearing, the compensation judge shall, upon the conclusion thereof, prepare a decision in the same fashion as required for decisions following original hearings.~~

9 MCAR § 2.320 Settlements.

A. Stipulations for settlement are allowed pursuant to Minn. Stat. § 176.521 and shall conform to that section and to the requirements of this rule.

B. All stipulations for settlement shall be filed within 30 days of the date the settlement was negotiated.

C. Stipulations for settlement shall be filed with and approved by ~~a settlement judge of the Department of Labor and Industry~~ the commissioner of his/her designee if the case has not been referred to the chief hearing examiner.

D. Stipulations for settlement reached and agreed upon subsequent to the referral of the case to the chief hearing examiner shall be filed with and subject to approval by the compensation judge assigned to hear the case or the calendar judge if the matter has not yet been assigned.

E. Stipulations for settlement shall contain the following information;

1. A brief statement of all of the admitted material facts;

2. A detailed statement of the matters in dispute, setting forth the contentions of the parties, supported by all medical reports or other documents in the possession of each party pertaining to each issue;

3. The weekly wage and compensation rate of the employee;

4. An itemization of the sums, if any, previously paid by the employer and insurer;

5. A statement that all medical or treatment expenses have been paid by the employer and insurer, or an itemization of the expenses which have not been paid by the employer and insurer, indicating which payments, if any, have been made by the employee. The stipulation shall specifically state whether any third party has paid any of the expenses and, if payments have been made, shall include the name and address of such third party together with any identifying claim or policy number;

6. The number of weeks and rate of compensation and, in cases of permanent partial disability, the percentage loss or loss of use upon which the compromise agreement is based;

7. Where applicable, the amount payable by the employer and insurer to the workers' compensation division for the benefit of the Special Compensation Fund;

8. Where applicable, a statement that the employee has been fully advised of the provisions of Minn. Stat. §§ 176.132 and 176.645, and the effect of the settlement upon any future claims for supplementary benefits or adjustment of benefits;

9. Where applicable, a statement that the employee is claiming or waiving his/her right to make application for an award of attorney's fees against the employer or insurer pursuant to Minn. Stat. §§ 176.081, subd. ~~1~~ 7 or 8, ~~or Minn. Stat. §~~ 176.135 or 176.191.

F. Stipulations for settlement of cases in which the employee or dependents have engaged ~~in~~ the services of an attorney shall ~~contain~~ be accompanied by a statement of the amount of attorney's fees requested and an itemization of the costs incurred, specifying who will be responsible for payment of each cost~~. It shall be accompanied by a written petition for attorney's fees and costs providing~~, and shall provide sufficient information to show the reasonableness of the requested fees and costs in accordance with Minn. Stat. § 176.081. If no fees are requested, the stipulation shall so state.

G. Stipulations for settlement shall be accompanied by copies of all medical reports in the possession of the parties which have not previously been filed.

H. The parties involved in the settlement shall submit an ~~Order Approving~~ award on stipulation prepared for signature by the applicable judge ~~which shall be submitted with~~ and sufficient copies thereof for all parties to ~~receive~~ be served if the settlement is approved.

I. The attorney representing the employee or dependents shall furnish a copy of the stipulation for settlement to his/her client at the time the client signs the stipulation.

J. Stipulations for settlement shall be signed by all parties as required by Minn. Stat. § 176.521.

K. The employer and insurer shall make payments pursuant to an award on stipulation within 14 days from the date the award on stipulation is served.

9 MCAR § 2.321 Attorney fees.

A. Whenever an employer or insurer ~~receive~~ receives notice that an attorney is representing an employee or dependent, 25% of the compensation, not including medical expense, shall be withheld pending an order determining the reasonable value of any claim for legal services or disbursements pursuant to Minn. Stat. § 176.081. Written notice that such compensation is being withheld shall immediately be mailed to the employee or dependents, the attorney and the division at its Saint Paul office.

B. In applicable cases, the filing of a claim petition or an objection to discontinuance of compensation shall constitute an application for the award of attorney fees against the employer and insurer pursuant to Minn. Stat. § 176.081, subd. 7.

C. Application for determination and approval of any claim for legal services or disbursements may be filed by the employer or insurer, the ~~employer~~ employee or dependents or the attorney. Application for attorney fees shall be by written petition ~~and shall be on a form prescribed by the~~ Division. Any application shall disclose the amount of compensation withheld, the total fees or disbursements previously paid to said attorney or his associates and, if filed by the attorney ~~or~~ for the ~~employer~~ employee or dependents, the amount of any retainer fee paid. Applications filed by attorneys shall contain sufficient information to show the reasonableness of the requested fees in accordance with Minn. Stat. § 176.081, subd. 5 ~~and shall be served by the attorney on all parties~~.

D. A separate application is not necessary if filed as part of a stipulation for settlement as provided in these rules.

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.

E. Applications under this rule shall be filed with the commissioner unless the case has been referred to the chief hearing examiner for assignment, in which case it shall be filed with the compensation judge assigned to hear the case or the calendar judge if no assignment has been made.

9 MCAR § 2.322 Taxation of costs and disbursements.

A. Service of the request for taxation of costs and disbursements shall be made upon the other parties, or their attorneys, by the taxing party.

B. ~~The~~ An opposing party has five working days from the date of service upon him in which to serve and file a formal objection to taxation or allowance, with admission or proof of service upon the other parties.

C. If requested, a time for hearing before the ~~calendar~~ compensation judge who heard the case shall be fixed. A notice thereof shall be given to the parties by the ~~calendar~~ compensation judge.

9 MCAR § 2.323 Second injury law.

A. Application for registration of physically impaired employees shall be ~~on forms~~ in a format prescribed by the division and submitted pursuant to rules of the commissioner.

B. Should the commissioner deem the application unacceptable prior to the subsequent injury, the applicant may, within 60 days following receipt of notice of rejection, petition to the division, in writing, for hearing upon the application. A copy of said petition shall be served by the applicant upon the State Treasurer, custodian of the Special Compensation Fund, and upon the Attorney General. Upon receipt of said petition, the commissioner shall refer the matter to the chief hearing examiner for hearing which hearing shall be conducted by a compensation judge as provided by Minn. Stat. § 176.411, with right of appeal.

C. If a dispute arises following the notice of intention to claim reimbursement under Minn. Stat. § 176.131, subd. 6, the commissioner shall refer the matter to the chief hearing examiner who shall assign the matter to a compensation judge for hearing which hearing shall be conducted as provided by Minn. Stat. § 176.411, with right of appeal.

9 MCAR § 2.324 Other hearings. Pursuant to the provisions of Minn. Stat. § 15.052, subd. 3, all hearings not discussed herein but required to be conducted by a compensation judge of the Office of Administrative Hearings shall be conducted in substantial compliance with these rules provided, however, that in any dispute wherein an immediate hearing is necessary in order to carry out the purpose and intent of the Minnesota Workers' Compensation Law, the notice of hearing shall be given not less than five working days prior to the hearing date. The chief hearing examiner shall provide expedited assignment of compensation judges to these hearings and shall assign compensation judges to the hearings in a manner which will allow the compensation judge's decision to be issued immediately upon conclusion of the hearing or as soon thereafter as may be reasonable and practical.

9 MCAR § 2.325 Severability. If any provision of these rules is held invalid, such invalidity shall not affect any other provisions of the rules which can be given effect without the invalid provision, and to this end the provisions of these rules are declared severable.

State Board of Education
Department of Education
School Management Services Division

Adopted Rules Governing Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth Who Are Handicapped

The rules proposed and published at *State Register*, Volume 5, Number 34, pp. 1291-1292, February 23, 1981 (5 S.R. 1291) are now adopted with the following amendments:

Rules as Adopted

Chapter Seven: Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth who are Handicapped

5 MCAR § 1.0127 Formal notice to parents.

A. General notice provisions.

5. All notices must be sufficiently detailed and precise to constitute adequate notice for hearing of the proposed action and contain a full explanation of all of the procedural safeguards available to parents under the provision of these rules. All notices must:

e. inform the parents that they may:

(1) obtain an independent assessment at their own expense;

(2) request from the district information about where an independent assessment may be obtained;

(3) obtain an independent assessment at public expense if the parent disagrees with an assessment obtained by the public agency. However, a district may initiate a due process hearing to show that its assessment is appropriate after at least one conciliation conference. If the final decision is that its assessment is appropriate, the parents still have the right to an independent assessment but not at public expense. Whenever an independent evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the public agency uses when it initiates an evaluation.

State Board of Education
Department of Education
Special Services Division

Adopted Rules Governing Prohibition of Discriminatory Practices in Athletic Programs in Public and Private Elementary and Secondary Schools

The rules proposed and published at *State Register*, Volume 5, Number 34, pp. 1295-1298 February 23, 1981 (5 S.R. 1295) are now adopted with the following amendments:

Rules as Adopted

Chapter Thirty-Three: Prohibition of Discriminatory Practices in Education

5 MCAR § 1.0668 Definitions. All the words below shall have the meaning herein ascribed to them:

D. "Participate"—Means for interscholastic sports, a student has been selected by the coach to be a member of a particular athletic team, inclusive of ~~both~~ varsity, ~~and~~ junior varsity, and sophomore teams, after the try-out period has ended.

5 MCAR § 1.0669 Separation by teams.

A. Athletic programs for students in the seventh grade or above may include one or more teams limited to participants of one sex whose overall athletic opportunities have previously been limited. Athletic programs for students in the sixth grade or below shall be operated without restrictions on the basis of sex, except that when overall athletic opportunities for one sex have previously been limited and there is demonstrated interest by members of that sex to participate on a team restricted to members of that sex, the educational institution may provide a team restricted to members of that sex. The educational institution shall make a biennial determination of students' demonstrated interest. The method used shall be reported to the Department of Education in conjunction with the report required by 5 MCAR § 1.0671. ~~may contain one or more teams which are limited to participants of one sex whose overall athletic opportunities have previously been limited and who by demonstrated interest indicate a desire to participate on a team restricted to members of that sex.~~

E. When an equal opportunity to participate is not provided to members of a sex whose overall athletic opportunities to participate have previously been limited, the school, where there is a demonstrated interest, shall provide separate teams ~~for the excluded sex~~ in sports which it determines will provide members of the excluded sex with an equal opportunity and which will attempt to accommodate ~~will provide equal opportunity and accommodate~~ their demonstrated interest.

