

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 831

wld 7-23-82 new submission

RULE REVIEW CHECKLIST

DATE RULE RECEIVED ~~7-12-82~~ 7-23-82
DATE FOR REVIEW ~~7-23-82~~ 8-3-82
DATE DUE ~~8-2-82~~ 8-12-82

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

Approved 8-12-82 Disapproved Returned to Agency 8-13-82

Resubmitted Due
Approved Disapproved Returned to Agency

Date filed w/Secretary of State 8-13-82 Revisor approved 7/16/82 disapproved

---

✓ Rule as Adopted

✓ Rule as Proposed see SR + attachment to FoF

✓ Order Adopting 7.12.82 Date

✓ Notice of Intent to Solicit Outside Opinion 4.7.80

✓ Order for rulemaking
various date of Hearing commencing 11.23.81 - Note. 1st day of hearing was cancelled due to weather emergency, rescheduled to 12/14/81

✓ Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency

✓ Affidavit of Mailing Notice or rulemaking + of Additional Mailing
10.19.81 At least 30 days prior to hearing/~~adoption~~

✓ Mailing list Certificate

✓ Publication in State Register
10.19.81 At least 30/~~20~~ days prior to hearing/~~adoption~~
see 9.7.81 for text of proposed rules.

✓ Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
4.1.82 Approving H.E.'s Report, in part disapproving
6.8.82 DISApproving agency action
6.17.82 APPROVING agency action

✓ Agency's Findings of Fact and Order Adopting

N/A LCRAR Report or agency Affidavit

✓ A Certificate of Board's Resolution Adopting Rules - 5.20.82.
✓ B " " " " " " - 6.23.82

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

✓ Comment to this office

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO LOUIS J. BREIMHURST DATE: 8/12/82
Executive Direcotr of Pollution Control Agency

ATTN: JOCELYN F. OLSON, Spec. Ass't. Atty. Gen.

FROM : LARRY D. STARNS PHONE: 297-3493
Special Assistant
Attorney General

SUBJECT: In the Matter of the Proposed Adoption of Rules of the Pollution Control Agency, 6 MCAR §§ 4.6088-4.6100, Waste Disposal Facility Operator and Inspector Certificate

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;

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.

LDS:drw
Encs.

cc: Ms. Kathy Burek
Mr. Duane Harves

ERNEST K. LEHMANN & ASSOCIATES, INC.
GEOLOGISTS

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RECEIVED
JUL 28 1982
ATTORNEY GENERAL
102 STATE CAPITOL
ST. PAUL, MINN. 55155

RECEIVED
JUL 29 1982
ATTORNEY GENERAL
Dept. of Natural Resources

July 27, 1982

Honorable Warren Spannaus
Attorney General
102 State Capital
St. Paul, Minnesota 55155

RE: Proposed EQB Environmental Review Program Rules

Dear Mr. Spannaus:

As part of our continuing communications regarding mining in Minnesota I wish to call your attention to the unecessary problems which will be created by the above proposed rules.

The original intent of the legistature in directing the revision of the environmental review rules was to simplify the environmental review process without sacrificing the quality of the review. The reverse will be the effect if the rules as proposed are promulgated.

To take only one example, the proposed rules would allow an RGU to require an EAW (and potentially an EIS) for every single exploratory drill hole except those for iron ore. This activity (exploratory boring) is already governed under the revision of the water well drilling act passed two years ago. Therefore, we believe the rule to be unecessary. Further there was no showing at the hearings of reasonableness and need for this rule other than the assertion that drilling was "controversial". Testimony of experienced explorers that exploratory drilling has been going on for many years in other states without causing adverse environmental effects was not accepted. Further, both iron ore and water well drilling (the latter of which, unlike exploratory boring seeks to encounter the water table) were exempted. This strikes us as unnecessarily discriminating against exploratory boring.

ERNEST K. LEHMANN & ASSOCIATES, INC.
GEOLOGISTS

Numerous other unreasonable and unecessary provisions could be cited. We think the one described above will suffice. We believe the rules should not be promulgated in their present form.

Very truly yours,

Ernest K. Lehmann, CPG
President

EKL/kal

cc: C. Blaine Harstad

LCRAR

Legislative Commission to
Review Administrative Rules

Senator Timothy J. Penny
Chairman

Representative Paul McCarron
Vice-Chairman

Kathleen P. Burek
Executive Director

RECEIVED
AUG 05 1982
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

July 29, 1982

Mr. Warren Spannaus
Attorney General
State of Minnesota
Rm. 102, Capitol
St.Paul, MN 55155

Attn: Judith Wehrwein

Re: Environmental Quality Board Rules Governing the Environmental Review Program

Dear Mr. Spannaus:

I am writing to you as chairman of the Legislative Commission to Review Administrative Rules (LCRAR) concerning the EQB rules now before you for review. As you know, the LCRAR is a bipartisan joint legislative commission charged with promoting "adequate and proper rules by agencies and an understanding on the part of the public respecting them," (Minnesota Statutes, Section 3.965, subd. 2). We are currently conducting a review of these rules at the request of a number of parties who feel there are problems with certain portions of the rules. In the course of a preliminary review, our staff has discovered a possible conflict between the language in 6MCAR §3.025.C.2 and Minnesota Statutes, Section 116D.04, subd. 2a,clause (c). It would greatly assist our review if your staff would direct their attention to this issue.

The cited portion of the rules states that a discretionary Environmental Assessment Worksheet(EAW) may be prepared pursuant to the petition process set forth in M.S. Section 116D.04, subd. 2a, clause (c) unless the project is exempt under one of the categories established under 6MCAR §3.041. The Board seems to be relying on Section 116D.04, subd. 2a, clause(a), which requires the EQB to establish by rule, "...categories of actions...for which no environmental review is required under this section." However, clause(c) of that subdivision states, "An environmental assessment worksheet shall also be prepared whenever material evidence accompanying a petition...demonstrates that, because of the nature or location of a proposed action, there may be potential for significant environmental effects." (Emphasis added.) Can the EQB, then, by rule, exempt any projects from the petition process?

The following points suggest themselves for consideration:

1. In Section 116D.04, subd. 2a, clause(a), the EQB is given the authority to require or not require environmental review of certain categories of actions; the EQB is doing the requiring. In clause(c) of that subdivision, it is the RGU which decides whether an EAW will be prepared. The EQB decides which RGU should receive the petition, and forwards it accordingly. The EAW is still not required by the EQB; the RGU will exercise its judgment, based on the material evidence submitted. The clear language of clause(a) is that an EAW is not required when the EQB so designates, but clause(a) does not say that an EAW can be prohibited by the EQB. The latter is the effect of 6MCAR §3.025.C.2.

2. The terms "also" and "whenever" can be given their plain language meaning only if section 116D.04, subd. 2a, clause(c) is seen as a process existing in addition to section 116D.04, subd. 2a, clause(a) and only if an RGU must(shall) order an EAW every time (i.e., whenever) the proper evidence is presented.

3. Under 6MCAR §3.025.C.2., part of the law cannot be given full effect. That is, Section 116D.04, subd. 2a, clause(c) is held, by rule, not to apply to those projects which fall below the levels established in 6MCAR §3.041. The EQB could, in fact, set the categories so high that few, if any, petitions could be acted upon.

4. The EQB may have expanded its own power by prohibiting petitions for certain categories of projects when no statutory language gives them that authority. As noted in point #1, Section 116D.04, subd. 2a, clause(a) says merely that the EQB may choose not to require environmental review. The EQB is not given any authority to prohibit review.

5. It would constitute an absurd result if no EAW could be prepared even though material evidence was presented to show that there was a potential for significant environmental effects. This would be contrary to the purpose of Chapter 116D as set forth in 116D.01 and .02. It would also be absurd for the EQB categories to govern a process which does not include the EQB as a decision-maker. Clause(c) appears to require the RGU to answer to a petition even if the EQB does not ordinarily require review in that case.

Another way of looking at this is that Section 116D.04, subd. 2a, clause(a) directs the EQB to set up categories to cover the general case - that is, to require environmental review for projects which, because of their size or some other factor, can be assumed to have the potential for significant environmental effects. Clause(c) of that subdivision is designed to provide for the exception to the general case - that project which ordinarily might not have such impacts, but may, in a given case, because of the particular nature or location of the project. Again, it would be contrary to the policy set forth in 116D for the EQB to prohibit RGU's from acting in such a case.

It might be argued that the use of the passive voice in Section 116D.04, subd. 2a, clause(a) is ambiguous because it is unclear who the actor is. That is, does clause(a) refer to categories of action for which no review is required by THE BOARD or to categories for which no review is required by LAW? The EQB rules adopt the second interpretation, which would delegate unlimited discretion to the EQB, and would therefore be unconstitutional. Since statutes must, if possible, be interpreted in a manner consistent with the constitution, the first interpretation seems to be the correct one. The Board can establish categories of action for which no environmental review is required by THE BOARD under Section 116D.04, but it cannot establish categories of action for which no environmental review is required by LAW under Section 116D.04. The LAW requires EAW's when petitions present the proper evidence even if THE BOARD may not, and the EQB cannot override the law with a rule.

Our review would be greatly assisted by knowing whether or not language in 6MCAR §3.025.C.2 is judged by your office to be legal. We greatly appreciate your attention to this issue.

Sincerely,

Senator Tim Penny
Chairman, LCRAR

TP:lsh

Minnesota
Environmental Quality Board
100 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
Phone 296-2319

RECEIVED
AUG 03 1982
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

August 2, 1982

Mr. Michael Miles
Assistant Attorney General
204 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155

Re: Environmental Quality Board Rules Governing
Environmental Review Program

Dear Mr. Miles:

The following comments are in response to the letter of Senator Tim Penny regarding what he views as a possible conflict between 6 MCAR § 3.025C.2 of the above rules and Minn. Stat. § 116D.04, subd. 2a(c) (1980). The MEQB does not agree that the proposed rule 6 MCAR § 3.025C.2 necessarily conflicts with Minn. Stat. § 116D.04, subd. 2a(c).

As Senator Penny correctly anticipates in his letter, the MEQB does indeed rely on Minn. Stat. § 116D.04, subd. 2a(a) (1980). It provides in pertinent part "/t/he Board shall by rule establish ... categories of actions for which no environmental review is required under this section." (Emphasis added.) The Senator contends that section 116D.04, subd. 2a(c) is ambiguous because of the use of the passive voice. The MEQB disagrees. Use of the word "section" clearly refers to the entirety of Minn. Stat. § 116D.04. Such an interpretation of "section" is consistent with its common statutory usage and with Minn. Stat. §§ 645.46 and 645.47. While "section" is not explicitly defined in either section 645.46 or 645.47, it is clearly implicit that a reference to "section" is intended to refer to the entire statute. Thus, the phrase in clause (a) of subdivision 2a "for which no environmental review is required under this section" means that no review under the Minnesota Environmental Policy Act (MEPA) will be required for those categories of actions exempted by rule even if a petition is filed. It should be noted that even those actions exempt from the environmental review process of MEPA may be challenged directly through legal action under the Minnesota Environmental Rights Act (MERA).

To otherwise interpret section 116D.04, subdivision 2a(a) would be to ignore both the plain meaning of the statute and legislative intent. By amending MEPA in 1980, the legislature sought to increase the predictability of the environmental review process in Minnesota. The legislature was responding

to concerns raised by those affected by the process, including project developers, governmental age cies and citizen groups, that the existing environmental review process contained a great deal of uncertainty regarding when it was to be applied. One of the mechanisms chosen by the legislature to reduce that uncertainty was its direction to the MEQB to establish, by rule, mandatory categories which would clearly establish when the environmental review process applied and when it did not. The MEQB is directed in section 116D.04, subdivision 2a(a) to establish mandatory Environmental Impact Statements (EIS) and Environmental Assessment Worksheet (EAW) categories which, when implemented, clearly identify under which conditions the environmental review process applied and which environmental review documents must be prepared. As previously noted, that section also directs the MEQB to establish categories of actions to be exempt from environmental review. As the extensive rulemaking record demonstrates, and the Hearing Examiner found, the MEQB has established the need for, and reasonableness of, the mandatory EAW, EIS and exemption categories. The MEQB does not agree with Senator Penny that this is an unconstitutional delegation of authority to the MEQB, since section 116D.04, subdivision 2a of MEPA does set forth the standard for the establishment of such categories. For a category of action to be exempt from review, the MEQB must have demonstrated that it will have little or no potential for significant environmental impact.

Certainly, the legislative intent of increasing predictability would not be achieved if the petition process could trigger environmental review of otherwise exempt actions. Moreover, it should be noted that to so interpret section 116D.04 would be placing a heavy burden on local governmental units and project developers. Needless delays and cost increase may result if the petition process could force environmental review on types of actions which have been established to have little or no potential for significant environmental impact.

Senator Penny asserts that the rules could have the effect of all but eliminating the petition process. As set forth in the proposed rules, it is the position of the MEQB that the petition process serves the function of providing a means of access to environmental review in those instances not covered by mandatory EAW, EIS, or exemption categories. Such an interpretation is consistent with the language of section 116D.04, subdivision 2a(c). "Also" and "whenever" as used, may be viewed as referring to that review which is additional to that provided under section 116D.04, subdivision 2a(a).

Finally, it should be noted that the MEQB's interpretation is consistent with practice under the existing environmental review rules which explicitly provide that a petition for EIS may be dismissed if the action is exempt under the rules (6 MCAR § 3.032C.1.b.). These rules have been in effect since 1977, and have been consistently so interpreted and applied by the MEQB. This is the first time this question has been raised about the MEQB's interpretation of the petition process.

Please do not hesitate to contact me if you have any questions regarding this matter.

Sincerely,

Tom Rulland, Manager
Policy Analysis and Review

TR/meo

cc: Senator Tim Penny, Chairman, LCRAR

JOSEPH G. BEATON, JR., LTD.
ATTORNEYS AT LAW

1503 WASHINGTON AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55454

OFF (612) 340-9323
RES (612) 870-8914

July 21, 1982

The Honorable Warren Spannaus
Attorney General
Attention: Judith Wehrwein
State Capitol
204 Administration Building
50 Sherburn Avenue
St. Paul, Minnesota 55155

Re: Environmental Quality Board
Environmental Review Program Rules

Dear Mr. Spannaus:

It is my understanding that these rules are now being reviewed by your office for compliance with the Administrative Procedures Act. Minnesota Statutes 15.0412 Subd. 4. C. requires the agency at public hearing to make an affirmative presentation of facts establishing the need for and reasonableness of the rule proposed for adoption.

Based on my review of these rules it appears that this presentation was lacking in a number of categories. At this time the specific category which I call to your attention is the presentation of facts as set forth in the statement of reasonableness and need with respect to exploratory borings.

It is my understanding that except for the facts set forth in the statement of reasonableness and need there was no other factual presentation by the agency on the need for or reasonableness of the rule as it relates to exploratory borings.

Statements that things are controversial and subject to scientific debate do not seem adequate to me to permit the promulgation of a rule in light of the statutory test.

If you wish further input from me please do not hesitate to contact me.

Very truly yours,

JOSEPH G. BEATON, JR., LTD.

Joseph D. Beaton Jr. ddk

By: Joseph G. Beaton, Jr.

cc: Kathleen Beruk, LCRAR
James Farmer, LCRAR
Ernest Lehmann
JGB:ddk

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BRIAN FAHEY
Director of Research

August 2, 1982

RECEIVED
AUG 03 1982
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Ms. Judith Wehrwein
Office of the Attorney General
204 State Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: Proposed Rules Governing
the Environmental Review
Program (EQB-82-001-KR)

Dear Ms. Wehrwein:

This letter will constitute MACI's written comments, for the record regarding the legality of the proposed rules governing the Environmental Review Program. Mr. Ted Shields has previously offered MACI's comments on the proposed rules to the Hearing Examiner; via letter dated January 11, 1982, copy attached, and to the EQB via memo dated May 7, 1982, copy attached, and I will not repeat them here. MACI has attempted to address the problems with these rules through various amendments, and while some have been accepted, there are still significant and serious concerns that warrant further consideration before these rules be adopted.

First, M.S. 15.0412 subd. 4(c) provides in part:

> "At the public hearing, the agency shall make an affirmative presentation of facts establishing the need for and reasonableness of the proposed rule and fulfilling any relevant substantive or procedural requirements imposed on the agency by law or rule, (emphasis added)"

This requirement of establishing "the need for" and "the reasonableness of" the proposed rule has been interpreted by the office of Hearing Examiners to be as follows:

> "Although Minnesota Statutes and case law do not specifically enunciate the difference between establishing the need for a rule and the reasonableness for that rule, there is indeed a difference. That difference may be most easily drawn in common sense terms.
>
> The distinction between establishing the need for a proposed rule is one of focus.

> In establishing the need for a rule, the agency must make a presentation of facts which demonstrate the existence of a problem requiring some administrative attention. Thus, the focus in establishing the need for a rule is on the threshold question of whether a problem even exits.
>
> The need question is the threshold question in that, unless a problem exists, it is unnecessary to face the question of reasonableness. Stated more concisely, there can be no 'reasonable' solution for a non-existent problem."
>
> "The focus in establishing the reasonableness of a rule is, unlike the focus in establishing the need for that rule, on the solution proposed by the agency rather than on the problem which the agency seeks to remedy. In order to establish the reasonableness of a rule, the agency must, therefore, make a presentation of facts which demonstrates the existence of some rational basis leading to the specific solutions proposed to remedy the identified problem."
>
> PCA-79-008-MG

Having stated this, let me then illustrate the weaknesses in the agency's presentation on behalf of its rules.

First, it is incumbant upon the agency to not only make an affirmative presentiation on behalf of the proposed rules, but also to go forward and prove (1) a problem exists for which these proposed rules address, and (2) that these proposed rules are a reasonable means of addressing the problem.

It is MACI's position that while the agency has made a presentation of facts it has failed in its burden of establishing the need for and the reasonableness of the proposed rules because (1) the agency has not shown the need for these rules and if it has, it has exceeded its statutory authority in doing so, and (2) the agency by not considering the effect of the permitting process upon the environmental review program failed to show the reasonableness of the rules.

I. Agency has failed to show the need for its rules or has exceeded its Statutory Authority.

Under the proposed rules the MEQB staff predicts at least 200 EAW's and 20 EIS's would be mandated each year. This would represent a 3-4 fold increase in the number mandated without even considering the number which will result from the petitioning process.

The significant aspect of this is that there would be 10 times as many mandated EAW's as EIS's, which would seem to run counter to the statutory purpose of an EAW, that being to determine whether a EIS is required for a proposed action. The relatively low thresholds for mandatory EAW's will do nothing but result in many EAW"S for projects

far below the statutory requirements for an EIS. This then would seem to indicate an excessive regulatory action beyond that envisioned by the legislature. How else could such a sudden change in the test of what constitutes the "potential for significant environmental effects resulting from any major governmental action" be explained, since Public Exhibit 42 of the Hearing Record indicates that the Assistant Attorney General assigned to the Minnesota Pollution Control Agency stated "that the state has been writing EIS's since 1974, and the test for an EIS has always been the same."

If the large differences between the mandatory thresholds for EAW's and EIS's is not enough, what about the vague areas between the EAW and exemption thresholds with nearly half of the categories having no exemption at all. Do the low thresholds fulfill the statutory language and stated objectives of the proposed rules, to "reduce delay and uncertainty in the environmental review process?" It would seem that having exemptions for less than half the categories subject to mandatory review would certainly not lessen the number of projects subject to review. Quere then has the agency really evaluated the need for these rules for every category, and even more, the reasonableness of these proposed rules regarding each category?

II. Agency Rules do not meet reasonable test:

Regarding the question of whether the permitting process in certain cases mitigated or lessened the need for an environmental review, both the MEQB staff and Hearing Examiner dealt with this only on a generalized basis and not category by category. Yet pesticides was removed from a mandatory category soley because of the permitting process conducted by the Department of Agriculture. In addition, MACI showed that the extensive permitting required in air pollution ought to demonstrate that it is sufficient to protect the environment from an air pollution project. We feel that the Hearing Examiner's rejection soley because permit reviews do not replace environmental reviews to be overly simplistic and ignoring of the burdon of proof that was upon the MEQB to affirmatively show that the environmental protection resulting from an environmental review would not be essentially duplicative of environmental protection found elsewhere, (i.e. the permitting process). Since no such showing was done, MACI believes there will be serious duplication, time delays, and unreasonable costs incurred if the proposed rules are not amended to account for such other systems, which at present already, to some degree protect the environment. At the least the agency should have shown category by category why the rules are needed because (1) there is no permitting review for this category or that, or (2) the permitting review was inadequate and if so why it is inadequate.

In summary, let me repeat that MACI has already suggested changes

to correct the significant deficiencies in the proposed rules. The question at hand is whether the proposed rules are legally sufficient in that they (1) have complied with the legal requirements for adoption, and (2) whether the rules as proposed are within the scope of the statute and are not so vague and unreasonable as to be the subject of numerous challenges. We sincerely believe that the proposed rules, if restructured, would not only provide for environmental protection, but also limit the delays and costs of providing that protection to the maximum. Without these changes, we cannot see how the rules can be adopted since the agency has failed in their burden of establishing the "need for and the reasonableness" of the proposed rules.

Respectively,

Brian S. Fahey

Brian S. Fahey, Esq.
Director Research

BSF:cs

Attachment A

PROJECTED EAWs AND EISs
BY GOVERNMENTAL AGENCIES
(BASED ON 5 YEARS)

AGENCY	EAW	EIS
EQB	17	1
DNR	36	10
PCA	281	10
MHD	1	1
PCA OR METRO COUNCIL	55	26
DOT OR PORT AUTH.	20	5
PCA OR LOCAL	90	-
DOT OR LOCAL	50	5
DNR OR LOCAL	5	-
LOCAL	470	42
	1025	100

Attachment B

PAST EXPERIENCE & PROJECTED ENVIRONMENTAL REVIEW
(Based on 5 Years)

Category	EAWs & EISs Past 5 Years Present Rules	Projected Under New Rules		
		EAWs	EISs	Exemptions
Nuclear Fuel	0	1	1	None
Electric Generating Facilities	0	5	0	20%
Petroleum Refineries	0	1	0	None
Fuel Conversion Facilities	4	15	2	10%
Transmission Lines	0	10	1	69 kV
Pipelines	1	2	0	None
Transfer Facilities	0	10	0	10%
Underground Storage	0	0	2	None
Storage Facilities	2	50	0	10%
Metallic Mineral Mining & Processing	2	6	3	Small
Nonmetallic Mineral Mining	1	55	15	Small
Paper & Pulp Processing Mills	1	5	1	10%
Industrial/Commercial/ Institutional Facil.	89	170	9	25%
Air Pollution	9	25	0	None
Hazardous Waste	0	75	7	None
Solid Waste	2	55	26	None
Sewage Systems	0	100	0	10%
Residential Developm't	146	170	18	20%
Recreational Develop.	20	20	0	None
Airport Projects	1	10	0	None - By Type
Highway Projects	0	40	5	None - By Type
Barge Fleeting	0	20	5	None
Water Appropriation & Impoundments	12	15	0	5%
Marinas	10	10	5	5-7½%
Stream Diversion	0	5	0	Maintenance
Wetlands & Protected Waters	25	30	0	None
Agriculture & Forestry	9	20	0	Minimal
Animal Feedlots	0	90	0	10%
Natural Areas	0	5	0	None
Historic Places	0	5	0	None

MINNESOTA ASSOCIATION
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JAMES T. (Ted) SHIELDS
Vice-President
Energy & Environmental Affairs

January 11, 1982

Mr. Kent Roberts
Hearing Examiner
Office of Administrative Hearings
Summit Bank Building
310 - 4th Avenue South
Minneapolis, Minnesota 55415

Re: Proposed Rules Governing
the Environmental Review
Program. (EQB-82-001-KR)

Dear Mr. Roberts:

This letter will constitute MACI's written comments to be placed in the record of the referenced rule making proceeding.

I. Has the Agency Exceeded Statutory Authority?

In public exhibit 37 the subject of requirements for EIS's and EAW's was addressed. At issue was whether a project must be both major and have the potential for significant environmental impact before an EIS would be required. This subject was the point of discussion on pages 71-77 in Volume V of the transcript of the hearing, i.e., December 15, 1981. (Please note that all references to the transcript in this letter refer to Volume V.)

The transcript contains my recommendations for five changes in the language of the proposed rules (i.e., at Sections 3.028, 3.028B, 3.028C, 3.029A and 3.029C) to bring them into conformity with Minnesota Statutes 116D.04.

The agency staff said they would "consider that as a possible amendment" (Transcript page 77), but the discussion preceding this statement indicated that they did not think it was necessary or desirable. They further said that case law indicates that there is a singular test to determine both major and significant, and that they would furnish the hearing examiner with references.

It is my understanding that such case law addresses the issue with respect to the National Environmental Policy Act (NEPA), but not the Minnesota Environmental Policy Act (MEPA).

In this respect, the hearing examiner should carefully review the two acts. NEPA, in Title I, Section 102 (C), requires all agencies of the Federal Government to "include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human

environment, a detailed statement ---" (emphasis added). MEPA, on the other hand, in 116D.04 Subdivision 1 makes a distinction between governmental and private actions by requiring EIS's. "Where there is potential for significant environmental effects resulting from any major governmental action or from any major private action of more than local significance ---" (emphasis added). It is clear that the Minnesota Legislature intended a two fold test where private actions were involved.

The EQB in adopting the rules implementing MEPA in 1974 literally thwarted "more than local significance" test be defining "governmental action" to include virtually anything a private person might undertake (see the definition of governmental action on page 17 of the Statement of Need and Reasonableness).

No one to date has chosen to make a court challenge of the EQB's definition of "governmental action" as it relates to MEPA. However, further altering of the language of the statute as proposed in the rules is clearly beyond the authority of the EQB and could have the effect of further altering the intent of MEPA.

Furthermore, in regard to the "singular test" theory, Public Exhibit 42 (a memo from Alan R. Mitchell to Eldon G. Kaul) addresses this issue beginning on page 2, item III, entitled "What is the Standard for Requiring an EIS?" Here, at the bottom of page 2, it is stated that, "The two major tests, then are whether the action is major and whether there is potential for significant environmental effects" (emphasis added). In the first full paragraph on page 3, the memo states that the PCA Board had already addressed the issue of "major" since, "The EAW indicates that the action is a major action, and no one has challenged the conclusion. The question of local significance need not be answered either because the action is a governmental one (although no one has asserted that the action is not of more than local significance). In the end, the Board must answer the question: Is there potential for significant environmental effects?"

Thus, contrary to much of the staff testimony at the current hearing, Public Exhibit 42 recognizes and apparently advises the Pollution Control Agency Board of four essential statutory and regulatory factors in determining whether or not an EIS is required: (1) whether the project is "private" or "governmental"; (2) whether the project is "major"; (3) whether the project is of more than local significance; and (4) whether the project has the potential for significant environmental effects.

In light of the foregoing, we submit that at a minimum the proposed rules must be amended in accordance with the proposed amendments referenced above.

II. Environmental Reviews vs. Permits.

On pages 122-124 of the transcript, there were "final" discussions about the "differences" between the permitting process and the environmental review process. The agency staff indicated that it would "update" Public Exhibit 42 in which Alan R. Mitchell addressed the issue with regard to a proposed expansion of the St. Regis Paper Company mill at Sartell, Minnesota. This "update" is unavailable at the time of preparation of this letter.

Public Exhibit 42, beginning on page 3, attempts to define "Potential for Significant Effects". It then quotes the four factors under 6MCAR § 3.025D (1977) which must be considered. However, the author seems to down play the third listed factor (top of page 3), i.e., mitigation, by stating that the "absolute impact" is more important than the mitigation effects of ongoing public regulatory authority. In the last paragraph of page 5, the author states, "the fact that the applicant will be discharging only one-half the allowable BOD, is not as important as the absolute impact."

Likewise, the author on page 6 seems to de-emphasize the relative importance of the fourth listed factor (top of page 3) relating to other environmental studies (e.g., studies relating to the permitting process).

In conclusion, the author (last page on page 6) says that a reading of the rules leads him to believe that the rules are so lacking in specificity, "... a decision on whether a major action has the potential for significant environmental effects is largely a subjective one to be made by each Board member."

On page 11 of Public Exhibit 42, the author addresses the subject of whether the permitting process can substitute for the EIS process. Here, some very questionable and generous interpretations are made. The statement that "statute prohibits it" is contrary to the third factor listed in 6MCAR § 3.025D (1977) relating to mitigation by ongoing public regulatory authority. And the statement that, "the Supreme Court has warned against it" is a very liberal interpretation of Court rulings. I am informed that

the Court has been primarily concerned with the facts in each case as they relate to the extent of the review of the subject in question.

It appears that this concept of down playing "mitigation" and selectively de-emphasizing some of the factors requiring consideration in determining the necessity of an environmental review is carried forward and expanded in the proposed rules. The question then arises, "Do the proposed rules meet the objectives of the rule (§ 3.021D) to "reduce delay and uncertainty in the environmental review process", and "eliminate duplication"?

On page 123 of the transcript I asked agency staff if they were going to address the issue of permits vs. environmental review for each category separately, or only in a general fashion. The answer to that question apparently was that they intend to address it in a generalized fashion in an "update" to Public Exhibit 42, and not go into the categories separately. I submit that this is totally inadequate because the extent of permit review varies widely. Examples:

1. Pesticides. Ms. Harper of the Department of Agriculture outlined in detail the permitting process relating to the use of pesticides. She concluded (top of transcript page 147) that the department supported the deletion from the old rules of the category that required an EAW for pesticide use (i.e., because the permitting process is sufficient).

2. Air Pollution. Air pollution in and of itself is totally controlled by the federally mandated Clean Air Act, and the State Implementation Plan (SIP) of the PCA. The ambient air quality standards established in APC 1 set limits for the amount of pollutants of various kinds that the ambient air can contain. These limitations are determined by rules adopted by the PCA, and in no case can they be less stringent than the federal regulations. By law, they must be established at levels which will protect public health as well as the environment, including "an adequate margin of safety --- to protect the public health." (Section 109. (a) (1) of the federal Clean Air Act of 1977). In areas, (air quality regions) where the limitations are being exceeded, existing sources of emissions are required to reduce the amount of pollutants they emit, and new sources must acquire "offsets" for all of their emissions so that there will be a "net air quality benefit" (MCAR § 4.0041 C8). These

"offsets" must be obtained through a reduction of the amount of pollutants being emitted from an existing source which will exceed the amount of pollutants emitted by the new source. In addition, in areas where limitations are being met, as well as in areas where the limitations are being exceeded, new sources must meet BACT (i.e., utilize the best available control technology).

Certainly this is a complete body of regulatory control with regard to air pollution. The "public concern" about air quality, including acid rain (page 134 of the Statement of Need and Reasonableness), is regularly and thoroughly addressed in the rule making process at both the federal and state levels when the ambient air quality standards are established. (Note that the current hearings on APC 1 began in February, 1981 and are continuing!)

We submit that the permitting and regulatory process involved in air pollution is so complete as of this date that no benefit can be derived from the type of environmental review incorporated in the proposed rules.

In summary, it is abundantly clear that the permitting process now in place is sufficient to protect the environment with respect to many of the categories included in the proposed rules. Requiring (or allowing through the petition process) environmental reviews will be duplicative, costly and time consuming without environmental benefit. The agency has not made a category analysis of the existing regulatory program, nor has it addressed the issue of how the environmental review process will further improve or protect the environment. Until it has done this and adjusted the proposed rules accordingly, it has failed to establish either the need for or the reasonableness of the proposed categories. Furthermore, it has violated its own objectives stated in § 3.021 D.4. and 5., i.e., "Reduce delay and uncertainty in the environmental review process", and "Eliminate duplication".

III. Threshold Limits

As the rules are structured, and with the existing definition of "governmental action", hundreds of small, private projects of only local significance will come under or be subject to the review process. Thus, the language of the statute, "private action of more than local significance", becomes meaningless.

The best estimate I can make, following discussions with the agency staff, is that there will be about a four-fold increase in the projected number of EIS's. An exact figure is not available on the number of EIS's

prepared in the past five years, but apparently there have been about 25. This compares with the staff's projection of about 100 over the next five years under the proposed rules.

One must address the basic question, "is the test for an EIS being changed, even though the statutory requirements remain the same"? In Public Exhibit 42, the attorney for the PCA states, "The state has been writing EIS's since 1974, and the test for an EIS has always been the same." (first paragraph on page 7). At the end of this paragraph the attorney states that the PCA Board should make a comparison "with the potential impacts of these other projects, both those for which an EIS was required and those for which an EIS was not prepared."

The EQB staff projection of a four-fold increase in the number of EIS's would suggest that the type of comparison recommended in Public Exhibit 42 was not made in establishing the mandatory EIS categories. If this were done, some of the thresholds undoubtedly would be raised, based on the experience and decisions of the EQB over the past seven years.

Adoption of threshold levels consistent with past decisions still would likely result in an increase in the number of EIS's, as well as provide more certainty and predictability. As Ms. Haukedahl stated (on page 47 of the transcript) as one of the reasons for the greater number of EIS's " --- is that there were no mandatory EIS categories under the old rules and there are now. You really had to rely entirely on the petition process or else voluntary EIS's in order to achieve an EIS. And now there will be mandatory EIS categories pursuant to the legislation."

It is possible and even probable that some projects were not involved in the EIS process in the past because there was no petition filed. But it is inconceivable that there were three of these for every one for which an EIS was prepared, given the controversial nature of such projects and the large number or reviews that were made (see Public Exhibit 38).

There is a considerable amount of discussion in the transcript concerning the comparative threshold levels for EIS's, EAW's and Exemptions. Attached herewith is a table showing the actual numbers and percentages, wherever this was possible. The information was compiled from the Statement of Need and Reasonableness and has been supplied to the EQB staff. Staff has indicated they agree with its accuracy. We hope it will be useful to the Hearing Examiner in reviewing this issue.

IV. Are the Rules Administratively Manageable?

One of the questions which must be addressed in viewing the mandatory categories is whether or not the thresholds are administratively manageable (item 4 in the middle of page 110 of the Statement of Need and Reasonableness).

Representatives of the cites and the counties testified to the effect that they anticipated some significant problems in meeting their administrative responsibilities, especially with regard to the number of reviews the rules will require. And they strongly suggested that in some cases either a city or a county would not be capable of meeting their responsibilities.

At page 64 of the transcript I asked the question, "what happens when the RGU fails to act?" Ms. Hankedahl responded, "Then the burden is on the proposer to probably take the RGU to court to ~~face~~ force them to act ---." The Hearing Examiner then asked "...if the EQB could intervene"? Mr. Rulland answered in the affirmative, referencing section 3.024 F. This section does state that the EQB may designate a different RGU. However, please note that this would require a formal action of the EQB at one of its regular meetings. This leads to a possible scenario of: (1) Proposer prepares EAW (time?); (2) RGU fails to act (time-up to two months - top of page 64 of the transcript); (3) EQB at regular meeting designates different RGU (time-up to one month); (4) New RGU designated (time-up two months). Thus, a project proposer could be delayed by five months in proceeding with a project after he has prepared a draft EAW!

In the eyes of the drafters of the rules this possible scenario may meet the minimum requirements of being "administratively manageable", but it far exceeds these minimum requirements in the eyes of project proposers.

Also, at page 164 of the transcript, Ms. Cain of the PCA indicated that, "We'll do it to the best of our ability to meet those time frames." Later, she further stated that she could not assure that the time frames would be met, but that, "...there are provisions for getting exemptions from the Governor for good cause. I think that we would certainly have good cause if we went over the time frames."

As referenced in Public Exhibit 36, one of the reasons the legislature amended MEPA in 1980 was to reduce the time involved in the environmental review process and to add certainty and predictability. All of the foregoing indicates that with the several-fold increase in the number of reviews, the reduced capabilities of RGU's and the questionable capabilities of

state agencies, there is no assurance (in fact there is good reason to doubt) that the costly delays in the past will be avoided in the future.

VI. Individual Categories

This letter will address the reasonableness of some, but not all, of the mandatory categories. It is believed that other participants with greater experience and expertise will address many of the others.

1. Fuel Conversion - Coal and Peat. Please note from the attachment that the EAW threshold is only 10% of the EIS threshold, and there is no exemption as "required" by the statute. On page 117 of the Statement of Need and Reasonableness, it is stated that, "Fuel conversion facilities for coal and peat have the potential for significant impacts with regard to air pollutant and water pollutant discharges, and transportion impacts." It is further stated that these projects are "likely to be highly controversial". What is not addressed is the adequacy of existing regulatory requirements to limit and control the discharge of air and water pollutants to an acceptable level. Also, there is no discussion of what the transportation impacts might be, and there is no discussion or justification for having no exemptions.

Since air and water pollution is thoroughly controlled through the existing permitting process of PCA, and since transportation probably would be a factor only on very large projects, the EAW threshold should be raised significantly to where the factor of transportation would become a legitimate and documented concern. Also, there definitely should be an exemption threshold at a level somewhat below the size of operation where transportation is a factor.

"Controversy" alone is not a legitimate reason for requiring an environmental review! Protection or enhancement of the environment is.

2. Fuel Conversion - Alcohol. The attachment shows that the EAW threshold is 10% of the EIS threshold. On page 117 of the Statement of Need and Reasonableness the factors of water pollution, odors, transportation systems and land use patterns are listed as potential concerns. "Controversy" is addressed with regard to the use of natural areas and agricultural land.

Again, the factor of water pollution and odor are currently under regulatory control. Impacts on natural areas and agricultural land will and should be addressed only if the thresholds for those categories are exceeded.

It is stated on the top of page 118 that operations smaller than ½ to 1 million gallons "are likely to be insignificant." Therefore, both the

EAW and the exemption categories should be raised to assure that a mandatory EAW will be required only when there is a reasonable likelihood that the project will be major and/or eligible for an EIS, and the exemption category should be raised to protect against delays in small projects that are likely to be "insignificant", and certainly far removed from the category "major".

3. Transfer Facilities. The exemption here is only 10% of the mandatory EAW category. All of the "concerns" listed on page 121 of the Statement of Need and Reasonableness are covered by existing regulatory controls, including "spills". The exemption threshold should be raised to about 50% of the EAW threshold.

4. Storage Facilities. The EAW threshold for coal is very low, and the exemption is only 10% of that. All of the "concerns" mentioned are subject to other regulatory requirements. This whole category is highly questionable, especially in light of the statement at the bottom of page 123 of the Statement of Need and Reasonableness, "If operations of this nature have the potential for significant impacts, the issue should be raised pursuant to the primary purpose of the activity."

The EAW threshold for hazardous materials appears to be reasonable, but there is no exemption as "required" by the statute. There certainly should be a reasonable exemption, particularly in light of the fact that a thorough and complete permitting process is required for such facilities.

For natural gas, the EAW threshold is only 10% of what it is in the current rules. The only reason given is that the current threshold is "unrealistic", but there is nothing said to justify the new number. Again, there is no exemption. As in the case of hazardous materials, an exemption is required if the category is to remain in the rules. Also, "controversy" should not be the sole reason for requiring a review, especially in light of the existing extensive safety and permitting requirements.

It should be noted that the storage facilities together are projected to require 50 mandatory EAW's over the next five years, compared to only 2 during the past five years. This will require an awful lot of work, time and money for some very questionable benefits.

5. Nonmetallic Mineral Mining. The acreage threshold for peat mining seem to be realistic. However, there is no exemption to protect the small mining activities relating to horticultural and briquet production. An exemption threshold of 80 acres would appear to be reasonable.

Gravel and sand extraction thresholds are greatly reduced from the current thresholds with the only justification given that such operations are "controversial". Again, there are no exemptions.

6. Paper and Pulp. The exemption level here is 20% of the EAW threshold. This appears to be excessively low for the expansion of an existing facility at which most of the "concerns" already have been addressed.

7. Industrial/Commercial/Institutional. The relative thresholds here are more in keeping with a reasonable approach; i.e., the EAW is 40% of the EIS, and the exemption is 25% of the EAW. The real question involved, then, is whether the numerical thresholds are reasonable. It is anticipated that other participants in the hearing will address the numerical thresholds issue.

8. Air Pollution. As stated earlier, there simply is no justification for this category in light of the new regulatory requirements of the federal Clean Air Act. Projects which do not exceed the threshold limits of other categories certainly should not be subject to review on the singular factor of its carefully regulated air emissions.

Note also that there is no exemption, and the explanation of this on page 85 of the transcript is simply unacceptable and unjustified. For example, the statement "---by having an exemption in an impact category, we are in essence saying that air pollutants have no environmental effect" could be carried further by saying that the fact that noise is not a category is in essence saying that noise has no environmental effect.

Mr. Rulland stated on page 85 of the transcript, in answer to the question of whether a small air pollution emission facility would be subject to an EAW through the petition process, that such a project "could be subject to a petition and thus to the EAW unless the project falls under an exemption in another category." There is nothing in the rules to support this statement. That's the same as saying that if you build a small commercial facility of less than 50,000 square feet in the middle of a type 3 wetland you are exempt because the size of the facility is exempt under the Industrial/Commercial/Institutional category. Mr. Kadlec on page 86 said that a petition would be "rejected" on a less than 50,000 square feet industrial facility emitting 50 tons of air pollutants. However, this is pure conjecture because the rules do not state this. Furthermore, that decision would be made by any of the many RGU's which will be reviewing such projects.

The staff's desires and intentions of how the entire review process should work in this regard are simply not supported by the provisions of the rules.

Also, the staff's justification for having this category at all, i.e., "Because it's a quantifiable, easily quantiable impact" (page 86 of the transcript) is totally lacking in merit.

9. Hazardous Waste. As stated earlier, the new hazardous waste regulatory programs of both the state and the federal government are quite complete in addressing the environmental aspects of hazardous waste facilities. Whether or not the review process provided by the proposed rules will be duplicative or properly coordinated with these other programs remains to be seen, based on the discussions at pages 113 to 117 of the transcript. It is hoped that Bob Dunn of the Waste Management Board will be addressing this matter in more detail for the benefit of the Hearing Examiner.

10. Marinas. The discussion of marinas appears at pages 125 to 129 of the transcript. It is MACI's position that this should be a category only for waters classified as wild and scenic rivers or "natural environment" lakes designated as such by the Department of Natural Resources.

Regardless of the staff's listing of a large number of impact areas relating to marinas (see page 151 of the Statement of Need and Reasonableness), the fact remains that the primary concern about marinas revolves around the number of boats that are going to be using a particular body of water (see my statement on page 127 of the transcript). And regardless of the "controversy" involved in the number of boats, there are no standards as to what is an "acceptable" number (see paragraph beginning on the bottom of page 127 of the transcript, and note that in this paragraph extending on page 128, the numbers of public accesses owned and planned by DNR should be 1000 and 500, rather than 100 and 50).

The arbitrariness of the staff on this issue also is almost incredulous wherein they apply the rules to "marinas" but not to "public accesses" (see transcript pages 128-129), and to commercial facilities and not to private facilities (see page 126 of the transcript). (Please note also near the top of page 129, the statement by me should read, "I am recommending the exclusion of this category", rather than the "inclusion".)

11. Wetlands. The discussion of wetlands appears at pages 129-133 of the transcript. Here the thresholds have, in fact, been reduced considerably regardless of what the staff testified. Beginning at the bottom of page 132, I was referred to Mr. Harmack's testimony for the detailed justification of the change in the thresholds. I have reviewed his testimony carefully and find it to be terribly confusing, as well as lacking in justification for the

change. In my estimation, the change has not been proven reasonable.

VII. General Comments. We strongly support the submissions by Dick Nowlin, particularly with respect to: (1) when governmental approvals are effectively completed; (2) when exemptions are applicable; (3) supplemental EIS's; and (4) the selection of a governmental agency with jurisdiction.

We also strongly support the suggestions and specific amendments submitted by Gary Johnson.

It should be emphasized that Mr. Nowlin and Mr. Johnson represent portions of the private sector which have been and will be involved in the environmental review process. Neither is attempting to be exempted from the process, but it is of extreme importance that the process be as streamlined and cost effective as possible.