5 MCAR § 1.0670 Duties of schools; penalty for failure to comply.

A. Public and private elementary and secondary schools shall make a biennial determination of student demonstrated interest. Schools shall report the method used to make the determination to the Department of Education as part of 5 MCAR § 1.0671. The first biennial determination shall be made prior to the end of the 1981-82 school year.

Student demonstrated interest shall be considered in the selection of those athletic activities to be provided in the athletic program for the purpose of providing separate teams or sports for members of previously excluded sex.

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.

[A. has been relettered B.]

~~1. A biennial determination of student demonstrated interest is to be conducted by use of a methodology the nature of which will be reported to the Department of Education in conjunction with the report required by 5 MCAR § 1.0671. The first biennial determination shall be made prior to the end of the 1981-82 school year.~~

~~Student demonstrated interest shall be considered in the selection of those athletic activities to be provided in the athletic program for the purpose of providing separate teams or sports for members of the previously excluded sex.~~

[2.-6. have been renumbered 1.-5.]

C. ~~B.~~ When two teams in the same sport are provided pursuant to 5 MCAR § 1.0669 A., the two teams shall be treated in a substantially equal manner. Public and private elementary and secondary school shall accomplish this to the extent that they are applicable in a given situation by providing that:

5. the amount of coaching provided for members of each team is comparable.

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
County of Hennepin

St. Louis Park Medical Center Research Foundation,

Appellant,

v.

The Commissioner of Revenue,

Respondent.

Tax Court
Regular Division

Docket No. 3256

Findings of Fact, Conclusions of Law, and Order for Judgment

Order dated 8-21-81.

A Pre-Trial Hearing was held on April 29, 1981, in the Government Center, City of Minneapolis, before the Honorable Carl A. Jensen, Judge of the Minnesota Tax Court. The parties stated there was no issue as to the facts and that the case could be decided on Briefs to be filed by the parties. Such Briefs have been filed.

D. James Nielsen and James M. Christenson of Thompson, Nielsen, Klaverkamp & James, P.A., appeared on behalf of the Appellant.

Robert T. Rudy, Assistant Hennepin County Attorney, appeared for Respondent.

Syllabus

Where it is agreed that a portion of the building qualifies for tax-exempt status, some portion of the underlying land must be attributed to the tax exempt purpose. The pro rata exempt status percentage applied to the building would ordinarily be applied to the underlying land unless it appears that the percentage of use of the land for exempt purposes is different than the percentage of use of the building.

Finding of Fact

1. At the pre-trial hearing of this matter, the parties agreed that the facts were not in dispute and the matter could be submitted on Briefs. This Court finds that there are questions of fact to be determined and the Court has insufficient evidence to determine these facts.

2. The Commissioner of Revenue determined that 60.9% of one building was entitled to tax-exempt status and that 0% of the underlying land was entitled to tax-exempt status. The commissioner further found 2.8% of another building was entitled to tax-exempt status and that 0% of the underlying land was entitled to tax-exempt status.

3. If a portion of a building is entitled to tax-exempt status some portion of the underlying land will be entitled to tax-exempt status.

4. The percentage of tax-exempt status for a building may be different than the percentage of tax-exempt status for the underlying land.

5. This matter should be remanded to the commissioner to determine the percentage of land that should receive tax-exempt status. From the Brief of Respondent, it appears that Respondent claims that the commissioner allocated a higher percentage of tax-exempt status to the buildings because he took into consideration the fact that he was not allocating any tax-exempt status to the underlying land. If this is correct, the commissioner should correct the percentage of allocation of the building for tax-exempt status and should make a determination of tax-exempt status percentage for the underlying land.

6. It is possible that the percentage of tax-exempt status of a building may be different than the percentage of tax-exempt status of the underlying land. One reason that this could be true would be that the land not used for the building could be used for parking and it could be that the percentage of parking space needed for the tax-exempt purposes would be different than the percentage of the building used for tax-exempt purpose. There might also be other reasons why the percentages would be different. In many cases the percentages would be the same.

Conclusions of Law

1. This matter is remanded to the Commissioner to determine the percentages of tax-exempt status for the subject buildings and land consistent with the Findings of Fact contained herein.

IT IS SO ORDERED. A STAY OF 15 DAYS IS HEREBY ORDERED.

Carl A. Jensen
Judge, Minnesota Tax Court

Memorandum

We agree with both parties that *Christian Businessmen's Committee v. State*, 228 Minn. 549, 38 N.W. 2d 803 (1949), is the controlling case. Headnote No. 7 states the following:

"7. When a building is owned by a charitable or other tax-exempt institution and one substantial part thereof is directly, actually, and exclusively occupied by such institution for the purposes for which it was organized and another substantial portion thereof is primarily used for revenue by rental to the general public, such building with the grounds thereof is pro rata exempt from taxation and pro rata taxable according to its separate uses, and it should be assessed and taxed on that portion of its proper assessable value allocated to the taxable use, after deducting from its over-all assessable value the portion thereof properly allocated to the proportionate tax-exempt use."

Appellant argues that the Supreme Court required that the same pro rata percentage of tax-exempt status be applied to both the building and the underlying land. We find that although this may generally be the case that there are situations where the percentages to be applied to the building and to the land would be different. One reason for such difference would be that the portion of the building used for tax-exempt status might require no parking area, whereas, the non-tax-exempt portion might require extensive parking area. There are undoubtedly other reasons that the applicable percentages could be different.

We find that where a portion of a building is entitled to tax-exempt status some portion of the underlying land must also be entitled to tax-exempt status. The Commissioner's finding is clearly erroneous and the matter is remanded to the Commissioner to make findings in accordance with the applicable law as stated herein.

C.A.J.

State of Minnesota

James H. and Lois Garfunkel,

Appellants,

v.

The Commissioner of Revenue,

Appellee.

Tax Court

In the Matter of the Appeal from the Commissioner's Order dated November 17, 1978, relating to the income tax of James H. and Lois Garfunkel for the taxable period from January 1, 1974, through December 31, 1975.

Order dated August 24, 1981

Docket No. 2818

The above matter was submitted to the Court for decision on a Stipulation of Facts, written briefs and oral argument heard by Judge Earl B. Gustafson on June 17, 1981.

James C. Diracles of Best and Flanagan appeared on behalf of Appellants.

Thomas K. Overton, Special Assistant Attorney General, appeared on behalf of Appellee.

Issue

The issue is whether undistributed income from two controlled foreign corporations should be included in the Minnesota gross income of a shareholder in the same years that this income is included in his federal adjusted gross income even though it was not actually received in those years.

Decision

Where income items are included in an individual taxpayer's federal adjusted gross income under the Federal Internal Revenue Code and not specifically excluded or modified by Minn. Stat. § 290.01, subd. 20, they should be included in taxpayer's Minnesota gross income.

Appellants' motions for summary judgment and to strike Appellee's brief made at the time of oral argument are denied.

The Commissioner's Order is affirmed.

Findings of Fact

The facts as stipulated by the parties are as follows:

1. This appeal involves Appellants' Minnesota income tax for the calendar years 1974 and 1975.

2. Because all audit changes concern Appellant James H. Garfunkel, he will be referred to as the "Taxpayer" herein.

3. The Taxpayer's father, Joseph Garfunkel, was a U.S. citizen residing and domiciled in the Bahamas (since 1924). He died on July 25, 1975. At the time of his death in 1974, he was the sole shareholder of two corporations, Amusements, Ltd. (Amusements) and GAR, Ltd. (GAR), both of which were "controlled foreign corporations" within the meaning of § 957(a) of the Internal Revenue Code (IRC). (Subpart F, Sections 951-964 of the IRC contain special provisions applicable to controlled foreign corporations.) The estate of the deceased (Estate) is a foreign estate within the meaning of IRC § 7701(a)(31).

4. The Taxpayer, who is a Minnesota resident, and his brother, who is not a Minnesota resident, are the sole, equal residuary beneficiaries of the Estate under decedent's wills. The only specific bequest under the wills was from property other than the share of these corporations and is not relevant to this appeal.

5. Admin Trust Company, Ltd., a foreign corporation, was appointed administrator of certain assets of the Estate of the deceased, including all shares of Amusements. The Royal Bank and Trust Company, Ltd., a foreign corporation, was appointed executor of certain assets of the Estate of the deceased, including all shares of GAR. A fiduciary relationship exists between the beneficiaries and the administrator and executor of the Estate.

6. The administrator operated Amusements during a portion of 1974 and 1975. During the period of operation by the administrator, Amusements had foreign personal holding company income of $4,944.00 in 1974 and of $3,652.00 in 1975. This income consisted of interest from non-U.S. sources. The administrator liquidated Amusements in 1975, distributing the assets to the Estate.

7. The executor operated GAR during a portion of 1974 and 1975. During the period of operation by the executor, GAR had foreign personal holding income of $93,122.00 in 1974 and $235,460.00 in 1975. This income consisted of dividends, interest, and net gain from stock, all from non-U.S. sources. In 1975 the executor sold all of the stock of GAR, retaining the proceeds from the sale in the Estate.

8. During 1974 and 1975 the Taxpayer did not receive a distribution of any kind from the Estate, Amusements, Ltd., or GAR, Ltd. During that period these corporations did not pay any actual dividends or make any distributions to anyone except as noted in paragraphs 6 and 7. During that period the Taxpayer had no authority or power to require the administrator or the executor of the Estate to make a distribution to him from the Estate or the corporations.

9. Subpart F (Sections 951-964 of IRC) provides rules for the attribution and recognition of income from controlled foreign corporations. Basically, Subpart F provides that each 'United States shareholder" of a controlled foreign corporation is required to include in his federal gross income his pro-rata share of the Subpart F income of the controlled foreign corporation (herein referred to as "attributed income" which is a non-statutory term used for convenience). Section 958(a) provides that for purposes of Subpart F, stock owned by a foreign estate is considered as being owned proportionately by the beneficiaries of the foreign estate. Pursuant to this attribution rule, the Taxpayer herein is considered the "United States shareholder" of 50% of the shares of GAR, Ltd. and Amusements, Ltd. for the purposes of Subpart F. Subpart F income includes all of the net income of GAR and Amusements. There is no requirement that attributed income under Subpart F be received by the United States shareholder (or anyone else) in order to require that such income be included in his adjusted gross income for federal income tax purposes.

10. Under the IRC, the Taxpayer's 1974 federal adjusted gross income included attributed income pursuant to Subpart F of

$2,472.00 from Amusements and $46,561.00 from GAR. Similarly, the Taxpayer's 1975 federal adjusted gross income included attributed income pursuant to Subpart F of $1,826.00 from Amusements and $117,730.00 from GAR.

11. On his 1974 and 1975 Minnesota income tax returns, the Taxpayer subtracted the Subpart income from his federal adjusted gross income in computing his Minnesota gross income. The Commissioner disallowed these subtractions and this appeal followed:

12. The following attached exhibits are incorporated by reference:

a. Taxpayer's 1974 Minnesota income tax return.

b. Taxpayer's 1974 Federal income tax return with related information returns and schedules.

c. Audit report for 1974.

d. Taxpayer's 1975 Minnesota income tax return.

e. Taxpayer's 1975 Federal income tax return and related information returns and schedules.

f. Audit report for 1975.

g. Order for 1974 and 1975.

Conclusions of Law

1. The Taxpayer's pro-rata share of the Subpart F income from controlled foreign corporations should not be excluded from Taxpayer's Minnesota gross income for the calendar years 1974 and 1975.

2. The Commissioner's Order dated November 17, 1978, is affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

MINNESOTA TAX COURT
Earl B. Gustafson, Judge

Memorandum

This appeal presents the question whether undistributed income from controlled foreign corporations should be excluded from the gross income of a Minnesota taxpayer even though included in his federal adjusted gross income.

Since 1961 the federal definition of "adjusted gross income" has been used by Minnesota as the basis for taxing the income of individuals. The taxable years in question are 1974 and 1975. All references to statutes will be to those in effect during this period.

Minn. Stat. § 290.01, subd. 19, starts by saying the term "net income" means the gross income, as defined in Subdivision 20. Subdivision 20 of Minn. Stat. § 290.01, in turn, defines individual "gross income" as federal adjusted gross income, unless specifically modified.

The pertinent language of Subdivision 20 of Minn. Stat. § 290.01 reads as follows:

For each of the taxable years beginning after December 31, 1970, the term "gross income" in its application to individuals, estates, and trusts *shall mean the adjusted gross income as computed for federal income tax purposes*. . . . , with modifications specified in this section. (Emphasis added)

There follows a list of specific and limited modifications to federal adjusted gross income.

In this case the taxpayer, a Minnesota resident, properly reported on his federal return his pro rata share of certain undistributed income from two controlled foreign corporations. Although this income had not actually been received in 1974 and 1975, Subpart F of the Internal Revenue Code (Secs. 951-964) required that it be included in his federal adjusted gross income for those years. The Commissioner maintains that Minn. Stat. § 290.01, subd. 20, requires the state to follow federal adjusted gross income except where specific modifications are mandated. There being no modification for Subpart F income, the Commissioner argues that federal adjusted gross income controls. The basic dispute is over what year this income is to be reported and taxed.

The taxpayer claims the income was not received in 1974 and 1975 and Minnesota has no right under Chapter 290 to tax income until he actually receives it. No claim is made that the federal adjusted gross income, as reported by appellants, was incorrect—only that it should be reduced by subtracting the income from controlled foreign corporations imputed to taxpayer but not yet received.

The "imputed income" provisions of Subpart F of Secs. 951-964 of the Internal Revenue Code were unquestionably adopted by reference into Minnesota's "gross income" by Minn. Stat. § 290.01, subd. 20, in the following language:

(iii) The Internal Revenue Code of 1954, as amended through December 31, 1973, shall be in effect for taxable years beginning after December 31, 1973.

The appellants claim that the following language found in Minn. Stat. § 290.01, subd. 20, provides an exception to the requirement that federal adjusted gross income be followed, namely:

. . . . Items of gross income shall be included in gross income of the taxable year *in which received by a taxpayer* unless properly to be accounted for as of a different taxable year under methods of accounting permitted by section 290.07 . . . (Emphasis added)

We find this language relates to accounting procedures in reporting income on a cash or accrual basis and does not change the substantive law clearly expressed in other parts of Subdivision 20.

Modifications increasing or decreasing federal adjusted gross income are specifically enumerated. For example, there is a detailed provision that allows income "attributed" to shareholders of a small business corporation (under federal law) but not actually received by them to be subtracted by taxpayers on their Minnesota returns if they have not elected to be taxed as a small business corporation under Minn. Stat. § 290.972. If there were a general rule that taxpayers could eliminate any and all "attributed" federal income, the Legislature would have found it unnecessary to enact this provision.

Under appellants' thesis, a cash basis taxpayer would merely deduct from federal adjusted gross income any income not actually received during the taxable year. The Legislature apparently makes the opposite assumption: that income "attributed" under the federal Internal Revenue Code is taxable by Minnesota unless specific statutory language allows it to be subtracted.

There are further reasons to assume the Legislature intended that federal adjusted gross income should be followed unless modified by specific statutory provisions.

The term "received" is defined in Minn. Stat. § 290.01, subd. 11:

The terms "paid or incurred" . . . shall be construed according to the *method of accounting upon the basis which net income is computed for the purposes of the taxes imposed by this chapter*, and the *term "received" . . . shall be similarly construed.* (Emphasis added)

To paraphrase this rather cumbersome language, "received" should be construed according to the accounting method used in computing net income under Chapter 290, namely, the accounting method used in arriving at adjusted federal gross income.

Under the language of Minn. Stat. § 290.01, subd. 20, previously quoted, the Legislature specifically recognizes there can be exceptions to rule that income can only be taxed in the year received. Items of gross income are included in Minnesota gross income only in the year received

. . . unless properly to be accounted for as of a different taxable year under methods of accounting permitted by section 290.07.

Changint the way income items are reported is permitted under § 290.07. But this is authority given to the commissioner:

[I]f [the method of accounting for income] employed does not . . . *fairly reflect income for the income taxable under this chapter*, the computation [of income] shall be made in accordance with such method as in the opinion of the commissioner does clearly and *fairly reflect income and the income taxable under this chapter.* (Emphasis added.).

We agree with the commissioner's determination that accounting for Subpart F income as advocated by the taxpayer would not "fairly reflect income for the income taxable under this chapter" because items of federal adjusted gross income must be accounted for under Chapter 290 in the year they are included in the federal tax return.

The objective of all interpretation and construction of statutes is to ascertain and effectuate the intention of the Legislature. Minn. Stat. § 645.16. Legislative intent may be ascertained by considering, among other things, the object of the statute. The statute should be construed so as to harmonize all of its provisions. *Anderson v. Commissioner of Taxation*, 252 Minn. 301, 90 N.W. 2d 520 (1958).

Is is clear that under Chapter 290 (Minnesota's Income Tax Act), read as a whole, a federal income item is included in Minnesota gross income unless one of the specified modifications provides for its subtraction from federal adjusted gross income. This degree of uniformity between federal and Minnesota income tax computations must be considered one of the objectives sought by the Legislature. We are reluctant to add modifications through "statutory interpretation" of ambiguous language when the Legislature could make these modifications in specific terms as it has in the past.

The appellants further contend that Subpart F income is not assignable to Minnesota and, therefore, not taxable by Minnesota. This contention has little merit.

Minn. Stat. § 290.17 provides in relevant part as follows:

(2) . . . Income or gains from intangible personal property not employed in the business of the recipient of such income or gains . . . shall be assigned to this state if the recipient thereof is domiciled within this state.

(5) All other items of gross income shall be assigned to the taxpayer's domicile.

Under either paragraph (2) or (5) above, the income is assigned to the taxpayer's domicile, Minnesota.

Lastly, appellants question the due process of Minnesota taxing a shareholder's undistributed Subpart F income. Constitutional due process requires that there be a nexus or connection between the state and the income in order for the state to have jurisdiction to tax the income. *Harris v. Commissioner of Revenue*, 257 N.W. 2d 568 (Minn. 1977). The fact that the taxpayer is domiciled in Minnesota and is the beneficiary of that income provides sufficient nexus. *McCulloch v. Franchise Tax Board*, 61 Cal. 2d 186, 390 P. 2d 412, appeal dismissed, 379 U.S. 133, rehearing denied, 379 U.S. 984 (1964).

Under appellants' contention that taxpayer's domicile does not provide sufficient nexus, this income would not be taxable by Minnesota or any other state of the United States.

We find the tax imposed by Minnesota on the undistributed Subpart F income from a controlled foreign corporation to be constitutional.

E.B.G.

SUPREME COURT

Decisions Filed Friday, August 28, 1981

Compiled by John McCarthy, Clerk

51636/30 State of Minnesota, by Warren Spannaus, its Attorney General, v. Century Camera, Inc., *et al.*, Appellants, Propper Oil and Auto Supply Warehouse Distributing Co., Inc., d.b.a. 10000 Auto Parts, *et al.*, Defendants. Hennepin County.

The communication affected by Minn. Stat. §§ 181.75,.76 (1980) is commercial speech; if an employer engages in the verbal activity of soliciting or requiring polygraph, voice stress analysis, or similar examination, the employer has no purpose other than the advancement of his or her business interests.

Section 181.75 does not suffer from overbreadth for failing to confine its prohibition to "coercive" speech. "Coercion" is not necessary for survival of constitutional scrutiny, although § 181.75 does contain an element of coercion.

Neither § 181.75 nor 181.76 is an otherwise impermissible regulation of commercial speech under the analysis of *Central Hudson Gas & Electric Corp. v. Public Service Commission*, 447 U.S. 557 (1980).

The phrase "any test purporting to test honesty" contained in §§ 181.75 and 181.76 is construed to mean tests and procedures which purport to measure physiological changes in the person tested. With this construction neither statute is unconstitutionally vague.

There is no deprivation of a property right in the business of conducting polygraph examinations or similar examinations caused by §§ 181.75 and 181.76.

Remanded for further proceedings consistent with the opinion. Sheran, C. J.

51656/30 Rose Gawel v. Two Plus Two, Inc., Foresight Security, Inc., petitioner, Appellant. Ramsey County.

Minn. Stat. § 181.75 (1980) is neither unconstitutionally overbroad nor vague for the reasons given in *State v. Century Camera*, No. 51636 (Minn., filed August 28, 1981).

Defendants are not denied equal protection of the laws because § 181.75 regulates the commercial speech of employers and their agents.

Remanded for further proceedings consistent with the opinion. Sheran, C. J.

51500/Sp. In re the Marriage of: Lawrence E. Schmitz, petitioner, Appellant, v. Violet E. Schmitz. Hennepin County.