VIII. Summary.

In summary, it is important that the environmental review process be as streamlined as possible to avoid the costly impacts of delay, uncertainty and bureaucratic red tape. Improvements in the proposed rules have been suggested and are in order with respect to this issue.

There clearly is a lack of sufficient justification for some of the mandatory categories.

Many of the thresholds are at levels below that which has or can be justified.

Exemption thresholds are lacking in some categories, which contradicts a statutory requirement, and are so low in others as to be almost meaningless.

EAW thresholds, as proposed, are so low in many categories that many small projects will be subject to review which would never come close to meeting the EIS requirement of being major and having the potential for significant environmental impacts. This goes beyond the statutory definition for the preparation of an EAW "to determine whether an environmental impact statement is required." In this respect, the rules place too much emphasis on mandatory EAW's and virtually ignore the provisions of the statute whereby a simple petition by 25 persons may request an EAW regardless of whether or not it is a "major" action.

EIS thresholds are set at a level which the staff projects will require four times as many EIS's as have been required in the past, in spite of the fact that the statutory requirements for an EIS have not changed since its

adoption in 1973, and determinations have been made by the EQB for seven years as to which projects do and do not require EIS's. If adopted as proposed, the mandatory EIS categories would alter via administrative fiat the tests established in statutory language and in decisions of the EQB over the past seven years.

Unless the deficiencies addressed herein are corrected, we firmly believe that neither the need for nor the reasonableness of the rules have been demonstrated by an affirmative presentation of facts.

Respectfully,

James T. Shields

JTS/cms

Attachment

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OF
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JAMES T. (Ted) SHIELDS
Vice-President
Energy & Environmental Affairs

TO: Members of the Minnesota Environmental Quality Board (MEQB)

FROM: James T. (Ted) Shields

DATE: May 7, 1982

RE: Proposed Rules Governing the Environmental Review Program

Adoption of the proposed environmental review rules could deliver a devastating blow to the hopes of many persons who wish to expand an existing business or establish a new business in Minnesota.

Since the environmental review process was initiated in Minnesota in 1974, we've experienced a radical change in the state's economy and business activity -- a change from expansion to contraction. Prime interest rates early in 1974 averaged about 9 percent, compared to about 16½ percent today. Thus, the cost of expanding or developing new businesses has risen sharply. Any delay in expanding a business or developing a new business is a costly process and an important consideration in whether or not to undertake a project.

In addition, the entire governmental regulatory process of "permitting" has expanded significantly. Today there are more than 2,000 various types of licenses (permits) issued by state agencies to regulate businesses operating in Minnesota. In addition, there are innumerable permits required by local units of government. Thus, there are few, if any, "private" projects which are not considered "governmental actions" under the language of the statutes (i.e."....activities, including projects wholly or partially conducted, permitted, financed, regulated or approved by units of government including the federal government").

The capabilities of all levels of government to continue existing programs and services have been limited severely by forced reductions in their budgets. There appear to be few governmental units capable or able to take on new or expanded programs without further reducing existing programs.

These factors were not an appropriate matter for the Hearing Examiner to consider during the formal hearings on the proposed rules. But they are factors which must be considered by governmental decisionmakers - in this case the MEQB.

If the proposed rules are adopted, the MEQB staff projects at least a three to four-fold increase in the number of Environmental Assessment Worksheets (EAW's) and Environmental Impact Statements (EIS's) (see attachments A and B). In other words, there would be at least 200 EAW's and 20 EIS's mandated each year. How many additional EAW's would result is anyone's guess, since any 25 persons can petition for an EAW on innumerable small projects and present a minimal amount of evidence indicating there "may be potential for significant environmental effects". And whether or not the project was a "major" project would have no bearing on whether an EAW would be ordered.

The fact that the proposed rules would mandate at least ten times more EAW's than EIS's seems to run counter to the statutory purpose of an EAW (i.e...."to determine whether an environmental impact statement (EIS) is required for a proposed action"). It appears that the low thresholds for mandatory EAW's will result in a large number of EAW's for projects which are far below the statutory requirements for an EIS.

Furthermore, the fact that the rules mandate a four-fold increase in the number of EIS's simply means that there has been a sudden change in the test of what constitutes the "potential for significant environmental effects resulting from any major governmental action". This is in direct contradiction to a statement made by an Assistant Attorney General assigned to the Minnesota Pollution Control Agency (Public Exhibit 42 of the Hearing Record) that, "(t) he state has been writing EIS's since 1974, and the test for an EIS has always been the same." He further states that to determine whether an EIS is required on a project, a comparison should be made "with the potential impacts of these other projects, both those for which an EIS was required and those for which an EIS was not prepared." Nothing appears in the Hearing Record suggesting that such comparisons have been made between past MEQB determinations and the mandatory EIS categories contained in the rules, even though the statutory language pertaining to EIS's remains unchanged.

It is true that some of the issues raised above were addressed in a statement presented to the Hearing Examiner on January 11, 1982, (attachment C). However, he chose not to comment on "changing the test" for an EIS or on the relative number of EAW's and EIS's. In regard to "major", his Finding Number 61 approved the MEQB's staff assertion that the term "major" be included in the rules where appropriate. The staff rejected this recommendation in their proposed Finding Number 61.

In addition to the large latitudes between the mandatory thresholds for EIS's and EAW's, there are excessive "gray" areas between the EAW thresholds and the Exemption thresholds (see attachment D). And to make matters even worse, there are no exemptions for nearly half of the categories. These facts certainly thwart statutory language and one of the stated objectives of the rules, to "reduce delay and uncertainty in the environmental review process". How more uncertain can a project proposer be than to initiate a small project involving any one of the 20 categories for which there is no exemption? Will 25 aggravated persons file a petition, thus causing a 20 to 35-day delay to determine whether an EAW will be required? And given the minimal amount of evidence required to indicate that there "may be potential for significant environmental effects", will an EAW be required? If an EAW is required there will be a total delay of from about three to six months. In today's money market and high interest rates, such uncertainties are sure to quell new or expansion projects.

It should be noted that the Hearing Examiner, for reasons unexplained in his Findings, ignored the subject of Exemptions in each of the categories he addressed.

And finally, there is the question of whether the permitting process in some instances obviates the need for an environmental review. The MEQB staff, with the ultimate approval of the Hearing Examiner, dealt with this on a generalized basis, rather than a category by category basis. This was in spite of the fact that the use of pesticides was removed from a mandatory category of the draft rules on the basis that the environmental review process would be duplicative of the permitting process conducted by the Department of Agriculture. MACI cited the extensive permitting requirements involved in Air Pollution to show that the permitting process is sufficient to protect the environment from an "air pollution" project. The Hearing Examiner simply rejected MACI's arguement on the general theme that permit reviews do not replace environmental reviews. However, in this instance and perhaps others, we firmly believe the burden rests with the MEQB to affirmatively show that the environmental protection resulting from environmental review will not be wholly or substantially duplicative of the environmental protection provided by the permitting process. This failure raises serious questions as to the reasonableness of the rules. Absent such a showing by the MEQB, we submit that there will be serious duplication and time delays, particularly for small projects for which there is no exemption threshold.

In conclusion we submit that the adoption of the proposed rules by the MEQB will:

1. Cause further delays in projects and increase the uncertainty of the environmental review process;

2. Greatly increase the costs and burdens to governmental units and to at least three out of four project proposers who will be mandated to do EAW's and EIS's under the new rules, but are not required to do these reviews under the current rules; and

3. Subject an unknown number of small projects to the petition process because the MEQB has failed to follow statutory direction to exempt them from the review process.

We sincerely believe these results are contrary to the Legislature's intent when it amended the Act in 1980. These results also are contrary to the efforts of the Administration and the Legislature to hasten the recovery of the state's economy, create new jobs and encourage the survival, retention and creation of small businesses in Minnesota.

To correct these gross deficiencies in the proposed rules, we suggest the following:

1. Make a detailed analysis of past projects where EIS's were ordered, and not ordered, and adjust the mandatory EIS thresholds in reasonable accordance with the established decisions and policies of the EQB.

2. Establish mandatory EAW thresholds at a level which will require EAW's where there is a reasonable possibility that the document will reveal a project to be a "major action with the potential for significant environmental effects."

3. Establish Exemption thresholds for all categories at realistic thresholds which will provide certainty to the proposers of small projects that they will not be faced with the potential for unnecessary delays and expense.

4. Review the current permitting requirements in each category and eliminate those categories where an environmental review would not substantially improve environmental protection.

We sincerely believe that a restructuring of the rules in this manner will best serve Minnesotans and the State's environment.

Also, since we have been informed that the Legislative Commission to Review Administrative Rules will be reviewing these proposed rules, we are sending a copy of this memorandum to the members of the Commission.

JTS:djd

Attachments:

A - Projected EAW's amd EIS's, by Agencies
B - Past and Projected EAW's and EIS's, by Categories
C - MACI Comments to Hearing Examiner
D - Comparison of EIS, EAW and Exemption Thresholds

cc: Legislative Commission to Review Administrative Rules

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AG copy

Minnesota Environmental Quality Board

Adopted Rules Governing the Environmental Review Program

Rules as Adopted

Chapter Eleven: Authority, Purpose, Definitions, Responsibilities

6 MCAR S ~~3.001~~ 3.021 Authority, purpose and objectives.

A. Authority. Rules 6 MCAR SS ~~3.001-3.036~~ 3.021-3.056 are issued under authority granted in Minn. Stat. ch. 116D to implement the environmental review procedures established by the Minnesota Environmental Policy Act.

B. Application. Rules 6 MCAR SS ~~3.001-3.036~~ 3.021-3.056 apply to all governmental actions. Rules 6 MCAR SS ~~3.001-3.036~~ 3.021-3.056 shall apply to ~~actions~~ projects for which environmental review has not been initiated prior to the rule's effective date. For any ~~action~~ project 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~~ decisions that may be required for that ~~action~~ project shall be acted upon in accord with prior rules.

et seq. HE 17

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~~ project will have on the environment. The purpose of 6 MCAR SS ~~3.001-3.036~~ 3.021-3.056 is to aid in providing that understanding through the preparation and public review of environmental documents.

Environmental documents shall contain information which

address addresses 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 a decision, nor shall indications of adverse environmental effects necessarily require that an action a project 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 SS 3.001-3.036 3.021-3.056 is designed to:

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

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 project;

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

5. Eliminate duplication.

6 MCAR S 3.002 3.022 Abbreviations and definitions.

A. Abbreviations. For the purpose of 6 MCAR SS 3.001-3.036 3.021-3.056 the following abbreviations have the meanings given them.

1. "CFR" means Code of Federal Regulations.

2. "DEPD" means Department of Energy, Planning and Development.

2. 3. "DNR" means Department of Natural Resources.

3. 4. "DOT" means Department of Transportation.

~~4.~~ 5. "EAW" means environmental assessment worksheet.

~~5.~~ 6. "EIS" means environmental impact statement.

~~6.~~ 7. "EQB" means Environmental Quality Board.

~~7.~~ 8. "HVTL" means high voltage transmission line.

~~8.~~ 9. "LEPGP" means large electric power generating plant.

~~9.~~ 10. "MCAR" means Minnesota Code of Agency Rules.

~~10. "MEA" means Minnesota Energy Agency.~~

11. ~~"MHD"~~ "MDA" means Minnesota Department of Agriculture.

12. "MDH" means Minnesota Department of Health.

~~12.~~ 13. "PCA" means Pollution Control Agency.

~~13.~~ 14. "RGU" means responsible governmental unit.

~~14.~~ 15. "USC" means United States Code.

B. Definitions. For the purposes of 6 MCAR SS ~~3.001-3.036~~ 3.021-3.056, 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.~~ HE 17

~~3.~~ 1. "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~~ or management as that of the agricultural land during the period of agricultural use. HE 18 HE 18

~~4.~~ 2. "Animal units" has the meaning given in 6 MCAR S 4.8051 B.4.

~~5.~~ 3. "Approval" means a decision by a unit of government to issue a permit or to otherwise authorize the commencement of

a proposed ~~activity~~ project.

~~6.~~ 4. "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.~~ 5. "Biomass sources" means animal waste and all forms of vegetation, natural or cultivated.

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

~~9.~~ 7. "Class II dam" has the meaning given in 6 MCAR S 1.5031.

~~10.~~ 8. "Collector roadway" means a road that provides access to minor arterial roadways from local streets and adjacent land uses.

~~11.~~ 9. "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.~~ 10. "Cumulative impact" means the impact on the environment that results from incremental effects of ~~an action~~ the project in addition to other past, present, and reasonably foreseeable future ~~actions~~ projects regardless of what person undertakes the other ~~actions~~ projects. Cumulative impacts can result from individually minor but collectively significant ~~actions~~ projects taking place over a period of time.

~~13.~~ 11. "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.~~ 12. "Disposal facility" has the meaning given in Minn. Stat. S 115A.03, subd. 10.

~~15.~~ 13. "EIS actual cost" means the total of all allowable expenditures incurred by the RGU and the proposer in preparing and distributing the EIS.

~~16.~~ 14. "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.~~ 15. "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.~~ 16. "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.~~ 17. "Environment" means physical conditions existing in the area which may be affected by a proposed ~~action~~ project. 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.~~ 18. "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~~ project or to initiate the scoping process for an EIS.

~~21.~~ 19. "Environmental document" means EAW, draft EIS, final EIS, ~~alternate~~ substitute review document, and other environmental analysis documents.

~~22.~~ 20. "Environmental impact statement" or "EIS" means a detailed written statement as required by Minn. Stat. S 116D.04, subd. 2a.

~~23.~~ 21. "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.~~ 22. "First class city" has the meaning given in Minn. Stat. S 410.01.

~~27.~~ 23. "Flood plain" has the meaning given in rule NR 85 (c) of the Department of Natural Resources.

~~28.~~ 24. "Flood plain ordinance, state approved" means a local governmental unit flood plain management ordinance which meets the provisions of Minn. Stat. S 104.04 and has been approved by the Commissioner of the DNR pursuant to rule NR 85 of the Department of Natural Resources.

~~29.~~ 25. "Fourth class city" has the meaning given in Minn. Stat. S 410.01.

~~30.~~ 26. "Governmental action" means activities, including projects wholly or partially conducted, permitted, assisted, financed, regulated or approved by governmental units, including the federal government.

~~31.~~ 27. "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.~~ 28. "Gross floor space" means the total square footage of all floors but does not include parking lots or approach areas.

~~33.~~ 29. "Ground area" means the total surface area of land that would be converted to an impervious surface by the proposed ~~activity~~ project. It includes structures, parking lots, approaches, service facilities, appurtenant structures, and recreational facilities.

~~34.~~ 30. "Hazardous waste" has the meaning given in Minn. Stat. S 116.06, subd. 13.

~~35.~~ 31. "High voltage transmission line" or "HVTL" has the meaning given in 6 MCAR S 3.072 E.

~~36.~~ 32. "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.~~ 33. "Large electric power generating plant" or "LEPGP" has the meaning given in 6 MCAR S 3.072 G.

~~38.~~ 34. "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 established pursuant to Minn. Stat. ch. 112, counties, towns, cities, port authorities, housing authorities, and the Metropolitan Council. It does not include courts, school districts, and regional development commissions.

~~39.~~ 35. "Marina" has the meaning given in 6 MCAR S 1.5020 D.

~~40.~~ 36. "Mineral deposit evaluation" has the meaning given in Minn. Stat. S 156A.071, subd. 9, clause (d).

37. "Minnesota River Project Riverbend area" means an area subject to the comprehensive land use plan of the Project Riverbend Board established pursuant to Laws of 1982, ch. 627.

38. "Mississippi headwaters area" means an area subject to the comprehensive land use plan of the Mississippi River Headwaters Board established pursuant to Laws of 1981, ch. 246; Minn. Stat. ch. 114B.

39. "Mississippi headwaters plan" means the comprehensive land use plan of the Mississippi River Headwaters Board established pursuant to Laws of 1981, chapter 246; Minn. Stat. ch. 114B.

~~41.~~ 40. "Mitigation" means:

a. Avoiding impacts altogether by not ~~taking~~

undertaking a certain ~~action~~ project or parts of ~~an action~~ a project;

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

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~~ project; or

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

~~42.~~ 41. "Mixed municipal solid waste" has the meaning given in Minn. Stat. S 115A.03, subd. 21.

~~43.~~ 42. "Natural watercourse" has the meaning given in Minn. Stat. S 105.37, subd. 10.

~~44.~~ 43. "Negative declaration" means a written statement by the RGU that a proposed ~~action~~ project does not require the preparation of an EIS.

~~45.~~ 44. "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.~~ 45. "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.~~ 46. "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.~~ 47. "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.~~ 48. "Phased action" means two or more ~~activities~~ projects 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.~~ 49. "Positive declaration" means a written statement by the RGU that a proposed ~~action~~ project requires the preparation of an EIS.

~~51.~~ 50. "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.~~ 51. "Preparation notice" means a written notice issued by the RGU stating that an EIS will be prepared for a proposed ~~action~~ project.

~~53.~~ 52. "Processing", as used in 6 MCAR SS ~~3.018~~ 3.038 O.2. and 3., and ~~3.019~~ 3.039 K.3., has the meaning given in Minn. Stat. S 115A.03, subd. 25.

53. "Project" means a governmental action, the results of which would cause physical manipulation of the environment, directly or indirectly. The determination of whether a project requires environmental documents shall be made by reference to the physical activity to be undertaken and not to the governmental process of approving the project.

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

55. "Project Riverbend plan" means the comprehensive land use plan of the Project Riverbend Board established pursuant to

Laws of 1982, ch. 627.

~~55.~~ 56. "Proposer" means the private person or governmental unit that proposes to undertake or to direct others to undertake ~~an action~~ a project.

~~56.~~ 57. "Protected waters" has the meaning given public waters in Minn. Stat. S 105.37, subd. 14.

~~57.~~ 58. "Protected wetland" has the meaning given wetland in Minn. Stat. S 105.37, subd. 15.

~~58.~~ 59. "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.~~ 60. "Related action" means two or more ~~actions~~ projects 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~~ projects will induce the other ~~action~~ project.

~~60.~~ 61. "Resource recovery" has the meaning given in Minn. Stat. S 115A.03, subd. 27.

~~61.~~ 62. "Resource recovery facility" has the meaning given in Minn. Stat. S 115A.03, subd. 28.

~~62.~~ 63. "Responsible governmental unit" or RGU means the governmental unit which is responsible for preparation and review of environmental documents.

~~63.~~ 64. "Scientific and natural area" means an outdoor recreation system unit designated pursuant to Minn. Stat. S 86A.05, subd. 5.

65. "Scram mining" has the meaning given in 6 MCAR S 1.0401 B.16. HE 25

~~64.~~ 66. "Second class city" has the meaning given in Minn. Stat. S 410.01.

~~65.~~ 67. "Sewer system" means a piping or conveyance system that conveys wastewater to a wastewater treatment plant.

~~66.~~ 68. "Sewered area" means an area:

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.~~ 69. "Shoreland" has the meaning given in rule Cons 70 of the Department of Natural Resources.

~~68.~~ 70. "Shoreland ordinance, state approved" means a local governmental unit shoreland management ordinance which satisfies Minn. Stat. S 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.~~ HE 28

~~70.~~ 71. "Solid waste" has the meaning given in Minn. Stat. S 116.06, subd. 10.

~~71.~~ 72. "State trail corridor" means an outdoor recreation system unit designated pursuant to Minn. Stat. S 86A.05, subd. 4.

~~72.~~ 73. "Storage", as used in 6 MCAR S ~~3.018~~ 3.038 0.4., has the meaning given in ~~40~~ CFR title 40, section 260.10 (a)(66) (1980).

~~73.~~ 74. "Third class city" has the meaning given in Minn. Stat. S 410.01.

~~74.~~ 75. "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.~~ 76. "Transfer station" has the meaning given in Minn.

Stat. S 115A.03, subd. 33.

~~76.~~ 77. "Waste" has the meaning given in Minn. Stat. S 115A.03, subd. 34.

~~77.~~ 78. "Waste facility" has the meaning given in Minn. Stat. S 115A.03, subd. 35.

~~78.~~ 79. "Wastewater treatment facility" means a facility for the treatment of municipal or industrial waste water. It includes on-site treatment facilities.

~~79.~~ 80. "Wetland" has the meaning given in U.S. Fish and Wildlife Service Circular No. 39 (1971 edition).

~~80.~~ 81. "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 or by the legislature of the state of Minnesota for inclusion within the Minnesota Wild and Scenic Rivers system pursuant to Minn. Stat. SS 104.31-104.40 or by Congress for inclusion within the National Wild and Scenic Rivers System pursuant to ~~16~~ USC title 16, sections 1274-1286 (1976).

HE 29-30 CHE 4/1 F&F 30

~~81.~~ 82. "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 or NR 2202 of the Department of Natural Resources.

~~82.~~ 83. "Wilderness area" means an outdoor recreation system unit designated pursuant to Minn. Stat. S 86A.05, subd. 6.

6 MCAR S ~~3.003~~ 3.023 General responsibilities.

A. EQB. The EQB shall monitor the effectiveness of 6 MCAR SS ~~3.001-3.036~~ 3.021-3.056 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~~ a project, the proposer of the ~~action~~ project 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~~ publication of the RGU's decision in the EQB Monitor in the district court of the county where the proposed ~~action~~ project, or any part thereof, would be undertaken.

6 MCAR S ~~3.004~~ 3.024 RGU selection procedures.

A. ~~6 MCAR S 3.018 or 3.019 Activity.~~ RGU for mandatory categories. For any ~~activity~~ project listed in 6 MCAR S ~~3.018~~ 3.038 or ~~3.019~~ 3.039, the governmental unit specified in those rules shall be the RGU.

B. ~~6 MCAR S 3.005 C.1. Order.~~ RGU for discretionary EAWs. If a governmental unit orders an EAW pursuant to 6 MCAR S ~~3.005~~ 3.025 C.1., that governmental unit shall be designated as the RGU.

C. ~~Petitioned EAW.~~ RGU for petition EAWs. 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 S 3.005 C.3. Order.~~ RGU for EAW by order of EQB. If the EQB orders an EAW pursuant to 6 MCAR S ~~3.005~~ 3.025 C.3., the EQB shall, at the same time, designate the RGU for that EAW.

E. RGU selection generally. For any ~~activity~~ project where the RGU is not listed in 6 MCAR S ~~3.018~~ 3.038 or ~~3.019~~ 3.039 or which falls into more than one category in 6 MCAR S ~~3.018~~ 3.038 or ~~3.019~~ 3.039, or for which the RGU is in question, the RGU shall be determined as follows: ponsible for verifying the

1. When a single governmental unit proposes to carry out

or has sole jurisdiction to approve ~~an action~~ a project, it shall be the RGU.

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

a. By agreement, designate which unit shall be the RGU within five days of receipt of the completed data portion of the EAW; or

b. Submit the question to the EQB chairperson, ~~which~~ who shall within five days of receipt of the completed data portions of the EAW designate the RGU based on a consideration of which governmental unit has the greatest responsibility for supervising or approving the ~~action~~ project or has ~~the~~ expertise that ~~may be~~ is relevant for the environmental review.

F. Exception. Notwithstanding A.-E., the EQB may designate, within five days of receipt of the completed data portions of the EAW, 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~~ project.

Chapter Twelve: Environmental Assessment Worksheet

6 MCAR S ~~3.005 Actions~~ 3.025 Projects 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~~ project. The EAW serves primarily to:

1. Aid in the determination of whether an EIS is needed for a proposed ~~action~~ project; 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~~ project that meets or exceeds the thresholds of any of the EAW categories listed in 6 MCAR S ~~3.018~~ 3.038 or any of the EIS categories listed in 6 MCAR S ~~3.019~~ 3.039.

C. Discretionary EAWs. An EAW shall be prepared:

1. When a project is not exempt under 6 MCAR S 3.041 and when a governmental unit with ~~jurisdiction or~~ approval authority over the proposed ~~action~~ project determines that, because of the nature or location of a proposed ~~action~~ project, the ~~action~~ project may have the potential for significant ~~adverse~~ environmental effects;

2. When a project is not exempt under 6 MCAR S 3.041 and when a governmental unit with ~~jurisdiction or~~ approval authority over a proposed ~~action~~ project determines pursuant to the petition process set forth in 6 MCAR S ~~3.006~~ 3.026 that, because of the nature or location of a proposed ~~action~~ project, the ~~action~~ project 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~~ project, the ~~action~~ project may have the potential for significant ~~adverse~~ environmental effects. This paragraph 3 shall not be applicable to a project exempt under 6 MCAR S 3.041 or to a project for which a governmental unit, with approval authority over the project, has made a prior negative or positive determination concerning the need for an EAW concerning the project; or

4. When the proposer wishes to initiate environmental review to determine if a project has the potential for significant environmental effects.

6 MCAR S ~~3.006~~ 3.026 Petition process.

A. Petition. Any person may request the preparation of an EAW on ~~an action~~ a project 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~~ proposed project;

2. The proposer of the ~~action~~ project;

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

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

5. Material evidence indicating that, because of the nature or location of the proposed ~~action~~ project, 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., 4., and 5. If the petition complies, the chairperson or designee shall designate an RGU pursuant to 6 MCAR S 3.024 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, proposers, and other persons or otherwise known to the RGU demonstrates that, because of the nature or location of the proposed ~~action~~ project, the ~~action~~ project 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~~ project 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, including specific findings of fact, 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

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may be extended by the RGU for an additional 15 days.

HE 51, CHE 4/1, CHE 6/8

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

H. Notice of decision. ~~The~~ Within five days of its decision, the RGU shall ~~promptly~~ notify, in writing, the proposer, the EQB staff, 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.~~ The EQB staff shall publish notice of the RGU's decision concerning the petition in the EQB Monitor.

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6 MCAR S ~~3.007~~ 3.027 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~~ project 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~~ proposed project. The EAW shall be prepared by the RGU or its agents. HE 53, 54 CHE 4/1

2. ~~The EAW may be prepared by the RGU, its staff or agent, or by the proposer or its agent.~~ If an RGU orders the preparation of an EAW pursuant to 6 MCAR S 3.026 F., 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.

3. ~~If the proposer or its agent prepares the EAW, whether voluntarily or pursuant to a mandatory category or RGU determination~~ When an EAW is to be prepared, except pursuant to 6 MCAR S 3.026 F., the proposer shall submit the completed data portions of the EAW to the RGU for its consideration and approval for distribution. The RGU shall have 30 days to add supplementary material, if necessary, and to approve the EAW for distribution. The RGU shall be responsible for the completeness and accuracy of all information ~~and for decisions or determinations contained in the~~ EAW. HE 55, CHE 4/1

D. Publication and distribution of an EAW.

1. The RGU shall provide one copy of the EAW to the EQB staff within five days after the RGU approves the EAW. 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: HE 56

a. Each member of the EQB;

b. The proposer of the ~~action~~ project;

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~~ project will take place; ~~and~~

k. The representative of any petitioners pursuant to 6 MCAR S 3.026; and HE 57

l. 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~~ project is proposed. The press release shall include the name and location of the ~~action~~ project, a brief description of the ~~activity~~ project, the location at which copies of the EAW are available for review, the date the comment period expires, and the procedures for commenting. The RGU shall publish legal notice or advertisement of the availability of the EAW if the proposer requests and agrees to pay for the notice or advertisement. The notice or advertisement shall contain the information required in the press release. HE 58

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 material contained in the EAW, potential impacts that may warrant further investigation before the ~~action~~ project is commenced, and the need for an EIS on the proposed ~~action~~ project.

3. The RGU may hold one or more public meetings to gather comments on the EAW if it determines that a meeting is necessary or useful. Reasonable public notice of the meetings shall be given prior to the meetings. All meetings shall be open to the public.

6 MCAR S ~~3.008~~ 3.028 Decision on need for EIS.

A. ~~When EIS needed.~~ Standard for decision on need for EIS. An EIS shall be ordered for ~~actions~~ projects 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~~ shall be extended by the EQB chairperson by no more than 15 additional days upon request of the RGU.

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, including specific findings of fact, 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, within five days, to all persons on the EAW distribution list pursuant to 6 MCAR S ~~3.007~~ 3.027 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~~ a project has the potential for significant ~~adverse~~ environmental effects the RGU shall compare the impacts which may be reasonably expected to occur from the ~~action~~ project 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~~ a project 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~~ projects;

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~~ of EIS's previously prepared on similar ~~actions~~ projects.

E. Related actions. When two or more ~~actions~~ projects 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~~ project for purposes of the determination of need for an EIS.

2. In ~~certain~~ phased actions ~~it will not be~~ where it is not possible to adequately address all the phases at the time of the initial EIS~~.~~ ~~In these 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~~ projects such as highways, streets, pipelines, utility lines, or systems where the proposed ~~action~~ project is related to a large existing or planned network, for which a governmental unit has determined environmental review is needed, the RGU ~~may at its option~~ shall 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. HE 63, CHE 4/1 & CHE 6/8

Chapter Thirteen:
Environmental Impact Statement.

6 MCAR S ~~3.009 Actions~~ 3.029 Projects 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~~ project, and other persons to evaluate proposed ~~actions~~ projects which have the potential for significant ~~adverse~~ environmental effects, to consider alternatives to the proposed ~~actions~~ projects, and to ~~institute~~ explore methods for reducing adverse environmental effects. HE 64

B. Mandatory EIS categories. An EIS shall be prepared for

any ~~activity~~ project that meets or exceeds the thresholds of any of the EIS categories listed in 6 MCAR S ~~3.019~~ 3.039.

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~~ project has the potential for significant ~~adverse~~ environmental effects; or

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

6 MCAR S ~~3.010~~ 3.030 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~~ project, 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~~ projects 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 S ~~3.008~~ 3.028; and

b. To initiate discussion concerning the scope of the EIS if an EIS is ordered pursuant to 6 MCAR S ~~3.008~~ 3.028.

C. Scoping period.

1. If the EIS is being prepared pursuant to 6 MCAR S ~~3.009~~ 3.029 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 S ~~3.007~~ 3.027 D.1. and 2. This notice and press release 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 S ~~3.009~~ 3.029 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~~ project is proposed. All meetings shall be open to the public; and

b. Within 30 days after the positive declaration is ~~issued~~ published in the EQB Monitor, 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~~ published in the EQB Monitor.

D. Procedure for scoping.

1. Written comments suggesting issues for scoping or commenting on the EAW ~~may~~ must 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 SS ~~3.001-3.036~~ 3.021-3.056.

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 SS ~~3.001-3.036~~ 3.021-3.056;

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~~.~~;

f. Identification of potential impact areas resulting from the project itself and from related actions which shall be addressed in the EIS; and

g. Identification of necessary studies requiring compilation of existing information or the development of new data that can be generated within a reasonable amount of time and at a reasonable cost.

HE 68, CHE 4/1

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.~~

~~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.~~ 3. After the scoping decision is made, the RGU ~~may~~ shall not amend the decision without the agreement of the proposer unless substantial changes are made in the proposed ~~action~~ project that affect the potential significant environmental effects of the project or substantial new information arises relating to the proposed ~~action~~ project that

HE 69

significantly affects the potential environmental effects of the proposed project or the availability of prudent and feasible alternatives to the project. 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~~ project 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 S ~~3.011~~ 3.031 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, environmental, 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~~ project 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~~ project. The standard format shall be:

1. Cover sheet. The cover sheet shall include:

a. The RGU;

b. The title of the proposed ~~action~~ project 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~~ project is located;

c. The name, address, and telephone number of the person at the RGU who can supply further information;

d. The name and address of the proposer and the name, address and telephone number of the proposer's representative who can supply further information.

~~d.~~ e. A designation of the statement as a draft, final or supplement;

~~e.~~ f. A one paragraph abstract of the EIS; and

~~f.~~ g. 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~~ project shall be described with no more detail than is absolutely necessary to allow the public to identify the purpose of the ~~action~~ project, its size, scope, environmental setting, geographic location, and the anticipated phases of development.

6. Governmental approvals. This section shall ~~contain a comprehensive listing of~~ list 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~~ in 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~~ project. Reasonable alternatives may include locational considerations, design modifications including site layout, magnitude of the ~~action~~ project, and consideration of alternative means by which the purpose of the ~~action~~ project 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~~ project 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~~ project and the effects the ~~action~~ project 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~~ project.

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~~ project. 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~~ the 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~~ the 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~~ project against the risk and severity of possible adverse impacts were the ~~action~~ project 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~~ consistent with ~~the scope decided upon in~~ 6 MCAR SS 3.021-3.056 and in accord with the scoping ~~process~~ determination. ~~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~~ project 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~~ project, to the extent known;

b. The proposer of the ~~action~~ project;

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~~ project will take place, to the extent known; 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;

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~~ project 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~~ submitted any time during the comment period. HE 73 FOF 73

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.~~ HE 74

F. Final EIS.

1. The final EIS shall respond to the timely substantive comments on the draft EIS consistent with the scoping decision. The RGU shall discuss at appropriate points in the final EIS any responsible opposing views relating to scoped issues which were not adequately discussed in the draft EIS and shall indicate the RGU's response to the views. HE 75

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. ? possible in what terms - economic physical

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~~ project 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.~~

1. The RGU shall determine the adequacy of the final EIS unless notified by the EQB, on its own initiative or at the request of the RGU, the proposer of the project or other interested persons, that the EQB will determine the adequacy. The EQB shall notify the RGU no later than 60 days following publication of the preparation notice in the EQB Monitor. The EQB shall intervene only if the EQB determines that:

a. The RGU is or will be unable to provide an objective appraisal of the potential impacts of the project;

b. The project involves complex issues which the RGU lacks the technical ability to assess; or

c. The project has multi-jurisdictional effects.

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~~ proposer and the RGU or by the Governor for good cause. HE 77

5. The final EIS shall be determined adequate if it:

a. Addresses the issues raised in scoping so that all ~~questions~~ issues for which information can be reasonably obtained have been ~~answered~~ analyzed; HE 79

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~~ SS 3.021-3.056. HE 78

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 ~~S 3.001-3.036~~ SS 3.021-3.056 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~~ project that affect the potential significant ~~adverse~~ environmental effects of the ~~action~~ project; or

b. There is substantial new information or new circumstances that significantly affect the potential environmental effects from the proposed ~~action~~ project 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.

4. The determination of adequacy of the supplemental EIS shall be made within 120 days after the notice of preparation of the supplemental EIS was published in the EQB Monitor unless the time is extended by consent of the proposer and the RGU or by the Governor for good cause.

6 MCAR S ~~3.012~~ 3.032 Prohibition on final ~~actions and~~

governmental decisions.

A. EAW filed or required. On any ~~action~~ project for which a petition for an EAW is filed or an EAW is required or ordered under 6 MCAR SS ~~3.001-3.036~~ 3.021-3.056, no final governmental decision to grant ~~or deny~~ a permit or other approval required, or to commence the ~~action~~ project 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~~ project 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~~ project 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.

C. Construction prohibited, exceptions. No physical construction of a project shall occur for any project subject to review under 6 MCAR SS ~~3.001-3.036~~ 3.021-3.056 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~~ project is an emergency under E. or a variance is granted under D. The EQB's statutory authority to halt ~~actions~~ projects or impose other temporary relief is in no way limited by this paragraph.

D. Variance. Construction may begin on ~~an activity~~ a project 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~~ project 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~~ project 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. Unusual economic hardship means that the hardship is caused by unique conditions and circumstances which are peculiar to the project and are not characteristic of other similar projects or general economic conditions of the area or state and that the hardship is not caused by the proposer's own action or inaction.

HE 84
† CHE 4
† CHE 6

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~~ project may be undertaken without the environmental review which would otherwise be required by 6 MCAR SS ~~3.001-3.036~~ 3.021-3.056. 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~~ aspects of the project necessary to control the immediate impacts of the emergency. Other ~~actions~~ aspects of the project remain subject to review under 6 MCAR SS ~~3.001-3.036~~ 3.021-3.056.

6 MCAR S ~~3.013~~ 3.033 Review of state ~~actions or~~ projects. HE 85

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~~ a project 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~~ project, the date the final decision is expected to be issued, the title and date of ~~EIS~~ EISs prepared on the ~~agency action~~ project and the name, address and phone number of the project proposer and parties to any proceeding on the ~~action~~ project. If the ~~action~~ project 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~~ a project, the chairperson of the EQB may delay implementation of the ~~action~~ project 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~~ a project where there is substantial reason to believe that the ~~action~~ project or its approval is inconsistent with the policies and standards of Minn. Stat. SS 116D.01-116D.06.

E. Notice and hearing. Promptly upon issuance of a decision to delay implementation of ~~an action~~ a project, 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. S 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~~ project is to take place. The notice shall identify the time and place of the hearing, and provide a brief description of the ~~action~~ project and final decision to be reviewed and a reference to the EQB's authority to conduct the hearing. The hearing ~~may~~ shall 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~~ project with the policies and standards of Minn. Stat. SS 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. The EQB shall prepare specific findings of fact regarding its decision. If the EQB fails to act within 45 days of notice given pursuant to C. the agency's decision shall stand as originally issued. HE 86

Chapter Fourteen:

Substitute Forms of ~~Environmmental~~ Environmental Review

6 MCAR S ~~3.014~~ 3.034 Alternative review.

A. Implementation. ~~The EQB~~ Governmental units may ~~approve the use~~ request EQB approval of an alternative form of environmental review for categories of projects which undergo environmental 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~~ The EQB shall approve the governmental process as an alternative form of environmental review if the governmental unit ~~shall demonstrate to the EQB that its review~~ demonstrates the process meets the following conditions: HE 88

1. The process identifies the potential environmental impacts of each proposed ~~action~~ project;

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~~ project 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~~ project 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~~ project. A copy of

environmental documents on ~~actions~~ projects 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~~ project. The process must provide for RGU response to timely substantive comments relating to issues discussed in environmental documents relating to the project; 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~~ project 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~~ projects reviewed under that alternative review procedure shall be exempt from environmental review under 6 MCAR SS ~~3.006, 3.007, 3.008, 3.010 and 3.011~~ 3.026, 3.027, 3.028, 3.030 and 3.031. 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 SS ~~3.001-3.036~~ 3.021-3.056. 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 S ~~3.015~~ 3.035 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 SS ~~3.005-3.012~~ 3.025-3.032 for projects which qualify for review under the ordinance.

B. ~~Approval~~ Notice.

~~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. Notice of adoption of the ordinance shall be made in the EQB Monitor.

~~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 it 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~~ projects 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~~ project, the ~~action~~ project 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 SS ~~3.018~~ 3.038 and ~~3.019~~ 3.039, 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~~ projects which are exempted from environmental review by 6 MCAR S ~~3.021~~ 3.041 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 SS ~~3.001-3.036~~ 3.021-3.056.

Section 2. Preparation. Prior to or together with any application for a permit or other form of approval for ~~an activity~~ a project, the proposer of the ~~action~~ project shall prepare an analysis of the ~~action's~~ project'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 in the EQB Monitor. The (board) (council) may hold a public meeting to receive comments on the analysis if it determines that a meeeting is necessary or useful. The meeting may be combined with any other meeting or hearing for a permit

.036

or other approval for the ~~activity~~ project. 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~~ a project 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 S ~~3.016~~ 3.036 Generic EIS. A generic EIS may be ordered by the EQB to study types of ~~actions~~ projects 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.~~

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~~B.~~ A. EQB as RGU. If the EQB orders a generic EIS, the EQB shall be the RGU for the generic EIS.

~~C.~~ B. Public requests for generic EIS. A governmental unit or any other person may request the EQB to order a generic EIS.

~~D.~~ C. Timing. Time deadlines for the preparation of a generic EIS shall be set at the scoping meeting.

~~E. Application of~~ D. 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~~.~~;

4. The amount of basic research needed to understand the impacts of such projects;

5. The degree to which decision makers or the public have a need to be informed of the potential impacts of such projects;

6. The degree to which information to be presented in the generic EIS is needed for governmental or public planning;

7. The potential for significant environmental effects as a result of the cumulative impacts of such projects;

8. The regional and statewide significance of the impacts and the degree to which they can be addressed on a project-by-project basis; and

9. The degree to which governmental policies affect the number or location of such projects or the potential for significant environmental effects.

~~F.~~ E. 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 S ~~3.010~~ 3.030 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.~~ F. Content. In addition to ~~any issues that may be addressed in~~ content requirements specified by 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.~~ G. 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.~~ H. 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 S ~~3.017~~ 3.037 Joint federal and state ~~EIS~~ environmental documents.

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 title 42, sections 4321-4361 (1976).

B. Joint responsibility. Where a joint federal and state ~~EIS~~ environmental document is prepared, the RGU and one or more federal agencies shall be jointly responsible for ~~preparing the~~ ~~EIS~~ its preparation. Where federal laws have ~~EIS~~ environmental document requirements in addition to but not in conflict with those in Minn. Stat. S 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~~ a project, the RGU shall utilize the draft or final federal EIS as the draft state EIS for the ~~action~~ project if the federal EIS addresses the scoped issues and satisfies the standards set forth in 6 MCAR S ~~3.008~~ 3.028 B.

Chapter Fifteen:
Mandatory Categories

6 MCAR S ~~3.018~~ 3.038 Mandatory EAW categories. An EAW must be prepared for ~~activities~~ projects 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~~ MDH 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~~ MDH 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 Minnesota River Project Riverbend area, or the Mississippi headwaters area. 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. S 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. S 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, the Mississippi headwaters plan or the Project Riverbend plan, as applicable, and either: CHE 4/1

a. The ~~activity~~ project involves 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, Minnesota River Project Riverbend area, or the Mississippi headwaters area. The local government unit shall be the RGU. CHE 4/1

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.

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, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or in an area characterized by soluble bedrock. The PCA shall be the RGU. CHE 4/1

4. Construction or expansion 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~~ which sells hazardous waste storage services to generators other than the owner and operator of the facility or construction of a facility at which a generator's own hazardous wastes will be stored for a time period in excess of 90 days, if the facility is located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, the Minnesota River Project Riverbend area, Mississippi headwaters area, or in an area characterized by soluble bedrock. The PCA shall be the RGU. FofF 138n. CHE 4/1

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 municipal or domestic wastewater treatment facility or sewer system with a capacity of 30,000 gallons per day or more. The PCA shall be the RGU.

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2. Expansion of an existing municipal or domestic 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, the Mississippi headwaters plan, or the Project Riverbend plan, as applicable, and either: CHE 4/1

a. The ~~activity~~ project 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 Minnesota River Project Riverbend area, or the Mississippi headwaters area. CHE 4/1

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. Construction 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 S ~~3.021~~ 3.041 P. or 6 MCAR S 3.041 M. 5. The local government unit shall be the RGU.

Z. Wetlands and protected waters.

1. ~~Actions~~ Projects 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. S 105.391, subd. 3. The local government unit shall be the RGU.

2. ~~Actions~~ Projects that will change or diminish the course, current, or cross section of 40 percent or more or 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 Minnesota River Project Riverbend area, or the Mississippi headwaters area. The local government unit shall be the RGU.

CHE 4/1

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, the Minnesota River Project Riverbend area, the Mississippi headwaters area, or critical area that does not have an approved plan under Minn. Stat. S 86A.09 or 116G.07. The DNR shall be the RGU. CHE 4/1

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~~ Projects 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~~ Projects 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.

CC. Natural areas. ~~Actions~~ Projects resulting in the permanent physical encroachment on lands within a national park, state park, wilderness area, state lands and waters within the boundaries of the Boundary Waters Canoe Area, scientific and natural area, or state trail corridor when the encroachment is inconsistent with laws applicable to or the management plan prepared for the recreational unit. The DNR or local government unit shall be the RGU. CHE 4/1

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 S ~~3.019~~ 3.039 Mandatory EIS categories. An EIS must be prepared for ~~activities~~ projects 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 or -- HE100
nuclear waste 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~~ MDH shall be the RGU.