Where the parties to a marital dissolution proceeding acquired a homestead subsequent to their marriage by paying $8,000 of the husband's nonmarital property down and giving a mortgage for the balance, the trial court correctly apportioned the increase in equity between the marital and nonmarital interests.

Affirmed. Otis, J.

51878/Sp. Sidney R. Baldwin, Relator, v. Commissioner of Revenue. Tax Court.

Where a church consists essentially of a single person who has assigned to it his income but retains the right to use church property as he sees fit, neither he nor the church is entitled to exemption from Minnesota income taxation.

In the absence of statutory authority, corporations sole are not recognized in Minnesota.

Affirmed. Otis, J.

52069/Sp. Bernard A. Teske v. Dale Young, d.b.a. Young Painting Contractor, *et al.*, Relators, and State Treasurer, Custodian of the Special Compensation Fund. Workers' Compensation Court of Appeals.

Amounts received by an employer and compensation insurer from the proceeds of an employee's third-party settlement as reimbursement of compensation previously paid and as a credit against their liability for future compensation pursuant to Minn. Stat. § 176.061, subd. 6 (1969), are not included in the "total of $25,000 of weekly compensation," payment of which would permit them pursuant to Minn. Stat. § 176.101, subd. 4 (1969), to receive an offset against furture compensation liability for Social Security benefits received by the employee.

Affirmed. Peterson, J.

50737 In re the Marriage of: Pedro DeLa Rosa, petitioner, Appellant, v. Elena DeLa Rosa. Hennepin County.

The trial court did not abuse its discretion by awarding respondent an equitable recovery of the financial support she provided to petitioner during his education. However, the award should be limited to the monies expended by respondent for petitioner's living expenses and contributions made toward petitioner's direct educational costs.

Remanded with instructions. Amdahl, J. Concurring in part, dissenting in part, Todd, J.

51123/Sp. Clint Schwingler v. Robert Doebel, *et al.*, Defendants, Earl McQuiston and Savage Enterprises, Inc., Appellants. Scott County.

A tavern owner and operator are not vicariously liable to a patron for injuries received when he was assaulted after leaving the tavern by a volunteer bartender who acted solely because of personal animosity toward the patron.

The tavern owner and operator did not fail to maintain a safe and orderly place of business when neither the volunteer bartender's conduct in suddenly throwing beer in the patron's face while serving him nor the bartender's subsequent assault upon the patron after each had separately left the tavern was foreseeable.

Reversed. Amdahl, J.

51481/Sp. State of Minnesota v. Robert Michael Lindahl, Appellant. Aitkin County.

Evidence of defendant's guilt was sufficient and trial court did not err in admitting eyewitness identification testimony or *Spreigl* evidence. Defendant, by failing to object, forfeited right to have this court consider claim that trial court coerced verdict.

Trial court did not prejudicially err in refusing to instruct jury that evidence of defendant's intoxication could be considered in determining defendant's guilt of charge of criminal sexual conduct involving use of force.

Affirmed. Amdahl, J.

51180/25 Sheldon Pratt v. State of Minnesota, Department of Natural Resources, by Robert L. Herbst, Its Commissioner, Appellant. Crow Wing County.

The evidence supports the trial court's findings that the three lakes involved were private waters before 1973 and public waters since then. This issue was properly before the trial court.

A legislative declaration reclassifying waters from private to public waters does not, by itself, constitute a taking in the constitutional sense.

Here, where the wild rice harvesting regulation has both arbitration and governmental enterprise functions and may uniquely and disproportionately affect the landowner's property, there may be a taking; and the case is remanded to the trial court for the taking of further evidence in accordance with the diminution standard.

Remanded for proceedings in accordance with this opinion. Simonett, J. Took no part, 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
Office of Audit Coordination

Notice of Request for Proposals for Auditing Services Regarding State and Federal Weatherization and Fuel Assistance Grants

1) Agency name and address: Minnesota Department of Economic Security, Office of Audit Coordination, 390 North Robert Street, St. Paul, MN 55101.

2) Contact person: Certified Public Accounting firms wishing to receive the Request for Proposals or additional information may call or write the contract officer: Dick Hooey, Room 200, 390 North Robert Street, St. Paul, Minnesota 55101 (612) 297-2620.

3) Description: A Request for Proposals will be issued September 7, 1981, for the purpose of securing audit services for State and Federal Weatherization and Fuel Assistance Grants administered by the Minnesota Department of Economic Security.

4) Cost: One award will be granted estimated to exceed $90,000.00.

5) Final proposal submission date: Proposals must be received by 4:00 p.m., Wednesday, September 30, 1981.

Department of Economic Security
Minnesota Balance of State Private Industry Council, Inc.

Notice of Request for Proposals for Conducting a Market Survey for a Color Video Cassette Tape Occupational Information Series

The Minnesota Balance of State Private Industry Council wishes to announce the solicitation of proposals to conduct a market survey for a color video cassette tape occupational information series. The contact person is:

Patrick J. Cruit
PIC Coordinator
Minnesota Department of Economic Security
690 American Center Bldg.
150 E. Kellogg Blvd.
St. Paul, Mn. 55101
(612) 296-2971

The last date that proposals will be accepted is Thursday September 22, 1981.

The estimated cost of the survey is $25,000.

Energy Agency
Alternative Energy Development Division
District Heating Activity

Notice of Request for Proposals for Engineering Design Services

The Minnesota Energy Agency, Alternative Energy Division, District Heating Activity, is seeking engineering firms to conduct the preliminary engineering design for the district heating project in the City of Red Wing, Minnesota. The Minnesota Energy Agency and the City have the option of adding reference design to the contract should the city decide to proceed to that

stage. These services, which will be provided under contract, are outlined in detail in the Request For Proposals (RFP) Statement of Work. The formal RFP may be requested and inquiries should be directed to either:

Ronald E. Sundberg
Alternative Energy Division
Minnesota Energy Agency
980 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Ph: (612) 296-9096

or,

Mary C. Lesch
Alternative Energy Division
Minnesota Energy Agency
980 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101
Ph: (612) 297-2324

It is anticipated that the activity to accomplish the preliminary engineering design work will not exceed a total cost to the State of $128,000. The deadline for the submission of completed proposals will be 4:30 p.m., September 25, 1981.

Contractors with the Minnesota Energy Agency must apply for a Certificate of Compliance from the Minnesota Department of Human Rights. All bidders must submit, along with their proposal to the Minnesota Energy Agency, a statement indicating that they have applied. Applications can be obtained by written request from the Minnesota Department of Human Rights, 500 Bremer Tower, 7th Place & Minnesota Street, St. Paul, MN 55101.

OFFICIAL NOTICES

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

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

Department of Administration
Cable Communications Board

Public Comment Requested Regarding Award of a Franchise by the City of Saint Paul for a Municipal Cable Communications System to Be Operated by a Non-profit Corporation

At its meeting on Friday, September 11, 1981 at 9:00 a.m. at 500 Rice Street in Saint Paul, the Minnesota Cable Communications Board will furnish an interpretation of applicable state cable rules and statutes in response to a request from the City of Saint Paul. The city has sought the interpretation with respect to a plan developed by its Cable Task Force for a municipal cable system to be operated by a non-profit corporation established by the city. The city's specific question to the board is as follows:

May the City of Saint Paul acquire a cable communications system by awarding a franchise to a non-profit corporation whose Board of Directors are appointed by the Mayor with the approval of the City Council and where title to the system will vest in the city upon payment of outstanding bonds, without following the franchise procedures under MCAR § 4.140 D.?

Before giving its opinion, the board wishes to hear public comment on the question either orally at the meeting or in writing. Those wishing to comment in writing should submit their statements no later than 5:00 p.m. Wednesday, September 9, 1981 at the board's offices at 500 Rice Street, Saint Paul, Minnesota, 55103. Persons wishing information may call 296-2545.

W. D. Donaldson
Executive Director

State Board of Education
Department of Education
School Management Services Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed New Rules Governing Maximum Effort School Aid

Notice is hereby given that the State Board of Education is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing criteria upon which the State Board of Education will base its recommendation for a state capital loan in compliance with Minn. Stat. § 124.43, subd. 1(b). The promulgation of these rules is authorized by Minn. Stat. § 124.41, subd. 2.

The State Board of Education requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit standards of information or comment in writing. Written statements should be addressed to:

Janet Kielb, Director
School District Organization
911 Capitol Square Building
550 Cedar Street
St. Paul, MN 55101

All statements of information and comment shall be accepted until October 1, 1981. Any written material received by the State Board of Education shall become part of the record in the event that the rules are promulgated.

August 27, 1981

Ronald J. Laliberte
Assistant Commissioner

Metropolitan Council

Public Hearing on the Proposed Amendment to the Capital Improvement Program for Regional Parks and Recreation Open Space

The Metropolitan Council will hold a public hearing on Thursday, October 1, 1981 at 7:30 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, St. Paul Minnesota 55101 on the proposed amendments to the Regional Parks and Open Space Capital Improvement Program. All interested persons are encouraged to attend the hearing and offer comments. Persons wishing to speak may register in advance by contacting the council's public hearing coordinator at 291-6421. Those requesting first will be scheduled first. Written comments may also be submitted until October 8, 1981 to Robert E. Nethercut, Director, Parks and Open Space Division, Metropolitan Council. Copies of the proposed changes and of the council's Recreation Open Space Development Guide and Policy Plan may be obtained from the council's Public Information Office at 291-6464.

Pollution Control Agency

Notice of Intent to Solicit Outside Opinion Concerning Proposed Amendments to Rules Affecting the Management of Solid Waste in the State of Minnesota

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) has made a preliminary determination that an in-depth evaluation of rules SW 1-12 is necessary. These rules outline permit application and facility location requirements for solid waste handling, processing and disposal facilities and also establish operating standards for solid waste disposal facilities such as frequency of cover material, control of litter and prohibition of open burning.

The MPCA is seeking information and comments on its existing solid waste management rules for all interested persons or groups.

Written statements and comments concerning these matters will be accepted for consideration until October 31, 1981 and should be addressed to:

Daniel A. Comeau
Division of Solid and Hazardous Waste
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113

Oral statements of information and comments will be accepted during regular business hours over the telephone at (612) 297-2701.

The MPCA staff will review these comments, develop additional information, and make recommendations to the MPCA board.