B. Electric generating facilities. Construction of a large electric power generating plant pursuant to 6 MCAR S 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 S 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. S 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. S 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, the Mississippi headwaters plan or the Project Riverbend plan, as applicable, and either:

a. The ~~activity~~ project 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 Minnesota River Project Riverbend area, or the Mississippi headwaters area.

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, the Minnesota River Project Riverbend area, the Mississippi headwaters area, 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, the Minnesota River Project Riverbend area, the Mississippi headwaters area, 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, the Minnesota River Project Riverbend area, the Mississippi headwaters area, 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, the Mississippi headwaters plan, or the Project Riverbend plan as applicable, and either:

a. The ~~activity~~ project involves riparian frontage, or

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 Minnesota River Project Riverbend area, or the Mississippi headwaters area.

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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~~ Projects that will eliminate a protected water or protected wetland except for those to be drained without a permit pursuant to Minn. Stat. S 105.391, subd. 3. The local government unit shall be the RGU.

6 MCAR S ~~3.020~~ 3.040 Discretionary EAW. A governmental unit with jurisdiction may order the preparation of an EAW for any ~~activity~~ project that does not exceed the mandatory thresholds designated in 6 MCAR S ~~3.018~~ 3.038 or ~~3.019~~ 3.039 if the governmental unit determines that because of the nature or location of the proposed ~~action~~ project the ~~action~~ project may have the potential for significant ~~adverse~~ environmental effects, and ~~the primary purpose of~~ the ~~action~~ project is not exempted pursuant to 6 MCAR S ~~3.021~~ 3.041.

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6 MCAR S ~~3.021~~ 3.041 Exemptions. ~~Activities~~ Projects within A.-Y. are exempt from 6 MCAR SS ~~3.001-3.036~~ 3.021-3.056.

A. Standard exemptions.

1. ~~Activities~~ Projects for which no governmental ~~action~~

~~is~~ decisions are required.

2. ~~Activities~~ Projects for which all governmental ~~action~~ ~~has~~ decisions have been ~~completed~~ made.

3. ~~Activities~~ Projects for which, and so long as, a ~~public agency~~ governmental unit has denied a required governmental approval.

4. ~~Activities~~ Projects for which a substantial portion of the ~~activity~~ project has been completed and an EIS would not influence remaining implementation or construction.

5. ~~Activities~~ Projects for which environmental review has already been initiated under the prior rules or for which environmental review is being conducted pursuant to 6 MCAR S ~~3.014~~ 3.034 or ~~3.015~~ 3.035.

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, the Minnesota River Project Riverbend area, or the Mississippi headwaters area:

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, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

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, the Minnesota River Project Riverbend area, or the Mississippi headwaters area, 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~~ project 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~~ projects on airport property except where the ~~activities~~ projects 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.

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, the Minnesota River Project Riverbend area, or the Mississippi headwaters area.

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~~ projects.

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~~ activities.

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.

Chapter Sixteen: Early Notice Rules.

6 MCAR S ~~3.022~~ 3.042 Authority and purpose.

A. Bulletin. To provide early notice of impending ~~actions~~ projects which may have significant ~~adverse~~ environmental effects, the EQB shall, pursuant to Minn. Stat. S 116D.04, subd. 8, publish a bulletin with the name of "EQB Monitor" containing all notices as specified in 6 MCAR S ~~3.024~~ 3.044. The EQB may prescribe the form and manner in which the governmental units submit any material for publication in the EQB Monitor, and the EQB Chairperson may withhold publication of any material not submitted according to the form or procedures the EQB has prescribed.

B. Purpose. These Rules are intended to provide a procedure for notice to the EQB and to the public of natural resource management and development permit applications, and impending governmental and private ~~actions~~ projects that may have

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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 S ~~3.023~~ 3.043 Exemptions.

A. EPA permit exception. All National Pollutant Discharge Elimination System Permits granted by the PCA, under the authority given by the Environmental Protection Agency, shall be exempt from 6 MCAR SS ~~3.001-3.036~~ 3.021-3.056 unless otherwise provided by resolution of the EQB.

B. ~~Governmental unit.~~ Non-strict observance. Where, in the opinion of any governmental unit, strict observance of 6 MCAR SS ~~3.022-3.026~~ 3.042-3.046 would jeopardize the public health, safety, or welfare, or would otherwise generally compromise the public interest, the governmental unit shall comply with these rules as far as practicable. In such cases, the governmental unit shall carry out alternative means of public notification and shall communicate the same to the EQB chairperson.

C. Federal permits, exemption. Any federal permits for which review authority has been delegated to a non-federal governmental unit by the federal government may be exempted by resolution of the EQB.

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6 MCAR S ~~3.024~~ 3.044 EQB Monitor publication requirements.

A. ~~Governmental units.~~ Required notices. Governmental units are required to publish notice of the items listed in 1.-15. in the EQB Monitor except that this rule constitutes a request and not a requirement with respect to federal agencies.

1. When ~~an action~~ a project has been noticed pursuant to 6 MCAR S ~~3.024~~ 3.044 A.3. separate notice of individual permits required by that ~~action~~ project need not be made unless changes in the ~~action~~ project 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.

F&F 138 K.

~~a. Filling of ten or more acres of public waters. Work in the beds of public waters, Minn. Stat. S 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. S 105.42. The DNR is the permitting authority.~~ HE 118

~~c.~~ a. 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. SS 93.16, 93.335, 93.351. The DNR is the permitting authority.~~ HE 119

~~e. Earth removal lease, Minn. Stat. S 92.50. The DNR is the permitting authority.~~ HE 120

b. Notice of public sales of permits for or leases to mine iron ore, copper-nickel, or other minerals on state-owned or administered mineral rights, Minn. Stat. SS 93.16, 93.335, 93.351, and 6 MCAR NR 94e. The DNR is the permitting authority. HE 119

~~f.~~ c. Section 401 certifications, ~~33~~ USC title 33, section 1341 (1976); Minn. Stat. S 115.03. The PCA is the permitting authority.

~~g.~~ d. Construction of a public use airport, Minn. Stat. S 360.018, subd. 6. The DOT is the permitting authority.

~~h.~~ e. Special local need registration for pesticides, Minn. Stat. S 18A.23; 3 MCAR S 1.0338 B. The ~~Department of Agriculture~~ MDA is the permitting authority.

2. Impending ~~actions~~ projects proposed by state agencies when the proposed ~~action~~ project may have the potential for significant ~~adverse~~ environmental effects. ⊛ Amend to provide for hearing.

3. Notice of the decision on the need for an EAW pursuant to 6 MCAR S 3.026 F. no FoF on this addition

4. Notice of the availability of a completed EAW pursuant to 6 MCAR S ~~3.007~~ 3.027 D.1.

~~4.~~ 5. RGU's decision on the need to prepare an EIS pursuant to 6 MCAR S ~~3.008~~ 3.028 A.4.

~~5.~~ 6. Notice of the time, place and date of the EIS

scoping meeting pursuant to 6 MCAR S ~~3.010~~ 3.030 C.1.b. and C.2.a.

~~6.~~ 7. EIS Preparation Notices pursuant to 6 MCAR S ~~3.010~~ 3.030 F.

~~7.~~ 8. Amendments to the EIS scoping decision pursuant to 6 MCAR S ~~3.010~~ 3.030 E.5.

~~8.~~ 9. Availability of draft and final EIS pursuant to 6 MCAR S ~~3.011~~ 3.031 E.5. and F.4.

~~9.~~ 10. Notice of draft EIS informational meetings to be held pursuant to 6 MCAR S ~~3.011~~ 3.031 E.7.

~~10.~~ 11. RGU's adequacy decision of the final EIS pursuant to 6 MCAR S ~~3.011~~ 3.031 G.7.

~~11.~~ 12. Notice of activities undergoing environmental review under alternative review processes pursuant to 6 MCAR S ~~3.014~~ 3.034 A.6.

~~12.~~ 13. Adoption of model ordinances pursuant to 6 MCAR S ~~3.015~~ 3.035 B.1. and 2.

~~13.~~ 14. Environmental analyses prepared under adopted model ordinances pursuant to 6 MCAR S ~~3.015~~ 3.035 C.

15. Notice of the application for a Certificate of Need for a large energy facility, pursuant to Minn. Stat. S 116H.03.

16. Notice of the availability of a draft environmental report, pursuant to 6 MCAR S 3.055 B.5.

17. Notice of the availability of a final environmental report, pursuant to 6 MCAR S 3.055 B.10.

~~14.~~ 18. Notice of other actions that the EQB may specify by resolution.

B. ~~Governmental units.~~ Optional notices. Governmental units may publish notices of general interest or information in the EQB Monitor.

C. Required EQB notices. The EQB is required to publish the following in the EQB Monitor:

1. Receipt of a valid petition and assignment of a RGU pursuant to 6 MCAR S ~~3.006~~ 3.026 C. and E.;

2. Decision by the EQB that it will determine the adequacy of a final EIS pursuant to 6 MCAR S ~~3.011~~ 3.031 G.1.;

3. EQB's adequacy decision of the final EIS pursuant to 6 MCAR S ~~3.011~~ 3.031 G.7;

4. Receipt by the EQB of an application for a variance pursuant to 6 MCAR S ~~3.012~~ 3.032 D.3;

5. Notice of any public hearing held pursuant to 6 MCAR S ~~3.013~~ 3.033 E.1;

6. The EQB's decision to hold public hearings on a recommended Critical Area pursuant to Minn. Stat. S 116G.06, subd. 1, clause (c);

7. Notice of application for a Certificate of Site Compatibility or a High Voltage Transmission Line Construction Permit pursuant to Minn. Stat. SS 116C.51-116C.69; and

8. Receipt of a consolidated permit application pursuant to 6 MCAR S 3.102 A.

6 MCAR S ~~3.025~~ 3.045 Content of notice. The information to be included in the notice for natural resources management and development permit applications and other items in 6 MCAR S ~~3.024~~ 3.044 A.1. and 2. shall be submitted by the governmental unit on a form approved by the EQB. This information shall include but not be limited to:

A. Identification of applicant. Identification of applicant, by name and mailing address.

B. Location of project. The location of the proposed project, or description of the area affected by the ~~action~~ project by county, minor civil division, public land survey township number, range number, and section number.

C. Identification of permit or project. 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~~ project.

D. Public hearings. A statement of whether the agency intends to hold public hearings on the proposed ~~action~~ project, 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.

E. Identification of governmental unit. The identification

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of the governmental unit publishing the notice, including the manner and place at which comments on the ~~action~~ project can be submitted and additional information can be obtained.

6 MCAR S ~~3.026~~ 3.046 Statement of compliance. Each governmental permit or agency authorizing order subject to the requirements of 6 MCAR S ~~3.024~~ 3.044 A.1. issued or granted by a governmental unit shall contain a statement by the unit concerning whether the provisions of 6 MCAR SS ~~3.022-3.026~~ 3.042-3.046 have been complied with, and publication dates of the notices, if any, concerning that permit or authorization.

6 MCAR S ~~3.027~~ 3.047 Publication. The EQB shall publish the EQB Monitor whenever it is necessary, except that material properly submitted to the EQB shall not remain unpublished for more than 13 working days.

6 MCAR S ~~3.028~~ 3.048 Cost and distribution.

A. ~~Government publication.~~ Costs of publication. When a governmental unit properly submits material to the EQB for publication, the EQB shall then be accountable for the publication of the same in the EQB Monitor. The EQB shall require each governmental unit which is required to publish material or requests the publication of material in the EQB Monitor, including the EQB itself, to pay its proportionate cost of the EQB Monitor unless other funds are provided and are sufficient to cover the cost of the EQB Monitor.

B. Distribution. The EQB may further provide at least one copy to the Documents Division for the mailing of the EQB Monitor to any person, governmental unit, or organization if so requested. The EQB may assess reasonable costs to the requesting party. Ten copies of each issue of the 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 EQB depositories.

Chapter Seventeen:
Assessing the Cost of
Preparing Environmental Impact Statements.

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6 MCAR S ~~3.029 Actions~~ 3.049 Projects requiring an assessment of the EIS preparation cost.

When a private person proposes to undertake ~~an action~~ a project, and the final determination has been made that an EIS will be prepared by a governmental unit on that ~~action~~ project, the proposer shall be assessed for the reasonable costs of preparing and distributing that EIS in accord with 6 MCAR SS ~~3.030-3.034~~ 3.050-3.054.

6 MCAR S ~~3.030~~ 3.050 Determining the EIS assessed cost.

A. Proposer and RGU agreement. Within 30 days after the EIS preparation notice has been issued, the RGU shall submit to the EQB a written agreement signed by the proposer and the 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 S ~~3.031~~ 3.051 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 RGU and the costs which will result in a cash payment by the proposer to the EQB if a state agency is the RGU or to a local governmental unit when it is the RGU. If an agreement cannot be reached, the RGU shall so notify the 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~~ a project which has a project estimated cost of one million dollars or less.

2. For ~~an action~~ a project 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~~ a project 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.

4. For ~~an action~~ a project 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 3.

C. Data costs. The proposer and the RGU shall include in the EIS assessed cost the proposer's costs for the collection and analysis of technical data which the 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 RGU. When practicable, the proposer shall consult with the RGU before incurring such costs.

D. Federal/state EIS. When a joint federal/state EIS is prepared pursuant to 6 MCAR S ~~3.017~~ 3.037 and the EQB designates a non-federal agency as the RGU, only those costs of the state RGU may be assessed to the proposer. The RGU and the proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the EQB in accord with 6 MCAR SS ~~3.001-3.036~~ 3.021-3.056.

E. Related actions EIS. When specific ~~actions~~ projects are included in a related actions EIS, only the portion of the EIS estimated cost that is attributable to each specific ~~action~~ project may be used in determining the EIS assessed cost for its proposer. The RGU and each proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the EQB in accord with 6 MCAR SS ~~3.001-3.036~~ 3.021-3.056.

6 MCAR S ~~3.031~~ 3.051 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 or the EIS actual cost, the

following items shall be included:

1. The cost of the RGU's staff time including direct salary and fringe benefit costs.

2. The cost of consultants hired by the 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 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 RGU not to exceed the 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;

2. Costs incurred by a private person other than the proposer or a governmental unit other than the RGU, unless the costs are incurred at the direction of the RGU for the preparation of material to be included in the EIS; and

3. The capital costs of equipment purchased by the 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~~ project. The boundaries shall be those defined by the ~~action~~ project which is the subject of the EIS

preparation notice;

2. Costs of architectural and engineering studies for the design or construction of the ~~action~~ project;

3. Expenditures necessary to begin the physical construction or operation of the ~~action~~ project;

4. Construction costs required to implement the ~~action~~ project including the costs of essential public service facilities where such costs are directly attributable to the proposed ~~action~~ project; and

5. The cost of permanent fixtures.

6 MCAR S ~~3.032~~ 3.052 Revising the EIS assessed cost.

A. ~~Proposer alters scope of action.~~ Alteration of project scope. If the proposer substantially alters the scope of the ~~action~~ project 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 RGU and the EQB.

1. If the change will likely result in a net change of greater than five percent in the EIS assessed cost, the proposer and the 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~~ project. The RGU shall submit either a revised agreement or a notice that an agreement cannot be reached following the procedures of 6 MCAR S ~~3.030~~ 3.050 A. except that such agreement or notice shall be provided to the EQB within 20 days after the proposer notifies the RGU and the EQB of the change in the ~~action~~ project. If the changed ~~action~~ project 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 EQB or to the local governmental unit beyond what has been expended or irrevocably obligated by the RGU at the time it was notified by the proposer of the change in the ~~action~~ project.

2. If the proposer decides not to proceed with the

proposed ~~action~~ project, the proposer shall immediately notify the RGU and the EQB. The 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 RGU's expenditures or irrevocable obligations at the time of notification, the proposer may apply to the EQB or to the local 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 RGU's expenditures or irrevocable obligations at the time of notification, the RGU shall notify the proposer and the EQB within ten days after it was notified of the project's withdrawal. Such costs shall be paid by the proposer within 30 days after the RGU notifies the proposer and the EQB.

B. New significant environmental problem. If, after the EIS assessed cost has been determined, the 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 EQB. If the discovery will likely result in a net change of greater than five percent in the EIS assessed cost, the proposer and the RGU shall make a new determination of the EIS assessed cost. The RGU shall submit either a revised agreement or a notice that an agreement cannot be reached following the procedures of 6 MCAR S ~~3.030~~ 3.050 A. except that such agreement or notice shall be provided to the EQB within 20 days after both parties and the EQB were notified.

6 MCAR S ~~3.033~~ 3.053 Disagreements regarding the EIS assessed cost.

A. Notice to EQB~~, information disagreement~~. If the proposer and the RGU disagree about ~~the information to be included in the EIS or~~ the EIS assessed cost, the proposer and the RGU shall each submit a written statement to the EQB identifying ~~the information each recommends be included in the EIS,~~ the EIS estimated cost, and the project estimated cost within ten days

after the RGU notifies the EQB that an agreement could not be reached. The 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 S ~~3.031~~ 3.051 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 RGU disagree about the project estimated cost, the proposer shall submit in writing a detailed project estimated cost in addition to the requirements of A. The RGU may submit a written detailed project estimated cost in addition to the requirements of A. The statements shall be submitted to the EQB within ten days after the RGU notifies the EQB that an agreement could not be reached. The project estimated cost shall include the costs as identified in 6 MCAR S ~~3.031~~ 3.051 C. and a brief explanation of the costs. The estimates shall be prepared according to the categories in 6 MCAR S ~~3.031~~ 3.051 so as to allow a reasonable examination as to their completeness.

C. EIS assessed cost ~~revision~~ disagreement. If the proposer and the RGU disagree about a revision of the EIS assessed cost prepared following the procedures in 6 MCAR S ~~3.032~~ 3.052, the proposer and the RGU shall use the applicable procedures described in A. or B. in resolving their disagreement except that all written statements shall be provided to the EQB within ten days after the RGU notifies the EQB that an agreement cannot be reached.

D. EIS actual cost disagreement. If the proposer and the RGU disagree about the EIS actual cost as determined by 6 MCAR S ~~3.034~~ 3.054 B., the proposer and the 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 S ~~3.031~~ 3.051 A. and B. shall be used in preparing the EIS actual cost statements. These statements shall be submitted to the EQB and the other party within 20 days after the final EIS has been

accepted as adequate by the RGU or the EQB.

E. EQB determination. The EQB at its first meeting held more than 15 days after being notified of a disagreement shall make any determination required by A.-D. The EQB shall consider the information provided by the proposer and the RGU and may consider other reasonable information in making its determination. This time limit shall be waived if a hearing is held pursuant to F.

F. Hearing. If either the proposer or the RGU so requests, the EQB shall hold a hearing to facilitate it in making its determination.

G. Half cash payment~~, EIS preparation~~. Nothing in A.-F. shall prevent the proposer from making one half of the cash payment as recommended by the RGU's proposed EIS assessed cost for the purpose of commencing the EIS process. If the proposer makes the above cash payment, preparation of the EIS shall immediately begin. If the required cash payment is altered by the EQB's determination, the remaining cash payments shall be adjusted accordingly.

6 MCAR S ~~3.034~~ 3.054 Payment of the EIS assessed cost.

A. Schedule of payments. The proposer shall make all cash payments to the EQB or to the local 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 EQB pursuant to 6 MCAR S ~~3.030~~ 3.050 A. or has been determined by the EQB pursuant to 6 MCAR S ~~3.033~~ 3.053 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 EQB.

3. The final cash payment shall be paid within 30 days after the final EIS has been submitted to the EQB.

a. The proposer may withhold final cash payment of the EIS assessed cost until the RGU has submitted a detailed accounting of its EIS actual cost to the proposer and the 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 EQB.

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 EQB has determined the EIS actual cost.

B. Refund. The proposer and the RGU shall submit to each other and to the EQB a detailed accounting of the actual costs incurred by them in preparing and distributing the EIS within ten days after the final EIS has been submitted to the EQB. If the cash payments made by the proposer exceed the RGU's EIS actual cost, the proposer may apply to the EQB or to the local governmental unit for a refund of the overpayment. The refund shall be paid as expeditiously as possible.

C. State agency as RGU. If the RGU is a state agency, the proposer shall make all cash payments of the EIS assessed cost to the EQB which shall deposit such payments in the state's general fund.

D. Local government unit as RGU. If the RGU is a local governmental unit, the proposer shall make all cash payments of the EIS assessed cost directly to the local governmental unit.

The local governmental unit shall notify the EQB in writing of receipt of each payment within ten days following its receipt.

E. Payment prerequisite to EIS. No 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.

F. Notice of final payment. Upon receipt or notice of receipt of the final payment by the proposer, the EQB shall notify each state agency having a possible governmental permit interest in the ~~action~~ project that the final payment has been received.

Other laws notwithstanding, a state agency shall not issue

.055

any governmental permits for the construction or operation of ~~an action~~ a project for which an EIS is prepared until the required cash payments of the EIS assessed cost for that ~~action~~ project or that portion of a related actions EIS have been paid in full.

G. Time period extension. All time periods included in 6 MCAR SS ~~3.030-3.034~~ 3.050-3.054 may be extended by the EQB chairperson only for good cause upon written request by the proposer or the RGU.

Chapter Eighteen:
Special Rules for Certain Large Energy Facilities

6 MCAR S ~~3.035~~ 3.055 Special rules for LEPGP.

A. Applicability. Environmental review for LEPGP as defined in Minn. Stat. S 116C.52, subd. 4 shall be conducted according to the procedures set forth in this rule unless a utility has filed an application for emergency certification pursuant to Minn. Stat. S 116C.57, subd. 3. 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. S 116H.13, but excluded under Minn. Stat. S 116C.52, subd. 4, shall not be subject to this rule. Except as expressly provided in this rule, 6 MCAR SS ~~3.004-3.016~~ 3.024-3.036 shall not apply to ~~facilities~~ LEPGPs subject to this rule. No EAW ~~need~~ shall be prepared for any ~~facilities~~ LEPGPs subject to this rule. If a utility has filed an application for emergency certification pursuant to Minn. Stat. S 116C.57, subd. 3, the procedures and standards specified in 6 MCAR S 3.077 shall constitute alternative environmental review and neither 6 MCAR SS 3.024-3.036 nor 6 MCAR S 3.055 shall apply.

See HE130 for relevant discussion

See HE13 for relev discuss

B. Environmental report at certificate of need stage.

1. The ~~MEA~~ DEPD 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. S 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~~ reasonable alternative facilities identified in 3.b.; 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~~ shall not be as exhaustive or detailed as an EIS ~~nor need it consider site-differentiating factors~~ and shall consider only those site-differentiating factors identifiable pursuant to the information requirements of 6 MCAR S 2.0633 A.5.

5. Upon completion of the draft environmental report, the report shall be circulated as provided in 6 MCAR S ~~3.011~~ 3.031 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. S 116H.13.

6. The ~~MEA~~ DEPD 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. S 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. S 116H.13. The DEPD shall respond to the

timely substantive comments on the draft environmental report.

8. The draft environmental report ~~and~~, any comments received during the hearings, and responses to the timely substantive comments shall constitute the final environmental report.

F&F 140

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~~ Commissioner of the DEPD to take final action pursuant to Minn. Stat. S 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 DEPD 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 S 3.011 I. if a determination pursuant to Minn. Stat. S 116H.13 is pending before the MEA.~~ A supplement to an environmental report shall be required if the tests described in 6 MCAR S 3.031 I. are met and a Minn. Stat. S 116H.13 determination is pending before the DEPD.

HE 129 + CHE 4

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. S 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 S ~~3.011~~ 3.031 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. S 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. S 116C.59 rather than through a formal scoping process.

The EIS ~~need~~ shall not consider need for the facility and other issues determined by the ~~MEA nor~~ DEPD. Unless a specific site has already been designated, the EIS shall not 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 S ~~3.011~~ 3.031 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. S 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. S 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. S 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 S ~~3.011~~ 3.031 F.

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. S 116C.58, the EQB shall determine the EIS to be adequate pursuant to 6 MCAR S ~~3.011~~ 3.031 G.

11. If required pursuant to 6 MCAR S 3.031 I., a supplement to an EIS ~~may~~ shall be ~~required pursuant to 6 MCAR S 3.011 I~~ prepared. HE 129 + CHE 4/1

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~~ issue any final ~~approval~~ decision for the construction or operation of a facility subject to this rule until the final EIS has been found adequate. FoF 138h.

D. Cooperative processes. 6 MCAR SS ~~3.008~~ 3.028 D. and E., ~~3.012~~ 3.032 D. and E., ~~3.016~~ 3.036 and ~~3.017~~ 3.037 shall apply to energy facilities subject to this rule. Variance applications may be submitted without preparation of an EAW.

6 MCAR S ~~3.036~~ 3.056 Special rules for HVTL.

A. Applicability. Environmental review for a HVTL as defined in Minn. Stat. S 116C.52, subd. 3, ~~unless exempted pursuant to Minn. Stat. S 116C.57, subd. 5,~~ shall be conducted according to the procedures set forth in this rule unless a utility has filed an application for emergency certification pursuant to Minn. Stat. S 116C.57, subd. 3., or for an exemption pursuant to Minn. Stat. S 116C.57, subd. 5. 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. S 116H.13 but excluded under Minn. Stat. S 116C.52, subd. 3, or exempted under Minn. Stat. S 116C.57, subd. 5 shall not be subject to this rule.~~ Except as expressly provided in this rule, 6 MCAR SS ~~3.004-3.016~~ 3.024-3.036 shall not apply to ~~facilities~~ HVTLs subject to this rule. No EAW ~~need~~ shall be prepared for any ~~facilities~~ HVTLs subject to this rule. If a utility has filed an application for emergency certification HE 130

pursuant to Minn. Stat. S 116C.57, subd. 3., or for an exemption pursuant to Minn. Stat. S 116C.57, subd. 5., the procedures and standards specified in 6 MCAR SS 3.077 and 3.078, respectively, shall constitute alternative environmental review and neither 6 MCAR SS 3.024-3.036 nor 6 MCAR S 3.056 shall apply.

B. Environmental report at certificate of need stage.

1. The ~~MEA~~ DEPD 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. S 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~~ shall not be as exhaustive or detailed as an EIS ~~nor need it consider factors that depend upon specific routes or facility designs.~~ and shall consider only those route differentiating factors identifiable pursuant to the information requirements of 6 MCAR SS 3.0634 A. and B.; and

f. The report shall be reviewed in the manner provided in 6 MCAR S ~~3.035~~ 3.055 B.5.-12.

C. EIS at route designation and construction permit stage.

See HE 125 + HE 133, CHE 4/1

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. S 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 S ~~3.011~~ 3.031 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. S 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. S 116C.59 rather than through a formal scoping process. Need for the facility and other issues determined by the MEA ~~need~~ DEPD shall not be considered in the EIS. HE 128 + HE 134 + CHE 4/1

4. The draft EIS shall be reviewed in the manner provided in 6 MCAR S ~~3.035~~ 3.055 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~~ issue any final ~~approval~~ decision for the construction or operation of a facility subject to this rule until the final EIS has been found adequate. FoF 138h.

D. Review of HVTL requiring no certificate of need. An EIS for a HVTL subject to Minn. Stat. SS 116C.51-116C.69 but not subject to Minn. Stat. S 116H.13 shall consist of an EIS to be prepared as provided in C. ~~The alternative of no action shall be considered.~~ } HE 131

E. Cooperative processes. 6 MCAR SS ~~3.008~~ 3.028 D. and E., 3.012 D. and E., ~~3.016~~ 3.036 and ~~3.017~~ 3.037 shall apply to facilities subject to this rule. Variance applications may be submitted without preparation of an EAW.

Repealer. Rules 6 MCAR SS 3.024-3.032, 3.040 and 3.047 as existing on the day before the effective date of these proposed

rules are repealed.

OFFICE OF THE REVISOR OF STATUTES

7-16-82
AR0003

AG copy

Certificate of Approval of Adopted Rules

Agency: Minnesota Environmental Quality Board

Rule Numbers: 6 MCAR S 3.021-3.056

Rule Title: Environmental Review Programs

Type of Rules: Permanent X

Temporary _____

Documents Incorporated by Reference:

U.S. Fish and Wildlife Circular No. 39 (1971 Edition)

The attached Rules are approved as to form, subject to the following editorial changes:

Page 19, line 15, delete the number "1" and insert the letter "l" (indented further)

Page 67, line 18, delete "6 MCAR"

Page 85, line 15, strike "MEA"

APPROVED AS TO LEGALITY
August 12, 1982
WARREN SPANNAUS, ATTORNEY GENERAL
BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 13 1982
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after hearing. See SR for original version of proposed rules

PROPOSED RULES (INCORPORATING STAFF PROPOSED AMENDMENTS)
ENVIRONMENTAL QUALITY BOARD
ENVIRONMENTAL REVIEW PROGRAM

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Chapter Eleven: Authority, Purpose, Definitions, Responsibilities.

6 MCAR § 3.021 Authority, purpose and objectives.

A. Authority. These rules are issued by the Minnesota Environmental Quality Board under authority granted in Minn. Stat. ch. 116D to implement the environmental review procedures established by the Minnesota Environmental Policy Act.

B. Application. These rules apply to all governmental actions. These rules shall apply to ~~†actions~~ projects† for which environmental review has not been initiated prior to the effective date of these rules. For any ~~†action~~ projects† 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 Environmental Quality Board prior to the effective date of these rules, all governmental ~~†approvals~~ decisions† that may be required for that ~~†action~~ project† shall be acted upon in accord with the 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~~ project† will have on the environment. The purpose of these rules is to aid in providing that understanding through the preparation and public review of environmental documents.

Environmental documents prepared under these rules shall contain information which addresses the significant environmental issues of a proposed ~~†action~~ project†. This information shall be available to governmental units and citizens early in the decision making process.

Environmental documents prepared under these rules shall not be used to justify ~~†an action~~ a decision†, nor shall indications of adverse environmental effects necessarily require that ~~†an action~~ a project† 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 these rules is designed to:

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

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~~ project†.

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

5. Eliminate duplication.

6 MCAR § 3.022 Abbreviations and definitions.

A. Abbreviations.

"CFR" means Code of Federal Regulations.

†"DEPD" means Department of Energy, Planning and Development.†

"DNR" means Department of Natural Resources.

"DOT" means Department of Transportation.

"EAW" means environmental assessment worksheet.

"EIS" means environmental impact statement.

"EQB" means Environmental Quality Board.

"HVTL" means high voltage transmission line.

"LEPGP" means large electric power generating plant.

"MCAR" means Minnesota Code of Agency Rules.

†"MDA" means Minnesota Department of Agriculture.†

~~†"MEA" means Minnesota Energy Agency.†~~

~~†"MHD"~~ "MDH"† means Minnesota Department of Health.

"PCA" means Pollution Control Agency.

"RGU" means responsible governmental unit.

"USC" means United States Code.

B. Definitions.

~~†"Action" means governmental action.†~~

~~†"Activity" means the whole of a project which will cause physical manipulation of the environment, directly or indirectly. 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.†~~

"Agricultural land" means land which is or has 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 within the last five years. Wetlands, naturally vegetated lands and woodlands contiguous to or surrounded by agricultural land shall be considered agricultural lands if under the same ownership ~~†and~~ and/or† management during the period of agricultural use.

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

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

"Attached units" means in groups of four or more, each unit 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.

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

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

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

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

"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.

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

"Days" means that in computing any period of time prescribed or allowed in these rules, the day of the event from which the designated period of time begins shall not be included. The last day of the period so computed 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 computation.

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

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

"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.

"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.

"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, windstorms, riot, accident, or sabotage.

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

"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~~ project† or to initiate the scoping process for an EIS.

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

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

"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.

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

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

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

"Flood plain" has the meaning given in 6 MCAR NR 85 (c).

"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 6 MCAR NR 85.

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

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

"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.

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

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

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

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

"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.

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

"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 †established pursuant to Minn. Stat. § 112.34 et seq.†, counties, towns, cities, port authorities, housing authorities, and the Metropolitan Council. It does not include courts, school districts, and regional development commissions.

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

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

†"Minnesota River Project Riverbend area" means an area subject to the comprehensive land use plan of the Project Riverbend Board established pursuant to Laws 1982, Chapter 627.†

†"Mississippi headwaters area" means an area subject to the comprehensive land use plan of the Mississippi River Headwaters Board established pursuant to Laws 1981, Chapter 246, Minn. Stat. ch. 114B.†

†"Mississippi headwaters plan" means the comprehensive land use plan of the Mississippi River Headwaters Board established pursuant to Laws 1981, Chapter 246, Minn. Stat. ch. 114B.†

"Mitigation" means:

a. Avoiding impacts altogether by not †~~taking~~ undertaking† a certain †~~action~~ project† or parts of an †~~action~~ project†; or

b. Minimizing impacts by limiting the degree of magnitude of †~~the action and its implementation~~ a project†; or

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

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

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

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

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

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

"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.

"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.

"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.

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

"Phased action" means two or more †~~activities~~ projects† 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.

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

"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.

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

"Processing", as used in 6 MCAR §§ 3.038 O. 2. and 3. and 3.039 K. 3., has the meaning given in Minn. Stat. § 115A.03, subd. 25.

†"Project" means a governmental action, the results of which would cause physical manipulation of the environment, directly or indirectly. The determination of whether a project requires environmental documents shall be made by reference to the physical activity to be undertaken and not to the governmental process of approving the project.†

"Project estimated cost" means the total of all allowable expenditures of the proposer anticipated to be necessary for the implementation of ~~†an action~~ a proposed project†.

†"Project Riverbend plan" means the comprehensive land use plan of the Project Riverbend Board established pursuant to Laws 1982, Chapter 627.†

"Proposer" means the private person or governmental unit that proposes to undertake or to direct others to undertake ~~†an action~~ a project†.

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

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

"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.

"Related action" means two or more ~~†actions~~ projects† 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~~ projects† will induce the other ~~†action~~ project†.

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

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

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

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

†"Scram mining" has the meaning given in 6 MCAR § 1.0401 B. 16.†

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

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

"Sewered area" means an area:

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.

"Shoreland" has the meaning given in 6 MCAR Cons. 70.

"Shoreland ordinance, state approved" means a local governmental unit shoreland management ordinance which meets the provisions of Minn. Stat. § 105.485 and has been approved by the Commissioner of the DNR pursuant to 6 MCAR Cons. 70 or 6 MCAR NR 82.

~~†"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.†~~

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

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

"Storage", as used in 6 MCAR § 3.038 O. 4., has the meaning given in 40 CFR 260.10 (66).

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

"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.

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

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

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

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

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

"Wild and scenic rivers district" means a river, or a segment of the river, and its adjacent lands that possesses outstanding scenic, recreational, natural, historical, scientific, or similar values and has been designated by the Commissioner of the DNR †or by the legislature of

the State of Minnesota† for inclusion within the Minnesota Wild and Scenic Rivers system pursuant to Minn. Stat. §§ 104.31 - 40 or by Congress for inclusion within the National Wild and Scenic Rivers System pursuant to 16 USC 1274 et seq.

"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 6 MCAR NR 81 †or 6 MCAR NR 2202†.

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

6 MCAR § 3.023 General responsibilities.

A. EQB. The EQB shall monitor the effectiveness of these rules and shall take appropriate measures to modify and improve the effectiveness of the rules. The EQB shall assist governmental units and interested persons in understanding and implementing these 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~~ a project†, the proposer of the ~~†action~~ project† 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 in the district court of the county where the proposed ~~†action~~ project†, or any part thereof, would be undertaken. Judicial review shall be initiated within 30 days after ~~†the RGU makes the decision~~ publication of the RGU's decision in the EQB Monitor†.

6 MCAR § 3.024 RGU selection procedures. The following procedures shall be used in determining the RGU for the preparation of an EAW:

A. For any ~~†activity~~ project† listed in 6 MCAR §§ 3.038 or 3.039, the governmental unit listed in parentheses shall be the RGU.

B. If a governmental unit orders an EAW pursuant to 6 MCAR § 3.025 C. 1., that governmental unit shall be designated as the RGU.

C. 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. If the EQB orders an EAW pursuant to 6 MCAR § 3.025 C. 3., the EQB shall, at the same time, designate the RGU for that EAW.

E. For any ~~†activity~~ project† where the RGU is not listed in 6 MCAR §§ 3.038 or 3.039 or which falls into more than one category in 6 MCAR §§ 3.038 or 3.039, 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~~ a project†, it shall be the RGU.

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

which governmental unit has the greatest responsibility for supervising or approving †~~an action~~ a project†, the governmental units shall either:

a. By agreement, designate which unit shall be the RGU †within five days of receipt of the completed data portion of the EAW†; or

b. Submit the question to the EQB †chairperson†, †~~which~~ who† shall †within five days of receipt of the completed data portions of the EAW,† designate the RGU based on a consideration of which governmental unit has the greatest responsibility for supervising or approving the †~~action~~ project† or has †~~the~~† expertise that †~~may be~~ is† relevant for the environmental review.

F. Notwithstanding paragraphs A-E of this rule, the EQB may designate†, within five days of receipt of the completed data portions of the EAW,† 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~~ project†.

Chapter Twelve: Environmental Assessment Worksheet.

6 MCAR § 3.025 †~~Actions~~ Projects† 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~~ project†. The EAW serves primarily the following purposes:

1. Aid in the determination of whether an EIS is needed for a proposed †~~action~~ project†; 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~~ project† that meets or exceeds the thresholds of any of the EAW categories listed in 6 MCAR § 3.038 or any of the EIS categories listed in 6 MCAR § 3.039.

C. Discretionary EAWs. An EAW shall be prepared:

1. When †a project is not exempt under 6 MCAR § 3.041 and when† a governmental unit, with †~~jurisdiction or~~† approval authority over the proposed †~~action~~ project†, determines that, because of the nature or location of a proposed †~~action~~ project†, the †~~action~~ project† may have the potential for significant †~~adverse~~† environmental effects.

2. When †a project is not exempt under 6 MCAR § 3.041 and when† a governmental unit, with †~~jurisdiction or~~† approval authority over a proposed †~~action~~ project†, determines, pursuant to the petition process set forth in 6 MCAR § 3.026, that, because of the nature or location of a proposed †~~action~~ project†, the †~~action~~ project† may have the potential for significant †~~adverse~~† environmental effects.

3. Whenever the EQB determines that, because of the nature or location of a proposed †~~action~~ project†, the †~~action~~ project† may have the potential for significant †~~adverse~~† environmental effects†~~.~~; provided that this subparagraph shall not be applicable to a project exempt under 6 MCAR § 3.041 or to a project for which a governmental unit, with approval authority over the project, has made a prior negative or positive determination conerning the need for an EAW concerning the project.†

†4. When the proposer wishes to initiate environmental review to determine if a project has the potential for significant environmental effects.†

6 MCAR § 3.026 Petition process.

A. Petition. Any person may request the preparation of an EAW on

†~~an action~~ a project† 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~~ proposed project†;

2. The proposer of the †~~action~~ project†;

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

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

5. Material evidence indicating that, because of the nature or location of the proposed †~~action~~ project†, 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 6 MCAR §§ 3.026 A. and B. 1., 2., †~~and~~† 3 †, 4., and 5†. If the petition complies, the chairperson or designee shall designate a RGU †pursuant to 6 MCAR § 3.024† 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 †, proposers, and other persons,† or otherwise known to the RGU demonstrates that, because of the nature or location of the proposed †~~action~~ project†, the †~~action~~ project† 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~~ project† 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 †including specific findings of fact† of its decision on the need for an EAW.

G. Timing. 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 similar 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. †Within five days of its decision, ~~It~~the RGU shall †~~promptly~~† notify, in writing, the proposer †, the EQB staff,† 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~~ The EQB staff shall publish notice of the RGU's decision concerning the petition in the EQB Monitor.†

6 MCAR § 3.027 EAW 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 i~~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 d~~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 a RGU demonstrates the alternative form will better accommodate the RGU's function or better address a particular type of ~~†action~~ project† 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~~ proposed project†. †The EAW shall be prepared by the RGU or its agents.†

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

†2. If a RGU orders the preparation of an EAW pursuant to 6 MCAR § 3.026 F., 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.†

3. ~~†If the proposer or its agent prepares the EAW, whether voluntarily or pursuant to a mandatory category or RGU determination,~~ When an EAW is to be prepared, the proposer shall submit the completed data portions of the EAW to the RGU for its consideration and approval †for distribution. Except pursuant to 6 MCAR § 3.026 F.,† the RGU shall have 30 days to add supplementary material, if necessary, and to approve the EAW †for distribution†. 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 †within five days after the RGU approves the EAW†. 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~~ †project†;

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~~ †project† will take place; ~~†and†~~

†k. The representative of any petitioners pursuant to 6 MCAR § 3.026; and†

~~†k~~l†. 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~~ †project† is proposed. The press release shall include the name and location of the ~~†action~~ †project†, a brief description of the ~~†activity~~ †project†, the location(s) at which copies of the EAW are available for review, the date the comment period expires, and the procedures for commenting. †The RGU shall publish legal notice and/or advertisement of the availability of the EAW if the proposer requests and agrees to pay for the notice and/or advertisement. The notice and/or advertisement shall contain the information required in the press release.†

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 material contained within the EAW, potential impacts that may warrant further investigation before the ~~†action~~ †project† is commenced, and the need for an EIS on the proposed ~~†action~~ †project†.

3. The RGU may hold one or more public meetings to gather comments on the EAW †if it determines that a meeting is necessary or useful†. Reasonable public notice of the meetings shall be given prior to the meetings. All meetings shall be open to the public.

6 MCAR § 3.028 Decision on need for EIS. An EIS shall be ordered for ~~†actions~~ †projects† which have the potential for significant ~~†adverse†~~ environmental effects.

A. 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 similar 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.

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's chairperson by no more than 15 additional days †upon request of the RGU†.

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, if applicable, on the information gathered during the EAW process and the comments received on the EAW.

3. The RGU shall maintain a record †including specific findings of fact† 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 †, within five days,† to all persons on the EAW distribution list pursuant to 6 MCAR § 3.027 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.

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

C. Criteria. In deciding whether ~~†an action~~ a project† 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~~ projects†;

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 of EISs previously prepared on similar ~~†actions~~ projects†.

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

E. Phased actions.

1. Phased actions shall be considered a single ~~†action~~ project† for determination of need for an EIS.

2. In ~~certain~~ phased actions ~~it will not be~~ where it is not 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~~ projects such as highways, streets, pipelines, utility lines, or systems where the proposed ~~action~~ project is related to a large existing or planned network, the RGU ~~may, at its option,~~ shall 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.~~ The determination shall be based on the relationship of the present proposal to the total proposal. The RGU may divide the project into smaller segments when the smaller segment will be undertaken regardless of the completion of the remainder of the system, is not sized to induce or predetermine construction of the remainder of the system, and is not undertaken contemporaneously with the remainder of the system.

Chapter Thirteen: Environmental Impact Statement.

6 MCAR § 3.029 ~~Actions~~ Projects 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~~ project, and other persons to evaluate proposed ~~actions~~ projects which have the potential for significant ~~adverse~~ environmental effects, to consider alternatives to the proposed ~~actions~~ projects, and to ~~institute~~ explore methods for reducing adverse environmental effects.

B. Mandatory EIS categories. An EIS shall be prepared for any ~~activity~~ project that meets or exceeds the thresholds of any of the EIS categories listed in 6 MCAR § 3.039.

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~~ project has the potential for significant ~~adverse~~ environmental effects; or

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

6 MCAR § 3.030 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~~ project, 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~~ projects 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 § 3.028; and

b. To initiate discussion concerning the scope of the EIS if an EIS is ordered pursuant to 6 MCAR § 3.028.

C. Scoping period.

1. If the EIS is being prepared pursuant to 6 MCAR §§ 3.029 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 § 3.027 D. 1.†and 2.† This notice †and press release† 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.

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 § 3.029 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~~ project† is proposed. All meetings shall be open to the public.

b. Within 30 days after the positive declaration is ~~†issued~~ published in the EQB Monitor†, 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~~ published in the EQB Monitor†.

D. Procedure for scoping.

1. Written comments suggesting issues for scoping or commenting on the EAW ~~†may~~ must† 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 these rules.

E. Scoping decision.

1. The scoping decision shall contain at least the following:

a. The issues to be addressed in the EIS;

b. Time limits for preparation, if they are shorter than those allowed by these rules;

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†~~.~~;†

†f. Identification of potential impact areas resulting from the project itself and from related actions which shall be addressed in the EIS; and

g. Identification of necessary studies requiring compilation of existing information or the development of new data that can be generated within a reasonable amount of time and at a reasonable cost.†

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 shall be addressed in the EIS.~~

~~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.~~ 3.† After the scoping decision is made, the RGU †~~may~~ shall† not amend the decision without the agreement of the proposer†,† unless substantial changes are made in the proposed †~~action~~ project that affect the potential significant environmental effects of the project† or substantial new information arises relating to the proposed †~~action~~ project that significantly affects the potential environmental effects of the proposed project or the availability of prudent and feasible alternatives to the project†. 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.

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~~ project† 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 § 3.031 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 †, environmental,† 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~~ project† for which it has special expertise or access to information.

B. Content.

1. Writing. An EIS shall be written in plain and objective language.

2. Format. An RGU shall use a format for an EIS that will encourage good analysis and clear presentation of the proposed †~~action~~ project† including alternatives to the †~~action~~ project†. The standard format shall be:

a. Cover sheet. The cover sheet shall include:

(1) The RGU;

(2) The title of the proposed †~~action~~ project† 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~~ project† is located;

(3) The name, address, and telephone number of the person at the RGU who can supply further information;

†(4) The name and address of the proposer and the name, address and telephone number of the proposer's representative who can supply further information.†

†~~(4)~~ (5)† A designation of the statement as a draft, final or supplement;

†~~(5)~~ (6)† A one paragraph abstract of the EIS; and

†~~(6)~~ (7)† 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.

b. Summary. The summary shall stress the major findings, areas of controversy, and the issues to be resolved including the choice among alternatives.

c. Table of contents.

d. List of preparers. This list shall include the names, together with their qualifications, of the persons who were primarily responsible for preparing the EIS or significant background papers.

e. Project description. The proposed †~~action~~ project† shall be described with no more detail than is absolutely necessary to allow the public to identify the purpose of the †~~action~~ project†, its size, scope, environmental setting, geographic location, and the anticipated phases of development.

f. Governmental approvals. This section shall †~~contain a comprehensive listing of~~ list† 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, t~~ T†hose permits for which all necessary information has been gathered and presented †~~with~~ in† the EIS shall be identified.

g. Alternatives. †~~Based on the analysis of the proposed action's impacts, t~~ T† he alternatives section shall compare the environmental impacts of the proposal with †~~any~~† other reasonable alternatives to the proposed †~~action~~ project†. Reasonable alternatives may include locational considerations, design modifications including site layout, magnitude of the †~~action~~ project†, and consideration of alternative means by which the purpose of the †~~action~~ project† 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.

h. Environmental, economic, employment and sociological impacts. For the proposed †~~action~~ project† 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~~ project† and the effects the †~~action~~ project† may have on the environment.

i. 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~~ project†.

j. Appendix. If a RGU prepares an appendix to an EIS the appendix shall include, when applicable†~~;~~:†

(1) Material prepared in connection with the EIS, as distinct from material which is not so prepared and which is incorporated by reference;

(2) Material which substantiates any analysis fundamental to the EIS; and

(3) 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~~ project†. 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~~ the† 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 6 MCAR § 3.031 G. 4. or the information relevant to †~~adverse~~ the† 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~~ project† against the risk and severity of possible adverse impacts were the †~~action~~ project† 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~~ consistent† with †~~the scope decided upon in~~ these rules and in accord with† the scoping †~~process~~ determination†. †~~The draft statement shall satisfy to the fullest extent possible the requirements of 6 MCAR § 3.031 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~~ project† 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;~~ project, to the extent known.†

b. The proposer of the †~~action~~ project†;

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 in each county where the ~~†action~~ project† will take place †, to the extent known,† where the draft will be available for public review; 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;

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~~ project† 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~~ submitted† 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 †EIS consistent with the scoping decision†. The RGU shall discuss at appropriate points in the final EIS any responsible opposing views †relating to scoped issues† 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 6 MCAR § 3.031 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~~ project† 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.†~~

†1. The RGU shall determine the adequacy of the final EIS unless notified by the EQB, on its own initiative or at the request of the RGU, the proposer of the project or other interested persons, that the EQB will determine the adequacy. The EQB shall notify the RGU no later than 60 days following publication of the preparation notice in the EQB Monitor. The EQB shall intervene only if the EQB determines that:

a. The RGU is or will be unable to provide an objective appraisal of the potential impacts of the project; or

b. The project involves complex issues which the RGU lacks the technical ability to assess; or

c. The project has multi-jurisdictional effects.†

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~~ proposer and the RGU† 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~~ issues† for which information can be reasonably obtained have been ~~†answered;~~ analyzed.†

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 these rules.

6. If the RGU or the EQB determines 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 6 MCAR § 3.031 F. 3.

7. The RGU shall notify all persons receiving copies of the final EIS pursuant to 6 MCAR § 3.031 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 these rules and to any other person requesting such 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~~ project† that affect the potential significant ~~†adverse†~~ environmental effects of the ~~†action~~ project†; or

b. There are substantial new information or new circumstances that significantly affect the potential environmental effects from the proposed ~~†action~~ project† 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 draft and final EISs unless alternative procedures are approved by the EQB.

†4. The determination of adequacy of the supplemental EIS shall be made within 120 days after the notice of preparation of the supplemental EIS was published in the EQB Monitor unless the time is extended by consent of the proposer and the RGU or by the Governor for good cause.†

6 MCAR § 3.032 Prohibition on final ~~†actions and~~ governmental† decisions.

A. On any ~~†action~~ project† for which a petition for an EAW is filed or an EAW is required or ordered under these rules, no final governmental decision to grant ~~†or deny†~~ a permit or other approval required, or to commence the ~~†action~~ project† 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. Except for projects under 6 MCAR §§ 3.032 D. ~~†or E.,†~~ for any ~~†action~~ project† 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~~ project† 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.

C. No physical construction of a project shall occur for any project subject to review under these rules 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~~ project† is an emergency under ~~†6 MCAR § 3.032 E. or a variance is granted under†~~ 6 MCAR § 3.032 D. The EQB's statutory authority to halt ~~†actions~~ projects† or impose other temporary relief is in no way limited by this rule.

~~†D. Variance. Construction may begin on an activity if the proposer applies for and is granted a variance from the provisions of 6 MCAR § 3.032 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's chairperson shall publish a notice of the variance application in the EQB Monitor within 15 days after receipt of the application.~~

~~4. The EQB's 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 such a variance, and~~

~~b. On the basis of the variance application and the comments, construction is necessary in order to:~~

~~(1) Avoid excessive and unusual economic hardship; or~~

~~(2) 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.~~

~~7. Only the construction or governmental approvals necessary to avoid the consequences listed above shall be undertaken or granted.~~†

†~~E.~~ D.† Emergency action. In the rare situation when immediate action by a governmental unit or a 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~~ project† may be undertaken without the environmental review which would otherwise be required by these rules. The governmental unit or person must demonstrate to the EQB's chairperson, either orally or in writing, that immediate action is essential and must receive authorization from the EQB's chairperson to proceed. Authorization to proceed shall be limited to those †~~actions~~ aspects of the project† necessary to control the immediate impacts of the emergency. Other †~~actions~~ aspects of the project† remain subject to review under these rules.

6 MCAR § 3.033 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~~ a project† ubject to this rule, that agency shall provide the EQB with notice of its intent to issue a decision. Such notice shall include a brief description of the †~~action~~ project†, the date the final decision is expected to be issued, the title and date of EISs prepared on the †~~agency action~~ project† and the name, address and phone number of the project proposer and parties to any proceeding on the †~~action~~ project†. If the †~~action~~ project† 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 as provided above 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~~ a project†, the chairperson of the EQB may delay implementation of the †~~action~~ project† 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~~ a project† where there is substantial reason to believe that the †~~action~~ project† or †its† 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~~ a project, 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~~ project is to take place. The notice shall identify the time and place of the hearing, and provide a brief description of the ~~action~~ project and final decision to be reviewed and a reference to the EQB's authority to conduct the hearing. The hearing ~~may~~ shall be conducted by the EQB's chairperson or a designee;

2. Any person may submit written or oral evidence tending to establish the consistency or inconsistency of the ~~action~~ project 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. The EQB shall prepare specific findings of fact regarding its decision. If the EQB fails to act within 45 days of notice given pursuant to 6 MCAR § 3.033 C. the agency's decision shall stand as originally issued.

Chapter Fourteen: Substitute Forms of Environmental Review.

6 MCAR § 3.034 Alternative review.

A. Implementation. ~~The EQB~~ Governmental units may ~~approve the use~~ request EQB approval of an alternative form of environmental review for categories of projects which undergo environmental 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~~ The EQB shall approve the governmental process as an alternative form of environmental review if the governmental unit ~~shall demonstrate to the EQB that its review~~ demonstrates that process meets the following conditions:

1. The process identifies the potential environmental impacts of each proposed ~~action~~ project;

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~~ project 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~~ project 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~~ project. A copy of environmental documents on ~~actions~~ projects reviewed under an alternative review proce-

dure 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~~ project. The process must provide for RGU response to timely substantive comments relating to issues discussed in environmental documents relating to the project; and†

8. The process must routinely develop the information required in paragraphs A. 1. - A. 5. of this rule and provide the notification and review opportunities in paragraphs A. 6. and A. 7. of this rule for each ~~†action~~ project† 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~~ projects† reviewed under that alternative review procedure shall be exempt from environmental review under 6 MCAR §§ 3.026, 3.027, 3.028, 3.030 and 3.031. 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 act and these rules. 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 § 3.035 Model ordinance.

A. Application. The model ordinance, set out in paragraph C. of this rule may be utilized by any local governmental unit which adopts the ordinance in lieu of 6 MCAR §§ 3.025 - 3.032 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 paragraph C. of this rule, 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 paragraph C. of this rule, 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 act. If the EQB determines the proposed ordinance meets these requirements, the EQB shall approve the ordinance ~~†for adoption~~ as a substitute form of environmental review in place of the model ordinance† and shall periodically review its implementation.

3. Notice of adoption of the model ordinance pursuant to B. 1. and 2. of this rule shall be made in the EQB Monitor.

4. If the EQB determines that the proposed local ordinance does not meet its requirements †as a substitute form of environmental review in place of the model ordinance†, 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~~ projects† which:

a. Are consistent with any applicable comprehensive plan; and

b. Do not require a state permit; and

c. The (board) (council) determines that, because of the nature or location of the ~~†action~~ project†, the ~~†action~~ project† 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 §§ 3.038 and 3.039, 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~~ projects† which are exempted from environmental review by 6 MCAR § 3.041 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 § 3.021 et seq.

Section 2. Preparation. Prior to or together with any application for a permit or other form of approval for ~~†an activity~~ a project†, the proposer of the ~~†action~~ project† shall prepare an analysis of the ~~†action's~~ project'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 †in the EQB Monitor†. 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~~ project†. 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~~ a project† 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 § 3.036 Generic EISs. A generic EIS may be ordered by the EQB to study types of ~~†actions~~ projects† 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 such actions;~~

~~2. Decision makers or the public have need to be informed of the potential impacts of such actions;~~

~~3. Information to be presented in the generic EIS is needed for governmental or public planning;~~

~~4. The cumulative impacts of such actions 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.~~A.† EQB as RGU. If the EQB orders a generic EIS, the EQB shall be the RGU for the generic EIS.

†~~C.~~B.† Public requests for generic EISs. A governmental unit or any other person may request the EQB to order a generic EIS.

†~~D.~~C.† Timing. Time deadlines for the preparation of a generic EIS shall be set at the scoping meeting.

†~~E.~~D. ~~Application of c~~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 subsequent project specific EISs.

†4. The amount of basic research needed to understand the impacts of such project;

5. The degree to which decision makers or the public have a need to be informed of the potential impacts of such projects;

6. The degree to which information to be presented in the generic EIS is needed for governmental or public planning;

7. The potential for significant environmental effects as a result of the cumulative impacts of such projects;

8. The regional and statewide significance of the impacts and the degree to which they can be addressed on a project-by-project basis; and

9. The degree to which governmental policies affect the number or location of such projects or the potential for significant environmental effects.†

†~~F.~~E.† 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 § 3.030 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.~~F.† Content. In addition to †~~any issues that may be addressed in~~ content requirements specified via† 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.~~G.† 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.~~H.† 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 § 3.037 Joint federal/state †~~EIS~~ environmental documents†.

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.

B. Joint responsibility. Where a joint federal/state †~~EIS~~ environmental document† is prepared, the RGU and one or more federal agencies shall be jointly responsible for †~~preparing the EIS~~ its preparation†. Where federal laws have †~~EIS~~ environmental document† 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~~ a project†, the RGU shall utilize the draft or final federal EIS as the draft state EIS for the †~~action~~ project† if the federal EIS addresses the scoped issues and satisfies the standards set forth in 6 MCAR § 3.028 B.

Chapter Fifteen: Mandatory Categories.

6 MCAR § 3.038 Mandatory EAW categories. An EAW must be prepared for †~~activities~~ projects† that meet or exceed the threshold of any of the following categories.

A. Nuclear fuels and nuclear waste.

1. Construction or expansion of a facility for the storage of high level nuclear waste. (EQB)

2. Construction or expansion of a facility for the storage of low level nuclear waste for one year or longer. †~~(MHD)~~ (MDH)†

3. Expansion of a high level nuclear waste disposal site. (EQB)

4. Expansion of a low level nuclear waste disposal site. †~~(MHD)~~ (MDH)†

5. Expansion of an away-from-reactor facility for temporary storage of spent nuclear fuel. (EQB)

6. Construction or expansion of an on-site pool for temporary storage of spent nuclear fuel. (EQB)

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. (EQB)

C. Petroleum refineries. Expansion of an existing petroleum refinery facility which increases its capacity by 10,000 or more barrels per day. (PCA)

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. (PCA)

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. (PCA)

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. (EQB)

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 derivatives. (EQB)

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. (EQB)

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. (PCA)

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†~~.~~, Minnesota River Project Riverbend area, or the Mississippi headwaters area.† (PCA)

H. Underground storage.

1. Expansion of an underground storage facility for gases or liquids that requires a permit, pursuant to Minn. Stat. § 84.57. (DNR)

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. (DNR)

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 a existing facility by these respective amounts. (PCA)

2. Construction of a facility on a single site designed for or capable of storing 1,000,000 gallons or more of hazardous materials. (PCA)

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. (PCA)

J. Metallic mineral mining and processing.

1. Mineral deposit evaluation of metallic mineral deposits other than natural iron ore and taconite. (DNR)

2. Expansion of a stockpile, tailings basin, or mine by 320 or more acres. (DNR)

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. (DNR)

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. (DNR)

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. (local)

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. (PCA)

M. Industrial/commercial/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 sq. ft.
b. Third or fourth class city - 200,000 sq. ft.
c. Second class city - 300,000 sq. ft.
d. First class city - 400,000 sq. ft. (local)

2. Construction of a new or expansion of an existing industrial, commercial, or institutional facility of 20,000 or more sq. ft. of ground area, if the local governmental unit has not adopted approved shoreland, flood plain, ~~tor~~† wild and scenic rivers land use district ordinances †the Mississippi headwaters plan or the Project Riverbend plan†, as applicable, and either:

a. The ~~tactivity~~ projectt involves riparian frontage, or

b. Twenty thousand or more sq. ft. of ground area to be developed is within a shoreland area, delineated flood plain, ~~tor~~† state or federally designated wild and scenic rivers district †, Minnesota River Project Riverbend area, or the Mississippi headwaters area†. (local)

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. (PCA)

2. Construction of a new parking facility for 1,000 or more vehicles. (PCA)

O. Hazardous waste.

1. Construction or expansion of a hazardous waste disposal facility. (PCA)

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 such facility by 1,000 or more kilograms per month capacity. (PCA)

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, †the Minnesota River Project Riverbend area, the Mississippi headwaters area,† or in an area characterized by soluble bedrock. (PCA)

4. Construction †or expansion† 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,~~ which sells hazardous waste storage services to generators other than the owner and operator of the facility or construction of a facility at which a generator's own hazardous wastes will be stored for a time period in excess of 90 days,† if the facility is located in a shoreland area, delineated flood plain, state or federally designated wild and scenic rivers district, †the Minnesota River Project Riverbend area, Mississippi headwaters area,† or in an area characterized by soluble bedrock. (PCA)

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. (PCA or Metropolitan Council)

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. (PCA or Metropolitan Council)

3. Construction or expansion of a mixed municipal solid waste transfer station for 300,000 or more cubic yards per year. (PCA or Metropolitan Council)

4. Construction or expansion of a mixed municipal solid waste resource recovery facility for 100 or more tons per day of input. (PCA or Metropolitan Council)

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. (PCA or Metropolitan Council)

Q. Sewage systems.

1. Construction of a new †municipal or domestic† wastewater treatment facility or sewer system with a capacity of 30,000 gallons per day or more. (PCA)

2. Expansion of an existing †municipal or domestic† 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. (PCA)

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.

d. Two hundred or more unattached or 300 or more attached units in a first class city. (local)

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, †the Mississippi headwaters plan, or the Project Riverbend plan,† as applicable, and either:

a. The ~~†activity~~ project† 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 Minnesota River Project Riverbend area, or the Mississippi headwaters area†. (local)

S. Recreational development. Construction of a seasonal or permanent recreational development, accessible by vehicle, consisting of 50 or more sites. (local)

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. (DOT or local)

U. Highway projects.

1. Construction of a road on a new location over one mile in length that will function as a collector roadway. (DOT or local)

2. Construction of additional travel lanes on an existing road for a length of one or more miles. (DOT or local)

3. The addition of one or more new interchanges to a completed limited access highway. (DOT or local)

V. Barge fleeting. Construction of a new or expansion of an existing barge fleeting facility. (DOT or Port Authority)

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. (DNR)

2. A new or additional permanent impoundment of water creating a water surface of 160 or more acres. (DNR)

3. Construction of a Class II dam. (DNR)

X. Marinas. Construction or cumulative expansion of a marina or harbor project which results in a total of 20,000 or more sq. ft. of temporary or permanent water surface area used for docks, docking, or maneuvering of watercraft. (local)

Y. Stream diversion. The diversion or channelization of a designated trout stream or a natural watercourse with a total watershed of ten or more sq. mi., unless exempted by 6 MCAR § 3.041 P. †or 6 MCAR § 3.041 M. 5.† (local)

Z. Wetlands and protected waters.

1. †~~Actions~~ Projects† 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. (local)

2. †~~Actions~~ Projects† that will change or diminish the course, current, or cross section of 40 percent or more or 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 Minnesota River Project Riverbend area, or the Mississippi headwaters area†. (local)

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 †, the Minnesota River Project Riverbend area, the Mississippi headwaters area,† or critical area that does not have an approved plan under Minn. Stat. §§ 86A.09 or 116G.07. (DNR)

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. (DNR)

3. †~~Actions~~ Projects† resulting in the conversion of 640 or more acres of forest or naturally vegetated land to a differing open space land use. (local)

4. †~~Actions~~ Projects† resulting in the permanent conversion of 80 or more acres of agricultural, forest, or naturally vegetated land to a more intensive, developed land use. (local)

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. (PCA, if in a shoreland, delineated flood plain, or Karst area, or local)

CC. Natural areas. †~~Actions~~ Projects† resulting in the permanent physical encroachment on lands within a national park, state park, wilderness area, †state lands and waters within the boundaries of the Boundary Waters Canoe Area,† scientific and natural area, or state trail corridor when such encroachment is inconsistent with †laws applicable to or† the management plan prepared for the recreational unit. (DNR or local)

DD. Historical places. Destruction of a property that is listed on the National Register of Historic Places. (permitting state agency or local)

6 MCAR § 3.039 Mandatory EIS categories. An EIS must be prepared for ~~†activities~~ projects† that meet or exceed the threshold of any of the following categories.

A. Nuclear fuels and nuclear waste.

1. The construction or expansion of a nuclear fuel †or nuclear waste† processing facility, including fuel fabrication facilities, reprocessing plants, and uranium mills. (DNR for uranium mills or PCA)

2. Construction of a high level nuclear waste disposal site. (EQB)

3. Construction of an away-from-reactor facility for temporary storage of spent nuclear fuel. (EQB)

4. Construction of a low level nuclear waste disposal site. †~~(MHD)~~ (MDH)†

B. Electric generating facilities. Construction of a large electric power generating plant pursuant to 6 MCAR § 3.055. (EQB)

C. Petroleum refineries. Construction of a new petroleum refinery facility. (PCA)

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. (PCA)

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. (PCA)

E. Transmission lines. Construction of a high voltage transmission line pursuant to 6 MCAR § 3.056. (EQB)

F. Underground storage.

1. Construction of an underground storage facility for gases or liquids that requires a permit pursuant to Minn. Stat. § 84.57. (DNR)

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. (DNR)

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. (DNR)

2. Construction of a new facility for mining metallic minerals or for the disposal of tailings from a metallic mineral mine. (DNR)

3. Construction of a new metallic mineral processing facility. (DNR)

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. (DNR)

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. (local)

I. Paper or pulp processing. Construction of a new paper or pulp processing mill. (PCA)

J. Industrial/commercial/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 sq. ft.
b. Third or fourth class city - 500,000 sq. ft.
c. Second class city - 750,000 sq. ft.
d. First class city - 1,000,000 sq. ft. (local)

2. Construction of a new or expansion of an existing industrial, commercial, or institutional facility of 100,000 or more sq. ft. 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 †, the Mississippi headwaters plan or the Project Riverbend plant†, as applicable, and either:

a. The ~~†activity~~ project† involves riparian frontage, or

b. One hundred thousand or more sq. ft. 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 Minnesota River Project Riverbend area, or the Mississippi headwaters area†. (local)

K. Hazardous waste.

1. Construction or expansion of a hazardous waste disposal facility for 1,000 or more kilograms per month. (PCA)

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, †the Minnesota River Project Riverbend area, the Mississippi headwaters area,† or in an area characterized by soluble bedrock. (PCA)

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, †the Minnesota River Project Riverbend area, the Mississippi headwaters area,† or in an area characterized by soluble bedrock. (PCA)

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. (PCA or Metropolitan Council)

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, †the Minnesota River Project Riverbend area, the Mississippi headwaters area,† or in an area characterized by soluble bedrock. (PCA or Metropolitan Council)

3. Construction or expansion of a mixed municipal solid waste resource recovery facility for 500 or more tons per day of input. (PCA or Metropolitan Council)

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. (PCA or Metropolitan Council)

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.

d. Eight hundred or more unattached or 1200 or more attached units in a first class city. (local)

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, †the Mississippi headwaters plan, or the Project Riverbend plant† as applicable, and either:

a. The ~~†activity~~ †project† involves riparian frontage, or

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 Minnesota River Project Riverbend area, or the Mississippi headwaters area†. (local)

N. Airport projects. Construction of a paved and lighted airport runway of 5,000 ft. length or greater. (DOT or local)

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. (DOT or local)

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. (DOT or Port Authority)

Q. Water appropriation and impoundments. Construction of a Class I dam. (DNR)

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. (local)

S. Wetlands and protected waters. †~~Actions~~ Projects† 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. (local)

6 MCAR § 3.040 Discretionary EAWs. A governmental unit with jurisdiction may order the preparation of an EAW for any ~~†activity~~ †project† that does not exceed the mandatory thresholds designated in 6 MCAR §§ 3.038 or 3.039 if:

A. The governmental unit determines that, because of the nature or location of the proposed ~~†action~~ †project†, the ~~†action~~ †project† may have the potential for significant ~~†adverse†~~ environmental effects, and

B. ~~†The primary purpose of t~~†the ~~†action~~ †project† is not exempted pursuant to 6 MCAR § 3.041.

6 MCAR § 3.041 Exemptions. †~~Activities~~ Projects† within the following categories are exempt from these rules.

A. Standard exemptions.

1. †~~Activities~~ Projects† for which no governmental †~~action is~~ decisions are† required.

2. †~~Activities~~ Projects† for which all governmental †~~action has~~ decisions have† been †~~completed~~ made†.

3. †~~Activities~~ Projects† for which, and so long as, a †~~public agency~~ governmental unit† has denied a required governmental approval.

4. †~~Activities~~ Projects† for which a substantial portion of the †~~activity~~ project† has been completed and an EIS would not influence remaining implementation or construction.

5. †~~Activities~~ Projects† for which environmental review has already been initiated under the prior rules or for which environmental review is being conducted pursuant to 6 MCAR §§ 3.034 or 3.035 of these rules.

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 is capable of increasing production by less than ten percent per year, provided that 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/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 †, the Minnesota River Project Riverbend area, or the Mississippi headwaters area†:

a. Third or fourth class city or unincorporated area - 50,000 sq. ft.

b. Second class city - 75,000 sq. ft.

c. First class city - 100,000 sq. ft.

2. The construction of an industrial, commercial, or institutional facility with less than 4,000 sq. ft. 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 †, the Minnesota River Project Riverbend area, or the Mississippi headwaters area†.

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 †, the Minnesota River Project Riverbend area, or the Mississippi headwaters area,† 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.

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 †~~such action~~ the project† 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~~ projects† on airport property except where such †~~activities~~ projects† 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.

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 sq. ft. of water surface area.

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 which is located within a shoreland area, delineated flood plain, ~~†or†~~ state or federally designated wild and scenic rivers district †, the Minnesota River Project Riverbend area, or the Mississippi headwaters area†.

S. Utilities. Utility extensions as follows: water service mains of 500 ft. 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 ft. or less and one inch diameter or less; and telephone services lines.

T. Construction †~~activities~~ projects†.

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~~ activities†.

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.

(NOTE: The following two chapters, chapters sixteen and seventeen, are not being proposed for significant change beyond the currently in force Environmental Review Program Rules, 1977 edition. Only those rules identified with deletion or underlining are being proposed for change. The remaining rules are included to facilitate reviewing and understanding the entire set of rules.)

Chapter Sixteen: Early Notice Rules.

6 MCAR § 3.042 ~~3.033~~ Authority and purpose.

A. To provide early notice of impending ~~†actions~~ projects† which may have significant ~~†adverse†~~ environmental effects, the EQB ~~Council~~ shall, pursuant to Minn. Stat. § 116D.04, subd. 8 ~~(1974)~~, publish a bulletin with the name of "EQB Monitor" ~~"EQC Monitor"~~ containing all

notices as specified in 6 MCAR § 3.044 ~~3.035~~. The EQB ~~Council~~ may prescribe the form and manner in which the governmental units ~~agencies~~ submit any material for publication in the EQB ~~EQC~~ Monitor, and the EQB Chairperson ~~of the Council~~ may withhold publication of any material not submitted according to the form or procedures the EQB ~~Council~~ has prescribed.

B. These rules are intended to provide a procedure for notice to the EQB ~~MEQC~~ and to the public of natural resource management and development permit applications, and impending governmental and private ~~†actions~~ projects† 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 § 3.043 ~~3.034~~ Exemptions.

A. 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 unless otherwise provided by resolution of the EQB ~~Council~~.

B. Where, in the opinion of any governmental unit ~~public agency~~, strict observance of 6 MCAR §§ 3.042 - 3.046 ~~3.033 - 3.035~~ would jeopardize the public health, safety, or welfare, or would otherwise generally compromise the public interest, the governmental unit ~~agency~~ shall comply with these rules as far as practicable. In such cases, the governmental unit ~~agency~~ shall carry out alternative means of public notification and shall communicate the same to the EQB ~~Council~~ Chairperson.

C. Any federal permits for which review authority has been delegated to a non-federal governmental unit ~~public agency~~ by the federal government may be exempted by resolution of the EQB ~~Council~~.

6 MCAR § 3.044 ~~3.035~~ EQB ~~EQC~~ Monitor publication requirements.

A. Governmental units ~~Public agencies~~ are required to publish the following in the EQB ~~EQC~~ Monitor except that this section 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~~ a project† has been noticed pursuant to 6 MCAR § 3.044 A. 3. ~~3.035 A. 3.~~ separate notice of individual permits required by that ~~†action~~ project† need not be made unless changes in the ~~†action~~ project† 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 in this section shall be effective until 30 days following publication of the notice.

~~†a. Filling of ten or more acres of public waters -- Work in the Beds of Public Waters (Minn. Stat. § 105.42). DNR~~

~~b. Dredging of ten or more acres of public waters -- Work in the Beds of Public Waters (Minn. Stat. § 105.42). DNR†~~

†a. ~~c.†~~ All public hearings conducted pursuant to water resources permit applications (Minn. Stat. ch. 105). DNR

~~†d. Permit to mine or lease to prospect for iron ore, copper-nickel, or other materials (Minn. Stat. §§ 93.16, 93.335, 93.351). DNR†~~

†b. Notice of public sales of permits for or leases to mine iron ore, copper-nickel, or other minerals on state owned or administered mineral rights (Minn. Stat. §§ 93.16, 93.335, 93.351 and 6 MCAR NR 94e.).†

~~†d. Permit to mine or lease to prospect for iron ore, copper-nickel, or other materials (Minn. Stat. §§ 93.16, 93.335, 93.351). DNR†~~

†b. Notice of public sales of permits for or leases to mine iron ore, copper-nickel, or other minerals on state owned or administered mineral rights (Minn. Stat. §§ 93.16, 93.335, 93.351 and 6 MCAR NR 94e.).†

~~†e. Earth removal lease (Minn. Stat. § 92.50). DNR†~~

†c. ~~f.~~† Section 401 Certifications (33 USC Section 1341; Minn. Stat. § 115.03.) PCA

†d. ~~g.~~† Construction of a public use airport (Minn. Stat. § 360.018, subd. 6). DOT

†e. ~~h.~~† Special local need registration for pesticides (Minn. Stat. § 18A.23; 3 MCAR § 1.0338 B.). MDA

~~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.~~

~~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 purpose 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 (1/4) mile of an organized public, private or nonprofit 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-merchantable 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 facility 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, subd. 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 animal units (Minn. Stat. § 116.07, subd. 7 (1974)).~~

~~x. Construction of a public use airport (Minn. Stat. § 360.018, subd. 6 (1974)).~~

2. Impending †~~actions~~ projects† proposed by state agencies when the proposed †~~action~~ project† may have the potential for significant †~~adverse~~† environmental effects.

†3. Notice of the decision on the need for an EAW pursuant to 6 MCAR § 3.026 F.†

†~~3.~~ 4.† Notice of the availability of a completed EAW pursuant to 6 MCAR § 3.027 D. 1.

†~~4.~~ 5.† RGU's decision on the need to prepare an EIS pursuant to 6 MCAR § 3.028. A. 4.

†~~5.~~ 6.† Notice of the time, place and date of the EIS scoping meeting pursuant to 6 MCAR §§ 3.030 C. 1. b. and C. 2. a.

†~~6.~~ 7.† ~~3.~~ EIS preparation notices ~~and Negative Declaration Notices.~~ pursuant to 6 MCAR § 3.030 F.

†~~7.~~ 8.† Amendments to the EIS scoping decision pursuant to 6 MCAR § 3.030 E. 5.

†~~8.~~ 9.† Availability of draft and final EIS pursuant to 6 MCAR §§ 3.031 E. 5. and F. 4.

†~~9.~~ 10.† ~~4.~~ Notice of draft EIS informational meetings ~~or hearings~~ to be held pursuant to 6 MCAR § 3.031 E. 7. ~~3.029 A. 6.~~

†~~10.~~ 11.† RGU's adequacy decision of the final EIS pursuant to 6 MCAR § 3.031 G. 7.

~~†11.~~ 12.† Notice of ~~†activities~~ projects† undergoing environmental review under alternative review processes pursuant to 6 MCAR § 3.034 A. 6.

~~†12.~~ 13.† Adoption of model ordinances pursuant to 6 MCAR §§ 3.035 B. 1. and 2.

~~†13.~~ 14.† Environmental Analyses prepared under adopted model ordinances pursuant to 6 MCAR § 3.035 C.

~~†14.~~ 15.† ~~6.~~ Notice of the application for a Certificate of Need for a large energy facility, pursuant to Minn. Stat. § 116H.13.

†16. Notice of the availability of a draft environmental report, pursuant to 6 MCAR § 3.055 B. 5.†

†17. Notice of availability of a final environmental report, pursuant to 6 MCAR § 3.055 B. 10.†

~~†15.~~ 18.† ~~5.~~ Notice of other actions that the EQB ~~Council~~ may specify by resolution.

B. Governmental units ~~Public agencies~~ may publish notices of general interest or information in the EQB ~~EQC~~ Monitor. ~~, including notices of consolidated state permit applications, the latter to be commenced at the direction of the Council.~~

C. The EQB ~~MEQC~~ is required to publish the following in the EQB ~~EQC~~ Monitor:

1. Receipt of a valid petitions~~, pursuant to 6 MCAR § 3.032,~~ and assignment of a RGU ~~Responsible Agency therefore.~~ pursuant to 6 MCAR §§ 3.026 C. and E.

~~2. Receipt of Draft or Final EIS.~~

2. Decision by the EQB that it will determine the adequacy of a final EIS pursuant to 6 MCAR § 3.031 G. 1.

3. EQB's adequacy decision of the final EIS pursuant to 6 MCAR § 3.031 G. 7.

4. Receipt by the EQB of an application for a variance pursuant to 6 MCAR § 3.032 D. 3.

5. ~~3.~~ Notice of any public hearing held pursuant to ~~Minn. Stat. § 116D.04, subd. 9 (1974).~~ 6 MCAR § 3.033 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.~~

6. ~~5.~~ The EQB's ~~Council's~~ decision to hold public hearings on a recommended Critical Area pursuant to Minn. Stat. § 116G.06, subd. 1(c). ~~(1974) (Critical Areas Act, 1973).~~

7. ~~6.~~ 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).~~

8. Receipt of a consolidated permit application pursuant to 6 MCAR § 3.102 A.

6 MCAR § 3.045 ~~3.036~~ Content of notice. ~~A.~~ The information to be included in the notice for natural resources management and development permit applications and other items in 6 MCAR §§ 3.044 A. 1. and 2.

~~3.035 A. 1. and 2.~~ shall be submitted by the governmental unit ~~public agency~~ on a form approved by the EQB ~~Council~~. This information shall include but not be limited to:

A. ~~1.~~ Identification of applicant, by name and mailing address.

B. ~~2.~~ The location of the proposed project, or description of the area affected by the ~~†action~~ project~~†~~ by county, minor civil division, public land survey township number, range number, and section number.

C. ~~3.~~ 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~~ project~~†~~.

D. ~~4.~~ A statement of whether, the agency intends to hold public hearings on the proposed ~~†action~~ project~~†~~, 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.

E. ~~5.~~ The identification of the governmental unit ~~agency~~ publishing the notice, including the manner and place at which comments on the ~~†action~~ project~~†~~ can be submitted and additional information can be obtained.

6 MCAR § 3.046 ~~3.037~~ Statement of compliance. Each governmental permit or agency authorizing order subject to the requirements of ~~these Rules~~ 6 MCAR § 3.044 A. 1. issued or granted by a governmental unit ~~public agency~~ shall contain a statement by the unit ~~agency~~ concerning whether ~~these rules~~ the provisions of 6 MCAR §§ 3.042 - 3.046 have been complied with, and publication dates of the notices, if any, concerning that permit or authorization.

6 MCAR § 3.047 ~~3.038~~ Publication. ~~A.~~ The EQB ~~Council~~ shall publish the EQB ~~EQC~~ Monitor whenever it is necessary, except that material properly submitted to the EQB ~~Council~~ 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 § 3.048 ~~3.039~~ Cost and distribution.

A. When a governmental unit ~~an agency~~ properly submits material to the EQB ~~Council~~ for publication, the EQB ~~Council~~ shall then be accountable for the publication of the same in the EQB ~~EQC~~ Monitor. The EQB ~~Council~~ shall require each governmental unit ~~agency~~ which is required to publish material or requests the publication of material in the EQB ~~EQC~~ Monitor, including the EQB ~~Council~~ itself, to pay its proportionate cost of the EQB ~~EQC~~ Monitor unless other funds are provided and are sufficient to cover the cost of the EQB ~~EQC~~ 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.~~

B. ~~C.~~ The EQB ~~Council~~ may further provide at least one copy to the Documents Division for the mailing of the EQB ~~EQC~~ Monitor to any person, governmental unit, ~~agency,~~ or organization if so requested. The EQB may assess ~~provided that~~ reasonable costs ~~are borne by~~ to the requesting party. Ten copies of each issue of the EQB ~~EQC~~ 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 EQB ~~MEQC~~ 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.~~

~~§ 3.040 General.~~

~~A. Publication duties of the EQC Monitor may be transferred to the State Register upon resolution of the Council.~~

Chapter Seventeen: Assessing the Cost of Preparing Environmental Impact Statements.

6 MCAR § 3.049 ~~3.041~~ †~~Actions~~ Projects† requiring an assessment of the EIS preparation cost. When a private person proposes to undertake an †~~action~~ project†, and the final determination has been made that an EIS will be prepared by a governmental unit ~~public agency~~ on that †~~action~~ project†, the proposer shall be assessed for the reasonable costs of preparing and distributing that EIS in accord with 6 MCAR §§ 3.050 - 3.054 ~~3.042 - 3.046~~.

6 MCAR § 3.050 ~~3.042~~ Determining the EIS assessed cost.

A. Within 30 days after the EIS preparation notice has been issued, ~~final determination has been made that an EIS will be prepared,~~ the RGU ~~Responsible Agency~~ shall submit to the EQB ~~Council~~ a written agreement signed by the proposer and the RGU ~~Responsible Agency~~. 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 §§ 3.051 A. and B. ~~3.043 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 RGU ~~Responsible Agency~~ and the costs which will result in a cash payment by the proposer to the EQB ~~Council~~ if a state agency is the RGU ~~Responsible Agency~~ or to a local governmental unit ~~Agency~~ when it is the RGU ~~Responsible Agency~~. If an agreement cannot be reached, the RGU ~~Responsible Agency~~ shall so notify the EQB ~~Council~~ within 30 days after the final determination has been made that an EIS will be prepared.

B. 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~~ a project† which has a project estimated cost of one million dollars or less.

2. For †~~an action~~ a project† 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~~ a project† 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.~~ of this rule.

4. For †~~an action~~ a project† 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.~~ of this rule.

C. The proposer and the RGU ~~Responsible Agency~~ shall include in the EIS assessed cost the proposer's costs for the collection and analysis of technical data which the RGU ~~Responsible Agency~~ 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 RGU ~~Responsible Agency~~.

When practicable, the proposer shall consult with the RGU ~~Responsible Agency~~ before incurring such costs.

D. Federal/state EIS. When a joint federal/state EIS is prepared pursuant to 6 MCAR § 3.037 ~~3.025 F. 4.~~ and the EQB ~~Council~~ designates a non-federal agency as the RGU ~~Responsible Agency~~, only those costs of the state RGU ~~Responsible Agency~~ may be assessed to the proposer. The RGU ~~Responsible Agency~~ and the proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the EQB ~~Council~~ in accord with these rules.

E. Related actions EIS. When specific ~~t~~actions~~s~~ projects~~t~~ are included in a related actions EIS, only the portion of the EIS estimated cost that is attributable to each specific ~~t~~action~~s~~ project~~t~~ may be used in determining the EIS assessed cost for its proposer. The RGU ~~Responsible Agency~~ and each proposer shall determine the appropriate EIS assessed cost and shall forward that determination to the EQB ~~Council~~ in accord with these rules.

6 MCAR § 3.051 ~~3.043~~ Determining the EIS estimated cost, the EIS actual cost and the project estimated cost.

A. In determining the EIS estimated cost or the EIS actual cost, the following items shall be included:

1. The cost of the RGU's ~~Responsible Agency's~~ staff time including direct salary and fringe benefit costs.

2. The cost of consultants hired by the RGU ~~Responsible Agency~~.

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 RGU ~~Responsible Agency~~ for the collection and analysis of information or data necessary for the preparing of the EIS. These costs shall be specifically identified.

5. Indirect costs of the RGU ~~Responsible Agency~~ not to exceed the RGU's ~~Responsible Agency'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. 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.

2. Costs incurred by a private person other than the proposer or a governmental unit ~~public agency~~ other than that RGU ~~Responsible Agency~~, unless the costs are incurred at the direction of the RGU ~~Responsible Agency~~ for the preparation of material to be included in the EIS.

3. The capital costs of equipment purchased by the RGU ~~Responsible Agency~~ or its consultants for the purpose of establishing a data collection program, unless the proposer agrees to including such costs.

C. 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 ~~taction~~ projectt. The boundaries shall be those defined by the ~~taction~~ projectt which is the subject of the EIS preparation notice.

2. Costs of architectural and engineering studies for the design or construction of the ~~taction~~ projectt.

3. Expenditures necessary to begin the physical construction or operation of the ~~taction~~ projectt.

4. Construction costs required to implement the ~~taction~~ projectt including the costs of essential public service facilities where such costs are directly attributable to the proposed ~~taction~~ projectt.

5. The cost of permanent fixtures.

6 MCAR § 3.052 ~~3.044~~ Revising the EIS assessed cost.

A. If the proposer substantially alters the scope of the ~~taction~~ projectt 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 RGU ~~Responsible Agency~~ and the EQB ~~Council~~.

1. If the change will likely result in a net change of greater than five percent in the EIS assessed cost, the proposer and the RGU ~~Responsible Agency~~ 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 ~~taction~~ projectt. The RGU ~~Responsible Agency~~ shall submit either a revised agreement or a notice that an agreement cannot be reached following the procedures of 6 MCAR § 3.050 A. ~~3.042 A.~~ except that such agreement or notice shall be provided to the EQB ~~Council~~ within 20 days after the proposer notifies the RGU ~~Responsible Agency~~ and the EQB ~~EQC~~ of the change in the ~~taction~~ projectt. If the changed ~~taction~~ projectt 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 EQB ~~Council~~ or to the local governmental unit ~~Agency~~ beyond what has been expended or irrevocably obligated by the RGU ~~Responsible Agency~~ at the time it was notified by the proposer of the change in the ~~taction~~ projectt.

2. If the proposer decides not to proceed with the proposed ~~taction~~ projectt, the proposer shall immediately notify the RGU ~~Responsible Agency~~ and the EQB ~~Council~~. The RGU ~~Responsible Agency~~ 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 RGU's ~~Responsible Agency's~~ expenditures or irrevocable obligations at the time of notification, the proposer may apply to the EQB ~~Council~~ or to the local governmental unit ~~Agency~~ 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 RGU's ~~Responsible Agency's~~ expenditures or irrevocable obligations at the time of notification, the RGU ~~Responsible Agency~~ shall notify the proposer and the EQB ~~Council~~ within ten days after it was notified of the project's withdrawal. Such costs shall be paid by the proposer within 30 days after the RGU ~~Responsible Agency~~ notifies the proposer and the EQB ~~Council~~.

B. If, after the EIS assessed cost has been determined, the RGU ~~Responsible Agency~~ 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 EQB ~~Council~~. If the discovery will

likely result in a net change of greater than five percent in the EIS assessed cost, the proposer and the RGU ~~Responsible Agency~~ shall make a new determination of the EIS assessed cost. The RGU ~~Responsible Agency~~ shall submit either a revised agreement or a notice that an agreement cannot be reached following the procedures of 6 MCAR § 3.050 A. ~~3.042 A.~~ except that such agreement or notice shall be provided ~~to the~~ EQB ~~Council~~ within 20 days after both parties and the EQB ~~Council~~ were notified.