Any written materials regarding the MPCA's solid waste management rules received by the MPCA shall become part of the hearing record in the event amendments to rules SW 1-12 are proposed. Further notice of proposed revisions to rules SW 1-12 will be given as required by law, including notice in the *State Register*.

Louis J. Breimhurst
Executive Director

Pollution Control Agency
Public Input Sought on Pollution Control Objectives

Citizens interested in helping set pollution control priorities for 1982 are invited to attend a public meeting at the Minnesota Pollution Control Agency (MPCA) Sept. 24.

Agency staff will present the MPCA's 1982 draft work plans for air, water, and solid and hazardous waste pollution control, and the funding agreement between Minnesota and the U.S. Environmental Protection Agency (State/EPA agreement). These plans guide MPCA resource allocation and are necessary for federal grant assistance.

Each division of the MPCA will review the highlights of its workplan. The Air Quality Division will discuss air monitoring and enforcement, permitting programs, and rule revisions. The Solid and Hazardous Waste Division will discuss the state hazardous waste rules and efforts to merge the state and federal hazardous waste programs into one state-run program. The Water Quality Division will cover construction grants for wastewater treatment plants, and cleanup of the Mississippi and Minnesota rivers in the Twin Cities area.

Interested citizens can attend the meeting or submit written statements to the MPCA. Copies of the draft plans are available for review at the Public Information Office, 1935 West County Road B2 in Roseville, and at the five regional offices in Brainerd, Duluth, Detroit Lakes, Marshall, and Rochester beginning Sept. 10. The meeting will be at 1:30 in the MPCA's Board room (first floor) on Sept. 24; written comments must be received by Oct. 8. For additional information, contact the MPCA Public Information Office, (612) 296-7373.

Pollution Control Agency

Recommendation by the Director to Certify Proposed Solid Waste Disposal Sites in Hennepin County as Intrinsically Suitable

Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that information gathering hearings concerning the intrinsic suitability of the proposed solid waste disposal sites in Hennepin County will be held by the Minnesota Pollution Control Agency (MPCA) pursuant to Minnesota Laws of 1981, ch. 352, § 41 at the following times and places:

Sites B, F, G, H, I (see descriptions below) on Monday, September 21, 1981, at Osseo Senior High School, 317 2 Avenue NW, Osseo, Minnesota, commencing at 7:00 p.m.

Sites J, K, L, M (see descriptions below) on Wednesday, September 23, 1981, at Rockford High School, 1050 County Road 50, Rockford, Minnesota, commencing at 7:00 p.m.

Sites A, C, D, E (see descriptions below) on Thursday, September 24, 1981, at Rockford High School, 1050 County Road 50, Rockford, Minnesota, commencing at 7:00 p.m.

If necessary, the hearings will be continued at 2:00 p.m. on Friday, September 25, 1981, at the Medina City Offices, 2052 County Road 24, Hamel, Minnesota.

The hearing on Sites B, F, G, H, and I will be held before Kent Roberts and the hearings on Sites J, K, L, M, A, C, D and E will be held before Phyllis Reha, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone: (612) 296-8112 (Roberts), (612) 296-8109 (Reha), Hearing Examiners appointed by the Chief Hearing Examiner of the State of Minnesota.

The procedures to be followed at this hearing were published in the *State Register* on July 13, 1981 (6 S.R. 55). A copy of these procedures may also be obtained by contacting the MPCA at the address noted below.

Hennepin County has provided to the MPCA data relating to the intrinsic suitability of thirteen sites proposed for its solid waste disposal site inventory. The Director of the MPCA has made a preliminary recommendation that the following sites be certified as intrinsically suitable for sanitary landfill sites because they can reasonably be expected to qualify for MPCA permits assuming certain conditions are met:

Site A

This site consists of 320 acres in the south half of Section 11, T120N, R23W, in Hassan Township one half mile north of the city limits of Rogers. County State Aid Highway (CSAH) 144 forms the southern border of the site and 145th Avenue North is adjacent to the north side of the site. State Highway 101 runs through the middle of the site dividing it into two 160-acre parts, one east and one west of the highway. This site can reasonably be expected to qualify for an MPCA permit assuming a liner and leachate collection system is constructed and adequate screening is provided.

Site B

This site consists of 410 acres in Section 9 and the northwest quarter of Section 10, T120N, R22W, in the City of Dayton. The site is bounded on the north by CSAH 12 and CSAH 144 forms the eastern portion of the southern border of the site. The western border of the site is one-half mile east of the western border of Section 9. This site can reasonably be expected to qualify for an MPCA permit assuming a liner and leachate collection system is constructed, runoff control is provided to prevent contaminated surface runoff from entering the wetlands adjacent to the site and Mississippi River, and adequate screening is provided.

Site C

This site consists of 320 acres in the east half of Section 10, T119N, R24W, within the city limits of Greenfield. The site is bounded on the south by CSAH 10, on the east by Greenfield Road and on the north by Harff Road. This site can reasonably be expected to qualify for an MPCA permit assuming a liner is constructed, a 1000 foot separation is maintained between the fill area and the lake located east of the site, contaminated runoff is prevented from entering the Crow River and adequate screening is provided.

Site D

This site consists of 320 acres in Section 15, T119N, R24W, within the city limits of Greenfield. The site is bounded on the north by CSAH 10 and on the east by Greenfield Road. This site can reasonably be expected to qualify for an MPCA permit assuming a liner is constructed, runoff control is provided to prevent contaminated runoff from leaving the site and adequate screening is provided.

Site E

This site, consisting of 160 acres, in the northwest quarter of Section 20, T119N, R23W, and is located in the City of Corcoran. The site is bounded on the north by Strehler Road. The western border of the site is approximately one-half mile east of CSAH 19 and the southern boundary of the site is approximately one half mile north of CSAH 50. This site can reasonably be expected to qualify for an MPCA permit assuming a liner is constructed and adequate screening is provided.

Site J

This site consists of 320 acres in the southwest quarter of Section 3 and the east half of Section 4, T118N, R24W, in the City of Independence. The site is bounded on the south by CSAH 11, on the west by CSAH 92 and on the east by Lake Sarah road. This site can reasonably be expected to qualify for an MPCA permit assuming adequate screening and a liner are provided and surface water is controlled to prevent pollution of the wetland located along the northern edge of the site.

Site K

This site consists of 220 acres in the northeast quarter of Section 9 and the northwest quarter of Section 10, T118N, R24W, in the City of Independence. The site is bounded on the north by CSAH 92 and on the east by Lake Sarah Road. This site can reasonably be expected to qualify for an MPCA permit assuming adequate screening and a liner are provided and surface water is controlled to prevent contaminated water from entering the low area directly south of the site.

Site L

This site consists of 380 acres in Section 17, T118N, R24W, in the City of Independence. The site is bounded on the north by

U.S. Highway 12 and on the east by CSAH 92. This site can reasonably be expected to qualify for an MPCA permit assuming adequate screening and a liner are provided and surface water is controlled to prevent pollution of the wetlands north of U.S. Highway 12 and the wetland east of the site.

Site M

This site consists of 300 acres in Section 20 and in the north half of Section 29, T117N, R24W, in the City of Minnetrista just north of St. Bonifacius. The site is bounded on the west by CSAH 92, on the south by CSAH 110 and on the east and north by Highland Road. This site can reasonably be expected to qualify for an MPCA permit assuming adequate screening and a liner are provided and surface water is controlled to prevent pollution of the wetland located northeast of the site.

The Director of the MPCA has made a preliminary recommendation that the following sites be certified as intrinsically suitable for demolition debris landfill sites because they can reasonably be expected to qualify for MPCA permits assuming certain conditions are met:

Site H

This site consists of 640 acres in Section 7, T119N, R21W, in the City of Brooklyn Park. The western portion of the site borders the City of Osseo. The site is bounded on the west by U.S. Highway 52, on the south by CSAH 30, on the east by CSAH 103, and on the north by 101st Avenue North. This site can reasonably be expected to qualify for an MPCA permit assuming a five foot separation distance is maintained between the ground water and demolition debris, contaminated runoff is prevented from leaving the site and adequate screening is provided.

Site I

This site consists of 360 acres in the south half of Section 9 and north half of Section 16, T119N, R21W, in the City of Brooklyn Park. The area is bounded by CSAH 30 on the north and CSAH 14 on the west. The southern boundary of the site is approximately one-half mile north of CSAH 109. Regent Avenue bisects the site from north to south one-fourth mile west of the eastern boundary of the site. This site can reasonably be expected to qualify for an MPCA permit assuming a five foot separation distance is maintained between ground water and demolition debris and adequate screening is provided.

The Director of the MPCA has made a preliminary recommendation that the following sites *not* be certified as intrinsically suitable because they cannot reasonably be expected to qualify for MPCA permits:

Site F

This site consists of 170 acres in the southeast quarter of Section 23 and the southwest quarter of Section 24, T119N, R22W, within the city limits of Maple Grove. The site is bounded on the north by 81st Avenue North and on the south by 77th Avenue North. This site cannot reasonably be expected to qualify for an MPCA permit for either a sanitary landfill or a demolition debris landfill because the municipal wells of the community of Maple Grove are located in a major surficial ground water aquifer immediately downgradient of the proposed site. This aquifer is not protected by an aquiclude.

Site G

This site consists of 235 acres in the north half of Section 24, T119N, R22W, within the city limits of Maple Grove. The site is bounded on the north by 85th Avenue North and on the south by 81st Avenue North. The eastern boundary of the site is about one-quarter mile west of Central Avenue. This site can not reasonably be expected to qualify for an MPCA permit for either a sanitary landfill or a demolition debris landfill because the municipal wells of the community of Maple Grove are located in a major surficial ground water aquifer immediately downgradient of the proposed site. This aquifer is not protected by an aquiclude.

The director's recommendations are based on the data submitted by Hennepin County and applied against criteria contained in Rule SW 6 and additional criteria adopted by the MPCA on June 23, 1981. The MPCA staff has not independently verified the data submitted by Hennepin County. The director's recommendations may be revised based on information submitted at the hearing.