6 MCAR § 3.053 ~~3.045~~ Disagreements regarding the EIS assessed cost.

A. If the proposer and the RGU ~~Responsible Agency~~ disagree about the information to be included ~~†in the EIS or†~~ the EIS assessed cost, the proposer and the RGU ~~Responsible Agency~~ shall each submit a written statement to the EQB ~~Council~~ identifying ~~†the information each has recommended for inclusion in the EIS,†~~ the EIS assessed cost, and the project estimated cost within ten days after the RGU ~~Responsible Agency~~ notifies the EQB ~~Council~~ that an agreement could not be reached. The 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 §§ 3.051 A. and B. ~~3.043 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. If the proposer and the RGU ~~Responsible Agency~~ disagree about the project estimated cost, the proposer shall submit in writing a detailed project estimated cost in addition to the requirements of ~~section~~ paragraph A. ~~above~~ of this rule. The RGU ~~Responsible Agency~~ may submit a written detailed project estimated cost in addition to the requirements of ~~Section~~ paragraph A. ~~above~~ of this rule. The statements shall be submitted to the EQB ~~Council~~ within ten days after the RGU ~~Responsible Agency~~ notifies the EQB ~~Council~~ that an agreement could not be reached. The project estimated cost shall include the costs as identified in 6 MCAR § 3.051 C. ~~3.043 C.~~ and a brief explanation of the costs. The estimates shall be prepared according to the categories in 6 MCAR § 3.051 ~~3.043~~ so as to allow a reasonable examination as to their completeness.

C. If the proposer and the RGU ~~Responsible Agency~~ disagree about a revision of the EIS assessed cost prepared following the procedures in 6 MCAR § 3.052 ~~3.044~~, the proposer and the RGU ~~Responsible Agency~~ shall use the applicable procedures described in 6 MCAR §§ 3.053 A. or B. ~~3.045 A. or B.~~ in resolving their disagreement except that all written statements shall be provided to the EQB ~~Council~~ within ten days after the RGU ~~Responsible Agency~~ notifies the EQB ~~Council~~ that an agreement cannot be reached.

D. If the proposer and the RGU ~~Responsible Agency~~ disagree about the EIS actual cost as determined by 6 MCAR § 3.054 B. ~~3.046 B.~~, the proposer and the RGU ~~Responsible Agency~~ 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 §§ 3.051 A. and B. ~~3.043 A. and B.~~ shall be used in preparing the EIS actual cost statements. These statements shall be submitted to the EQB ~~Council~~ 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. The EQB ~~Council~~ at its first meeting held more than 15 days after being notified of a disagreement shall make any determination required by ~~sections~~ paragraphs A. - D. of this rule ~~above~~. The EQB ~~Council~~ shall consider the information provided by the proposer and the RGU ~~Responsible Agency~~ 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 § 3.053 F. ~~3.045 F.~~

F. If either the proposer or the RGU ~~Responsible Agency~~ so requests, the EQB ~~Council~~ 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. Nothing in ~~sections~~ paragraphs A. - F. of this rule ~~above~~ shall prevent the proposer from making one half of the cash payment as recommended by the RGU's ~~Responsible Agency's~~ proposed EIS assessed cost for the purpose of commencing the EIS process. If the proposer makes the above cash payment, preparation of the EIS shall immediately begin. If the required cash payment is altered by the EQB's ~~Council's~~ determination, the remaining cash payments shall be adjusted accordingly.

6 MCAR § 3.054 ~~3.046~~ Payment of the EIS assessed cost.

A. The proposer shall make all cash payments to the EQB ~~Council~~ or to the local governmental unit ~~Agency~~ 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 EQB ~~Council~~ pursuant to 6 MCAR § 3.050 A. ~~3.042 A.~~ or has been determined by the EQB ~~Council~~ pursuant to 6 MCAR §§ 3.053 E. or F. ~~3.045 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 EQB ~~Council~~.

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 RGU ~~Responsible Agency~~ has submitted a detailed accounting of its EIS actual cost to the proposer and the EQB ~~Council~~. 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 EQB ~~Council~~.

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 EQB ~~Council~~ has determined the EIS actual cost.

B. The proposer and the RGU ~~Responsible Agency~~ shall submit to each other and to the EQB ~~Council~~ a detailed accounting of the actual costs incurred by them in preparing and distributing the EIS within 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 RGU's ~~Responsible Agency's~~ EIS actual cost, the proposer may apply to the EQB ~~Council~~ or to the local governmental unit ~~Agency~~ for a refund of the overpayment. The refund shall be paid as expeditiously as possible.

C. If the RGU ~~Responsible Agency~~ is a state agency, the proposer shall make all cash payments of the EIS assessed cost to the EQB ~~Council~~ which shall deposit such payments in the state's general fund.

D. If the RGU ~~Responsible Agency~~ is a local governmental unit ~~Agency~~, the proposer shall make all cash payments of the EIS assessed cost directly to the local governmental unit ~~Agency~~. The local governmental unit ~~Agency~~ shall notify the EQB ~~Council~~, in writing, of receipt of each payment within ten days following its receipt.

E. No RGU ~~Responsible Agency~~ 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. Upon receipt or notice of receipt of the final payment by the proposer, the EQB ~~Council~~ shall notify each state agency having a possible governmental permit interest in the ~~†action~~ project† that the final payment has been received. Other laws notwithstanding, a state agency shall not issue any governmental permits for the construction or operation of ~~†an action~~ a project† for which an EIS is prepared until the required cash payments of the EIS assessed cost for that ~~†action~~ project† or that portion of a related actions EIS have been paid in full.

G. ~~Except as provided in 6 MCAR § 3.046 E. all~~ All time periods included in 6 MCAR §§ 3.050 - 3.054 ~~3.042 - 3.046~~ may be extended by the EQB ~~Council~~ chairperson only for good cause upon written request by the proposer or the RGU ~~Responsible Agency~~.

Chapter Eighteen: Special Rules for Certain Large Energy Facilities

6 MCAR § 3.055 Special rules for LEPGPs.

A. Applicability. Environmental review for LEPGPs as defined in Minn. Stat. § 116C.52, subd. 4 shall be conducted according to the procedures set forth in this rule †~~.~~ , unless a utility has filed an application for emergency certification pursuant to Minn. Stat. § 116C.57, subd. 3.† 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 §§ 3.024 - 3.036 shall not apply to ~~†facilities~~ LEPGPs† subject to this rule. No EAW ~~†need~~ shall† be prepared for any ~~†facilities~~ LEPGPs† subject to this rule. †If a utility has filed an application for emergency certification pursuant to Minn. Stat. § 116C.57, subd. 3, the procedures and standards specified in 6 MCAR § 3.077 shall constitute alternative environmental review and neither 6 MCAR §§ 3.024 - 3.036 nor 6 MCAR § 3.055 shall apply.†

B. Environmental report at certificate of need stage.

1. The ~~†MEA~~ DEPD† 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~~ reasonable alternative facilities identified in 3. b.†; 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~~ shall† not be as exhaustive or detailed as an EIS ~~†nor need it consider site-differentiating factors~~

and shall consider only those site-differentiating factors identifiable pursuant to the information requirements of 6 MCAR § 2.0633 A. 5.†

5. Upon completion of the draft environmental report, the report shall be circulated as provided in 6 MCAR § 3.031 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~~ DEPD† 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. †The DEPD shall respond to the timely substantive comments on the draft environmental report.†

8. The draft environmental report †, ~~and~~† any comments received during the hearings †, and responses to the timely substantive comments† 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~~ Commissioner of the DEPD† 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 paragraph B. 5. of this rule.

11. The †~~MEA~~ DEPD† 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 § 3.031 I. if a Minn. Stat. § 116H.13 determination is pending before the MEA.~~ A supplement to an environmental report shall be required if the tests expressed in 6 MCAR § 3.031 I. are met and a Minn. Stat. § 116H.13 determination is pending before the DEPD.†

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 § 3.031 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~~ shall† not consider need for the facility and other issues determined by the †~~MEA~~ DEPD ~~nor~~. Unless a specific site has already been designated, the EIS shall not† 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 § 3.031 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. Such 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 above 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 § 3.031 F.

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 paragraph C. 4. of this rule.

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 § 3.031 G.

11. †If required pursuant to 6 MCAR § 3.031 I., a ~~A~~† supplement to an EIS †~~may~~ shall† be ~~†required pursuant to 6 MCAR § 3.031 I.~~ prepared.†

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~~ issue† any final †~~approval~~ decision† 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 §§ 3.028 †D. and† E., 3.032 D. and E., 3.036 and 3.037 shall apply to energy facilities subject to this rule. Variance applications may be submitted without preparation of an EAW.

6 MCAR § 3.056 Special rules for HVTLs.

A. Applicability. Environmental review for HVTLs 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†~~.~~ unless a utility has filed an application for emergency certification pursuant to Minn. Stat. § 116C.57, subd. 3., or for an exemption pursuant to Minn. Stat. § 116C.57, subd. 5.† 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 §§ 3.024 - 3.036 shall not apply to †~~facilities~~ HVTLs† subject to this rule. No EAW †~~need~~ shall† be prepared for any †~~facilities~~ HVTLs† subject to this rule. †If a utility has filed an application for emergency certification pursuant

to Minn. Stat. § 116C.57, subd. 3., or for an exemption pursuant to Minn. Stat. § 116C.57, subd. 5., the procedures and standards specified in 6 MCAR §§ 3.077 and 3.078, respectively, shall constitute alternative environmental review and neither 6 MCAR §§ 3.024 - 3.036 nor 6 MCAR § 3.056 shall apply.†

B. Environmental report at certificate of need stage.

1. The †~~MEA~~ DEPD† 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 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~~ shall† not be as exhaustive or detailed as an EIS †~~nor need it consider factors that depend upon specific routes or facility designs~~ and shall consider only those route differentiating factors identifiable pursuant to the information requirements of 6 MCAR §§ 3.0634 A. and B.†

f. The report shall be reviewed in the manner provided in 6 MCAR §§ 3.055 B. 5. - 12.

C. EIS at route designation and construction permit stage.

1. The EQB shall be responsible for preparation of an EIS on an 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 § 3.031 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~~ DEPD shall† not be considered in the EIS.

4. Review of draft EIS. The draft EIS shall be reviewed in the manner provided in 6 MCAR §§ 3.055 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~~ issue† any final †~~approval~~ decision† for the construction or operation of a facility subject to this rule until the final EIS has been found adequate.

D. Review of HVTLs requiring no certificate of need. An EIS for HVTLs 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 paragraph C. of this rule. †~~The alternative of no action shall be considered.~~†

E. Cooperative processes. 6 MCAR §§ 3.028 †D. and† E., 3.032 D. and E., 3.036 and 3.037 shall apply to facilities subject to this rule. Variance applications may be submitted without preparation of an EAW.

GUIDE TO THE FINDINGS

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3.053 B.----------None
3.053 C.----------None
3.053 D.----------None
3.053 E.----------123
3.053 F.----------None
3.053 G.----------None
3.054 A.----------None
3.054 B.----------None
3.054 C.----------None
3.054 D.----------None
3.054 E.----------None
3.054 F.----------17
3.054 G.----------None
3.055 ----------132
3.055 A.----------130,138a,138b, 138c
3.055 B.----------124,125,126,127, 129
3.055 C.----------22,127,128,129, 138b
3.055 D.----------138e
3.056 ----------132
3.056 A.----------130,138b,138c
3.056 B.----------127,133
3.056 C.----------22,127,128,134, 138b
3.056 D.----------131
3.056 E.----------138e

STATE OF MINNESOTA
BEFORE THE
ENVIRONMENTAL QUALITY BOARD

IN THE MATTER OF THE PROPOSED RULES GOVERNING THE ENVIRONMENTAL REVIEW PROGRAM

STAFF PROPOSED AMENDMENTS TO BOARD ACCEPTED FOR ADOPTION FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULES DATED MAY 20, 1982

The above captioned matter came on for hearing before Hearing Examiner Kent B. Roberts of the Minnesota Office of Administrative Hearings on November 24, December 1, 14, 15 and 21, 1981 in St. Paul, Minnesota and on December 2, 1981 in Duluth, Minnesota. The Report of the Hearing Examiner and Order of the Chief Hearing Examiner were received by the EQB on April 2, 1982. The Report and the Order were assigned Docket Number EQB-82-001-KR by the Office of Administrative Hearings. On May 20, 1982, the Board accepted Findings of Fact, Conclusions and an Order adopting the rules. The accepted Findings of Fact and Conclusions were presented to the Chief Hearing Examiner for review. On June 8, 1982 the Chief Hearing Examiner issued an Order specifying additonal defects to be corrected prior to adoption of the rules. The Board hereby amends its May 20, 1982 Findings of Fact, Conclusions, and Order to comply with the June 8, 1982 Order of the Chief Hearing Examiner.

The Board makes the following amendments to the Findings of Facts on Procedural Matters:

C. Amend existing finding #C:

The Board incorporates the draft of the proposed rules dated May 20, 1982 as a part of these findings and conclusions <u>except as specifically stated in these findings and conclusions.</u> This draft incorporates amendments made pursuant to these findings and conclusions.

D. Additional finding:

<u>The Board incorporates the Order of the Chief Hearing Examiner, dated June 8, 1982, as a part of these findings and conclusions except as specifically stated in these findings and conclusions.</u>

The Board makes the following amendments to the Findings of Fact on the Proposed Amendments.

51. Delete existing finding #51 and substitute:

<u>Sections 3.026 G.1 and G.2.</u> The Board accepts the June 8, 1982 Chief Hearing Examiner's Order #1. The May 20, 1982 draft of the proposed rules is amended as follows:

6 MCAR § 3.026 G.2.

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

60. Delete existing finding #60 and substitute:

Section 3.028 A.1.b. The Board accepts the June 8, 1982 Chief Hearing Examiner's Order #2. The May 20, 1982 draft of the proposed rules is amended as follows:

6 MCAR § 3.028 A.1.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~~ shall be extended by the EQB's chairperson by no more than 15 additional days upon request of the RGU.

63. Delete existing finding #63 and substitute:

Section 3.028 E.3. The Board accepts the June 8, 1982 Chief Hearing Examiner's Order #3. With respect to issue A, the Board withdraws the new language in light of the clarification that the prior language was adequate. With respect to issue B, the Board accepts the additional language with a clarification as to the interpretation of "need".

The term "need" as used in the SONR was in reference to need for environmental review as opposed to a formal determination of need for a project. The term as used on page 65 of the Statement of Need and Reasonableness (SONR) should be read as ". . . need for environmental review . . .". Evidence for this interpretation lies within the construct of the paragraph itself. I.e., for highways, streets, and other large systems such as housing projects, industrial parks, PUDs, etc. there is no formal governmental determination of need for the project prior to environmental review.

Further, the discussion of phased actions is placed in the context of deciding on the need for an EIS in the overall context of the rules. It has already been decided that environmental review is necessary (by virtue of the fact that an EAW was prepared) and the question at this point is merely with regard to the scope and format of the EIS.

The May 20, 1982 draft of the proposed rules is amended as follows:

6 MCAR § 3.028 E.2.

For proposed projects such as highways, streets, pipelines, utility lines, or systems where the proposed project is related to a large existing or planned network, for which a governmental unit has determined environmental review is needed, the RGU shall 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. ~~The determination shall be based on the relationship of the present proposal to the total proposal. The RGU may divide the project into smaller segments when the smaller segment will be undertaken regardless of the completion of the remainder of the system, is not sized to induce or predetermine construction of the remainder of the system, and is not undertaken contemporaneously with the remainder of the system.~~ 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.

84. Delete existing finding #84 and substitute:

Section 3.032 D. The Board accepts the June 8, 1982 Chief Hearing Examiner's Order #4. The Board selects the option of adding standards by which economic hardship can be measured. The language adopted is designed to reflect the "strict necessity" standard as presented in the SONR. The language adopted is identical to the language submitted to hearing with the addition of economic hardship standards. The May 20, 1982 draft of the proposed rules is amended as follows:

6 MCAR § 3.032 D.

Variance. Construction may begin on an activity if the proposer applies for and is granted a variance from the provisions of 6 MCAR § 3.032 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's chairperson shall publish a notice of the variance application in the EQB Monitor within 15 days after receipt of the application.

4. The EQB's 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 such 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 hardships or avoid a serious threat to public health or safety. Unusual economic hardship means that the hardship is caused by unique conditions and circumstances which are peculiar to the project and are not characteristic of other similar projects or general economic conditions of the area or state and that the hardship is not caused by the proposer's own action or inaction.

6. The EQB shall set forth in writing its reasons for granting or denying each request.

7. Only the construction or governmental approvals necessary to avoid the consequences listed above shall be undertaken or granted.

89. Delete existing finding #89 and substitute:

Section 3.035 A. and B. The Board accepts the June 8, 1982 Chief Hearing Examiner's Order #5. In so doing, the Board finds the rules are more readable by combining subparagraphs B.1. and B.3. The May 20, 1982 draft of the proposed rules is amended as follows:

6 MCAR § 3.035 B.

~~Approval.~~ Notice.

~~1.~~ If a local governmental unit adopts the ordinance exactly as set out in paragraph C. of this rule, 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 units adopts an environmental review ordinance which differs from the ordinance set out in paragraph C. of this rule, 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 act. If the EQB determines the proposed ordinance meets these requirements, the EQB shall approve the ordinance as a substitute form of environmental review in place of the mdoel ordinance and shall periodically review its implementation.~~

~~3.~~ Notice of adoption of the ~~model~~ ordinance ~~pursuant to B. 1 and 2. of this rule~~ shall be made in the EQB Monitor.

~~4. If the EQB determines that the proposed local ordinance does not meet its requirements as a substitute form of environmental review in place of the model ordinance, the local governmental unit shall be notified of the reasons for this decision in writing within 30 days.~~

141. Additional finding:

Section 3.036 D.2. The Board accepts the June 8, 1982 Chief Hearing Examiner's Order #6. The May 20, 1982 draft of the proposed rules is amended as follows:

6 MCAR § 3.036 D.2.

If the possible effects on the human environment from a type of action are highly uncertain or involve unique or unknown risks, ~~and~~

The Board makes the following amendments to the Conclusions:

6. The Board accepts the Hearing Examiner's conclusion. The Board has taken action to correct defects cited in the Hearing Examiner's findings. The actions taken by the Board are consistent with the actions recommended by the Hearing Examiner, except as noted at findings 32, ~~51~~, 58, ~~60~~, ~~63~~, 68, 73, 74, 92, 117, 122 and 123 and at additional findings 139, 140, and 141.

7. The Board accepts the Hearing Examiner's conclusion. The Board accepts the Chief Hearing Examiner's Orders resulting from this conclusion. The Board has taken action consistent with the Chief Hearing Examiner's Orders, ~~except as noted at findings 51, 60 and 63.~~

MEQB Ex 12

OFFICE OF THE REVISOR OF STATUTES
PROPOSED RULES

RECEIVED
OCT 28 1981
ADMINISTRATIVE HEARINGS

Agency Environmental Quality Board

Division

Agency Contact Ken Kadlec Phone Number 6-8253

Title: Proposed Rules, Environmental Quality Board, Environmental Review Program

Type of Rules: Permanent X Temporary ____

Incorporations by References:

Rule Number	Material Incorporated	
3.022 B.79	Author	
	Title	U.S. Fish and Wildlife Circular No. 39 (1971 edition)
	Place	
	Publisher	
	Date	
	Cost	
	Places Available	

See Additional references on back Yes ____ No ____

Duplication of Statutory Language

Rule Number	Statutory Section Duplicated
6 MCAR S 3.023 D.	116D.04 subd. 10

The attached rules are approved as to form.

Steven C. Cross
Revisor of Statutes

Name: John C. Fuller by BCM
John C. Fuller

Title: Assistant Revisor

Phone: 6-0955

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY BOARD

In the Matter of the Proposed Adoption
of Rules of the Minnesota Environmental
Quality Board Governing the
Environmental Review Program

ORDER
ADOPTING RULES

The above-entitled matter came on for hearing before Hearing Examiner Kent Roberts on the 24th day of November, 1981, at 1:10 p.m., and on the 1st day of December, 1981, at 1:00 p.m., in the State Office Building Auditorium, St. Paul, Minnesota; on the 2nd day of December, 1981, at 1:00 p.m., in the St. Louis County Board Room, Duluth, Minnesota; on the 14th day of December, 1981, at 9:00 a.m., and on the 15th day of December, 1981, at 9:00 a.m., in the Pollution Control Agency Board Room, Roseville, Minnesota; and on the 21st day of December, 1981, at 9:00 a.m., in the Minnesota Cable Communications Building, St. Paul, Minnesota, after proper notice required by Minnesota Statutes section 15.0412 was served upon all persons, associations, and other interested groups registered with the State Department of Energy, Planning and Development for that purpose.

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

NOW, THEREFORE, IT IS ORDERED that these rules identified as the Environmental Review Program Rules are adopted this 12th day of July, 1982, pursuant to authority vested in me by Minnesota Laws 1982 ch. 524 § 3 and in the Environmental Quality Board by Minn. Stat. § 116C.04 subd. 5 (1980).

STATE OF MINNESOTA

Gary Botzek

Gary Botzek, Chairperson
Environmental Quality Board

RECEIVED
OCT 1981
ADMINISTRATIVE HEARINGS
MEQB
Ex 1

graphs and transparencies and for use in the state's photogrammetric instruments for analytical aerial triangulation and map compilation. The state may call for the use of panchromatic, color negative or infrared color emulsions in obtaining the photography.

2. Aerial Oblique Photography

Provide negatives taken by the contractor suitable for printing photography for illustrative purposes.

3. Photographic Laboratory Services

Provide from aerial negatives, rectified, ratioed and controlled photographic enlargements and mosaics, 9½" x 9½" diapositives on glass or film suitable for photogrammetric compilation of topographic mapping, screened photographic film positives from mosaic negatives, and continuous roll photographic film positives of topographic mapping from scribed originals on 36" wide roll.

4. Map Compilation

Provide map compilation by Wild A-10 Autograph or equivalent type instrument for the compilation of topographic maps or photogrammetric cross-sections.

Firms interested in submitting a proposal for this contract should write for additional information. Requests for additional information will not be considered if delivered after 4:30 p.m., April 28, 1980.

Send your response to:

E. R. Larson, Director
Office of Surveying and Mapping
Room 711, Transportation Building
St. Paul, Minnesota 55155

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.

Environmental Quality Board

Notice of Intent to Solicit Outside Opinions or Information Concerning Revisions to Rules Relating to Environmental Review Program

Pursuant to Minn. Stat. § 15.0412, subd. 6, notice is hereby given that the Minnesota Environmental Quality Board is soliciting information and opinions from sources outside the agency for the purpose of revising the existing environmental review program rules, 6 MCAR § 3.021 *et. seq*. Such rules are authorized by Minn. Stat. § 116.04.

Any persons desiring to submit information or comment on the subject may do so either orally or in writing. All statements of information and comment on the subject may do so either orally or in writing. All statements of information and comment must be received by May 5, 1980. Any written material received by this date will become part of the record of any rules hearing held on this subject.

Written or oral information and comment should be addressed to:

Thomas Rulland, Manager
Environmental Management Programs
Capitol Square Building, Room 100
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2319

March 28, 1980

Arthur E. Sidner, Chairman
Environmental Quality Board

Minnesota Teachers Retirement Association

Notice of Availability of Actuarial Consultation Contract (7/1/80-6/30/82)

Contact Person: Harvey W. Schmidt, Minnesota Teachers Retirement Association, 302 Capitol Square Building, St. Paul, MN 55101, Tel. (612) 296-2409.

MEQB Ex 8

RECEIVED
OCT 28 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

ENVIRONMENTAL QUALITY BOARD

In the Matter of the Proposed Adoption of Rules of the Minnesota Environmental Quality Board Governing the Environmental Review Program

ORDER FOR HEARING

IT IS ORDERED this 28th day of September 1981, that a public hearing on the proposed rules captioned above be held in the following places and commencing at the times indicated:

State Office Building Auditorium, St. Paul, Minnesota

November 23, 1981	9:00 a.m. and 1:00 p.m.
November 24, 1981	1:00 p.m. and 7:00 p.m.
December 1, 1981	1:00 p.m.

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

December 2, 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.

IT IS FURTHER ORDERED, that notice of said hearings be given to all persons who have registered their names with the Minnesota Environmental Quality Board for that purpose and be published in the State Register.

STATE OF MINNESOTA

R. F. Benner

Robert F. Benner, Chairman
ENVIRONMENTAL QUALITY BOARD

MEQB 219

RECEIVED
OCT 28 1981
ADMINISTRATIVE HEARINGS

MINNESOTA ENVIRONMENTAL QUALITY BOARD

Proposed Rules Governing the
Environmental Review Program

NOTICE OF HEARING

NOTICE OF RESCHEDULED HEARINGS

Notice is hereby given that public hearings on the above entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4, in the places and commencing at the times listed in this notice. A previous hearing notice and text of these rules were published at State Register, Volume 6, Number 10, p. 354, on September 7, 1981. A notice of postponement of public hearing was published at State Register, Volume 6, Number 14, p. 607, on October 5, 1981.

HEARING SCHEDULE

State Office Building Auditorium, St. Paul, Minnesota

November 23, 1981	9:00 a.m. and 1:00 p.m.
November 24, 1981	1:00 p.m. and 7:00 p.m.
December 1, 1981	1:00 p.m.

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

December 2, 1981	1:00 p.m. and 7:00 p.m.

These hearings will continue 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. 3b

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. 5b

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. 11a 11b

Statement of Need and Reasonableness. Notice is hereby given that 25 days prior to the hearing, a Statement of Need and Reasonableness will 9

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. 9

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. 2 5b

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. 7a 7b

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 date 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.

DATE: Sept. 28, 1981

STATE OF MINNESOTA

Robert F. Benner

Robert F. Benner, Chairman
ENVIRONMENTAL QUALITY BOARD

MEQB Ex 5

In the Matter of the Proposed Adoption
of Rules of the State Environmental Quality Board
Governing the Environmental Review Program

AFFIDAVIT OF MAILING

RECEIVED
OCT 28 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Henry G. Sanchez, being first duly sworn, deposes and says:

That on the 19th day of October, 19 81, at the City of St. Paul, County of Ramsey, State of Minnesota, He served the attached Notice of Hearing by depositing in the State of Minnesota Central Mail System for first class mailing in the United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Environmental Quality Board for the purpose of receiving notice of the proposed adoption of rules by this agency.

Henry G. Sanchez

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

Leonard O. Hislop

LEONARD O. HISLOP
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires March 18, 1983

MEQB Ex 6

In the Matter of the Proposed Adoption
of Rules of the State Environmental Quality Board
Governing the Environmental Review Program

AFFIDAVIT OF MAILING

RECEIVED
OCT 28 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Henry G. Sanchez, being first duly sworn, deposes and says:

That on the 19th day of October, 1981, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached Notice of Hearing by depositing in the State of Minnesota Central Mail System for first class mailing in the United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have commented on preliminary drafts of the proposed rules and who have stated a desire to be notified with regard to these rules for the purpose of receiving notice of the proposed adoption of rules by this agency.

Henry G. Sanchez

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

Leonard O. Hislop

LEONARD O. HISLOP
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires March 18, 1983

MEQB Ex 7

RECEIVED
OCT 28 1981
ADMINISTRATIVE HEARINGS

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption
of Rules of State Environmental Quality Board
Governing the Environmental Review Program

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. § 15,0412, subd. 4, that their names be placed on file with and maintained by the State Environmental Quality Board for the purpose of receiving notice of the proposed adoption of rules by this agency is accurate and complete as of 1:00 P M, this 19th day of October, 1981.

Patti Blom

Patti Blom

David Ekern
Dept. of Transportation
807 Transportation Building
St. Paul MN 55155

Kathy Burek
[redacted]CRAR
430 State Office Building
St. Paul MN 55155

Jane Harper
Dept. of Agriculture
[redacted]90 West Plato Blvd.
St. Paul MN 55107

Gerald Larson
Dept. of Transportation
807 Transportation Bldg.
St. Paul MN 55155

Karen Cole
DEPD - Energy Division
150 Kellogg Blvd. E.
St. Paul MN 55101

Northwind Alliance
627 Lake Ave. No.
Duluth MN 55806

[redacted]ban Planning & Design, Inc.
[redacted]0 River Woods
Burnsville MN 55337

City of Brooklyn Park
5800 85th Ave. No.
Brooklyn Park MN 55443

Joe Beaton
1503 washington Ave. S.
Minneapolis MN 55454

Edward Eisenbrey
Ernest K. Lehmann & Assoc.
1409 Willow St.
Minneapolis MN 55403

Gerald Larson
Dept. of Transportation
807 Transportation Bldg.
--Interoffice--

Peg Arisian
Nuclear Policy Study Group
56 Russell Ave. So.
Minneapolis MN 55405

Loni Kemp
Minnesota Project
618 East 22nd St.
Minneapolis MN 55404

Karen Cole
DEPD - Energy Division
150 Kellogg Blvd. E.
-- Interoffice --

Nelson French
Sierra Club
Room 113 Uptown Place
3255 Hennepin Ave. So.
Minneapolis MN 55408

John Herman
Pepin, Dayton, Herman
930 Lumber Exchange Bldg.
Ten South Fifth St.
Minneapolis MN 55402

Diane McPherson
Region 9 Devel. Comm.
Box 3367
Mankato MN 56001

Barbara Johnson
Hamline Univ. Law School
1536 Hewitt Ave.
St. Paul MN 55104

Jane Harper
Dept. of Agriculture
9 West Plato Blvd.
-- Interoffice --

Dick Smith
ARM - Barton St. G.
10633 89th Ave. No.
Osseo MN 55369

Gary Johnson
NSP
414 Nicollet Mall
Minneapolis MN 55401

David Ekern
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-- Interoffice --

John Hoene
MN Asphalt Pavement Assn.
555 Wabasha
St. Paul MN 55102

Ted Shields
MACI
480 Cedar St.
St. Paul MN 55101

Jim Eggen
UPA
Highway 10
Elk River MN 55330

Kathy Burek
LCRAR
430 State Office Bldg.
-- Interoffice --

Duke Addicks
League of MN Cities
300 Hanover Bldg.
480 Cedar St.
St. Paul MN 55101

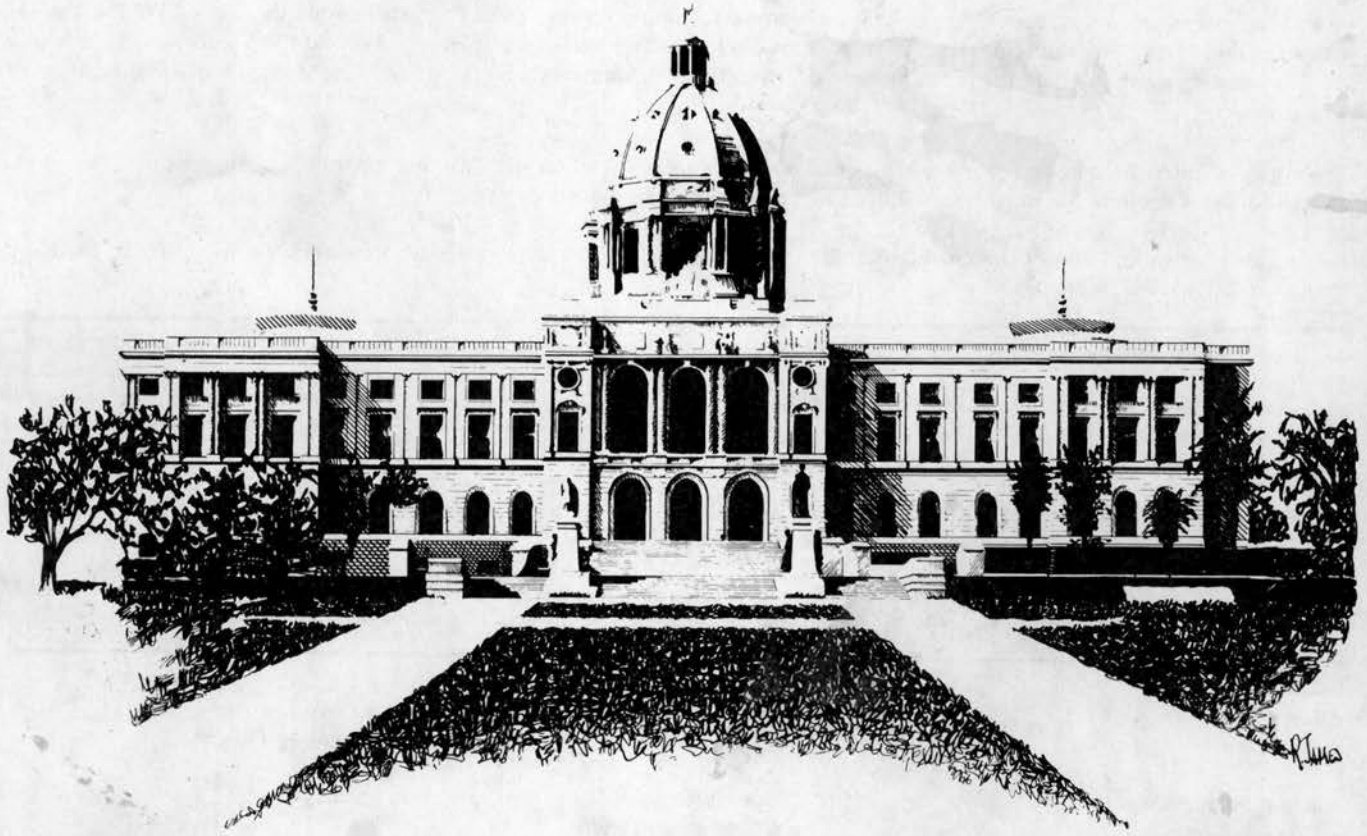
Dick Nowlin
Sensible Land Use Coalition
7900 Xerxes Ave. So.
Minneapolis MN 55431

M&QB Ex 2

RECEIVED
OCT 28 1981
ADMINISTRATIVE
HEARINGS

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.

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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*.

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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
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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.

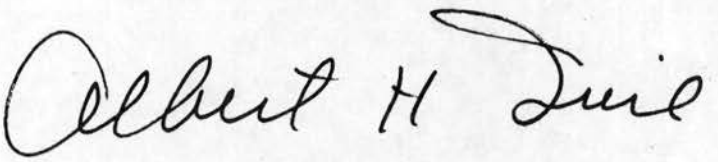
3. The Task Force shall, pursuant to Laws of 1981, ch. 360, art. 1, § 2, conduct a study of publicly funded health care programs and make specific recommendations to the Governor regarding changes which are needed to limit expenditures for such programs to the amount authorized by the biennial budget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

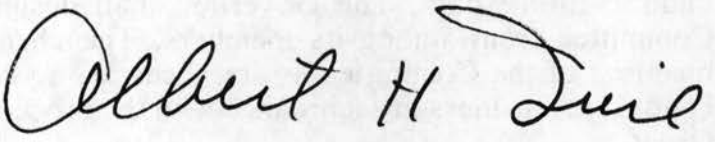
NOW, THEREFORE, I Order:

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.

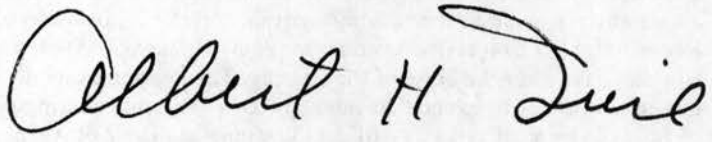
VII. Transmittal of Nominees to Governor.

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

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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:

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- 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.

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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.

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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:

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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.

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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.

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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:

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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;

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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.

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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.

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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;

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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.

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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,

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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).

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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.

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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.

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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

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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.

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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.~~

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~~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.**

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~~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~~.~~;

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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.

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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.

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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.

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ADOPTED RULES

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

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

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

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

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.

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~~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.~~

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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

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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;

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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.

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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

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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~~

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~~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.

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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.

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[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

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

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
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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.

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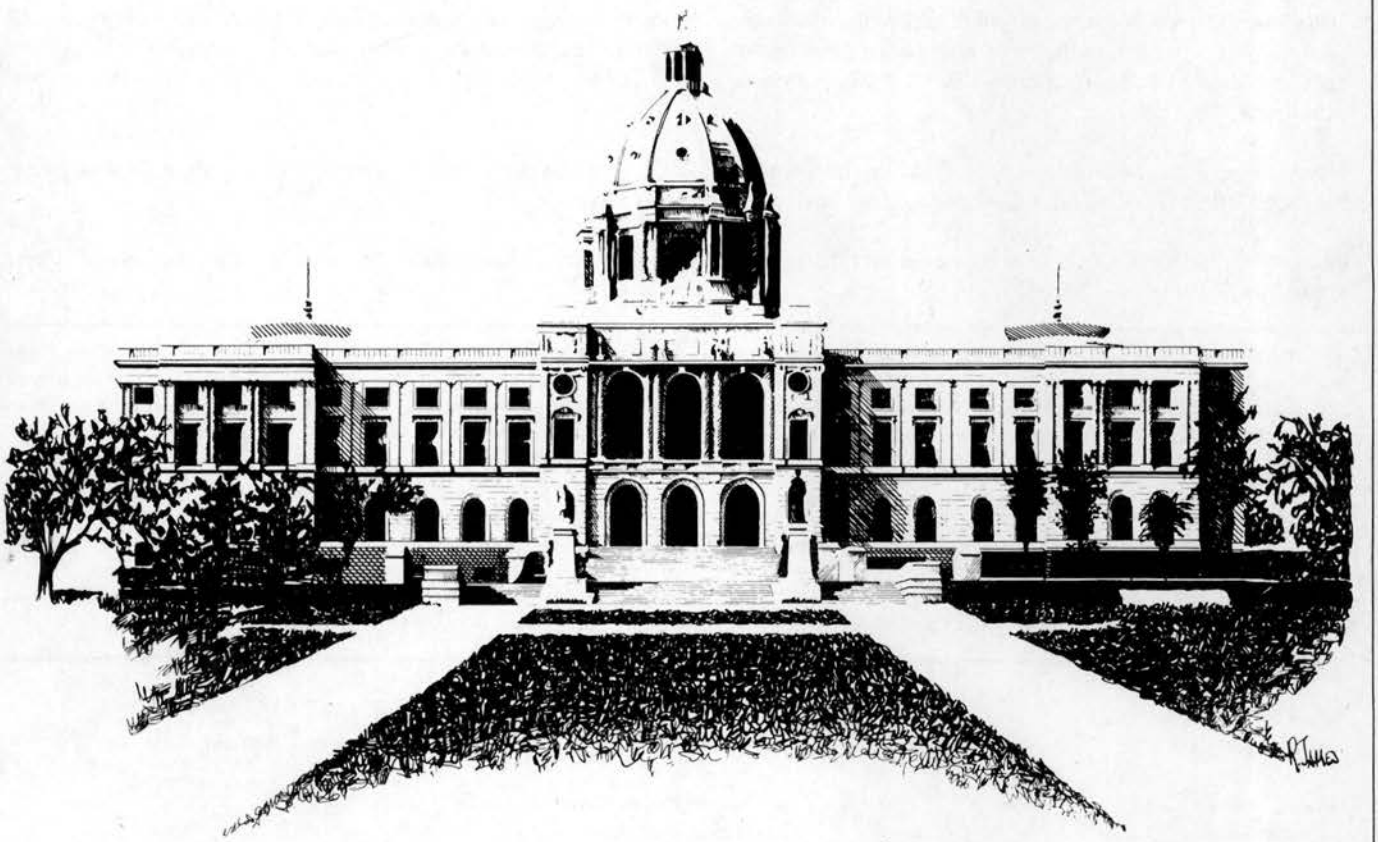

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October 5, 1981

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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		
15	Monday Sept 28	Monday Oct 5	Monday Oct 12
16	Monday Oct 5	Monday Oct 12	Monday Oct 19
17	Monday Oct 12	Monday Oct 19	Monday Oct 26
18	Monday Oct 19	Monday Oct 26	Monday Nov 2

*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.

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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
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NOTICE

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

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

The PROPOSED RULES section contains:

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

The ADOPTED RULES section contains:

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

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

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

Issues 1-13, inclusive
Issues 14-25, inclusive
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PROPOSED RULES

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

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

and

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

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

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Office of Administrative Hearings

Proposed Permanent Rules Relating to Workers' Compensation

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to the provisions of Minn. Stat. § 15.0412, subd. 4, in the above-entitled matter commencing at 9:00 a.m. on Thursday, November 5, 1981, at Room 83 of the State Office Building, 435 Park Street, St. Paul, Minnesota. The hearing will continue until all interested persons have an opportunity to be heard. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Peter C. Erickson, Hearing Examiner, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612/296-8118), either before the hearing or within five (5) working days after the public hearing ends. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed twenty (20) calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that twenty-five (25) days prior to the hearing a statement of need and reasonableness will be available for review at the Office of Administrative Hearings. Copies of this statement of need and reasonableness may also be purchased at a cost of twenty cents per page. The statement of need and reasonableness will include the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules.

The agency's authority to adopt the proposed rules is contained in Minn. Laws of 1981, chapter 346, § 5 (amending Minn. Stat. 1980, § 15.052, subd. 4).

The purpose of the proposed rules is to establish procedures for the conduct of the hearing process relating to contested workers' compensation hearings. The rules contain sections relating to: general authority and definitions; joinder of parties; pleadings including content of petitions and responsibilities of attorneys in initiating contested matters; settlement judge review and settlement conferences; expedited procedures for hearings where employees have been given notice of the employer's intent to discontinue benefits; answers to the petitions; service of documents; definitions of the various types of hearings; notice of hearings; continuances; intervention; consolidation; disqualification of compensation judges; prehearing procedures; discovery; petitions for contribution or reimbursement; subpoenas; the hearing itself; production of medical evidence; rights of parties; witnesses; rules of evidence; contents of the record; provisions relating to transcripts of hearings; disruptions of

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hearings; compensation judge decisions; rehearing; settlements; attorney fees; taxation of costs and disbursements; second injury law; expedited procedures for other hearings; temporary orders; removal and return of exhibits; and the permanent partial disability panel.

The office estimates that the cost to local bodies of implementing this rule for the two years immediately following its adoption will not exceed $100,000 within the meaning of Minn. Stat. § 15.0412, subd. 7.

The permanent rules will supercede the agency's temporary rules which were effective on August 19, 1981.

Copies of the proposed rules are now available and at least one free copy may be obtained by writing to: Duane R. Harves, Chief Hearing Examiner, Minnesota Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rules, you should contact Duane R. Harves at (612) 296-8100.

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

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

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

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

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

September 21, 1981.

Duane R. Harves
Chief Hearing Examiner

Rules as Proposed (all new material)

9 MCAR § 2.301 Scope and purpose. The procedures contained in 9 MCAR §§ 2.301-2.326 shall govern all hearings required to be conducted pursuant to the provisions of the Minnesota workers' compensation laws, Minn. Stat. ch. 82 and the Minnesota Administrative Procedure Act, Minn. Stat. §§ 15.0411-15.052, 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 in the cases.

B. Authority of compensation judges. In any case which has been regularly assigned to him or 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 or 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. For the purposes of 9 MCAR §§ 2.301-2.326, the following terms have meanings given them.

1. "Calendar judge" means a workers' compensation judge from the Office of Administrative Hearings.
2. "Chief hearing examiner" means the Chief Hearing Examiner of the Office of Administrative Hearings.
3. "Commissioner" means the Commissioner of the Department of Labor and Industry.
4. "Compensation judge" means a workers' compensation judge from the Office of Administrative Hearings.

5. "Division" means the Workers' Compensation Division of the Department of Labor and Industry.

6. "Petition" means 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 employer or insurer.

8. "Settlement judge" means a workers' compensation judge from the Department of Labor and Industry.

9 MCAR § 2.303 Joinder of parties.

A. Request. Upon a motion of any party or upon his or her own motion, a settlement or 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 and all pleadings in the case.

B. Service. Any party requesting joinder of additional parties shall serve a copy of the 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 ten days prior to the pretrial or settlement conference, unless the 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 request is served on the party to be joined, it shall be accompanied by copies of all pleadings and the notice of the date, time and place set for a settlement conference or prehearing conference.

C. Affidavit. When a party requests joinder less than ten days prior to the pretrial or settlement conference date, the request shall include an affidavit of the requesting party stating the facts necessary to show cause why the lesser time should be allowed.

D. Delay. In cases where the settlement or calendar judge has denied the joinder because of the requesting party's failure to meet the ten-day time requirement, the case shall not be stricken, continued or otherwise delayed for the purposes of joinder, unless the attorney for the employee or dependent consents to it.

E. Contents of motion. All motions for joinder shall contain at least the following:

1. The party to be joined and its insurer, if any;

2. The date and nature of the claimed personal injury or impairment;

3. The detailed circumstances, in affidavit form, showing that the party to be joined is a necessary party;

4. The supporting medical opinions relied upon, if applicable;

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.

F. Objection. A party contesting joinder under 9 MCAR § 2.303 may do so by objection filed with the settlement or calendar judge within ten days of service, requesting a hearing thereon; otherwise, an ex parte order may be issued granting or denying this joinder.

9 MCAR § 2.304 Commencement of proceedings; petitions; responsibilities of attorneys; notice to third parties.

A. Commencement of proceedings. Original proceedings for the adjudication of compensation rights and liabilities are commenced by the service of a petition as provided by Minn. Stat. § 176.305. Any petition filed on behalf of an employee or his or her dependents shall certify that 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. Consolidation of claims. 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.

C. Contents of petitions. A petition shall contain the following information which shall be in the sequence listed in 1.-21.

1. Title. The title of the case shall include the petitioner's name, the employer's name and address, the insurer's name and address, the division's record number and the employee's social security number;

2. The petitioner's address;

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3. The date of the alleged personal injury or onset of occupational disease;

4. The place of employment on the date of the alleged injury or disease;

5. The employee's weekly wage at the time of the alleged injury or disease;

6. A statement that the injury or disease arose out of and in the course of the employment;

7. A statement which specifies the nature and extent of the alleged injury or disease, including the percentage of disability, if known, attaching a copy of all medical reports;

8. The date on which the employer was first given notice of the alleged injury or disease and the manner in which the notice was given;

9. The name and address of the employer's insurer on the date of the alleged injury or disease or if the employer was self-insured, a statement to that effect;

10. A detailed listing of the dates of the alleged disability, stating whether each date was for temporary total, temporary partial, permanent total, or permanent partial disability;

11. A detailed list of the medical benefits alleged to be owing, giving the names, addresses, dates of treatment or purchase of drugs, or other compensable items;

12. The names and addresses of any third parties who have paid disability, medical or other benefits to the employee as a result of the alleged injury or disease, listing the dates and amounts of the payments, and the relevant claim number or policy number;

13. A statement that attorney's fees are or are not requested;

14. A statement that the employer and insurer were notified, as required by Minn. Stat. § 176.271, subd. 2, that a proceeding would be instituted and stating the relief sought, giving the date of the notice and attaching a copy of the notice;

15. A signature and attestation by the employee;

16. The name, address and telephone number of the employee's attorney unless the employee is representing himself or herself;

17. A statement that a settlement or prehearing conference is or is not requested and, if so, the requested location for the conference;

18. A statement indicating the number of lay and medical witnesses expected to be called as witnesses and the anticipated length of their testimony;

19. A statement specifying the principal issues to be resolved at hearing;

20. A statement that the employee is or is not presently receiving workers' compensation benefits and, if the employee is, the amounts and the name and address of the paying party; and

21. The requested location for the regular hearing.

D. Heading of petition. 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.

E. Responsibilities of attorneys; notice to third parties. All attorneys representing employees, employers, or any other parties to a workers' compensation proceeding shall inquire of their clients at the time the proceeding is commenced, and again within five days of receipt of a notice of prehearing conference, as to whether any third party, other than the workers' compensation insurer, has paid wage loss benefits or treatment expense to the employee or in the employee's behalf.

If inquiry discloses that any third party, such as an insurer or a welfare department, has made any such payments, the attorney discovering that fact shall then have the duty to place the third party on written notice, within five days, of its right to petition for intervention and reimbursement. The written notice shall have attached to it a copy of 9 MCAR § 2.310 and also a copy of all pleadings in the case and a copy of all notices and all orders of the workers' compensation division of the department of labor and industry and of the office of administrative hearings served in the case to date, and shall specifically advise that:

1. The employee has commenced a proceeding to recover workers' compensation benefits, and that under Minn. Stat. § 176.361 and 9 MCAR § 2.310 the third party has the right to petition for intervention and reimbursement of payments made for treatment and wage loss;

2. The name and address of all parties to the proceeding and the names and addresses of their attorneys;

3. The name of the third party's insured, the nature of the payments made, and any identifying claim and policy number;

4. Any failure of the third party to comply with any provisions of 9 MCAR § 2.310 shall result in a denial of the claim for reimbursement unless the compensation judge determines that the error or omission is merely technical.

Failure of an employee's attorney to comply in a timely manner with this rule shall be taken into consideration as an additional significant factor in determining the attorney's fee under Minn. Stat. § 176.081.

Failure of an attorney representing an employer and insurer to comply in a timely manner with this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer and insurer under Minn. Stat. § 176.225 for unreasonable or vexatious delay.

Where inquiry by the attorney for the injured employee at the time a proceeding is commenced discloses information that a third party has made payments, the employee's claim petition shall not be accepted for filing and the proceeding shall not be considered commenced unless the claim petition is accompanied by a proof of service of written notice upon the third party, unless the time for commencing an action under the statute of limitations in Minn. Stat. § 176.151 has run. The written notice shall be in the form prescribed by 1.-4.

9 MCAR § 2.305 Settlement judge review and settlement conferences.

A. Referral. Upon the filing of a petition, the commissioner, within ten days, shall refer the matter to a settlement judge who shall review the filing to determine whether a settlement conference is appropriate.

B. Disposition. If a settlement conference has been requested or is deemed appropriate by the settlement judge, he or she shall notify all parties of the date, time and place where the settlement conference will be conducted. The settlement conference shall be completed within 60 days of the date of referral of the petition by the commissioner. If a settlement conference has not been requested or is deemed to be inappropriate, the settlement judge shall certify the matter to the chief hearing examiner.

C. Retention of jurisdiction. If the settlement conference cannot be concluded within 60 days, the settlement judge shall certify the matter to the chief hearing examiner; provided, however, that with the consent of the petitioner or his or her representative, the settlement judge may retain jurisdiction for an additional 60 days for purposes of receiving a full settlement of all issues.

D. Settlement alternatives not precluded. 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 his or her own motion once the matter has been received from the commissioner.

E. Attendance. 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.

F. Matters agreed upon. If, following a settlement conference, a 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 or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. The order shall be binding on any compensation judge who may subsequently be assigned to hear the case. Issues once agreed upon and approved may be reopened by the compensation judge only upon motion of any party on the basis of newly discovered evidence which was not reasonably discoverable at the earlier time.

9 MCAR § 2.306 Notice of intention to discontinue compensation payments.

A. Contents. A notice of intention to discontinue compensation filed pursuant to Minn. Stat. § 176.241, shall contain the following information:

1. The name and home address of the person whose compensation would be discontinued;

2. The file number previously assigned by the division and the office of administrative hearings;

3. The name and address of the attorney, if any, who represented the employee during previous proceedings;

4. A description of the prior order, if any, under which compensation was being paid and the name of the person issuing the order;

5. The date the compensation is proposed to be discontinued;

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6. A complete list of facts supporting the discontinuance which shall be prepared with sufficient specificity to allow the employee to prepare an objection without the necessity of requesting additional information;

7. If the proposed discontinuance is based on medical evidence, copies of all medical reports bearing on the employee's physical condition at the time of the proposed discontinuance;

8. A statement which shall read as follows:

NOTICE

You have the right to object to this proposed discontinuance. If you intend to object, you must prepare a written objection and file it with the Commissioner of the Minnesota Department of Labor and Industry, Fifth Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. You may contact (employer) or (insurer) regarding the discontinuance and the procedures related to the filing of an objection. If you file an exemption, it may be mailed or personally delivered to the Department of Labor and Industry at the address listed above. An objection must contain your full name, address and telephone number, the name of the employer and insurer, the date of this notice and the file number listed on this notice.

9. The name and address of the employer and insurer;

10. The name, address and telephone number of the attorney representing the employer or insurer; and

11. The name, address and telephone number of the person filing the notice.

B. Objections.

1. Any objection to the proposed discontinuance shall be in writing, shall be filed with the commissioner, and shall contain the following information:

a. The name, address and telephone number of the employee;

b. The name, address and telephone number of the person filing the objection, if it is not the employee;

c. The name of the employer and insurer;

d. The date of the notice of discontinuance; and

e. The file numbers which were listed on the notice of discontinuance.

2. When an objection has been filed or where it appears to the commissioner that the right to compensation may not have terminated, the matter shall be referred to the chief hearing examiner who shall set the matter for hearing on a priority basis not less than 30 nor more than 75 days from the date of the receipt of the matter from the commissioner.

3. Any objection filed more than 120 days after service of a notice to discontinue shall be treated as a claim petition and shall not be heard on a priority basis.

C. Petitions for discontinuance. When an employer or insurer petitions the commissioner for an order allowing discontinuance of benefits but has chosen not to discontinue payments until after a final determination, the petitioner shall be entitled to a hearing on the same priority basis as set forth in B.2. Petitions filed under this provision shall contain the same information as required for a notice of discontinuance.

9 MCAR § 2.307 Answers.

A. Service and filing. An answer to each petition shall be served and filed within 20 days after service of the application unless a waiver has been obtained pursuant to Minn. Stat. § 176.321, subd. 3.

B. Proof of service. The answer shall be accompanied by proof of service upon the opposing parties.

C. Contents. 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 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 notice of intention to initiate proceedings. Any request for an extension 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.

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.

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 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.

9 MCAR § 2.309 Hearings.

A. Definition of hearing. For the purposes of 9 MCAR §§ 2.301-2.326, a hearing may be 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 conducted by a settlement judge. It is 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 the matter. The conference may be conducted by telephone and in the cases where 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 purposes of a prehearing conference are to ascertain if there are genuine disputes requiring resolution by a calendar or compensation judge, to provide assistance to the parties in resolving disputes, to narrow the issues, and to expedite preparation and trial if a regular hearing is necessary. A prehearing conference is conducted by a calendar or compensation judge. It 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. Each attorney receiving notice of the hearing date at a settlement or prehearing conference shall be responsible for notifying each party the attorney represents of the hearing date. When a written notice is required, it shall be given at least five days prior to the date of hearing, except:

1. When notice is waived by all parties;
2. When a different time is expressly agreed to by all parties; or
3. When the notice is governed by contrary law or rule.

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 the 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

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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, which date has been approved by the compensation, calendar or settlement judge before whom the matter is pending, and when the continuance request is made no less than ten 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 before whom the matter is pending. When made more than ten 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. If less than ten working days remain prior to the 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 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;

b. When 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 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. Motion. 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 matter has been 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 intervene if one should exist. The motion shall be accompanied by the following, 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;

8. At the option of the intervenor, a proposed stipulation which states 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 petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor.

B. Stipulation. When the person serving the motion for intervention has included a proposed stipulation, all parties shall either execute and return the signed stipulation to the intervenor or serve upon the intervenor and all other parties specific and detailed objections to any payments made by the intervenor which are not conceded to be correct and related to the injury or condition the employee has asserted is compensable. If a party has not returned the signed stipulation or filed objections within 20 days of service of the motion, the intervenor's right to reimbursement for the amount sought shall be deemed to have been established without the necessity of the intervenor participating further in the proceedings.

C. Attendance by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall attend all settlement or prehearing conferences and shall attend the regular hearing if ordered to do so by the compensation judge.

D. Order. 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. Presentation of evidence by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, at the regular hearing on the claim petition where intervention has been granted, the intervenor shall present evidence in support of his or her claim after the 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. Effects of noncompliance with rule. 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 merely technical.

G. Failure of attorney to respond. Failure by the employee's attorney to submit a timely response which also complies otherwise with this rule shall be a significant additional factor to be taken into consideration under Minn. Stat. § 176.081 in determining the amount of the attorney's fees. Failure by an attorney representing an employer or insurer to submit a timely response which also complies otherwise with the requirements of this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer or insurer under Minn. Stat. § 176.225 for unreasonable or vexatious delay.

9 MCAR § 2.311 Consolidation.

A. Authorization. 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 affect the rights of the parties in 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. Receipt of evidence. Under consolidation, all documentary evidence previously received in an individual case shall be reintroduced in the 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, the 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 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 appropriate judge finds that consolidation would prejudice the party moving for severance, the judge shall order such severance or other relief as he or 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.

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9 MCAR § 2.312 Disqualification.

A. Procedures. A compensation judge shall withdraw from participation in a case at any time if the judge deems himself or 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 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.

B. Affidavit for reassignment. The petitioner and parties responding a petition shall be entitled to reassignment of a regular hearing to another compensation judge in accordance with the provisions of this section. Proceedings for a reassignment shall be instituted by the filing of an affidavit under penalty of perjury in substantially the following form:

State of Minnesota
County of _____

_____, being duly sworn, deposes and says: That (s)he is (a party) (attorney for a party) to the above entitled case; that affiant believes that (s)he cannot have a (fair) (expeditious) (inexpensive) (unencumbered) (impartial) trial before the workers' compensation judge (before whom the case is pending) (to whom the case is assigned).

_____

Subscribed and sworn to before me
this _____ day of _____, 19_____

_____

Notary Public
My commission expires _____

If the compensation judge assigned to hear the case is known, the affidavit shall be filed not more than five working days after receipt of the notice of regular hearing and be directed to the attention of the chief hearing examiner. A copy of the affidavit shall be served on all other parties or their attorneys at the same time the affidavit is filed. In no event shall any such affidavit be entertained after the swearing of the first witness at a regular hearing.

Upon the filing of an affidavit for reassignment in accordance with the provisions of this section, without any further act or proof, the chief hearing examiner shall assign the case or proceeding to another compensation judge. Upon reassignment a new notice of regular hearing shall be served. Under no circumstances shall more than one such reassignment be made in any one case or proceeding pursuant to the affidavit of any one party; provided, however, that one additional reassignment may be made upon petition of a party on the other side. The petition by the other party shall be filed in the manner and time hereinbefore provided.

Unless required because of the unavailability of a compensation judge to hear the case, no continuance shall be granted by reason of an affidavit filed under this section. If a continuance is necessary, another regular hearing will be scheduled as early as possible.

Consolidated cases are to be considered as one case within the meaning of this section. This section is not applicable to settlement or pretrial conferences.

9 MCAR § 2.313 Prehearing procedures.

A. Requirement. 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 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. Settlement discussions. 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 settlement or prehearing conference shall be prepared to participate in settlement discussions.

C. Conference procedures. 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;

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 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 ten 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, it shall pay the expense for the showing and may tax this expense in the same manner as other 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 the 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 ten 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 the claim, the approximate amount of the claim, and the names and addresses of the employers for whom the employee worked during the period of the claim; authorizations to permit opposing counsel to confirm wages earned in those employments shall have been furnished at least ten 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 compensation judge and opposing counsel at least ten days prior to the time of the regular hearing;

10. The 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. If payment has been made, the name and address of the party making payment shall be furnished to the settlement or calendar judge, 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 ten days prior to the settlement or prehearing conference, copies of the relevant wage records of the employee;

12. The attorney for the employee or dependents shall furnish to the settlement or calendar judge 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. Prehearing statement. 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. 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, extent and type of disability claimed.

E. Evidence not disclosed at conference. Evidence, or other matters listed in C. which have not been disclosed at the prehearing conference shall not be allowed to be presented at the regular hearing unless it can be shown to the compensation judge that the evidence or other matters offered were discovered subsequent to the prehearing conference, were not discoverable through the exercise of due diligence prior to that time, and that the other parties have been advised of the evidence or other matters prior to the trial and have had an opportunity for review.

F. Temporary orders. Any insurer or self-insurer voluntarily agreeing to pay benefits pursuant to Minn. Stat. § 176.91, subd. 1, shall file a formal petition for temporary order.

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1. The petition shall contain the following:

a. Name of the employer and its insurer or self-insured consenting to payment of compensation benefits and medical expenses;

b. The dispute involved, including the name and address of other employer and its workers' compensation insurer, if known, that may be liable for workers' compensation benefits and the date of the alleged injury while working for the employer;

c. The beginning date of the employee's present disability, and the compensation rate that the insurer or self-insurer will voluntarily pay;

2. The original petition for temporary order, with proof of service on all necessary parties, shall be filed with the division, the office, or the court of appeals, depending upon where the matter is pending;

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. § 176.191, subd. 1;

NOW, THEREFORE, IT IS HEREBY ORDERED, that (name of insurer or self-insured) having consented to payment of compensation benefits pursuant to Minn. Stat. § 176.191 shall pay to (name), employee, compensation at the weekly rate of $(amount), during the period of employee's disability, beginning (date), and shall also pay reasonable medical expenses related to employee's said disability.

IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that some other employer or insurer is liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge, or Court of Appeals shall order the parties held liable to reimburse (name of paying party) for all or part of the compensation paid pursuant to this temporary order, for which the other parties are held liable, including interest at the rate of five percent per annum.

Dated at ....., Minnesota
this .....day of .....

(WORKERS' COMPENSATION DIVISION)
(COMPENSATION JUDGE)
(COURT OF APPEALS)

.....
By .....

The original and sufficient copies of the order to make service upon all neccessary parties, and any attorneys representing them, shall be filed.

G. Payment of benefits by special compensation fund. An employee seeking payment of benefits by the special compensation fund pursuant to Minn. Stat. § 176.191, subd. 2, shall file a formal petition for temporary order.

1. The petition shall contain the following:

a. A statement that written demand for payment pursuant to Minn. Stat. § 176.191, subd. 1, has been made against all employers and insurers party to the claim and that the payment demanded has been refused:

b. The names and addresses of all employers and insurers or self-insurers who are parties to the claim;

c. A statement as to the dispute involved and the dates of all alleged injuries while working for each employer;

d. The beginning date of the employee's present disability, the compensation rate applicable for each injury date, the proposed compensation rate to be paid by the special compensation fund, and an itemization of all medical expenses requested to be paid pursuant to the temporary order;

2. The original of the petition for temporary order, with proof of service on all necessary parties, shall be filed with the division, the office, or the court of appeals, depending upon where the matter is pending;

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. § 176.191, subd. 2;

NOW, THEREFORE, IT IS HEREBY ORDERED that the State Treasurer, as custodian of the special compensation fund, shall, pursuant to Minn. Stat. § 176.191, subd. 2, pay to (name), employee, compensation at the weekly rate of $(amount), during the period of employee's disability, beginning (date), and shall also pay reasonable medical expenses related to the employee's said disability.

IT IS FURTHER ORDERED, that following a final determination of liability and if it has been determined that one or more employers or insurers are liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge or Court of Appeals shall order the parties held liable to reimburse the State Treasurer, as custodian of the special compensation fund, for all or part of the compensation paid pursuant to this temporary order, for which the other parties are held liable, including interest at the rate of 12 percent per annum.

Dated at ....., Minnesota
this .....day of .....

(WORKERS'S COMPENSATION DIVISION)
(COMPENSATION JUDGE)
(COURT OF APPEALS)

.....
By .....

The original and sufficient copies of the order to make service upon all necessary parties, and any attorneys representing them, shall be filed.

H. Necessary parties. For the purpose of this rule, the following shall be deemed necessary parties:

1. The employee or dependents;

2. All insurers or self-insured named in the petition for temporary order;

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 the petition is made pursuant to Minn. Stat. § 176.191, subd. 2.

I. Answer. Within ten days after being served with a copy of the petition for temporary order and order, employers or their insurers, other than paying party, or the state treasurer, as custodian of the special compensation fund, may file a verified answer to the petition in accordance with the provisions of Minn. Stat. § 176.321.

J. Circumstances of nonapproval of temporary orders. Temporary orders, as a general rule, shall not be approved if made contingent upon the waiver by the employee of his rights to claim an additional award pursuant to Minn. Stat. § 176.225, or to have fees for his attorney assessed against the employer and insurer in addition to compensation pursuant to Minn. Stat. § 176.191 or 176.081, subd. 8.

K. Effect of filing. The filing of a petition for temporary order shall not cause the matter to be placed on the trial calendar, unless accompanied by a petition for contribution or reimbursement.

9 MCAR § 2.314 Discovery.

A. Demand. Each party shall, within 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 the 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 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 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 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. Upon demand, the petitioner shall

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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. 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 compensatibn 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 the judge 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, that unusual or extraordinary circumstances exist which compel extensive discovery, or 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. Unless, for good cause shown, the party taking the deposition has obtained the permission of the calendar judge, or compensation judge if the case has been assigned for hearing, to take the 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.

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 at law. The 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, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive discovery.

D. Penalties. Upon the failure of a party to reasonably comply with 9 MCAR §§ 2.301-2.326 relating to discovery or with an order of 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 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 purposes 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 that party from introducing designated matters in evidence.

E. Proprietary information. When a party is asked to reveal material which that party considers to be proprietary information or trade secrets, he or 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.

9 MCAR § 2.315 Petitions for contribution or reimbursement.

A. Contents. 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 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 parties named in it.

B. Filing. In all cases where a claim petition or other form of action is pending, a petition for contribution or reimbursement shall be filed no later than ten 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 the petition. In cases where no action is pending, the filing of the petition for contribution or reimbursement with the division shall initiate proceedings.

C. Answer. Within 20 days after being served with a copy of a petition for contribution or reimbursement, employers or their insurers, other than the petitioning party, may file a verified answer to the 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. Notice to employee. The employee shall be notified of all of the proceedings and should be represented by an attorney of his or her choice. A copy of all motions or answers shall be duly served upon the employee, the employee's attorney, or both 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 shall 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 with it, the calendar judge or compensation judge, if the case has been assigned for regular hearing, may quash or modify the subpoena if the judge finds that it is unreasonable or oppressive.

9 MCAR § 2.317 The hearing.

A. Notice. 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 five 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. Availability of medical witnesses. 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 B.

C. Medical reports. 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 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 the disability;
8. The medical treatment indicated;
9. Opinion as to whether or not permanent disability has resulted from the injury and whether or not the condition has stabilized. If 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.

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

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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 or 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 the judge's final order.

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;

d. Offers of proof, objections and rulings thereon;

e. The compensation judge's order;

f. All memoranda or data submitted by any party in connection with the case;

g. A transcript of the hearing, if one was prepared; and

h. The audio-magnetic recording tapes, if that device was used to record the hearing.

3. The transcript.

a. The chief hearing examiner shall direct that the verbatim record of a hearing shall be transcribed if requested by any person. If a transcription is made, except as provided in c., the chief hearing examiner shall require the requesting person and other persons who request copies of the transcript to pay a reasonable charge for them if transcribed by the office. If transcribed by someone other than the office, the person requesting the transcription or a copy shall be liable to the person preparing the transcript for the charge.

b. Charges for transcripts prepared by the office shall be set by the chief hearing examiner, with the approval of the Department of Finance, and all moneys received for transcripts prepared by the office shall be payable to the State Treasurer, Office of Administrative Hearings Account.

c. Pursuant to the provisions of Minn. Stat. § 176.421, subd. 4, clause (3), a party may petition the chief hearing examiner for an order directing that a transcript be prepared, for purposes of appeal to the Court of Appeals, at no cost to the appellant. A petition filed under this provision shall include the following:

(1) Title of the case;

(2) Case identification numbers;

(3) Name, address and telephone number of the attorney representing the appellant;

(4) A sworn affidavit from the appellant which shall include:

(a) Appellant's monthly personal income from all sources including income from trusts, bonds, and savings certificates;

(b) A list, at market value, of all stocks, bonds, savings certificates or other certificates of indebtedness held by the appellant and the appellant's spouse if residing in the same household;

(c) If residing in the same household, the monthly personal income from all sources for appellant's spouse;

(d) A statement of the monthly expenses for the appellant's household;

(e) If the appellant owns any rental property, a statement showing the appellant's equity in the property and the monthly income and expense for the property;

(f) If the appellant owns outright or is purchasing the property in which he or she resides, a statement showing the market value of the property, the appellant's equity in the property, and the present monthly payments, if any.

H. Continuances during the hearing. If it appears in the interests of justice that further testimony should be received, the compensation judge, in his or her discretion, may continue the hearing to a future date and 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 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 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 shall proceed first. All other parties 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 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 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 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.

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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 interference or disruption or threat thereof, the compensation judge shall read this rule to those persons causing the interference or disruption and thereafter proceed as the judge deems appropriate.

9 MCAR § 2.318 The compensation judge's 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 the judge's 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 and opportunity 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 or her decision and, upon completion, 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 and location of the hearing and the compensation 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;

e. Findings of fact, conclusions and a determination on each issue raised. In cases involving a multiplicity of issues, the compensation judge may organize the decision by major subissues if the judge determines that organizing the decision in that manner will aid the reader in understanding the contents of it.

C. Readability. 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.

D. Proposed decision filed by party. 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. When a compensation judge has issued his or her findings, conclusions and decision, the judge's jurisdiction over the case shall end, except for taxation of disbursements or awarding of attorney's fees, unless the matter is rereferred to the compensation judge by the court of appeals and the chief hearing examiner for supplemental findings, taking of additional testimony, rehearing, or other action; provided that compensation judges may correct clerical errors in decisions at any time prior to appeal.

9 MCAR § 2.320 Settlements.

A. Stipulations. 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. Filing. All stipulations for settlement shall be filed within 30 days of the date the settlement was negotiated.

C. Approval. Stipulations for settlement shall be filed with and approved by the commissioner or the commissioner's designee if the case has not been referred to the chief hearing examiner.

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.

D. Contents. 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 the 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 or her right to make application for an award of attorney's fees against the employer or insurer pursuant to Minn. Stat. §§ 176.081, subd. 7 or 8, 176.135 or 176.191.

E. Attorney's fees detailed. Stipulations for settlement of cases in which the employee or dependents have engaged the services of an attorney shall 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, 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.

F. Medical reports. Stipulations for settlement shall be accompanied by copies of all medical reports in the possession of the parties which have not previously been filed.

G. Award. The parties involved in the settlement shall submit an award on stipualtion prepared for signature by the applicable judge and sufficient copies thereof for all parties to be served if the settlement is approved.

H. Copy to client. The attorney representing the employee or dependents shall furnish a copy of the stipulation for settlement to his or her client at the time the client signs the stipulation.

I. Signatures. Stipulations for settlement shall be signed by all parties as required by Minn. Stat. § 176.521.

J. Payment. The employer and insurer shall make payments pursuant to an award on stipualtion within 14 days from the date the award on stipulation is served.

9 MCAR § 2.321 Attorney fees.

A. Authorization. Whenever an employer or insurer receives notice that an attorney is representing an employee or dependent, 25 percent 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 the compensation is being withheld shall immediately be mailed to the employee or dependents, the attorney and the division at its Saint Paul office.

B. Application. 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.

Application for determination and approval of any claim for legal services or disbursements may be filed by the employer or insurer, the employee or dependents or the attorney. Application for attorney fees shall be by written petition. 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 for the 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.

A separate application is not necessary if filed as part of a stipulation for settlement as provided in these rules.

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C. Filing. 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 request. 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. Service of objection. 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. Hearing. If requested, a time for hearing before the compensation judge who heard the case shall be fixed. A notice thereof shall be given to the parties by the compensation judge.

9 MCAR § 2.323 Second injury law.

A. Application. Application for registration of physically impaired employees shall be in a format prescribed by the division and submitted pursuant to rules of the commissioner.

B. Hearing. 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 the 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 the 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. Referral. 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 Permanent partial disability panel.

A. Notification to administrator. Upon receipt of a file from the commissioner, if the chief hearing examiner, or a calendar or compensation judge if the case has been assigned to them, determines from a review of the file that permanent partial disability is a significant issue to be determined in the case, the chief hearing examiner shall immediately notify the administrator of the workers' compensation court of appeals if the employee resides in a county selected by the court of appeals pursuant to the provisions of Minn. Stat. § 176.152, subd. 7.

B. Questions to panel. When the administrator of the workers' compensation court of appeals notifies the chief hearing examiner of the names and addresses of the members of the permanent partial disability panel, the compensation judge, or the chief hearing examiner in cases in which a compensation judge has not yet been assigned, shall submit written questions to the panel. A copy of the questions shall be served on all parties at the same time.

Hearing. When the chief hearing examiner or compensation judge receives the report of the panel, the case shall be set for a regular hearing as soon as practicable.

D. Disputes relating to payment of panel members. Disputes relating to the payment of the fees of panel members arising pursuant to the provisions of Minn. Stat. § 176.152, subd. 6, shall be brought to the attention of the compensation judge assigned to hear the case no later than 20 days prior to the date of the hearing. The parties disputing the fee shall notify the compensation judge, in writing, of the intent to dispute the fee, stating therein the specific facts relied upon in disputing the fee. A copy of this notification shall be served on all other parties and the members of the panel at the same time as it is filed with the compensation judge. At the hearing, the dispute shall be determined as other issues in the case.

9 MCAR § 2.326 Exhibits: removal and return.

A. Requests for removal. All requests for permission to remove any exhibit or document from the official file must be made to the compensation judge to whom the file has been assigned or to the supervisor of the docket section of the office.

B. Return without consent or notice. Upon the expiration of the time in which to appeal, all exhibits or other documentary evidence may be returned to their source of origin without the consent of the parties or notice thereto, upon order of the

compensation judge. A copy of the letter of transmittal of the exhibits or documents shall remain in the file as part of the record of the case.

C. Request for return. Upon expiration of the time in which to appeal, exhibits or other documentary evidence shall be returned to their source upon the request of the party which introduced the evidence into the record. A request for return of exhibits or documents shall be made in writing to the compensation judge, shall contain the title and appropriate identification number of the case in which they were entered into evidence, and shall identify the exhibits or documents requested. A telephone number of the person making the request shall be included with the request.

Department of Agriculture
Agronomy Services Division

Proposed Rules Governing Storage and Handling of Liquid and Dry Commercial Fertilizer

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Agriculture proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Agriculture has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comment on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes section 15.0412, subdivisions 4-4f (1980).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modification is desired.

Authority for the adoption of these rules is contained in the Minnesota Fertilizer, Soil Amendment and Plant Amendment Law, Minn. Stat. §§ 17.711 to 17.729, as amended by Laws of 1981, ch. 214. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from: Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for a review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, MN 55107, (612) 296-1486.

The purpose of the Minnesota Fertilizer, Soil Amendment and Plant Amendment Law is to regulate the sale and handling of fertilizers and soil conditioners within the State of Minnesota. Presently, no rules exist which govern the storage and handling of liquid and dry commercial fertilizers. Proper storage and handling of liquid and dry commercial fertilizers benefits public health and safety by helping to reduce the number and severity of fertilizer spills which could adversely affect ground and surface water quality.

Please be advised that Minnesota Statutes, Chapter 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he/she becomes a lobbyist. Lobbying includes attempting to influence rulemaking by communicating or using others to communicate with public officials. A lobbyist is generally any individual who spends more than $250 per year for

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lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than $250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, (612) 296-5615.

Copies of this notice and the proposed rules are available and may be obtained by contacting Gerald Heil, Minnesota Department of Agriculture, 90 West Plato Boulevard, St. Paul, Minnesota 55107, (612) 296-1486.

September 17, 1981

Mark W. Seetin
Commissioner of Agriculture

Rules as Proposed (all new material)

3 MCAR § 1.0325 Liquid fertilizers.

A. Authority and purpose. This rule is adopted by the Commissioner of Agriculture pursuant to Minn. Stat. § 17.725, to govern the storage and handling of liquid commercial fertilizer used for agricultural purposes.

B. Definitions. For the purpose of this rule, the terms defined in this rule, and the terms defined in Minn. Stat. § 17.713, have the meanings given them.

1. "Appurtenances" means valves, pumps, fittings and metering or dispensing devices.

2. "Department" means the Department of Agriculture.

3. "Incident" means a flood, fire, tornado, transportation accident, storage container rupture or leak or other release of liquid fertilizer, whether accidental or not, which is likely to cause adverse effects on the environment.

4. "Liquid commercial fertilizer" means mixed fertilizer or fertilizer materials distributed in a nonpackage form.

5. "Responsible party" means the person who has direct custody or control of liquid fertilizer at the time of an incident.

6. "Safeguard" means a facility, device or system or a combination of any of them designed to prevent the escape or movement of a substance or solution from the place it is stored or kept under conditions which might result in the pollution of any state waters.

7. "Storage container" means a tank in which commercial fertilizer is stored. This does not include delivery equipment unless the delivery equipment is used for storage.

C. Approval of facility and equipment. A person beginning construction of a new liquid fertilizer storage facility or modifying an existing liquid fertilizer storage facility shall first obtain the approval of the Commissioner of Agriculture or his designee. The application shall be made on forms provided by the commissioner. The application shall be approved when inspection of the facility and review of the application demonstrates that the proposed facility satisfies the requirements of this rule and provides safeguards to prevent hazards to people's lives, adjoining property or the environment.

At any time, the commissioner may review approved facilities where it appears that existing safeguards are not sufficient to prevent hazards to people's lives, adjoining property or the environment. Upon determination by the commissioner that hazards to people's lives, adjoining property or the environment do exist, the commissioner may withdraw approval or require additional mitigation measures to be taken.

D. Exceptions. Parts F.1. and G.3. shall not apply to facilities and equipment governed by this rule which were established prior to the date of adoption of this rule unless the existing facility, without modification, would result in a hazard to people's lives, adjoining property or the environment.

E. Variances. Upon receipt of a written request, the department may grant a variance from a provision of this rule. A variance will be granted when the request shows that compliance with this rule would cause unnecessary hardship to the requester and that the requested use would not constitute a hazard to people's lives, adjoining property or the environment. The department shall set forth in writing its reasons for granting or denying a requested variance.

F. Equipment.

1. Adequate provisions shall be made to protect all exposed piping from physical damage that might result from moving machinery, equipment and vehicles.

2. Main valves shall be located as near to the storage container as possible and shall be either closed and made inoperative when the facility is unattended or protected against tampering by adequate fencing.

3. Appurtenances shall be inspected, properly maintained, protected against rust and painted to prevent corrosion or failure.

G. Storage containers.

1. Storage containers shall be inspected, properly maintained, protected against rust and painted to prevent corrosion or failure.

2. Storage container areas shall be kept free of clutter and ignitible materials including weeds and long dry grass.

3. Persons storing liquid fertilizers in storage containers of a rated capacity of 500 gallons or more shall provide safeguards for containment equal to the amount of the largest single storage container.

H. Markings.

1. Each storage container shall be labeled in a clearly legible and conspicuous manner with the appropriate grade or guaranteed analysis of the contents of the storage container.

2. An identification sign shall be displayed in a clearly legible and conspicuous manner stating the name, address and telephone number of the nearest agent, representative or owner of the storage facility.

I. Incidents. A person involved in or responsible for an incident shall report the incident to the department. The department shall immediately notify other appropriate state agencies. The responsible party shall take appropriate action to contain or clean up the incident. The department shall be the lead state agency for making decisions involving the clean-up or containment operations and may initiate those operations if it appears necessary. By initiating clean-up or containment operations, the department shall not be deemed to assume any liability for costs in addition to that prescribed or imposed by law.

3 MCAR § 1.0326 Dry fertilizers.

A. Authority and purpose. This rule is adopted by the Commissioner of Agriculture pursuant to Minn. Stat. § 17.725 to regulate the storage and handling of dry commercial fertilizer used for agricultural purposes.

B. Definitions. For the purpose of this rule, the terms defined in this part, and the words defined in Minn. Stat. § 17.713, have the meanings given them.

1. "Department" means the Department of Agriculture.

2. "Dry commercial fertilizer" means both mixed fertilizer and fertilizer materials distributed in a nonpackage form.

3. "Incident" means a flood, fire, tornado, transportation accident or other event causing a release of dry fertilizer, whether accidental or not, which is likely to cause adverse effects on the environment.

4. "Responsible party" means the person who has direct custody or control of the dry fertilizer at the time of an incident.

5. "Storage container" means a tank or bin in which commercial fertilizer is stored. This does not include delivery equipment unless the delivery equipment is used for storage.

C. Approval of facility and equipment. A person beginning construction of a new dry fertilizer storage facility or modifying an existing dry fertilizer storage facility shall first obtain the approval of the Commissioner of Agriculture or his designee. The application shall be made on forms provided by the commissioner. The application shall be approved when inspection of the facility and review of the application demonstrates that the proposed facility satisfies the requirements of this rule and provides safeguards to prevent hazards to people's lives, adjoining property or the environment.

At any time, the commissioner may review approved facilities where it appears that existing safeguards are not sufficient to prevent hazards to people's lives, adjoining property or the environment. Upon determination by the commissioner that hazards to people's lives, adjoining property or the environment do exist, the commissioner may withdraw approval or require additional mitigation measures to be taken.

D. Exceptions. Part G. shall not apply to facilities and equipment governed by this rule which were established prior to the date of adoption of this rule unless the existing facility, without modification, would result in a hazard to people's lives, adjoining property or the environment.

E. Variances. Upon receipt of a written request, the department may grant a variance from a provision of this rule. A variance will be granted when the request shows that compliance with this rule would cause unnecessary hardship to the

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requester and that the requested use would not constitute a hazard to people's lives, adjoining property or the environment. The department shall set forth in writing its reasons for granting or denying a requested variance.

F. Equipment. Equipment shall be maintained in good operating order.

G. Operations. Dry commercial fertilizer facilities shall be operated to allow the unloading, storage, mixing and loading of the bulk materials in a manner which will prevent avoidable amounts of particulate matter from leaving the premises.

H. Storage containers. Storage containers shall be maintained to prevent major cross contamination of various dry commercial fertilizer ingredients and materials. Storage container areas shall be kept free of clutter and ignitible materials including weeds and long dry grass.

I. Markings. Each storage container shall be labeled in a clearly legible and conspicuous manner with the appropriate grade or guaranteed analysis of its contents.

J. Outside fertilizer storage. Outside fertilizer storage piles shall not be located in areas subject to floods or where surface water runoff could enter storm sewers, sanitary sewers or other state waters.

K. Incidents. A person involved in or responsible for an incident shall report the incident to the department. The department shall immediately notify other appropriate state agencies. The responsible party shall take appropriate action to contain or clean up the incident. The department shall be the lead state agency for making decisions involving clean-up or containment operations and may initiate those operations if it appears necessary. By initiating clean-up or containment operations, the department shall not be deemed to assume any liability for costs in addition to that prescribed or imposed by law.

Department of Commerce
Securities and Real Estate Division

Proposed Rule SDiv 2030 (Cheap Stock), Relating to the Minnesota Securities Act

Notice of Intent to Amend Rule without a Hearing

Notice is hereby given that, pursuant to her authority under Minn. Stat. § 80A.25 (1980), the Commissioner of Securities and Real Estate intends to amend Rule SDiv 2030 (Cheap Stock), relating to the Minnesota Securities Act (Minn. Stat. ch. 80A). The commissioner desires that the proposed rule be amended without a public hearing in accordance with Minn. Stat. § 15.0412, subd. 4h (1980).

A free copy of the proposed rule may be obtained from the commissioner's office. Those interested in submitting comment pertaining to the proposed rule may do so within 30 days of publication of this notice in the *State Register*. Additionally, if during the 30-day comment period, seven or more persons make a written request for a hearing on the proposed rule, the commissioner will hold a public hearing in accordance with Minn. Stat. § 15.0412, subdivisions 4 to 4g (1980). A request for a copy of the proposed rule, all comments, any requests for a hearing and all questions regarding the proposed rule should be directed to:

Mr. Daniel W. Hardy
Assistant to the Commissioner
Securities and Real Estate Division
Department of Commerce
500 Metro Square Building
Saint Paul, Minnesota 55101
Telephone: (612) 296-5689

The proposed rule may be modified by the commissioner if the modifications are supported by the data and views submitted during the 30-day comment period, provided the modifications do not result in substantial change.

The commissioner has prepared a statement of need and reasonableness which contains a summary of the evidence justifying both the need for, and the reasonableness of, the proposed rule. The statement of need and reasonableness is available for inspection by the public, during regular business hours, at the above address.

If no hearing is required, the commissioner will submit to the Attorney General the proposed rule and notice as published in the *State Register*, the rule as proposed for adoption, any written comments received by the commissioner during the 30-day comment period, and the statement of need and reasonableness for the rule. On the same day these materials are submitted to the Attorney General the commissioner will notify any person who has requested that the commissioner inform him or her of when these materials have been submitted to the Attorney General. Any person wishing to be so notified should contact Mr. Hardy at the address listed above.

A copy of the existing rule and proposed changes follows this notice.

Finally, Minn. Stat. ch. 10A.03 (1980) 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 should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone: (612) 296-5615.

August 26, 1981

Mary Alice Brophy
Commissioner of Securities and Real Estate

Rule as Proposed

SDiv 2030 Cheap stock.

~~(a) The amount of "cheap stock" allowable, based upon the "fair value of the equity investment" as defined in SDiv 2029(b), shall not exceed three times the first 10 percent of equity investment and two times any further equity investment to a maximum number of shares of cheap stock allowable of 90 percent of the total number of shares to be outstanding after the proposed offering.~~

A. Quantity. The quantity of cheap stock, expressed as a percentage of the total number of shares to be outstanding after the proposed offering, shall not exceed the percentages in Exhibit SDiv 2030 A.-1., depending on the "fair value of the equity investment" as defined in SDiv 2029 (b).

Exhibit SDiv 2030 A.-1.
Maximum Amount of Cheap Stock Outstanding

Minimum Investment	Cheap Stock
5%	15%
10%	30%
15%	40%
20%	50%
30%	70%
40%	90%

~~(b)~~ B. Definition. Cheap stock means securities:

~~(1)~~ 1. Issued in consideration of property tangible or intangible, or services, the value of which has not been reasonably established, or

~~(2)~~ 2. Issued at a price substantially less than the public offering price of the securities and which cannot be justified with reference to the existence of an active public market for such securities. Securities issued at a price substantially less than the public offering price of the securities means:

~~(aa)~~ a. Securities issued for less than ~~66⅔%~~ percent of the public offering price if the securities were issued less than one year prior to registration~~.~~;

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~~(bb)~~ b. Securities issued for less than 50~~%~~ percent of the public offering price if the securities were issued more than one year but less than two years prior to registration;

~~(cc)~~ c. Securities issued for less than 33⅓~~%~~ percent of the public offering price if the securities were issued more than two years but less than three years prior to registration.

In the case of unexercised options, or other securities convertible into the same class of security as that proposed to be offered, the aggregate of the cash amount paid and the cash amount required to be paid pursuant to the conversion or exercise privilege shall be divided by the number of shares issuable upon conversion or exercise to determine whether the securities were "issued at a price substantially less than the public offering price."

~~(c)~~ C. Exclusions. Cheap stock does not include:

~~(1)~~ 1. Securities which have been outstanding more than three years at the time of the proposed registration, provided that the issuer ~~of~~ or its predecessors have been in active, continuous business operation for more than three years immediately prior to the proposed registration;

~~(2)~~ 2. Securities of an issuer which ~~(a)~~ had earnings during the final year prior to registration or ~~(b)~~ had earnings during two of the three fiscal years prior to registration, as determined in accordance with generally accepted accounting principles, after taxes and excluding extraordinary income, if such earnings are in an amount equal to ~~4~~ four percent of the proposed public offering price on all outstanding shares of the same class at the date of application for registration; or

~~(3)~~ 3. Securities previously issued pursuant to a registration under Minn. Stat. ch. 80A.

Department of Revenue
Income Tax Division

Proposed Rule Governing Practice of Attorneys, Accountants, Agents and Preparers before the Department of Revenue (13 MCAR § 1.6101); and Proposed Repeal of Income Tax Rule 2052(4)

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Revenue proposed to adopt the above-entitled rule and repeal the existing rule without a public hearing. The commissioner has determined that the proposed adoption of this rule and repeal of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, § 15.0412, subdivisions 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Mr. Dale H. Busacker
Attorney, Income Tax Division
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145
(612) 296-3439

Authority for the adoption of these rules is contained in Minnesota Statutes, § 290.52. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Mr. Busacker upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Busacker.