A copy of the MPCA criteria for determining intrinsic suitability, the director's recommendation, the data submitted by Hennepin County and the procedures for this hearing are available for inspection at the following locations:

Minnesota Pollution Control Agency
1935 W. County Road B-2
Roseville, MN 55113
Phone: (612) 296-7373

Minneapolis Environmental Library
Minneapolis Public Library
300 Nicollet Mall
Minneapolis, MN 55401

Hennepin County Libraries:

St. Bonifacius Library
St. Bonifacius, MN 55375

Rogers Library
21300 John Milles Dr.
Rogers, MN 55374

Osseo Library
415 Central Ave.
Osseo, MN 55369

Hennepin County Public
Information Library
Government Center
300 S. 6th St.
Minneapolis, MN 55487

Maple Plain Library
Maple Plain, MN 55359

Champlin Library
230 Curtis Rd.
Champlin, MN 55316

Brooklyn Park Library
8600 Zane Ave. N.
Brooklyn Park, MN 55001

In addition, a report containing the basis for the director's recommendation will be available at the above locations by September 14, 1981. To the extent feasible, such documents may be copied.

Questions concerning the procedures to be followed at the hearing may be directed to Special Assistant Attorney General Marlene Senechal at the MPCA address above, telephone: (612) 296-7346. Questions concerning the director's recommendation may be directed to Dale Wikre at the MPCA address above, telephone: (612) 297-2735.

August 31, 1981

Louis J. Breimhurst
Executive Director

Public Utilities Commission

Proposed Rule Governing Rule Variances

Notice of Extension of Time for Comments

On July 13, 1981, the Public Utilities Commission published a Notice of Intent to Adopt Rules without a Public Hearing in the *State Register*. That notice stated that persons interested in the rule would have 30 days to submit comments on the proposed rule.

Notice is hereby given that the commission will accept comments on the proposed rule until September 17, 1981.

Randall Young
Executive Secretary

Department of Transportation

Petition of the City of Fairmont for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Fairmont has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along Woodland Avenue between Fairlakes Avenue and Lake Park Boulevard.

The request is for a variance from 14 MCAR § 1.5032 H.1.c., Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 44 feet with parking permitted instead of a roadway width of 46′ feet.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 31st day of August, 1981.

Richard P. Braun
Commissioner of Transportation

Petition of the County of Hennepin for a Variance from State Aid Standards for Street Width

Notice is hereby given that the County Board of the County of Hennepin has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along Douglas Drive (CSAH 102) between 42nd Avenue North and 51st Place North in the City of Crystal.

The request is for a variance from 14 MCAR § 1.5032 H.1.c. Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 48 feet with restricted parking permitted instead of a roadway width of 52′ feet with no parking or 72′ with parking.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 31st day of August, 1981.

Richard P. Braun
Commissioner of Transportation

Petition of the City of Richfield for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Richfield has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along Lyndale Avenue between South Lakeshore Drive and 74th Street.

The request is for a variance from 14 MCAR § 1.5032 H.1.c., Rules for State Aid Operations under Minnesota Statute, Chapters 162 and 163 (1978) as amended, so as to permit a minimum roadway width of 47 feet with no parking permitted instead of a roadway width of 52 feet with no parking.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 31st day of August, 1981.

Richard P. Braun
Commissioner of Transportation

Petition of the City of St. Paul for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of St. Paul has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along Johnson Parkway between Minnehaha and East Seventh Street.

The request is for a variance from 14 MCAR § 1.5032 H.1.c. Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a minimum roadway width of 36 feet with no parking permitted instead of a roadway width of 52′ feet with no parking.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

Dated this 31st day of August, 1981

Richard P. Braun
Commissioner of Transportation

STATE OF MINNESOTA

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

ORDER FORM

State Register. Minnesota's official weekly publication for agency rules and notices, executive orders of the Governor, state contracts, Supreme Court and Tax Court decisions.

_____ Annual subscription $130.00
_____ Single copies $3.00 each

The 1979-80 Audio Visual Catalog. A 275-page catalog of state agency films, slides and tapes available to the public.

_____Single copy $4.50 + $.23 (sales tax) = $4.73*each

Session Laws of Minnesota—1980. One volume. Laws enacted during the 1980 legislative session. Inquire about back volumes. $40 + $2.00 (sales tax) = $42.00 each.

State Register Binder. Durable 3½ inch, forest green binders imprinted with the *State Register* logo.

_____*State Register Binder* $6.00 + $.30 (sales tax) = $6.30* each

Finding Aids Annual. Contains cumulative findings aids to Volume 4 of the *State Register*, including MCAR Amendments and Additions, Executive Orders List, Executive Orders Index, Agency Index, Subject Matter Index.

_____Single copy $5.00

Minnesota Statutes Supplement—1979. One volume. $40 + $2.00 (sales tax) = $42.00 each.

Worker's Compensation Decisions. Volume 33. Selected landmark decisions of the Worker's Compensation Court of Appeals. Available by annual subscription, with quarterly update service.

_____Annual subscription $50.00

Documents Center Catalog—1981-82. Complete listing of all items available through the Documents Center. Agency rules, brochures, studies, catalogs, maps, prints, commemorative items and much more.

_____FREE COPY

*To avoid Minnesota sales tax, please include your Certificate of Exempt Status issued by the Minnesota Department of Revenue.

Please enclose full amount for items ordered. Make check or money order payable to "State of Minnesota."

Name_____

Attention of: _____

Street _____

City _____ State _____ Zip _____

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.

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Temporary Rules of the Minnesota Energy Agency Governing the Petroleum Products State Set-Aside Program, 6 MCAR §§ 2.007-2.015.

ORDER ADOPTING TEMPORARY RULES

The temporary rules proposed for adoption in the above-entitled matter, and a notice of intent to adopt those rules, were published in the State Register at 6 S.R. 347-53 on September 7, 1981, pursuant to Minn. Stat. § 15.0412, subd. 5. After affording all interested persons an opportunity to submit written data and views on the proposed temporary rules within 20 days of the publication date, reviewing and considering the data and views, and determining that the above-captioned rules are needed and reasonable,

NOW, THEREFORE, IT IS ORDERED that these rules identified as temporary rules for the administration of the Petroleum Products State Set-Aside Program are hereby adopted this ninth day of October, 1981, pursuant to authority vested in me by Laws of Minnesota 1981, Chapter 356, Section 136, Subdivision 7.

MINNESOTA ENERGY AGENCY

MARK MASON
Director

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Temporary Rules of the Minnesota Energy Agency Governing the Petroleum Products State Set-Aside Program, 6 MCAR §§ 2.007-2.015

ORDER FOR PUBLICATION OF TEMPORARY RULES

IT IS ORDERED this 24th day of August, 1981, that the proposed temporary rules in the above-entitled matter be published in the State Register.

MARK MASON
Director

minnesota energy agency
980 american center building • 150 east kellogg boulevard • st. paul, minnesota 55101 • (612) 296-5120

September 25, 1981

Mr. Bruce Corey
Vice President of Planning and Engineering
Geo. A. Hormel & Co.
P. O. Box 800
Austin, MN 55912

Dear Bruce:

It was good to hear from you again, and I appreciate your letter supporting the proposed rules governing the petroleum state set-aside program.

Chris Gilchrist of my staff asked me to address your comments regarding the absence of residual fuel oil priorities. The state set-aside legislation (chapter 116H.095) was passed in order to keep the program in place once the federal authority was no longer in effect. The legislation does allow this office to:

1) Allocate state set-aside on motor gasoline and middle distillates.

2) Require suppliers to report forecasted volumes on various products. This information is vital to the forecasting function of this office.

The language in subdivision 7 of chapter 116H.095 pertains to rulemaking-authority. Although there is no authority for set-aside volumes on residuals, suppliers are required to include information on residual fuel oil supplies in their monthly reports.

I agree that the food distribution system is important to protect from potential disruption in the event of an emergency. We have attempted to address this in the proposed set-aside rules within the limits dictated by our enabling statute. I would suggest that you contact your state senator and legislator, and ask for inclusion of residual in the state set-aside portion of chapter 116H. I would also welcome the opportunity to visit with you on the possibility of establishing a residual oil set-aside.

Again, thank you for your comments. Call me at 612/297-2337 at your convenience to discuss your concerns and wishes.

Sincerely,

Dixie Diehl
Manager, Energy Information
and Petroleum Operations

DLD/jp

An Equal Opportunity Employer

September 22, 1981

Minnesota Energy Agency
ATTN: Mr. Chris Gilchrist
980 American Center Building
160 East Kellog Blvd.
St. Paul, MN 55101

Proposed Temporary Rules Governing Petroleum State Set-Aside Program

INTRODUCTION

Geo. A. Hormel & Company is an agricultural user of substantial amounts of residual fuel oil for boilers and diesel fuel and motor gasoline for the transportation of food perishables and other food products.

COMMENTS:

We are in favor of these temporary rules governing the administration of the state petroleum set-aside program with priority rankings based on end-use as a necessary means of protecting the health and safety of the citizens and economy of the state. We strongly support the first priority rankings for "Agriculture" and "Essential Services" in allocating the state set-aside of middle distillates and motor gasoline in the event of emergency shortfalls, etc.

However, we are concerned that priority rankings have not been established for residual fuel oil, although we recognize

that the Legislature did not specifically require same in Minn. laws of 1981, ch. 356, §136. The same rationale would apply to these fuels as with the case of middle distillates and motor gasoline. Our boiler fuel use of natural gas has a very low priority because residual fuel oil is an alternate fuel, making it vulnerable to curtailment in the event of a shortage. Without adequate backup supplies of residual fuel oils, we would be forced to shut down, eliminating a vital link in the food chain in the area of fresh and processed meats. There are numerous other food manufacturers in Minnesota in the same position. Nor is it improbable that a natural gas shortage and a fuel oil shortage could occur simultaneously, although perhaps unlikely in the near future.

The importance of protecting the food distribution system from disruption has long been recognized by both federal and state law. See e.g., §4(b)(1) of the Emergency Petroleum Allocation Act of 1973 and Minn. Stat. §116H.09(1980); the latter of which is cited in Subd. 8 of §116H.095 (1981). Subd. 7 and 8 of Minn. Stat. §116H.095(1981) provide discretionary rulemaking authority for the Agency governing residual oils and additional priorities. We believe that this provides authority for the Agency to add a priority ranking for the allocation of state set-aside of residual fuel oil, including "Agriculture" and "Essential Services" in the first priority ranking. This would certainly be consistent with the intent of the Legislature to protect the food distribution system from disruption in the event of an energy emergency or shortfall.

For the foregoing reasons, we urge that the Agency consider making such an addition to these temporary rules, which will likely provide the framework for later permanent rules.

It is apparent that a great deal of time and thought went into drafting these rules, for which we are grateful. Thank you for your consideration of our views on this important matter.