The general purpose of this rule is to regulate the practice of attorneys, accountants, agents and preparers (hereinafter referred to as "tax practitioners") before the Department of Revenue. Specifically, the rule is needed (1) to implement the authority which is granted to the Commissioner of Revenue to suspend or disbar tax practitioners, by providing a uniform procedure for such suspension or disbarment; (2) to provide ethical standards of behavior governing practice before the department; (3) to set minimum standards of competency for those who practice; (4) to define what is disreputable conduct; and (5) to define the nature and scope of practice before the Department of Revenue.

The existing Income Tax Rule 2052(4) is repealed because this new rule will supersede it and make it unnecessary.

Copies of this notice and the proposed rules are available and may be obtained by contacting Mr. Busacker.

September 17, 1981

Clyde E. Allen, Jr.
Commissioner of Revenue

Rule as Proposed (all new material)

13 MCAR § 1.6101 Practice of attorneys, accountants, agents, and preparers before the Department of Revenue.

A. Practice defined. The term "practice" comprehends all matters connected with the presentation by an attorney, accountant, agent, or preparer to the Department of Revenue or any of its employees, upon filing an executed power of attorney, of a client's rights, privileges, or liabilities under Minn. Stat. ch. 290 or 290A, and the rules thereunder. Practice includes the preparation and filing of necessary documents, correspondence with and communication to the Department of Revenue, and the representation of a client at conferences, hearings, and meetings. However, the preparation and signing of a tax return, the appearance of an individual as a witness for a taxpayer, and the furnishing of information at the request of the Department of Revenue or any of its employees do not, of and by themselves, constitute practice before the department, unless these acts are coupled with the presentation of a client's case at conferences, hearings, or meetings. For purposes of this rule, the term "practice" is synonymous with "representation."

B. Scope of representation pursuant to power of attorney.

1. When authorized by the taxpayer through a written power of attorney, an attorney, accountant, agent, or preparer may appear as the taxpayer's representative, with or without the taxpayer, before an employee of the Department of Revenue with respect to the tax liability of the taxpayer for the type of tax and taxable year or period authorized in the power of attorney.

2. For purposes of this rule, a power of attorney grants authority to deal with any of the following: original or amended individual income tax returns; property tax refund returns; fiduciary income tax returns; partnership returns of income; corporation income tax returns, including returns of small business corporations, life insurance companies, banks, and savings and loan associations; employers income tax withholding returns or deposits; claims for refund; and estimated tax declarations.

3. A taxpayer representative may inspect only those state records, files, or documents which are either specifically listed, or directly or indirectly connected with matters specifically listed in a power of attorney.

4. If the taxpayer is not present, a person presenting a power of attorney shall present identification satisfactory to the department employee.

C. Persons ineligible to practice. Any person who is:

1. Under disbarment or suspension from practice before the Department of Revenue;

2. An employee of the Department of Revenue;

3. Under disbarment or suspension from practice as an attorney, certified public accountant, or licensed public accountant in the State of Minnesota; or

4. Under disbarment or suspension from practice before the Internal Revenue Service shall be ineligible to appear as a taxpayer representative under this rule. However, with regard to 3. and 4., a granting of reinstatement to practice as an attorney, certified public accountant, or licensed public accountant, or a granting of reinstatement to practice before the Internal Revenue Service shall automatically reinstate a person's eligibility to practice before the Department of Revenue.

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D. Standards of ethics and conduct.

1. No attorney, accountant, agent, or preparer acting as a taxpayer representative shall neglect or refuse to submit records or information in any matter before the Department of Revenue, upon proper and lawful request by a duly authorized employee of the Department of Revenue, unless the taxpayer representative has a good faith belief that the information or testimony is privileged. No taxpayer representative shall interfere, or attempt to interfere, with any proper and lawful efforts by the Department of Revenue or its employees to obtain information relative to any matter before the Department of Revenue. Insisting upon a subpoena shall not be a violation of this paragraph.

2. Each taxpayer representative shall exercise due diligence in regard to all of the following:

a. Preparing, assisting in the preparation of, approving, and filing returns, documents, affidavits, and any other papers relating to Department of Revenue matters;

b. Determining the correctness of representations made by him to the Department of Revenue; and

c. Determining the correctness of representations made by him to clients with reference to any matter administered by the Department of Revenue.

3. Each taxpayer representative shall exercise good faith in determining the correctness of representations made by clients to him with reference to any matter administered by the Department of Revenue when the preparer or agent has reasonable grounds to believe the client's representations are false or inaccurate.

4. No taxpayer representative shall unreasonably delay the prompt disposition of any matter before the Department of Revenue.

E. Incompetent conduct. Incompetent conduct, for which any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from practice before the Department of Revenue, means the failure by an attorney, accountant, agent, or preparer, after due warning has been given by the Commissioner of Revenue pursuant to G.3., to:

1. Demonstrate the familiarity with the income tax statutes, rules, and forms necessary to enable the practitioner to properly apply, discuss, or complete them, and thus to render adequate services in connection with a taxpayer's case before the Department of Revenue; or

2. Exercise due diligence as required in D.2. The standard used for determining failure to exercise due diligence shall be the common law standard of reasonableness used in determining negligence.

F. Disreputable conduct. Disreputable conduct, for which any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from practice before the Department of Revenue, includes any conduct violative of D. In addition, the following acts or events constitute disreputable conduct:

1. Conviction of any criminal offense under a state or federal tax statute, or conviction of any crime involving dishonesty or breach of trust;

2. Preparing or filing for himself or another a false or fraudulent Minnesota income tax return or other statement on which Minnesota income taxes or a refund thereof may be based, knowing it is false or fraudulent;

3. Willful failure to prepare or file a Minnesota income tax return for himself or another in violation of the applicable income tax statutes or rules;

4. Willful failure to prepare or file an amended Minnesota income tax return for himself or another, knowing that a material error or omission was made on the original return;

5. Suggesting to a client or a prospective client an illegal plan for evading Minnesota income taxes or the payment thereof, knowing the plan is illegal;

6. Giving false testimony or information in any proceeding before the Department of Revenue, or before any tribunal authorized to pass upon Minnesota income tax matters, knowing it is false;

7. Filing any false or fraudulently altered document, affidavit, or power of attorney in any case or other proceeding before the Department of Revenue, or procuring the filing thereof, knowing it is false or fraudulently altered;

8. Using, with intent to deceive, false representations to procure employment in any case or proceeding before the Department of Revenue, including, but not limited to:

a. Misrepresentations regarding eligibility to practice before the Department of Revenue;

b. Specific material misrepresentations regarding experience or education, whether general or specialized, as an income tax return preparer;

c. Guaranteeing the payment of any tax refund or the allowance of any tax credit; or

d. Representing to a client that the attorney, accountant, agent, or preparer can improperly obtain special consideration or action from the Department of Revenue or an employee thereof, or that he has improper access to sources of information within the Department of Revenue which are otherwise private, confidential, or nonpublic;

9. Approving for filing, or advising or aiding in the preparation of, a false or fraudulent Minnesota income tax return prepared by some other person, knowing the return is false or fraudulent;

10. Misappropriation of, or failure to properly and promptly remit, funds received from a client for the purpose of paying taxes or other obligations due the State of Minnesota;

11. Endorsement or negotiation of a client's check in payment of a refund of any tax, credit, penalty, or interest administered by the Commissioner of Revenue, without the client's prior endorsement. The preceding sentence shall not apply when the full amount of the check is deposited in the taxpayer's bank account for the benefit of the taxpayer;

12. Charging a client a fee based upon a percentage of the refund that the client is eligible to receive from the State of Minnesota, unless representation of the client reaches the contested stage, either in a formal administrative hearing or a court proceeding;

13. Attempting to influence, or offering or agreeing to attempt to influence, the official action of any employee of the Department of Revenue by the use of threats, false accusations, duress, or coercion, by the offer of any special inducement or promise of advantage, or by the bestowing of any gift, favor, or thing of value;

14. In connection with practice before the Department of Revenue, making false accusations or statements knowing them to be false, or circulating or publishing slanderous or libelous matter concerning the Department of Revenue or any of its employees;

15. Knowingly aiding and abetting another person to practice before the Department of Revenue during a period of disbarment or suspension of the other person;

16. For purposes of 1. through 15., the phrases "income tax" and "income tax return" include all matters referred to in B.2.

G. Disbarment and suspension procedures.

1. Authority to disbar or suspend. Pursuant to Minn. Stat. § 290.52, the Commissioner of Revenue, after due notice and opportunity for hearing, may suspend or disbar from further practice before the Department of Revenue any attorney, accountant, agent, or preparer who: is shown to be incompetent or disreputable; refuses to comply with the provisions of this rule; or in any manner willfully and knowingly defrauds, deceives, or misleads any taxpayer with respect to a claim or prospective claim involving the Department of Revenue.

2. Violation of rule. Any attorney, accountant, agent, or preparer shall be subject to disbarment or suspension from practice before the Department of Revenue for violation of any of the provisions contained in this rule.

3. Notification of violation of rule and issuance of warning. Whenever the Commissioner of Revenue has sufficient grounds to believe that any attorney, accountant, agent, or preparer has violated a provision of this rule, he shall notify the practitioner in writing of the specific violation which has been committed. The notification shall contain a warning to the practitioner that if the violation continues, or if any other violations are committed, the commissioner shall commence a proceeding for disbarment or suspension of the practitioner.

4. Commencement of disciplinary proceeding. Whenever the Commissioner of Revenue has sufficient grounds to believe that any attorney, accountant, agent, or preparer has failed to comply with a warning by continuing to violate any provision of this rule, he shall commence a proceeding for disbarment or suspension of the attorney, accountant, agent, or preparer. The commissioner's Notice of and Order for Hearing shall set forth the specific violations which the practitioner has committed, both prior and subsequent to the commissioner's warning, and shall make a recommendation as to the specific disciplinary action to be taken against the practitioner. The entire proceeding shall be governed by the procedure for contested case proceedings as provided in Minn. Stat. §§ 15.0411-15.0426 and in 9 MCAR §§ 2.201-2.299.

5. Voluntary suspension. An attorney, accountant, agent, or preparer, in order to avoid the commencement or conclusion of a disciplinary proceeding, may, by agreement with the Commissioner of Revenue, consent to suspension from

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practice before the Department of Revenue. The Commissioner of Revenue shall then suspend the practitioner in accordance with the disciplinary guideline set forth in 6.

6. Disciplinary guideline for violation of rule. Upon completion of the hearing in a contested case proceeding for disciplinary action brought by the Commissioner of Revenue against an attorney, accountant, agent, or preparer, if the hearing examiner finds that the practitioner has committed the violations specified in the commissioner's Notice of and Order for Hearing, and that disciplinary action is appropriate, the commissioner shall:

a. Suspend the practitioner from practicing before the Department of Revenue for a period of up to one year, if the proceeding brought against the practitioner is the first proceeding in which disciplinable misconduct has been found;

b. Suspend the practitioner for a period of up to five years if the proceeding brought against the practitioner is the second proceeding in which the disciplinable misconduct has been found; or

c. Disbar the practitioner from practicing before the Department of Revenue if the proceeding brought against the practitioner is at least the third proceeding in which disciplinable misconduct has been found.

For purposes of a., b., and c., a voluntary suspension pursuant to 5. is a proceeding in which disciplinable misconduct has been found. The commissioner shall base his decision as to disciplinary action on all the facts before him, along with any extenuating circumstances he deems relevant.

7. Effect of disbarment or suspension. If the commissioner's order against an attorney, accountant, agent, or preparer is for disbarment, the practitioner shall not thereafter be permitted to practice before the Department of Revenue, except to represent himself. Similarly, if the commissioner's order against an attorney, accountant, agent, or preparer is for suspension, the practitioner shall not thereafter be permitted to practice before the Department of Revenue during the period of suspension, except to represent himself. The disbarment or suspension of an individual, where the individual was employed by a firm or organization at the time his violation of this rule occurred, shall not affect the right of other members of the firm or organization to practice before the department.

8. Petition for reinstatement. If there has been a material change in circumstances after suspension or disbarment, a suspended or disbarred attorney, accountant, agent, or preparer may petition, in writing, the Commissioner of Revenue for reinstatement to practice before the Department of Revenue. The petition must be supported with documentation or testimony from a responsible third party as to the fitness, character and ability of the practitioner to resume practice. The commissioner shall review the petition and make his determination within 30 days as to whether the practitioner shall be reinstated. If the petition is granted by the commissioner, the practitioner may resume practice. If the petition is denied by the commissioner, no further petitions may be brought by the practitioner during the remainder of the suspension period, or for a period of five years if the practitioner has been disbarred.

Repealer. Income Tax rule 2052(4) is repealed.

Department of Revenue

Proposed Rules Governing Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

Notice of Hearing

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes, § 15.0412, subdivision 4, in the above-entitled matter in the Conference Room, 500 Rice Street, St. Paul, Minnesota on November 4, 1981, commencing at 10 a.m. and continuing until all persons or representatives of associations or other interested groups have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Jon Lunde, Office of Administrative Hearings, Room 300, 1745 University Avenue, Saint Paul, Minnesota, 55104, telephone (612) 296-5938, either before the hearing or within five working days after the close of the hearing. The hearing examiner may extend this time limit for a longer period; however, the extension cannot exceed 20 calendar days.

The rule hearing procedure is governed by Minnesota Statutes, §§ 15.0411 to 15.0417 and 15.052, and by 9 MCAR §§ 2.101 to 2.113 (Minnesota Code of Agency Rules). Any questions about procedure may be directed to the hearing examiner, Jon Lunde.

The proposed rules if adopted will effectively amend the current rules of the Department of Revenue relating to ad valorem (property) taxes imposed on utilities. The present rules deal generally with the valuation, allocation and apportionment of

property of electric, gas distribution, pipeline and cooperative electric companies. The proposed rules if adopted would: define certain terms; require utilities to report the cost of leased property; modify the cost approach to value by allowing electric companies an additional 1% depreciation, and gas distribution and pipeline companies an additional 2½% depreciation on the original cost of the companies' assets; increase the study period to be used when computing the "average cost per kilowatt of installed capacity" for steam and gas turbine generating plants; permit an allowance for pollution control equipment and an allowance for obsolescence to be conducted from the value added to the cost approach to value due to the computation of the "average cost per kilowatt of installed capacity" factor; detail the computation of these two allowances; modify the income approach to value by increasing the capitalization rate by 0.5%; specify the types of utilities that are to be valued on a "cost only" method; provide for the utilization of "obsolescence allowances" if a utility meets certain standards and detail the methods to be used to calculate these allowances; specify certain standards to be met by utilities in the retirement of property; require a utility to report certain information on property costs whenever a new taxing district is established; modify the base to be used for the apportionment of utility property to the various taxing districts; and eliminate the example section of the rules while incorporating the examples into the body of the rules.

One free copy of this notice and the proposed rules may be obtained by writing to G. D. Garski, Manager of State Assessed Property, Property Equalization Division, Second Floor, Centennial Office Building, Saint Paul, Minnesota, 55145, telephone (612) 296-5131. Additional copies will be available at the door on the date of the hearing.

The agency's authority to promulgate the proposed rules is contained in Minnesota Statutes, §§ 270.06 and 270.11, subdivisions 1 and 6.

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 Hearing Examiners. This statement of need and reasonableness will include a summary of all of the evidence which will be presented by the agency at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the statement of need and reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Notice: The proposed rule is subject to change as a result of the rule hearing process. The agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rule to participate in the rule hearing process.

Please be advised that Minnesota Statutes, chapter 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 Minnesota Statutes, § 10A.01, subdivision 11 (Supp. 1979) as any individual:

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

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

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, Saint Paul, Minnesota, 55155, telephone (612) 296-5615.

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

Clyde E. Allen, Jr.
Commissioner of Revenue

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Rules as Proposed

Chapter One: Valuation and Assessment of Electric, Gas Distribution, and Pipeline Companies (Utility Companies)

13 MCAR § 1.0001 Introduction. On October 19, 1973, the Minnesota Supreme Court in Independent School District No. 99, et al. v. Commissioner of Taxation, 297 Minn. 378, ruled that in estimating the market value of utility properties for ad valorem tax purposes, the assessing authorities must consider every element and factor affecting market value. The assessment formula used to value operating utility property since 1962, based solely on the original cost less limited depreciation and commonly known as the "Hatfield Formula," was thus invalidated as a rule of general application.

These ~~regulations~~ rules are promulgated to fill that void and reflect the manner in which the value of utility property will be estimated by utilizing data relating to the cost of the property and the earnings of the company owning or utilizing the property.

Since the Commissioner of Revenue is by statute the assessor of some of the utility property in the State of Minnesota and has supervisory powers ~~of~~ over all assessments of property, and may raise or lower values pursuant to Minn. Stat. ~~,~~ § 270.11, he will estimate the valuation of the entire system of a utility company operating within the state. The entire system will be valued as a unit instead of valuing the component parts, and the resulting valuation will be "allocated" or assigned to each state in which the utility company operates. Finally, by the process of apportionment, the portion allocated to Minnesota will be distributed to the various taxing districts within the state. ~~All~~ Most of the data used in the valuation, allocation, and apportionment process will be drawn from reports submitted to the Department of Revenue by the utility companies. These reports will include Minnesota Department of Revenue Annual Utility Reports (UTL Forms), Annual Reports to the Federal Energy Regulatory Commission and Annual Reports to the Interstate Commerce Commission. Periodic examinations of the supporting data for these reports will be made by the Department of Revenue.

The methods, procedures, indicators of value, capitalization rates, weighting percents, and allocation factors will be used as described in 13 MCAR §§ 1.0003~~-1.0007~~ 1.0006 for ~~1979~~ 1982 and subsequent years, or until, in the opinion of the Commissioner of Revenue, different conditions justify a change.

As in all property valuations the Commissioner of Revenue reserves the right to exercise his judgment whenever the circumstances of a valuation estimate dictate the need for it.

13 MCAR § 1.0002 Definitions. As used in this chapter, the following words, terms and phrases shall have the meanings given to them by this ~~regulation~~ rule, except where the context clearly indicates a different meaning.

A. Allocation. "Allocation" means the process of dividing the unit value of a utility company among the states in which the utility operates.

B. Apportionment. "Apportionment" means the process of distributing that portion of the utility company's unit value which has been allocated to Minnesota to the various taxing districts in which the utility company operates.

C. Book depreciation. "Book depreciation" means the depreciation shown by a utility company on its corporate books, and allowed the company by various regulatory agencies.

D. Capitalization rate. "Capitalization rate" means the relationship of income to capital investment or value, expressed as a percentage.

E. Electric company. "Electric company" means any company engaged in the generation, transmission, or distribution of electric power, excluding cooperatives and municipal corporations.

F. Gas distribution company. "Gas distribution company" means any company engaged in the distribution of natural or synthetic gas, excluding the cooperatives and municipal corporations.

G. Installed capacity. "Installed capacity" means the number of kilowatts a power plant is capable of producing as shown by the nameplates affixed to the generators by the manufacturer.

H. Integrated company. "Integrated company" means any company engaged in two or more utility operations within Minnesota, such as electric distribution and gas distribution, within the framework of one corporate structure.

I. Major generating plant. "Major generating plant" means any steam-electric power plant capable of generating 25,000 KW (Kilowatts) or more; or any hydro-electric, internal combustion, or gas turbine power ~~plan~~ plant capable of generating 10,000 KW or more.

J. Net operating earnings. "Net operating earnings" means earnings from the system plant of the utility after the deduction of operating expenses, depreciation, and taxes, but before any deduction for interest.

K. Non-formula assessed property. "Non-formula assessed property" means property of a utility which is valued by the local or county assessor rather than by the Commissioner of Revenue.

L. Operating property. "Operating property" means any property, owned or leased, except land that is directly associated

with the generation, transmission, or distribution of electricity, natural gas, gasoline, petroleum products, or crude oil. Examples of operating property include, but are not limited to, substations, transmission and distribution lines, generating plants, and pipelines. Land, garages, warehouses, office buildings, pole yards, radio communication towers, and parking lots are examples of non-operating property.

M. Pipeline company. "Pipeline company" means any company engaged in the transmission of natural gas, gasoline, petroleum products, or crude oil via a fixed line of pipes.

N. Standard factor. "Standard factor" means the number used as the basis of comparison when measuring the degree or amount of obsolescence inherent in the property (generating plant) being valued.

O. System plant. "System plant" means the total tangible property, real and personal, of a company which is used in its utility operations in all states in which it operates.

P. Throughput. "Throughput" means the amount of product measured in barrels, gallons, or cubic feet which passes through a pipeline.

~~O.~~ Q. Unit value. "Unit value" means the value of the system plant of a utility company taken as a whole without any regard to the value of its component parts.

~~P.~~ R. Weighted pipe line miles. "Weighted pipe line miles" means the product obtained by multiplying the number of miles of each size of a pipeline by the diameter in inches of each size. Example: a 6 mile pipeline ~~having~~ 3 miles ~~with a~~ of which is 10 ~~inch~~ inches in diameter and 3 miles ~~with a~~ of which is 30 ~~inch~~ inches in diameter would have a weighted miles product of 120.

13 MCAR § 1.0003 Valuation.

A. General. Because of the unique character of public utiltiy companies, such as being subject to stringent government regulations over operations and earnings, the traditional approaches to valuation estimates of property (cost, capitalized income and market) must be modified when utility property is valued. Consequently, for the ~~1979~~ 1982 and subsequent assessment years, until economic and technological factors dictate a change, the value of utility company property will be estimated in the manner provided in this chapter.

B. Market approach. Market value implies a price for which an entire public utility enterprise might reasonably change hands between willing and informed buyers and sellers. The term presupposes a market of normal activity, no urgency to buy or sell on the part of either the buyer or seller, and continued operation of the utility as a single entity. Public utility property is seldom transferred as a whole unit under these circumstances. Consequently, after consideration of this approach, it has been decided that valuation of utility properties by this approach is speculative and unreliable and will not be employed as a method of valuation for utility property at this time.

C. Cost approach. The cost factor that will be considered in the utility valuation formula is the original cost less depreciation of the system plant, and improvements, plus the original cost of construction work in progress on the assessment date. The original cost of any leased operating property used by the utility must be reported to the commissioner in conjunction with the annual utility report. If the original cost of the leased operating property is not available, the commissioner shall make an estimate of the cost by capitalizing the lease payments. Depreciation will not be allowed on construction work in progress. Depreciation will be allowed as a deduction from cost in the amount allowed on the accounting records of the utility company, as such records are required to be maintained by the appropriate regulatory agency.

Depreciation, however, shall not exceed the prescribed percentage of cost: for electric companies, ~~18~~ 19 percent; for gas distribution companies, ~~45~~ 47.5 percent; pipeline companies, ~~45~~ 47.5 percent.

~~When valuing electric company property the "average cost per kilowatt of installed capacity" will also be considered. Any excess of average cost per kilowatt of installed capacity over the actual cost of production plan (except land) multiplied by the kilowatts of installed capacity will be added to the original cost of the plant, and reduced by the same rate of depreciation applicable to the original cost. The average cost per kilowatt of installed capacity is computed by averaging the construction costs of production plant (except land) for major generating plants in the Continental U.S. by type of plant, as shown in the latest issues of the United States Department of Energy publications, Hydro-Electric Plant Construction Cost and Annual Production Expenses and Steam-Electric Plan Construction Cost and Annual Production Expenses and Gas Turbine Electric Plant Construction Cost and Annual Production Expenses. Average cost per kilowatt of installed capacity will be determined~~

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~~after excluding, federally constructed, multi-purpose projects, and nuclear electric generating plants. The periods to be used for computing the average will be as follows: hydroelectric plants, 15 years; steam electric plants; 10 years; gas turbine plants, 10 years.~~

~~The following examples illustrate this procedure. In both examples assume that the study of the most recent construction data available from Federal Power Commission publications indicates that the average cost per kilowatt of installed capacity in a fossil fuel steam plant is $150 per kilowatt. Each of the two plants is of this type.~~

~~1. Plant~~	~~#1~~		~~#2~~	
~~2. Installed capacity~~	~~100,000~~	~~KW~~	~~50,000~~	~~KW~~
~~3. Year in Service~~	~~1960~~		~~1940~~	
~~4. Cost of Plant~~	~~$15,200,000~~		~~$3,500,000~~	
~~5. Cost per KW~~	~~$152~~		~~$70~~	
~~6. Average cost per KW~~	~~$150~~		~~$150~~	
~~7. Excess (line 6-5)~~			~~$80~~	
~~8. Additional value (line 7 × 2)~~			~~$4,000,000~~	
			~~$4,000,000~~	

A modification to the cost approach to value will be considered by the commissioner when valuing electric utility property. The original cost of an electric utility's major generating plants will be increased if the cost of the plant falls below a certain standard. The standard to be used will be a national average of the cost per kilowatt of installed capacity. The cost per kilowatt of installed capacity is the total construction cost of the generating plant divided by the number of kilowatts the plant is capable of producing. The national average to be used will be computed by totaling the construction costs, excluding the cost of land, for major generating plants within the 48 contiguous United States. The total cost of the plants will be divided by the total generating capacity of the same plants to arrive at an average cost per kilowatt of installed capacity. A separate average will be computed for each of the following types of plants: gas turbine, hydro-electric, and steam-electric. The plants used in the calculation will exclude federally constructed, multi-purpose projects, and nuclear electric generating plants. The information used to compute the average will be drawn from the latest issues of the following United States Department of Energy publications: Hydro-Electric Plant Construction Cost and Annual Production Expenses, Steam-Electric Plant Construction Cost and Annual Production Expenses, and Gas Turbine Electric Plant Construction Cost and Annual Production Expenses.

The plants which will be used in the computation of the national average will be those plants built during the most recent 15 years included in the above named publications.

An example of this computation of the national average cost per kilowatt of installed capacity is as follows:

Steam-Electric Generating Plants

Plant	Plant Cost Excluding Land	Plant Capacity
A	$ 14,000,000	100,000 kw
B	13,000,000	90,000 kw
C	17,000,000	110,000 kw
D	14,500,000	80,000 kw
E	18,000,000	120,000 kw
F	10,000,000	70,000 kw
G	19,000,000	130,000 kw
H	9,000,000	60,000 kw
I	20,000,000	140,000 kw
J	8,000,000	50,000 kw
	$142,500,000	950,000 kw

Total plant cost ($142,500,000) divided by total plant capacity (950,000 kw) equals $150 average cost per kilowatt of installed capacity.

The national average cost per kilowatt of installed capacity will be compared to the specific cost per kilowatt of installed capacity for each of the major generating plants owned by the utility being valued. If the national average cost per kilowatt is greater than the subject plant cost, the subject plant will have additional dollars incorporated into its cost in order to raise its cost per kilowatt to the national average. If the subject plant's cost per kilowatt equals or exceeds the national average, no cost will be added.

The following example illustrates this procedure:

XYZ Utility
Steam-Electric Generating Plants

1. Plant	#1	#2
2. Installed Capacity	100,000 kw	50,000 kw
3. Year in Service	1970	1950
4. Cost of Plant (Exclusive of Land)	$15,200,000	$5,000,000
5. Specific Plant Cost per kw	$152	$100
6. National Average Cost per kw	$150	$150
7. Deficiency	none	$ 50
8. Additional Cost (Line 7 × Line 2)	none	$2,500,000

This additional cost to be added to the original cost of the specific plant will be reduced by two factors: an allowance for pollution control equipment and an allowance for obsolescence.

The allowance for pollution control equipment will be computed annually by totaling the construction costs, exclusive of land, of all major generating plants within Minnesota by type of plant. A total will also be made of the cost of the equipment in these plants which has been approved for tax exempt status in accordance with Minn. Stat. § 272.02, subd. 1, clause (15). This total will also be computed by type of plant. The total of the approved pollution control equipment will be divided by the total construction cost, exclusive of land, of the plants in order to calculate a percentage. This percentage will be the ratio of dollars spent for pollution control equipment to total dollars spent to construct a specific type of power plant. This percentage will then be used to reduce the gross additional cost to be added to the cost of the specific generating plant, as computed above. An example of this process is as follows:

Steam-Electric Plants Within Minnesota

Plant	Plant Cost Excluding Land	Cost of Approved Pollution Control Equipment
A	$15,200,000	$1,500,000
B	10,000,000	1,000,000
C	5,000,000	700,000
D	20,000,000	2,000,000
E	16,500,000	1,470,000
	$66,700,000	$6,670,000

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Total cost of approved pollution control equipment ($6,670,000) divided by total plant cost ($66,700,000) equals 10% ratio of pollution control equipment expenditures to total expenditures for generating plant construction.

XYZ Utility
Steam-Electric Plant #2

1. Additional Cost Due to Computation of Average Cost per kw of Installed Capacity	$2,500,000
2. 10% Allowance for Pollution Control Equipment	250,000
3. Additional Cost to be Added after Adjustment for Pollution Control Equipment	$2,250,000

The allowance for obsolescence which will be applied to the additional plant construction cost will be computed annually for hydro-electric and steam-electric generating plants. The information needed to compute the obsolescence factors will be drawn from the same publications that are used to compute the national average cost per kilowatt of installed capacity figure. Gas turbine plants will not have any obsolescence allowance applied to the additional cost added to the plants.

The obsolescence allowance for hydro-electric plants will be calculated through the use of a "plant factor." The plant factor is computed by dividing the number of kilowatt hours a generating plant actually produced in a year by the number of kilowatt hours the plant was capable of producing. The plant factor is normally expressed as a percentage. The mathematical expression of this factor is: net generation (kwh) divided by annual installed capacity (hours in a year × installed capacity (kw)). A standard plant factor will be computed for hydro-electric plants by averaging the ten plants within the 15 year study period used to compute the average cost per kilowatt of installed capacity with the highest plant factor. This standard will then be compared to an average of the most recent three years' plant factor of the subject plant. The amount the subject plant deviates from the standard is the amount of obsolescence which will be applied to the added cost.

An example of this obsolescence allowance computation is shown below.

Hydro-Electric Plants

Plant	Net Generation kwh (000)	Plant Capability kwh (000)	Plant Factor
A	400,150	755,000	53 %
B	300,040	577,000	52 %
C	250,000	480,000	52 %
D	600,000	1,250,000	48 %
E	896,000	1,600,000	56 %
F	700,000	1,400,000	50 %
G	507,000	975,000	52 %
H	450,000	1,000,000	45 %
I	376,000	800,000	47 %
J	810,000	1,800,000	45 %
		Average	50 %

XYZ Utility
Hydro-Electric Plant #4

Year	Net Generation kwh (000)	Plant Capability kwh (000)	Plant Factor
19XX	400,000	1,000,000	40 %
19XX	500,000	1,000,000	50 %
19XX	450,000	1,000,000	45 %
		Average	45 %

Hydro-electric plant #4 plant factor (45%) divided by standard plant factor (50%) equals 90%. Therefore, hydro-electric plant #4 deviates from the standard by 10%, or is 10% obsolete.

The obsolescence allowance for steam-electric generating plants will be computed annually using two indicators. The first

indicator will be the plant factor. The plant factor for steam-electric plants will be computed and applied in the same manner as the computation specified for hydro-electric plants above. The only difference will be that the information used for the computation will be drawn from the latest Steam-Electric Plant Construction Cost and Annual Production Expenses publication rather than the Hydro-Electric Plant publication. Plant factors of the ten best steam-electric generating plants within the 15 year study period will be averaged. This average will be compared to the most recent three year average plant factor for the subject plant. The subject plant's deviation from the standard plant factor is the amount of indicated obsolescence.

The second indicator which will be used to compute an obsolescence allowance for steam-electric generating plants will be a thermal efficiency factor. The source of information for this computation will also be the latest issue of the United States Department of Energy's publication, Steam-Electric Plant Construction Cost and Annual Production Expenses. Thermal efficiency for a generating plant is measured by the number of British thermal units (B.T.U.) required to produce one kilowatt hour. This efficiency rating can be obtained by dividing the number of kilowatt hours produced by a generating plant by the number of B.T.U.'s needed to produce this power. The number of B.T.U.'s used can be obtained by multiplying the units of fuel burned by the generating plant—tons of coal, gallons of oil, or cubic feet of gas—by the average B.T.U. content of the fuel unit. The standard thermal efficiency factor will be computed by averaging the thermal efficiency factor of the ten most efficient steam-electric generating plants within the 15 year study period used to compute the average cost per kilowatt of installed capacity. This standard thermal efficiency factor will then be compared to the thermal efficiency factor of the subject plant. The amount the subject plant deviates from the standard is the amount of obsolescence indicated by this factor.

The two obsolescence figures for the subject plant as indicated by both the plant and thermal efficiency factors will then be averaged. This resulting average is the obsolescence allowance which will be applied to the cost added to the subject plant as a result of the average cost per kilowatt of installed capacity computation. In no instance shall the original cost of a generating plant be reduced by an allowance for obsolescence unless its cost is increased through the use of the average cost per kilowatt of installed capacity computation.

The following examples illustrate the computation of: the standard thermal efficiency factor; obsolescence indicated by the application of this factor to the subject plant; average obsolescence for steam-electric generating plants; and obsolescence allowance adjustment of the added cost due to the use of the average cost per kilowatt of installed capacity for the subject plant.

Steam-Electric Generating Plants

Plant	Net Generation kwh (Millions)	BTU's Used (Millions)	BTU's per kwh
A	2,000	18,400,000	9,200
B	6,000	53,400,000	8,900
C	8,000	72,000,000	9,000
D	5,000	45,500,000	9,100
E	3,000	26,400,000	8,800
F	1,000	9,000,000	9,000
G	4,000	36,600,000	9,150
H	9,000	80,550,000	8,950
I	7,000	61,950,000	8,850
J	5,000	45,250,000	9,050
		Average	9,000

XYZ Utility Company
Steam-Electric Plant #2

Net Generations kwh (Millions)	BTU's Used (Millions)	BTU's per kwh
2,000	21,600,000	10,800

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Steam-electric plant #2 thermal efficiency factor (10,800 BTU's per kwh) divided by standard thermal efficiency factor (9,000 BTU's per kwh) equals 120%. Therefore, steam-electric plant #2 deviates from the standard by 20% or is 20% obsolete.

XYZ Utility Company
Steam-Electric Plant #2

1. Obsolescence Indicated by Plant Factor	10%
2. Obsolescence Indicated by Thermal Efficiency Factor	20%
3. Obsolescence Allowance (Average of 1 and 2)	15%
4. Additional Cost due to Computation of Average Cost per kw of Installed Capacity	$2,500,000
5. 15% Obsolescence Allowance	375,000
6. Additional Cost to be Added after Adjustment for Obsolescence	$2,125,000

The cost indicator of value computed in accordance with this ~~regulation~~ rule will be weighted for each ~~class~~ type of utility company as follows: electric companies, 85 percent; gas distribution companies, 75 percent; and pipeline companies, 75 percent.

The following example illustrates how the cost indicator of value would be computed for an electric company:

1. Utility Plant (Cost)	$200,000,000
2. Construction in Progress	5,500,000
3. Additional Value From Average Cost per K.W. Computation	2,000,000
4. Total Plant	207,500,000
5. Non-Depreciable Plant (Land, Intangibles, C.W.I.P.)	17,500,000
6. Depreciable Plant	190,000,000
7. Depreciation (Maximum 19%)	36,100,000
8. Total Cost Indicator of Value	171,400,000

D. Income approach to valuation. The income indicator of value will be estimated by weighting the net operating earnings of the utility company for the most recent three years as follows: most recent year, 40 percent; previous year, 35 percent; and final year, 25 percent. After considering, as far as possible, all conditions that may exist in the future that may affect the present annual return, including risk, life expectancy of the property, and cost of money, the capitalization rates used to compute value for the assessment will be: electric companies, ~~8.00~~ 8.5 percent; gas distribution companies, ~~8.25~~ 8.75 percent; and pipeline companies ~~8.50~~ 9 percent. The income indicator of value computed in accordance with this ~~regulation~~ rule will be weighted for each class of utility company as follows: electric companies, 15 percent; gas distribution companies, 25 percent; and pipeline companies, 25 percent.

The following example illustrates how the income indicator of value would be computed for a pipeline company:

	1980	1981	1982
1. Net Operating Income	$ 468,000	$ 385,700	$ 450,000
2. Capitalized Income @ 9%	5,200,000	4,285,600	5,000,000
3. Weighting Factor	25%	35%	40%
4. Weighted Capitalized Income	1,300,000	1,500,000	2,000,000
5. Total Income Indicator of Value			4,800,000

E. Unit value computation. The unit value of the utility company will be the total of the weighted ~~indicator~~ indicators of value.

The following is an example of the computation of the unit value for a pipeline company:

1. Cost Indicator of Value	$5,000,000 ×	75% =	$3,750,000
2. Income Indicator of Value	$4,800,000 ×	25% =	$1,200,000
3. Unit Value of Pipeline Company		100%	$4,950,000

F. ~~Valuation of utility property of cooperatives. Cooperative associations shall have their utility property valued on the basis of historical cost only since they do not operate on the tradition profit making basis. Depreciation will be allowed as a deduction from cost at increments of 2.5 percent per year but the maximum shall not exceed 25 percent of property used in the generation, transmission or distribution of electric power.~~ Valuation of utility property of cooperatives and other non-common carrier or non-regulated utilities. Cooperative associations and other types of utilities which do not operate in the traditional profit making mode, are not common carriers, or are non-regulated, will have their utility property valued on the basis of historical cost only. Depreciation will be allowed as a deduction from the historical cost in increments of 2.5 percent per year, but the maximum depreciation allowed shall not exceed 25 percent of the cost of the utility operating property. Additions to existing utility property will be depreciated 2.5 percent per year until they reach the 25 percent maximum. Retirements of utility property will be deducted from the cost basis at the appropriate depreciation level of the retired property.

The following example illustrates this process for an electric cooperative association:

1. Cost of Substation	$1,000,000
2. Value 1st year @ 97.5%	975,000
3. Value 2nd year @ 95%	950,000
4. Value 3rd year @ 92.5%	925,000
5. Value 4th year @ 90%	900,000
6. Value 5th year @ 87.5%	875,000
7. Value 6th year @ 85%	850,000
8. Value 7th year @ 82.5%	825,000
9. Value 8th year @ 80%	800,000
10. Value 9th year @ 77.5%	775,000
11. Value 10th year @ 75%	750,000
12. Value 11th and succeeding years at 75%	750,000

G. Obsolescence allowances. The commissioner may adjust the value calculated pursuant to this rule through the use of an obsolescence allowance. This allowance is intended to be used in order to recognize the effect the curtailment or termination of a pipeline's source of supply may have on its value. In order for a pipeline or a gas distribution company to be eligible for such an allowance they must meet certain criteria or standards. These standards are listed below. It is mandatory that standards 1, 2 and 3 be met by the utility. It is highly desirable that standards 4 and 5 also be met.

1. The utility must adequately demonstrate, to the satisfaction of the commissioner, that its source of supply for gas or oil will be terminated within the next ten years.

2. The utility must be at, or above, the maximum depreciation allowance as specified by C.

3. The utility must have made application to the appropriate regulatory agency for increased depreciation allowances, and the application must not have been denied or rejected.

4. The utility must not have made any major capital expenditures within the last three years.

5. The utility must not have sold any long term bonds or signed any long term notes within the last three years.

If the utility has made major capital expenditures or entered into long term debt obligations within the last three years, a satisfactory explanation of the rationale for these actions must be made to the commissioner before an allowance for obsolescence will be granted.

The obsolescence allowances which may be applied to the utility's value will be calculated in the following manner:

Method 1. A 5 year average of the utility's annual throughput will be calculated. The throughput for the assessment year will be compared to this average and a percentage calculated. This percentage will be applied to the cost indicator of value calculated pursuant to C. in order to adjust the indicator for obsolescence. The adjusted cost indicator of value will be used in the calculation of the unit value pursuant to E. The following is an example of this procedure:

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Year	Throughput in Barrels
1977	1,200,000
1978	1,300,000
1979	1,150,000
1980	1,100,000
1981	1,050,000
	5,800,000 Total
	1,160,000 Average Throughput

1. 1982 Throughput	1,000,000 Barrels
2. Percent of 1982 Throughput to 5 Year Average Throughput	86%
3. Cost Indicator of Value	$6,300,000
4. Cost Indicator Adjusted for Obsolescence	$5,418,000

Method 2: The book depreciation shown on the books and accounts of the utility will be compared to the depreciation allowed by C. If the book depreciation exceeds the maximum depreciation allowance, 50% of the excess depreciation will be used in the calculation of the cost indicator of value. An example of this calculation is as follows:

1. Book Depreciation	$6,000,000
2. Maximum Allowable Depreciation	4,750,000
3. Excess Depreciation	1,250,000
4. 50% of Excess Depreciation	$ 625,000
5. Utility Plant	$11,000,000
6. Construction Work in Progress	50,000
7. Total Plant	11,050,000
8. Non-Depreciable Plant (Land, CWIP)	1,050,000
9. Depreciable Plant	10,000,000
10. Depreciation (Maximum 47.5%)	4,750,000
11. Obsolescence Allowance	625,000
12. Cost Indicator of Value	5,675,000

Method 3. The income indicator of value computed in accordance with D. will be calculated by capitalizing the utility's 3-year weighted net operating earnings for a specific term of years rather than into perpetuity. The term of years to be used will be the number of years remaining until the expected expiration of the utility's source of supply for product (oil, gas), or the number of years remaining until the utility's major assets (pipeline, pump stations, storage tanks, and similar assets) are fully depreciated, whichever is greater. An example of this capitalization process is as follows:

	1979	1980	1981
1. Net Operating Earnings	$1,320,000	$1,000,000	$800,000
2. Weighting	25%	35%	40%
3. Weighted Net Operating Earnings	$330,000	$350,000	$320,000
4. Total Weighted Net Operating Earnings		$1,000,000	
5. Terms of years until major assets are fully depreciated			8
6. Capitalization rate pursuant to 13 MCAR § 1.0003 D.			9%
7. Capitalization rate converted to term of 8 years			18.0674%
8. Capitalized Income/Income Indicator of Value			$5,534,831

The commissioner shall apply to the valuation process whichever of the three obsolescence methods is most appropriate in order to equitably recognize the effect of obsolescence on the utility's value.

H. Retirements. Utility operating property may be retired from the utility system while still in place if certain criteria are met:

1. The property must be physically disconnected from the utility system. In the case of electrical plants, the

disconnection or dismantling of wires, cables, connectors, or transformers would constitute physical disconnection. In the case of pipelines, the disconnection of pipes, valves, or fittings would be evidence of physical disconnections.

2. An affidavit of retirement should be filed by the utility with the commissioner at least 30 days prior to the assessment date. This affidavit should indicate the facility being retired and the date it was taken out of service.

The utility should make every effort to inform the commissioner of pending major retirements. The commissioner in turn shall notify the county assessor of impending major retirements as soon as this information becomes available to the department.

Utility property which is retired in place shall continue to be taxed for ad valorem purposes; however, its market value shall not be determined on the basis of its value as utility operating property.

If a utility should choose to temporarily retire a facility pending the development of an alternate fuel, greater demand, increased source of supply or some other valid reason, the cost of this facility must be transferred to the appropriate regulatory agency's account entitled "Held for Future Use." Standby facilities will not be considered to be temporarily retired unless their costs are carried in this account. Temporarily retired utility facilities will be valued taking into account a number of factors including: age of the facility, type of facility, amount of maintenance and additional costs needed to restore the facility to operational status, length of retirement, and earning potential of the facility. In no instance shall a temporarily retired facility be valued lower than if the facility were considered non-operating utility property.

13 MCAR § 1.0004 Allocation.

A. General. After the unit value of the utility property has been estimated, the portion of value which is attributable to Minnesota must be determined. This process of dividing the unit value of a utility company among the states in which the utility operates is called allocation. Each of the factors in the allocation formula is assigned a weighted percentage to denote the relative importance assigned to that factor. The resulting sum of the weighted factors multiplied by the unit value yields the valuation of the utility property which will, after the adjustments described in 13 MCAR § 1.0005, be subject to ad valorem tax in the State of Minnesota.