Bruce Corey

Bruce Corey
Vice President of
Planning & Engineering

Sec. 135. Minnesota Statutes 1980, Section 116H.09, Subdivision 5, is amended to read:

Subd. 5. The executive council or the legislature may declare an energy supply emergency when an acute shortage of energy exists by issuing a declaration which indicates the nature of the emergency, the area or areas threatened if less than the whole state is threatened, and the conditions causing the emergency. The declaration shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and shall be promptly filed with the ~~energy agency~~ commissioner, the division of emergency services and the secretary of state. Upon a declaration of an energy supply emergency by the executive council or the legislature, the governor and the division of emergency services, in consultation with the ~~director~~ commissioner, shall implement and enforce the emergency conservation and allocation plan or any part thereof. Revisions of the plan shall be made by the ~~director~~ commissioner in accordance with subdivision 4. The executive council or the legislature may terminate an energy supply emergency at any time by issuing a declaration which terminates the energy supply emergency and indicates the conditions which make possible termination of the emergency, but no energy supply emergency may continue for longer than 30 days unless renewed by the legislature. Each renewed energy supply emergency may not continue for longer than 30 days, unless otherwise provided by law. Each person shall carry out the responsibilities specified in the emergency conservation allocation plan, and violation of any provision of such emergency conservation or allocation requirements shall be deemed a violation of sections 116H.01 to 116H.15 and the rules promulgated thereunder for purposes of enforcement pursuant to section 116H.15.

Sec. 136.

116H.095. State set-aside program

Subdivision 1. **Purpose.** The purpose of this section is to grant to the commissioner authority to exercise specific power to deal with shortages of refined petroleum products. Authority granted shall be exercised for the purpose of minimizing the adverse impacts of shortages and dislocations upon the citizens and the economy of the state and nation.

Subd. 2. **Establishment.** The commissioner shall establish and is responsible for a state set-aside system for motor gasoline and middle distillates to provide emergency petroleum requirements and thereby relieve the hardship caused by shortage, supply dislocations, or other emergencies. The commissioner, for purposes of administration, may exercise all of the powers granted by chapter 116H.

Subd. 3. **Definitions.** As used in this section:

(a) "Middle distillates" means distillates obtained between kerosene and lubricating oil fractions in the refining process, including but not limited to, kerosene, number one and number two heating oil and diesel fuel;

(b) "Motor gasoline" means a liquid mixture of hydrocarbons produced by the distillation of petroleum and used chiefly as a fuel in internal combustion engines;

(c) "Prime supplier" means the producer or supplier now or hereafter making the first sale of middle distillates or motor gasoline subject to the state set-aside for consumption within the state;

(d) "State set-aside" means the amount of middle distillates or motor gasoline required to be made available by a prime supplier for utilization by the commissioner to resolve or mitigate emergencies or hardships due to shortages of supply.

Subd. 4. **Set-aside required.** Every prime supplier shall allocate for sale or exchange monthly upon order of the commissioner a volume of gasoline and middle distillate not exceeding the monthly set-aside amount. The amount of gasoline subject to monthly set-aside shall be an amount equal to three percent of the prime supplier's sales of gasoline during the corresponding month of 1980. The amount of middle distillate subject to monthly set-aside shall be an amount equal to four percent of the prime supplier's sales of middle distillate during the corresponding months of 1980.

Subd. 5. **Report of estimated volume.** Every prime supplier who did not do business in the state during the corresponding month of 1980 shall file with the commissioner a report of its estimated volume of gasoline and middle distillate sale. The report shall be in a form prescribed by the commissioner and shall be submitted by the 25th day of the month preceding the month covered by the report. Each prime supplier subject to this subdivision shall allocate monthly for sale or exchange upon order of the commissioner three percent of estimated gasoline supplies and four percent of estimated middle distillate supplies as shown by the report.

Subd. 6. **Prime supplier obligations.** Each prime supplier shall designate a representative to act for and on behalf of the prime supplier in respect to energy agency state set-aside orders to be issued to the prime supplier. A prime supplier shall provide the amount of allocated product stated in the energy state set-aside order.

Subd. 7. **Rules.** The commissioner shall adopt rules, including temporary rules pursuant to section 15.0412, Subdivision 5, to govern the administration of the set-aside system. Rules shall cover matters such as the form and procedure for applications for set-aside allocations by dealers of bulk purchasers, reports on available gasoline and middle distillate supplies, orders and procedure for set-aside allocation and distribution and other rules deemed necessary or desirable in the implementation and administration of the set-aside system, including monthly reports of anticipated deliveries and actual sales of gasoline, middle distillates, propane, aviation fuels, and residual oils.

Subd. 8. **Criteria.** The commissioner may allocate gasoline and middle distillates from the set-aside system in accordance with the criteria in section 116H.09 and rules adopted pursuant thereto. The commissioner may prescribe additional priorities by rule.

Sec. 137. Minnesota Statutes 1980, Section 116H.10, is amended to read:

116H.10. Forecasts, statistics and information

Subdivision 1. In order to further the purposes of sections 116H.01 to 116H.15, the ~~director~~ commissioner shall develop and maintain an effective program of collection, compilation, and analysis of energy statistics. The statistical program shall be developed to insure a central state repository of energy data and so that the state may coordinate and cooperate with other governmental data collection and record keeping programs.

Subd. 2. In addition to supplying ~~such~~ the current statistical and short range forecasting information as the ~~director may require~~ commissioner requires, each utility, coal supplier, petroleum supplier and large energy facility in the state shall prepare and transmit to the ~~director~~ commissioner by July 1~~, 1975, and every year thereafter~~ of each year, a report specifying in five, ten, and 15 year forecasts the projected demand for energy within their respective service areas and the facilities necessary to meet the demand.

minnesota energy agency
980 american center building • 150 east kellogg boulevard • st. paul, minnesota 55101 • (612) 296-5120

October 8, 1981

Mr. F. D. Dreizler
Vice President, Energy Regulation and Compliance
Gulf Refining and Marketing Company
P.O. Box 2001
Houston, Texas 77252

Dear Mr. Dreizler:

Thank you for taking the time to comment on the Minnesota Energy Agency's proposed temporary rules governing the petroleum state set-aside program.

Chris Gilchrist of my staff asked me to address your concerns regarding the proposed reporting requirements. 6 MCAR 2.010 A.3. of the proposed rules states that the "...reports shall be submitted in a standardized form approved by the office." This office intends to use the EIA-25 as the standardized form as long as it continues. Our main intent is to ensure that prime suppliers continue to provide this information to our office.

Your comment concerning the requirement to report volumes sold during the corresponding month of 1980 is well taken. We would use the historical EIA-25 data in the administration of the program. As a point of information, I would like to mention that the Minnesota Energy Agency is recommending a change in the enabling legislation. If passed by the legislature, this action would amend the law to base the set-aside amount on forecasted volumes rather than the 1980 base year. A result in this amendment would be the elimination of the rule requirement to report 1980 sales volumes.

Thank you again for your comments. If you have any questions or desire additional information, please do not hesitate to contact this office.

Sincerely,

Dixie Diehl
Manager, Energy Information
and Petroleum Operations

/cb

cc: Chris Gilchrist

An Equal Opportunity Employer

Gulf Refining and Marketing Company

F. D. Dreizler
VICE PRESIDENT
ENERGY REGULATION AND COMPLIANCE

September 18, 1981

P. O. Box 2001
Houston, TX 77252

Mr. Chris Gilchrist
Minnesota Energy Agency
980 American Center Building
160 E. Kellogg Boulevard
St. Paul, MN 55701

Dear Mr. Gilchrist:

Gulf Oil Corporation appreciates the opportunity to review the Minnesota Energy Agency's Proposed Temporary Rules Governing Petroleum State Set-Aside Program. We offer the following comments on the proposed reporting requirements.

The U.S. Department of Energy currently requires a monthly Prime Suppliers' Report, the EIA-25. Gulf submits a copy of this report to the Minnesota Energy Agency every month. Data required includes actual volumes of crude and products delivered into a state, as well as projected volumes for the following month. The product slate on the EIA-25 is essentially that in the Proposed Rules. Since there is no indication DOE plans to eliminate or modify the Prime Suppliers' Report, we can see no reason for the State of Minnesota to add another layer of reporting.

Insofar as the proposed requirement to report volumes sold during the corresponding month of 1980 is concerned, these data are on file in your office on the EIA-25 for 1980. These volumes could be easily matched against those now being submitted on the same report.

If you have any questions, please contact our office.

Very truly yours,

F D Dreizler fjb

F. D. Dreizler

MLO/11

minnesota energy agency
980 american center building • 150 east kellogg boulevard • st. paul, minnesota 55101 • (612) 296-5120

October 8, 1981

Mr. A. C. Anderson
Manager Allocation/Liaison
Government Energy Regulations Analysis
Shell Oil Company
One Shell Plaza
P.O. Box 2463
Houston, Texas 77001

Dear Mr. Anderson:

Thank you for your letter regarding the state set-aside program. Your supporting such a program is gratifying.

Chris Gilchrist of my staff asked me to address your specific comments regarding the proposed temporary rules. Your arguments for determining the set-aside amount by forecasted volume rather than a fixed base year are well taken. This approach would be consistent with present reporting procedures and would not require any significant changes in this office's administrative procedures. It is for this reason that the Minnesota Energy Agency will ask the legislature to amend the enabling statute.

The language in the attached statute establishes the 1980 base year for determining the set-aside volume. If we are successful in changing this language to base the set-aside amount on forecasted volumes, then the rules governing the program will be likewise amended.

Thank you again for your strong support. If you have any questions, please do not hesitate to contact me.

Sincerely,

Dixie L. Diehl, Manager
Energy Information and
Petroleum Operations

DD/cb

cc: Chris Gilchrist

An Equal Opportunity Employer

Shell Oil Company

One Shell Plaza
P.O. Box 2463
Houston, Texas 77001

September 29, 1981

Mr. Chris Gilchrist
Minnesota Energy Agency
980 American Center Building
St. Paul, Minnesota 55101

Dear Mr. Gilchrist

A copy of the Minnesota Energy Agency's proposed temporary rules governing the petroleum state set-aside program has been forwarded to this office from the Minnesota Petroleum Council. We have been asked to respond directly to you with our comments.

It is Shell's position that a limited (3-5%) state standby set-aside plan should be part of each state's energy emergency contingency program. We believe that the real value of states having flexible state set-aside plans is in their availability for use in mild and/or moderate shortfall situations (as well as severe energy emergencies) when their implementation may well reduce or eliminate the problem. Prudent management of the state set-aside can prevent minor shortfalls from becoming a disruptive condition causing panic and, as a result, overreaction. In fact, it would be in the best interest of all concerned (states, consumers, oil industry, etc.) if the states would develop limited (3-5%) state set-aside plans as the basis for their energy emergency planning instead of drafting complicated regulations which may be difficult to implement quickly and so restrictive that they could be counterproductive in an emergency supply situation. Attached are some thoughts on elements of a proven state set-aside plan "technique" which, if used in addition to the hardship and priority applications already understood, can make a state set-aside program even more effective.

Our review of the proposed state set-aside program rules indicates that they contain most of the criteria we believe to be important in such a program. We disagree, however, with the method of determining the amount of product available for state set-aside use. To base it on a fixed time period (same month in 1980 - in this case) would unfairly affect all customers already suffering due to short supplies. In effect, using this approach, the state would actually be requiring a greater share of the limited product available for the current month's set-aside program than the percentage figure in the rules would imply.

To resolve the problem of how the amount of set-aside product is determined, we recommend the following be used instead of the same month (1980) base period method:

> "The set-aside volume available to the state for a particular month shall be the sum of the amounts calculated by multiplying the state

set-aside percentage level by each prime suppliers' estimated portion of its total supply for that month which will be sold into the state distribution system for consumption within the state. The amount of fuel to be set-aside for a particular month cannot be accumulated or deferred."

The approach outlined above is consistent with that being used in many other state set-aside programs, and it can be easily implemented in Minnesota because the forecast information required is already a part of the proposed rules under Section 6 MCAR-2.010 part A (Monthly Reports).

If you have any questions or would like to discuss any of the above comments, please contact me in Houston at (713) 241-5573.

Sincerely,

A C Anderson

A. C. Anderson
Manager Allocation/Liaison
Government Energy Regulations Analysis

Attachment

cc - Minnesota Petroleum Council - Rita Meyer

STATE SET-ASIDE PLAN

A state set-aside plan should be a standard part of every state's emergency energy contingency program. Such a plan, limited to a range of 3-5% of a supplier's established monthly volume, would enable a state to provide relief for supply emergencies. Examples are priority user problems, special individual hardship cases and "customer lines" problems on weekdays due to weekend closing of service stations (mainly metropolitan markets). All of the problems just enumerated can be common to either slight or moderate shortfall situations and may be present as well under severe shortage conditions.

Special emphasis should be given to the state set-aside weekend incentive program which Shell helped develop in cooperation with the state of Texas during the 1979 supply shortfall. That program, implemented in those areas experiencing long lines, allocated state set-aside reserves to stations agreeing to remain open for gasoline sales on Saturdays and Sundays. The program was the most effective of those used at service stations according to a DOE-sponsored study of the 1979 gasoline shortage situation.

Listed below are some of the significant advantages of the proper use of state set-aside plans:

1. Relatively simple to develop and understand.

2. Easy to coordinate with industry.

3. Can be implemented expeditiously.

4. Can help reduce or eliminate lines at service stations (weekend incentive approach) which

   - has positive effect on "shortage psychology"

   - reduces/eliminates media and consumer pressure on regulators, politicians and the industry.

5. Can be used to satisfy special needs of priority users and hardship cases without affecting industry contractual relationships.

6. Can provide a "standard" approach nationwide.

7. Will eliminate need for more complicated regulations/controls at the state level.

8. Effective for slight, moderate and severe shortfall situations.

ACA:ml

minnesota energy agency
980 american center building • 150 east kellogg boulevard • st. paul, minnesota 55101 • (612) 296-5120

October 9, 1981

Mr. Robert C. Fox
Senior Attorney
Office of General Counsel
Mobil Oil Corporation
P.O. Box 66568
AMF O'Hare, Illinois 60666

Dear Mr. Fox:

Chris Gilchrist of my staff asked me to thank you for taking the time to comment on the proposed temporary rules governing the petroleum state set-aside program. The rules outline a program that is not disimilar from the set-aside program that existed under Federal controls.

The monthly report required by 6 MCAR 2.010 is essentially the same information that prime suppliers presently provide on the DOE EIA-25 form. As long as the State of Minnesota continues to receive a copy of this monthly report, this office would not require prime suppliers to submit additional information in order to comply with this provision of the proposed rule.

Thank you again for providing your comments regarding the proposed temporary rules. If you have any questions, feel free to contact this office.

Sincerely,

Dixie L. Diehl
Manager, Energy Information
and Petroleum Operations

DD/cb

cc: Chris Gilchrist
Dwight Wagenius

An Equal Opportunity Employer

Mobil Oil Corporation

WOODFIELD EXECUTIVE PLAZA
SCHAUMBURG, ILLINOIS 60196
TELEPHONE (312) 885-6092

MAILING ADDRESS:
P.O. BOX 66568
AMF O'HARE, ILLINOIS 60666

OFFICE OF GENERAL COUNSEL

ROBERT C. FOX
SENIOR ATTORNEY

September 30, 1981

Minnesota Energy Agency
980 American Center Building
160 East Kellogg Boulevard
St. Paul, Minnesota 55101

Attention: Mr. Chris Gilchrist

Re: Proposed Temporary Rules
Governing Petroleum State
Set-Aside Program

Gentlemen:

On September 7, 1981, the Minnesota Energy Agency published in the State Register proposed temporary rules governing petroleum state set-aside program. Comments on these proposed rules were invited.

Mobil has the following comments with respect to these proposed rules.

1. Mobil feels that the publication of these rules is unnecessary and could be confusing and counterproductive. At the present time, there is no shortage of refined petroleum products, and we do not anticipate any such shortage in the foreseeable future. In no event can we anticipate a shortage of products that would affect only the state of Minnesota. If there is another national shortage of refined petroleum products, another plan for allocation at the federal level is a virtual certainty. Any such federal plan would, of course, supersede any state rules or regulations, thereby making the effort to develop these rules futile. History has shown that suppliers are better equipped to solve any temporary hardship or dislocation problems without interference of either state or federal authorities.

2. The reporting requirements for prime suppliers are cumbersome and almost overwhelming. The monthly reports required by 6 MCAR Section 2.010 would be difficult, if not impossible, to produce and would be of no use to the agency, because the agency is not in a position to react to reports filed on that basis. At the maximum, suppliers should have to report only sales for the corresponding month of the prior year so that the energy office will be able to determine the amount of gasoline and distillates they would have at their disposal through the set-aside program.

Very truly yours,

RCFox

Robert C. Fox

RCF/bsg

minnesota energy agency
980 american center building • 150 east kellogg boulevard • st. paul, minnesota 55101 • (612) 296-5120

October 8, 1981

Mr. F. B. Stanly
Regional Manager-Marketing
Texaco Inc.
1515 W. 22nd Street
Oak Brook, Illinois 60521

Dear Mr. Stanly:

Thank you for taking the time to comment on the proposed temporary rules governing the state set-aside program.

Chris Gilchrist of my staff has asked me to address your specific concern regarding the reporting requirement as contained in Section 6 MCAR 2.010 A.2. The law creating the set-aside program establishes the fixed base year for determining the set-aside amount. The proposed rules reflect this legislative intent.

We have received several letters objecting to this point in the proposed rules. The Minnesota Energy Agency is recommending that the enabling statute be amended to base the set-aside volume on forecasted volumes instead of sales in 1980. If this change in the enabling statute is made, the rules would be amended by deleting the reporting requirement you are objecting to.

This office will keep you informed of further activity regarding the state set-aside program.

Thank you again for your comments.

Sincerely

Dixie L. Diehl
Manager, Energy Information
and Petroleum Operations

/cb

cc: Chris Gilchrist
Dwight Wagenius

An Equal Opportunity Employer

TEXACO
INC.

F. B. STANLY
REGIONAL MANAGER – MARKETING
MIDWESTERN REGION

1515 W. 22nd STREET
OAK BROOK, ILLINOIS 60521

September 30, 1981

Mr. Chris Gilchrist
The Minnesota Energy Agency
980 American Center Building
St. Paul, Minnesota 55101

RE: Proposed Temporary Rules
Petroleum State Set-Aside
Program

Dear Mr. Gilchrist:

The proposed temporary rules for governing the Petroleum State Set-Aside Program as published in the State Register of Monday, September 7, 1981 should not be adopted. The petroleum supply situation is such that State Set-Aside is not now needed nor does it appear that such rules will be needed.

To place the demand upon suppliers to provide burdensome reports on a monthly basis is contrary to the national intent of relaxing costly rules and regulations upon the business community. These reports are not necessary and will only impede the efficiency of a supplier by taking time that could be better used to ensure adequate distribution of products to the general public.

The report's schedule as outlined under Section 6 MCAR:2.010 further does not allow for discontinuance of reporting on volumes that are no longer contractually obligated from prime suppliers to wholesale purchaser-consumers.

This volume which may become "surplus" due to a mutual contract termination between a prime supplier and wholesale purchaser-consumer or by unilateral contractual termination notice served by a wholesale purchaser-consumer upon the prime supplier may well be utilized elsewhere in the prime supplier's distribution system and should not be required to be reported.

The proposed Set-Aside rules do not address the above contractual obligations and as such will require reporting of volumes that are no longer available for distribution within a city, county, or even within the state.

As a prime supplier, it would be impossible to provide the Set-Aside volumes through channels of distribution that have been discontinued or through wholesale purchasers who no longer choose to purchase from prime suppliers.

The imposition of rules and regulations are costly, not only from a supplier viewpoint, but also for those who consolidate and maintain these reports; in this instance, the State of Minnesota. Since there is little, if anything, to be gained by the imposition of such rules and regulations, it is respectfully submitted that it would be preferable to all concerned not to adopt these proposed temporary rules governing Petroleum State Set-Aside Program.

Sincerely,

F. B. Stanly

FBS/jd

STATE OF MINNESOTA

MINNESOTA ENERGY AGENCY

In the Matter of the Proposed Adoption of Temporary Rules of the Minnesota Energy Agency Governing the Petroleum Products State Set-Aside Program, 6 MCAR §§ 2.007-2.015.

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 and the rules of the Attorney General have been followed.

Dated: October 9, 1981.

Dwight S. Wagenius

DWIGHT S. WAGENIUS
Special Assistant Attorney General