The factors to be considered in making allocations of unit value to Minnesota for the utility companies and the weight assigned to each factor for each class are specified in this ~~regulation~~ rule.

B. Electric companies. The original cost of the utility property located in Minnesota divided by the total original cost of the property in all states of operation is weighted at 90 percent. Gross revenue derived from operations in Minnesota divided by gross operations revenue from all states is weighted at ten percent.

The following example illustrates this formula, assuming a unit value of $20,000,000.

1. Minnesota Plant Cost	~~($115,000,000)~~	x .90 = 50.49%
2. System Plant Cost	~~($205,000,000)~~	
3. Minnesota Gross Revenue	~~(40,000,000)~~	x .10 = 3.8%
4. System Gross Revenue	~~($105,000,000)~~	
5. Total Percentage Allocable to Minnesota		54.29%
6. Unit Value of System Plant		$20,000,000
7. Amount of Value Allocable to Minnesota		$10,858,000

C. Gas distribution companies. The allocation of value of gas distribution companies shall be made considering the same factors as are used to determine the allocation of value of electric companies. The weight given to the original cost factor will be 75 percent, and gross revenue shall be weighted 25 percent.

D. Pipeline companies. In addition to the cost factor and the gross revenue factor, the factor of weighted pipeline miles shall be considered in allocating the value of pipeline companies. Weighted pipeline miles means the number of miles of pipeline multiplied by the diameter of the pipe, measured in inches. To illustrate, a pipeline 6 miles long has 3 miles of pipe with a diameter of 10 inches and 3 miles of pipe with a diameter of 30 inches. The weighted pipeline miles is 120.

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3 miles × 10″ diameter = 30
3 miles × 30″ diameter = 90
Weighted pipeline miles = 120

The following example ~~illustrate~~ illustrates the allocation of value of property of a pipeline company and the weights given to each factor~~:~~:

1. Minnesota Plant Cost	~~($13,500,000)~~	x .75 = 25.76%
2. System Plant Cost	~~($39,300,000)~~	
3. Minnesota Gross Revenue	~~($ 2,980,000)~~	x .05 = 1.60%
4. System Gross Revenue	~~($ 9,300,000)~~	
5. Minnesota Weighted Pipeline Miles	~~(9,500)~~	x .20 = 7.01%
6. System Weighted Pipeline Miles	~~(27,100)~~	
7. Total Percentage Allocable to Minnesota		34.37%

13 MCAR § 1.0005 Adjustments for non-formula assessed or exempt property.

A. After the Minnesota portion of the unit value of the utility company is determined, any property which is non-formula assessed or which is exempt from ad valorem tax, will be deducted from the Minnesota portion of the unit value. Only that qualifying property located within the State of Minnesota may be excluded.

B. The following properties will be valued by the local or county assessor and, therefore, the formula provided herein for the valuation of utility property will not be applicable for such property~~:~~:

1. Land;
2. Non-operating property;
3. Rights of way.

C. The Minnesota portion of the unit value will be reduced by the original cost of ~~these items except that~~ land and rights of way. In the case of non-operating property, the deduction shall be original cost, less the rate of depreciation applicable in the valuation process pursuant to 13 MCAR § 1.0003.

D. A deduction from the Minnesota portion of the unit value shall also be made for property, real or personal, which is exempt from ad valorem tax. For instance, pollution control equipment for which an exemption has been granted is exempt. A deduction from the Minnesota portion of the unit value shall be made at original cost, less the applicable rate of depreciation used in the valuation process pursuant to 13 MCAR § 1.0003. The value of personal property, such as office machinery and vehicles, which is not taxed, shall also be excluded from the Minnesota portion of the unit value. The deduction shall be at original cost less the applicable rate of depreciation utilized in the valuation process.

The following example illustrates how these items are deducted from the Minnesota portion of the unit value.

1. Minnesota Portion of Unit Value		$5,000,000
2. Excludable Items—Nondepreciable		
a. Land Assessed Locally		3,000
b. Land Rights		1,000
3. Excludable Items—Depreciable		
a. General Plant Items	$10,000	
b. Pollution Control Equipment	10,000	
c. Gross Depreciable Items	20,000	
d. Depreciated at 25%	5,000	
e. Net Depreciable Exlucable Items		15,000
4. Total Excludable Items		20,000
5. Minnesota Apportionable Value		4,980,000

E. The utility company shall have the burden of proof to establish that the value of any property should be excluded from the

Minnesota portion of the unit value. Accordingly, the utility company shall have the responsibility to submit, in the form required by the Commissioner of Revenue, such schedules of exempt or non-formula assessed property as he may require.

13 MCAR § 1.0006 Apportionment.

A. After the unit valuation of the utility company has been allocated to the State of Minnesota and has been adjusted pursuant to 13 MCAR § 1.0005, the determined amount shall be apportioned or distributed to the taxing districts in Minnesota in which the company operates. This apportionment will be made by the Commissioner of Revenue on the basis of information submitted by the utility companies in annual reports filed with the commissioner.

B. The following information must be submitted for each taxing district:

1. The market value of the company's operating property by classification, as reflected in the last assessment, including the cost of leased taxable property.

2. The original cost of the company's operating property by classification, including the cost of leased taxable property.

3. The original cost of any new additions since the last assessment, including work in progress on the assessment date.

4. The market value of any retirements made after the last assessment, as reflected in that assessment.

5. The original cost of any retirements made after the last assessment.

6. Whenever a new taxing district is established, the information submitted by the utility companies for the taxing district must be submitted in the same form as enumerated in 1.-5. If the utility, because of administrative difficulty, is forced to make estimates of values and costs for property within new taxing districts, these estimates must be approved by the commissioner.

C. The total market value of each company's operating utility property in Minnesota shall be divided by the ~~larger~~ greater of:

1. The last market value of ~~each~~ the company's operating utility property in each taxing district, plus original cost of new construction, reduced by the last market value of property retired since the last assessment.

2. The original cost ~~x 75 percent~~ together with any additional cost computed in accordance with 13 MCAR § 1.0003 C. of ~~each~~ the company's operating utility property in each taxing district plus original cost of new construction reduced by the original cost of property retired since the last assessment multiplied by the percentage as specified below.

For the 1982 assessment year the original costs shall be multiplied by 77.5%.

For the 1983 assessment year the original costs shall be multiplied by 80%.

For the 1984 assessment year the original costs shall be multiplied by 82.5%.

For the 1985 assessment year the original costs shall be multiplied by 85%.

For the 1986 assessment year the original costs shall be multiplied by 87.5%.

For the 1987 assessment year the original costs shall be multiplied by 90%.

For the 1988 assessment year the original costs shall be multiplied by 92.5%.

For the 1989 assessment year the original costs shall be multiplied by 95%.

For the 1990 assessment year the original costs shall be multiplied by 97%.

For the 1991 assessment year the original costs shall be multiplied by 100%.

D. For this purpose, the last market value and the last assessment shall mean the latest assessment immediately prior to the current assessment. The portion of unit value to be assigned to each taxing district will be the resulting percentage multiplied by the Minnesota portion of the unit value, as adjusted pursuant to ~~13 MCAR § 1.0006~~ this rule.

~~E. If the market value of any parcel of property assessed pursuant to this chapter is increased, the increase entered on the assessment books shall be subject to the limitation provided in Minn. Stat. § 273.11, Subd. 2. The amount of decrease in~~

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~~market value of such property, exclusive of property retired or destroyed since the last assessment, shall not exceed ten percent of the value in the preceding assessment.~~

Repealer. Rule 13 MCAR § 1.0007 is repealed.

Department of Natural Resources

Migratory Waterfowl Sanctuary Order No. 29

Regulations Designating Certain Waters as Migratory Waterfowl Feeding and Resting Areas during the Open Season for the Year 1981

Petitions having been filed with the Commissioner of Natural Resources of the State of Minnesota by the number of petitioners required by law, who assert that they are licensed resident Minnesota hunters, and that certain designated waters constitute substantial feeding and resting grounds for migratory waterfowl, I, Joseph N. Alexander, Commissioner of Natural Resources, pursuant to authority vested in me by law, having duly investigated and considered said matter and having found said assertions as to said waters hereinafter described to be correct, and that it is in the best interests of proper game management to have the same set aside as migratory waterfowl feeding and resting areas, prescribe the following regulations relating thereto:

Section 1. All waters on Upper Rice Lake in Clearwater County, Bear Lake in Freeborn County, Squaw Lake in Itasca County, South Heron Lake in Jackson County, and Lake Johanna in Pope County are hereby designated as migratory waterfowl feeding and resting areas and shall be duly posted as such.

Sec. 2. All of Lake Christina in Grant and Douglas Counties except that part lying southerly of a straight line described as follows: Beginning at the easterly terminus of the north line of Government Lot 3, Section 12, Township 130 North, Range 41 West, at the water's edge of Lake Christina; thence easterly to the water's edge at the northwesterly point of the Peninsula of Government Lot 1, Section 8, Township 130 North, Range 40 West, that projects into said lake, is hereby designated as a migratory waterfowl feeding and resting area and shall be duly posted as such.

Sec. 3. All that portion of Marsh Lake in Big Stone, Lac qui Parle and Swift Counties lying easterly and southeasterly of a line beginning at that point where the west section line of Section 10, Township 120 North, Range 44 West, meets the lake water line; thence southeasterly approximately 370 rods to the southwest corner of Egret Island located in Section 15, Township 120 North, Range 44 West; thence southeasterly approximately 340 rods to a point where the east section line of Section 22, Township 120 North, Range 44 West, intersects the water line of south shore of the lake, is hereby designated as a migratory waterfowl feeding and resting area and shall be posted as such.

Sec. 4. All that portion of Lake Lizzie in Ottertail County lying in Sections 3, 4, 5, 6, 7, 8 and 9, Township 136 North, Range 42 West, is hereby designated as a migratory waterfowl feeding and resting area and shall be posted as such.

Sec. 5. When so posted, it shall be unlawful for any person, other than uniformed Natural Resources officers and other agents of the Commissioner in the performance of their official duties, or disabled or handicapped persons who, under permit of the Commissioner, may use electric motors of not over 24 pounds of thrust, to use upon said Upper Rice, Bear, Squaw, South Heron, Johanna, or upon such parts of Christina, Marsh, and Lizzie Lakes designated as feeding and resting areas, any kind of motor-propelled boat, raft, watercraft or aircraft during the open migratory waterfowl season.

Dated at Saint Paul, Minnesota, this 16th day of September, 1981.

Joseph N. Alexander, Commissioner
Department of Natural Resources

Department of Natural Resources

Game Refuge Order No. 410

Order Establishing the Glendalough Statutory Waterfowl Refuge, Douglas County

TO WHOM IT MAY CONCERN:

WHEREAS, a petition having the required number of signatures has been presented to the Director of the Division of Fish and Wildlife, State of Minnesota, requesting that the following described lands in Ottertail County Minnesota be established as a state waterfowl refuge.

Southwest ¼ of Northwest ¼, Government Lots 1, 2, 3, 4, 5 and 7 (except that part of said Government Lot 5 lying east of the private road as presently located on said Government Lot 5) of Section 13, Township 133, Range 40;

Government Lots 1 and 2 of Section 14, Township 133, Range 40;

Government Lots 1, 2, 3, 4, 5, 6 and 7 (including that part of said Government Lot 4 platted as Highland Park Beach) of Section 18, Township 133, Range 39.

WHEREAS, all of the owners, lessees or persons in possession of the above described lands have joined in said petition; and

WHEREAS, it has been found that public interest would be best served by the establishment of this waterfowl refuge;

NOW, THEREFORE, UNDER AUTHORITY OF MINNESOTA STATUTES 1981, SECTION 99.25, SUBDIVISIONS 3 AND 6A, IT IS ORDERED THAT THE ABOVE DESCRIBED AREA BE AND IS ESTABLISHED AS A STATUTORY WATERFOWL REFUGE TO BE KNOWN AS THE GLENDALOUGH STATUTORY WATERFOWL REFUGE, OTTERTAIL COUNTY, MINNESOTA. THIS ORDER BECOMES EFFECTIVE UPON DUE PUBLICATION THEREOF AND COMPLETION OF POSTING IN ACCORDANCE WITH LAW.

Dated at Saint Paul, Minnesota
this 9th day of September, 1981.

Joseph N. Alexander, Commissioner
Department of Natural Resources
By: Jerome Kuehn, Acting Director
Division of Fish and Wildlife

Department of Natural Resources

Commissioner's Order No. 2105

Amending Commissioner's Order No. 2100 Regulating the Taking of Certain Furbearers

Pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, hereby prescribe the following amendments to Commissioner's Order No. 2100 regulating the taking of certain furbearers.

Section 1. Sec. 3, paragraph b., of Commissioner's Order No. 2100 is amended to read as follows:

b. Bag Limits. Residents may possess raccoon without limit. Any person who is not a resident of Minnesota may not take or possess more than eight raccoon per season.

Sec. 2. Sec. 6, paragraph e., Sec. 7, paragraph d., and Sec. 8, paragraph b.3., are all deleted.

Sec. 3. Sec. 9 of Commissioner's Order No. 2100 is amended to read as follows:

No person shall place, set, or operate a trap unless his or her name and either address or driver's license number is etched legibly onto the trap or onto a metal tag no less than 30 gauge in thickness which is welded, brazed or soldered to the trap or affixed to the trap with a tightly twisted wire or solid metal ring.

Sec. 4. Sec. 14 of Commissioner's Order No. 2100 is amended to read as follows:

Each lynx, bobcat, fisher and otter mut be presented, by the person taking it, to a conservation officer for registration before the pelt is sold, but in no event more than 48 hours after the season closes. The pelt shall have been removed from the carcass and the carcass shall be surrendered to the conservation officer. Each fisher shall be skinned so that one front foot remains intact and attached to the pelt.

Sec. 5. Sec. 20 of Commissioner's Order No. 2100 is amended to read as follows:

No person shall be accompanied by a dog or dogs while engaged in tending or setting traps for protected wild animals, unless such dog or dogs are harnessed and attached to a sled or securely tethered to a tree or other permanent device with a leash of no more than 15 feet in length.

Except as provided herein, all provisions of Commissioner's Order No. 2100 shall remain in full force and effect.

Dated at Saint Paul, Minnesota, this 16th day of September, 1981.

Joseph N. Alexander
Commissioner of Natural Resources

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Department of Natural Resources

Commissioner's Order No. 2107

Amending Commissioner's Order No. 2102 Regulating Hunting and Trapping in State Game Refuges, Public Hunting Grounds, Wildlife Management Areas, National Wildlife Refuges and State Parks

Pursuant to authority vested in me by law, I, Joseph N. Alexander, Commissioner of Natural Resources, hereby prescribe the following amendments to Commissioner's Order No. 2102 regulating hunting and trapping in State Game Refuges, Public Hunting Grounds, Wildlife Management Areas, National Wildlife Refuges and State Parks.

Section 1. Sec. 1. Subd. 2 of Commissioner's Order No. 2102 is amended to read as follows:

Trapping is authorized by permit only, issued by the Area Manager, on the following public hunting grounds: Carlos Avery in Anoka and Chisago Counties; Hubbel Pond in Becker County; Red Lake in Beltrami and Lake of the Woods Counties: Talcot Lake in Cottonwood and Murray Counties; Mille Lacs in Mille Lacs and Kanabec Counties; Lac qui Parle in Big Stone, Lac qui Parle, Swift and Chippewa Counties; Orwell in Ottertail County; Roseau River in Roseau County; Thief Lake in Marshall County; Rothsay in Wilkin County; and Whitewater in Olmsted, Wabasha and Winona Counties. If the Area Manager determines that the number of trapping permits issued must be limited in order to avoid undo depletion of the furbearer resource or to prevent excessive crowding of trappers, he may establish any practicable method, including a drawing, for impartially determining the persons who may trap. The Area Manager may reject the application for a trapping permit from any trapper who has failed to submit a trapping report for the previous trapping season.

Sec. 2. Sec. 1. Subd. 7 of Commissioner's Order No. 2102 is amended to read as follows:

Hunting on certain portions of Lac qui Parle, Thief Lake, Elm Lake, Roseau River and Talcot Lake Wildlife Management Areas is controlled as specified in Section 3.

Sec. 3. Sec. 2. Subd. 5 of Commissioner's Order No. 2102 is amended to read as follows:

The hunting of migratory waterfowl adjacent to certain segments of the Rochester, Roseau River, Lac qui Parle, and Talcot Lake Game Refuges is controlled as specified in Section. 3.

Sec. 4. Sec. 2 of Commissioner's Order No. 2102 is amended by adding a new Subd. called Subd. 6 to read as follows:

The Fox Lake Game Refuge, in Martin County, is open to the taking of Canada geese from October 3 to October 7, 1981, both dates inclusive, within the established goose regulations for the zone in which it is located.

Sec. 5. Sec. 3. Subd. 1 of Commissioner's Order No. 2102 is amended by adding a new paragraph called j. to read as follows:

On the Talcot Lake Game Refuge and Sanctuary in Cottonwood County, the controlled hunting zone shall include the area 200 yards out from the following described boundary:

Beginning along County State Aid Highway (CSAH) 7, Cottonwood County at the center of Sec. 17, Township 105 North, Range 38 West; thence south along CSAH 7 to State Trunk Highway (STH) 62; thence west along STH 62 to the intersection with the Township Road at the northwest corner of Section 32, Township 105 North, Range 38 West.

Sec. 6. Sec. 3 of Commissioner's Order No. 2102 is amended by adding a new Subdivision, called Subd. 7, to read as follows:

Within the Talcot Lake controlled hunting zone the following regulations shall apply to waterfowl hunters during the open goose season.

a. Hunting station occupancy is limited to no more than three persons.

b. The resident wildlife manager or the area wildlife manager may limit all persons hunting at all hunting stations within a controlled hunting zone or at any hunting station within a zone to one day of hunting in every eight if he determines that such is necessary to provide for the equitable allocation of hunting opportunities. After making such a determination, the manager shall daily stamp the small game hunting license or firearms safety certificate of every person at each restricted hunting station with the date of such person's hunt. Persons with licenses stamped pursuant to this paragraph may hunt at any restricted station on the day stamped but shall not occupy any such station for the next seven days. Stations subject to the restrictions imposed by this paragraph shall be so posted. The manager shall remove any such restriction when he determines that it is no longer necessary for the purpose specified above.

c. No persons shall occupy a shooting station within the controlled hunting zone except when their vehicles are occupying numbered parking stalls in a designated parking lot in the controlled hunting zone.

d. Hunters shall hunt only at the designated hunting stations having numbers corresponding to their parking stall number.

e. No person shall park in or otherwise occupy any parking stall in the designated parking lot or occupy any designated hunting station during any two consecutive days.

f. No person shall occupy a designated hunting station or park in or otherwise occupy the designated parking lot in the controlled hunting zone during the period from 10:00 P.M. until 5:00 A.M. the following day.

g. No trailers of any kind shall be allowed in the designated parking lot.

h. All guns must be unloaded and cased except within 10 feet of a hunting station.

i. A hunting party shall vacate its shooting station and leave the controlled hunting zone after the daily limit of Canada geese has been taken.

Except as provided herein, all provisions of Commissioner's Order No. 2102 shall remain in full force and effect.

Dated at Saint Paul, Minnesota, this 16th day of September, 1981.

Joseph N. Alexander, Commissioner
Department of Natural Resources

ADOPTED RULES

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

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

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

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

Department of Agriculture
Plant Industry Division

Adopted Rules Governing Seed Potato Certification (3 MCAR §§ 1.0127-1.0135) and Repeal of Agr 121-126

The rules published and proposed at *State Register*, Volume 5, Number 48, pp. 1913-1922, June 1, 1981 (5 S.R. 1913) are now adopted, with the following modifications:

Rules as Adopted

3 MCAR § 1.0127 Purpose and authority. Rules 3 MCAR §§ 1.0127-1.0135 provide standards for the inspection, certification, production, and marketing of certified seed potatoes in the State of Minnesota. The authority to adopt these rules is contained in Minn. Stat. § 21.118 ~~(1980)~~.

3 MCAR § 1.0128 Definitions. As used in 3 MCAR §§ 1.0127-1.0135, the following defintions apply unless the context clearly indicates otherwise.

D. "Inspected" has the meaning given it in Minn. Stat. § 21.111, subd. 2 ~~(1980~~.

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E. "Seed potatoes" has the meaning given it in Minn. Stat. § 21.111, subd. 5 ~~(1980)~~.

F. "Certified" has the meaning given it in Minn. Stat. § 21.111, subd. 3 ~~(1980)~~.

3 MCAR § 1.0129 General guidance. The provisions of this section govern the production of potatoes for use as certified seed potatoes.

A. Seed potato certification. In order to produce certified seed potatoes, a grower must comply with the following procedures:

1. Potatoes entered for certification shall be inspected while growing in the field and again after harvest at the time of shipment. Certification shall be based upon visual inspection by the commissioner of sample plants and tubers from each field and lot. Certificates shall be issued to show the varietal purity, freedom from disease, ~~and/or~~ and physical defects of the potatoes at the time of inspection.

D. Certified seed potato grades. Grades of certified seed potatotes are established according to the physical defects of the tubers. There are three grades used for shipping Minnesota certified seed potatoes.

2. The red tag certified seed potato grade is the second grade. This grade allows more physical defects of the tubers than the blue tag certified seed potato grade. It may be used by growers of Foundation certified, Approved certified, and Certified seed ~~potato growers~~ potatoes. The red tag grade may also be used for intrastate and interstate shipments of certified seed potatoes.

3 MCAR § 1.0130 Application and eligibility for inspection and certification. The following procedures shall govern:

A. Application for inspection.

1. All potatoes planted on a farm shall be eligible and shall be entered for certification.

2. Application for inspection shall be made before June 16 each year on forms furnished by the commissioner or a seed potato certification inspector. Applications postmarked after June 15 but before July 1 shall be charged a fifty cents per acre late registration fee. No applications shall be accepted that are postmarked later than June 30. The commissioner may extend the deadline due to special circumstances ~~affecting~~, such as natural disasters, which make it impractical or impossible for planting to be completed by the deadline and which affect an area or large number of growers.

5. No application for inspection shall be accepted from a grower in any community or county in which there is not sufficient acreage ~~to warrant the expense of an inspection~~ for the total inspection fee charges to cover the cost of wages and expenses of the inspectors providing the inspection service. Determination of sufficient acreage shall be made by the commissioner.

B. Seed potatoes eligible for Minnesota certification planting. A field shall not be inspected for certification unless both the seed potato variety and the particular lot planted have the authorization of the commissioner. ~~Any well established, named, commercial variety shall be considered for certification if the variety has been described as to vine and tuber characteristics in a journal recognized by the commissioner and in accordance with the recommendations of the Patoto Association of America~~ In considering seed potato varieties for authorization for certification planting, the commissioner shall consider scientific evidence and expert opinion. To be eligible for certification planting, seed potatoes shall be one of the following:

1. From Minnesota growers:

a. Foundation certified seed potatoes;

b. Approved certified seed potatoes; or

c. Certified seed potatoes. A grower may replant his own certified seed potatoes. The commissioner may authorize the planting of purchased certified seed potatoes if there is no source of Foundation certified or Approved certified seed potatoes available to the grower.

3 MCAR § 1.0135 Minnesota certified seed potato grades and tolerances.

A. Minnesota certified seed potato grades. Before becoming eligible for grading as certified seed potatoes, the requirements of 3 MCAR §§ 1.0130 and 1.0131 shall be met. In addition, Foundation certified seed potatoes shall meet the requirements of 3 MCAR § 1.0132. Approved certified seed potatoes shall meet the requirements of 3 MCAR § 1.0133. Grading and tagging or issuance of a bulk certificate are the final steps in the certification process.

1. Minnesota blue tag certified seed potato grade. To be graded as Minnesota blue tag certified seed potatoes, the potatoes shall meet the following requirements:

a. The potatoes shall be, at time of final inspection, one variety; fairly well-shaped; free from bacterial ring rot, powdery scab, freezing, black heart, and soft rot or wet breakdown; and free from injury by surface or pitted scab, and from

damage caused by dirt or other foreign matter, second growth, growth cracks, air cracks, cuts, shriveling, sprouts, pitted scab, surface scab, russet scab, dry rot, other diseases, insects or worms, external discoloration caused from loss of skin, mechanical or other means, and from serious damage caused by sunburn, hollow heart, or internal discoloration (other than hollow heart).

b. Size. For round or intermediate shaped varieties, the maximum size shall be not more than 12 ounces and, unless otherwise specified, the minimum size shall be not less than 1⅞ inches in diameter. For long varieties, the maximum size shall be not more than 14 ounces and, unless otherwise specified, the minimum size shall be not less than 1¾ inches in diameter. For all varieties, size "B", the minimum diameter shall be not less than 1½ inches and the maximum size shall be not more than 2¼ inches in diameter.

c. Lot tolerances. In order to allow for variations incident to proper grading and handling, the following tolerances, by weight, are provided:

(1) For defects:

(a) 10% for potatoes seriously damaged by hollow heart;

(b) 10% for potatoes seriously damaged by sunburn;

(c) 5% for potatoes seriously damaged by internal discoloration (other than hollow heart);

(d) 8% for potatoes injured by (slight) scab;

(e) 10% for potatoes damaged by dirt or other foreign matter;

(f) 10% for potatoes damaged by sprouts; and

(g) 6% for potatoes which fail to meet the remaining requirements of the grade provided, that included in this amount not more than the following percentages shall be allowed for the following defects:

(i)	Soft rot, frozen, or wet breakdown	0.5%
(ii)	Damage by surface or pitted scab	2.0%
(iii)	Damage by dry ~~rots~~ rot	2.0%
(iv)	Late blight tuber rot	2.0%
(v)	Bacterial ring rot	0.0%
(vi)	Powdery scab	0.0%

State Board of Education
Department of Education
Special Services Division

Adopted Rules Governing Licensure Requirements for Head Varsity Coaches of Interscholastic Sports in Senior High Schools (5 MCAR § 1.0533)

The rules proposed and published at *State Register*, Volume 5, Number 34, pp. 1293-1295, February 23, 1981 (5 S.R. 1293) are now adopted with the following modifications:

Rules as Adopted

Chapter Twenty-Seven A: Licensure of Supervisory and Support; Issuance, Suspension, and Revocation

5 MCAR § 1.0533 D. Qualifications for licensure. All candidates recommended for licensure as a head varsity coach of interscholastic sports shall have satisfactorily completed a program approved by the Minnesota Board of Education consisting of ~~a maximum of~~ 12 ~~quarter or 9 semester~~ to 18 quarter hours or the equivalent containing components designed to provide candidates recommended for licensure with knowledge, skills, and understandings in all of the following areas:

5 MCAR § 1.0533 H. School district hardship situations. In cases where a local school district is unable to employ a licensed head varsity coach of interscholastic sports, the superintendent of such school district may request the Commissioner of Education to grant a provisional license for one school year, ~~and~~ renewable ~~for a maximum of one additional School year~~ upon

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application on a year to year basis to a teacher or a baccalaureate degreed person to serve as a head varsity coach of an interscholastic sport upon evidence submitted by the superintendent of schools that the following conditions have been met:

1. Evidence that the school district is unable to employ a licensed head varsity coach of interscholastic sports for the current school year, and

2. The person to be employed under such authorization holds a current, valid Minnesota teaching license~~, and~~ or a baccalaureate degree, and

3. The person to be employed under such authorization ~~is currently enrolled in a program approved by the Minnesota Board of Education leading to the licensure of head varsity coaches of interscholastic sports.~~ has experience in the sport and can demonstrate to the superintendent of schools that he/she has the fundamental knowledge and skills necessary for coaching the sport, and

4. Verification of completion of six quarter hours or 60 clock hours of instruction in first aid and the care and prevention of athletic injuries.

SUPREME COURT

Decisions Filed Friday, September 25, 1981

Compiled by John McCarthy, Clerk

810266/Sp. Mary Louise Wolk, *et al.*, Appellants, v. James De Cowski, *et al.*, Hennepin County.

Statute authorizing warranted interception of oral or wire communications must be interpreted strictly, with any doubt as to its scope being resolved against the state.

Reversed and remanded. Sheran, C. J.

51640/Sp. State of Minnesota v. Stanley Lloyd, Appellant. Hennepin County.

Trial court did not commit prejudicial error in its evidentiary rulings or instructions.

Affirmed. Otis, J.

51339 Bruce B. Bedeau v. John Mart, *et al.*, Lehigh Valley Railroad Co., *et al.*, Defendants and Lehigh Valley Railroad Company, defendant and third party plaintiff, Appellant, v. Mannix Construction, Inc., Maintenance of Way Division, third party defendant. Hennepin County.

Instructions relating to the contract provision, not objected to prior to their submission to the jury, become the law of the case.

Plaintiff may voluntarily dismiss his claims against certain defendants, with the trial court's approval, and the remaining defendant may not object unless such dismissal also has the effect of dismissing his claims against the codefendants.

In the absence of detailed findings explaining the basis of the trial court's decision to remit the verdict, this court is unable to determine the trial court's rationale, and a new trial is appropriate on the question of damages alone.

Affirmed in part, and reversed and remanded in part. Todd, J.

51795/Sp. In re the Marriage of: Pamela Nice-Peterson, petitioner, v. Perry W. Nice-Peterson, Appellant. Hennepin County.

A trial court is accorded broad discretion in its consideration and disposition of a motion to modify an award of child custody made incident to a judgment and decree of marital dissolution. Upon its consideration of affidavits submitted in support of the motion, Minn. Stat. § 518.185 (1980), the trial court shall review the documents and schedule an evidentiary hearing thereon if that review indicates a likelihood that the movant might establish the requisite change of circumstances upon which a modification may be based. *Peterson v. Peterson*, 308 Minn. 297, 308, 242 N.W.2d 88, 95 (1976).

Affirmed. Yetka, J.

51946/Sp. Donald C. Krupenny, Jr., Appellant, v. West Bend Mutual Insurance Company. Ramsey County.

A person who is injured in the course of loading or unloading a motor vehicle is not entitled to no-fault benefits unless the injury occurs while the person is occupying, entering or alighting from a motor vehicle. Minn. Stat. § 65B.43, subd. 3 (1980).

Affirmed. Yetka, J.

81-220/Sp. Randy A. Schultz, *et al.*, v. Thomas Stanton, *et al.*, etc., Appellants, Dennis V. Elwell, James E. Tatro, *et al.* Dakota County.

Reversed and remanded for trial on both the main action and claim for contribution. Yetka, J.

51272/Sp. Tamarac Inn, Incorporated, petitioner, v. The City of Long Lake, *et al.*, Appellants.

Denial of renewal of existing liquor licenses based on failure to complete a restaurant facility and complaints of liquor ordinance violations was arbitrary and capricious, where the restaurant was within days of completion and the ordinance violations were no more serious than those at a similarly situated establishment which was not denied renewal.

Affirmed. Scott, Dissenting, Otis, J.

51471/Sp. State of Minnesota v. Michael A. Morrison, Appellant. Hennepin County.

Evidence was sufficient to support the convictions, trial court did not err in evidentiary rulings or instructions, and defendant is not entitled to a reduction in sentence.

Affirmed. Scott, J.

52071/Sp. State of Minnesota v. Douglas Allen Dahms, Appellant. Faribault County.

Police officers executing a search warrant did not, as defendant contends, exceed the scope of the warrant, and therefore the trial court properly denied defendant's motion to suppress.

Police reports that certain items of property were stolen were not admissible under Minn. R. Evid. 803(6) and, without this evidence, the other evidence was insufficient to sustain four of defendant's convictions.

Evidence was sufficient to sustain all the other convictions except one, which is reduced.

Reversed in part, remanded for resentencing. Scott, J.

50556/Sp. Minnesota Federation of Teachers, Local 331, Petitioner, Appellant, v. Independent School District No. 361. Koochiching County.

Because it is reasonably debatable whether the controversy sought to be arbitrated is within the scope of the arbitration clause, the district court erred in dismissing a motion to compel arbitration made pursuant to Minn. Stat. 572.09 (1980).

Reversed and remanded. Scott, J. Conc. spec. Simonett, J.

81-272/Sp. The City of Minneapolis v. State of Minnesota, by William L. Wilson, Commissioner, Department of Human Rights. Hennepin County.

Anti-discrimination statute prohibits, among other things, discrimination against a white person because of his association with black people.

Evidence supports the hearing examiner's finding that police officer assaulted citizen.

Reversed. Scott, J.

50957/367 Reserve Mining Company v. State of Minnesota and Arthur C. Roemer, Commissioner of Revenue, Appellants. Lake County.

The taconite tailings tax statute, Minn. Stat. § 298.24, subd. 2 (1980), is not unconstitutional as a bill of attainder, as a violation of the separation of powers doctrine, or as an impairment of contract.

The taconite tailings tax is an excise tax subject to the limitations on taxation in the taconite amendment, Minn. Const. art. X, § 6.

Affirmed in part and reversed in part. Wahl, J. Took no part, Sheran, C. J.

51164/Sp. State of Minnesota, by Warren Spannaus, its Attorney General, petitioner, Appellant, v. Lutsen Resorts, Incorporated, *et al.*, Melvin LeRoy Lingwall, *et al.*, Horace A. Lamb, *et al.* Cook County.

Under these circumstances condemnation of an advertising device by the State pursuant to statute neither denies equal protection nor violation principles of equity.

Reversed and remanded. Wahl, J.

51639/Sp. The Minnesota Chemical Dependency Association, petitioner, Appellant, v. Minneapolis Commission on Civil Rights, Timothy Campbell, complainant. Hennepin County.

The determination by the Minneapolis Commission on Civil Rights that complainant was discriminated against on the basis of affectional preference in employment was unsupported by substantial evidence.

Reversed. Amdahl, J. Took no part, Wahl, J.

SUPREME COURT

51894/Sp. Dorothy Matson v. Charles D. Matson, Appellant. Washington County.

The Wisconsin judgment for support and maintenance arrearages is definite and certain and for a specific amount. Therefore, plaintiff was entitled to proceed under the Uniform Enforcement of Foreign Judgments Act, Minn. Stat. §§ 548.26-.33 (1980).

There is no merit to defendant's contention that the Wisconsin court lacked subject matter jurisdiction over the proceeding resulting in the judgment for arrearages.

The Wisconsin court retained continuing personal jurisdiction over defendant to enforce the support and maintenance provisions of the original divorce decree. Due process was satisfied by notice to defendant of the enforcement proceeding through personal service in Minnesota.

Affirmed and remanded for further proceedings. Amdahl, J.

51923 Joseph Lamb, petitioner, Appellant, v. Village of Bagley, State of Minnesota, by Marilyn McClure, Commissioner, Department of Human Rights. Clearwater County.

On this record the use of abusive racial epithets coupled with other disparate treatment constitutes, as a matter of law, impermissible discrimination on the basis of race by the respondent village against complainant, an American Indian employed as one of its police officers.

Reversed and remanded. Simonett, J.

Decision Filed Tuesday, September 22, 1981

81-766/Sp. State of Minnesota, Appellant, v. Michael James Wright. Ramsey County.

Trial court's sentencing departure in placing defendant on probation was based on substantial and compelling circumstances where the trial court reasonably concluded, on the basis of recommendations of a psychiatrist and the agent who prepared the presentence investigation report, that defendant was particularly unamenable to incarceration and particularly amenable to individualized treatment in a probationary setting consistent with the public safety.

Affirmed. 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 Administration
Bureau of Real Estate and Transportation

Notice of Request for Proposals for a Building Management Contract

The Department of Administration is requesting proposals for a five-year building management contract, provided funds are appropriated by the Legislature, for the Minnesota Government Services Center located at Fourth Avenue West and Second Street, Duluth, Minnesota.

Responders are to project the total costs of their management services and to detail each service category as requested in the Request for Proposals.

A Request for Proposals is to be obtained by calling or writing:

James L. Ware
Department of Administration
Plant Management Division G-28
50 Sherburne Avenue
Saint Paul, Minnesota 55155
Telephone: (612) 296-9901

Proposals must be submitted no later than 2:30 p.m., on November 30, 1981.

Department of Economic Security

Notice of Request for Proposals for Computer Consulting Services

Notice is hereby given that the Department of Economic Security is soliciting proposals from qualified consultants to certify the performance of computer software used by the Minnesota Community Action Data System. The system is a distributive computer system containing Fund Accounting and Client Components. The system uses the IBM S/34 and IBM 5285 terminals. The consultant is expected to perform the following tasks:

1. Assemble and review design and operating information.
2. Test and document the status of current system software.
3. Assess and certify the performance of the system.
4. Report findings and recommendations for solutions to problems—short and long term.

The estimated cost is $20,000. Due date for proposals is October 26, 1981. Expected date for completion of evaluation of proposals is November 21, 1981. Expected completion date of the project is December 31, 1981. This RFP does not obligate DES to complete the project and DES reserves the right to cancel the solicitation. Direct all inquiries to:

Tracy Page
Department of Economic Security
690 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
(612) 296-8062

Department of Education
Council on Quality Education

Notice of Request for Proposals to Study Small School Districts' Use of Low Power Television and Secure FCC Licenses

The Council on Quality Education is soliciting proposals related to a state study of the use of low power television (LPTV) in small rural school districts. It is anticipated that contracts will be let to survey the need for this technology, to determine needs for personnel and training in small school districts which set up LPTV transmission facilities, to develop cost estimates for equipment at these facilities, to prepare license applications for the Federal Communications Commission, and to manage and coordinate the above activities or contracts. Contracts for these efforts may be awarded separately or to a single qualified firm, agency, or individual. Spending for the overall study effort will not exceed $90,000. Contracts may be let as early as October 27, 1981.

The RFP's may be requested from and inquiries should be directed to:

Eugene Kairies, Coordinator
Council on Quality Education
Minnesota Department of Education
Division of Special Services
722 Capitol Square
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-5072

Water Planning Board

Notice of Request for Proposals for Assistance in Preparation of Local Planning Handbook for Use by County Officials in Local Water and Related Land Resources Planning

The "Special Study on Local Water Management" was approved by the Minnesota Water Planning Board in January 1981. The study was prepared pursuant to Laws of 1980, ch. 548. In this study, the board has recommended that counties be assigned the responsibility for coordinating local water management activities and for developing comprehensive water and related land resources plans. The purpose of this Request for Proposals is to assist the Water Planning Board by:

1. Determining the scope and detail of county plans which could be developed with existing information and resources.

2. Estimating county financial, technical, administrative, and information requirements for plan development.

This Request for Proposals does not obligate the state to complete the project and the state reserves the right to cancel the solicitation if it is considered to be in its best interest.

I. Scope of Project. This project will examine water and related land resources information, policies, plans, programs, and resources available within selected counties in order to assess the detail and scope which might be required in comprehensive water and related land resources plans prepared by counties. This background information is necessary for the preparation of the Local Planning Handbook (to be completed by board staff).

The assessment will determine the adequacy of existing information and resources for evaluating immediate and long-range needs and guiding solutions to problems relating to flood management; stormwater management; provision and conservation of water supplies; protection and enhancement of water quality and quantity; control or alleviation of soil erosion and siltation; and preservation of the natural and economic value of shorelands, public waters and wetlands, and water surfaces. The project should recognize the prevailing fiscal status constraints; the necessity of scaling plan requirements to need; and should assess the adequacy of existing information and resources in this light.

II. Project Tasks. An assessment of the adequacy of water and related land resources information, policies, plans, programs, and resources available within five to eight selected counties (including at least one county in the metropolitan area) will be made to determine the scope and detail possible in county plans. Determination of county financial, technical, administrative, and informational needs to complete county plans of the scope and detail possible will be made. This project will involve:

1. Selection of the counties in which assessments will be made, assuring an array of water management problems.

2. An inventory of existing information, policies, plans, programs, and resources relevant to comprehensive water and related land resources plan development.

3. An assessment of the adequacy of existing information and resources for development of comprehensive county water and related land resources plans.

4. Determination of the scope and detail possible using obtainable information and resources and design for a format for a hypothetical county plan.

5. Determination of county financial, technical, administrative, and informational needs for development of a county comprehensive water and related land resources plan of the scope and detail suggested to be possible in (4) above.

III. Department Contact. Prospective responders who have any questions regarding this Request for Proposals may call or write John Wells, Minnesota Water Planning Board, 600 American Center Building, 150 E. Kellogg Boulevard, St. Paul, Minnesota, 55101, (612) 297-2377. Please note: Other board personnel are not permitted to discuss the project with responders before the proposal submittal deadline.

IV. Submission of Proposals. All proposals must be sent to and received by John Wells at the above address no later than 4:30 p.m., October 28, 1981. Late proposals will not be accepted. There must be three copies of each proposal and they are to be sealed in a mailing envelope or package with the responder's name and address clearly written on the outside. Prices and terms of the proposal as stated must be valid for the length of the project.

V. Project Costs. The board has estimated that the cost of this project should not exceed $10,000 for professional services and expenses.

VI. Project Completion Date. The project shall be completed by March 31, 1982.

VII. Proposal Contents. The following will be considered minimum contents of the proposal:

1. A statement and discussion of the project objectives to demonstrate the responder's view of the nature of the project.

2. Identification and description of the deliverables related to each project task to be provided by the responder.

3. A description of the responder's background and experience, with particular emphasis on work with local and state government.

4. A detailed cost and work plan which identifies major tasks to be accomplished.

5. A description of the extent of the Water Planning Board's participation in the effort, as well as any other services to be provided by the board.

The description of the background and experience of the responder shall include identification of personnel who will conduct the project and an explanation of their training and work experience. No changes in the primary personnel assigned to the project will be permitted without specific written approval of the state project manager.

The detailed cost and work plan will be considered a scheduling and managing tool, as well as a basis for invoicing.

VIII. Evaluation. All proposals received by the deadline will be evaluated by representatives of the Water Planning Board. If deemed necessary, an interview may be included in the evaluation process. Factors upon which proposals will be judged include, but are not limited to the following:

1. Expressed understanding of project objectives.

2. Project work plan.

3. Project cost detail.

4. Qualifications of both company and personnel.

Experience of project personnel will be given greater weight than that of the firm. Evaluation and selection will be completed by November 6, 1981. Results will be sent immediately by mail to all responders.

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.

Minnesota Environmental Quality Board

Proposed Rules Governing the Environmental Review Program

Notice of Postponement of Public Hearing

Notice is hereby given that the public hearing on the proposed rules as noticed in the September 7, 1981 issue of the *State Register* at 6 S.R. 354 has been postponed. The agency will reschedule the hearing for a later date. The proposed rules as noticed in the same issue of the *State Register* at 6 S.R. 355 through 6 S.R. 393 are not affected by this postponement. The proposed rules as noticed will be the rules that are the subject of the public hearing.

Questions regarding this matter should be directed to Tom Rulland, (612) 296-2319 at the Environmental Quality Board, Room 100, Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101.

Office of the Governor

Notice of Appointment of Department Head

In accordance with Minnesota Stat. § 15.06, notice is hereby given of the appointment of Valdis Vikmanis as Acting Commissioner of the Department of Finance on August 26, 1981.

Pollution Control Agency
Solid and Hazardous Waste Division

Notice of Intent to Solicit Outside Opinion Regarding Amendments to Rules Governing the Minnesota Waste Reduction and Source Separation Demonstration Grant Program

Notice is hereby given that the Minnesota Pollution Control Agency is seeking information or opinions from sources outside the agency in preparing to promulgate amendments to 6 MCAR § 4.6086 governing the administration of the Minnesota Source Separation and Waste Reduction Program. The promulgation of these rule amendments is authorized by Minn. Stat. §§ 115A.49 to 115A.54 which requires the agency to administer a solid waste management demonstration program. The rule amendments relate to incorporation of additional criteria to prioritize categories of eligible source separation and waste reduction demonstration project applications and to the incorporation of selection criteria to allow ranking of similar project applications in the same project category. Comments are especially sought concerning views on the types of projects which should have a high priority for funding.

The Minnesota Pollution Control Agency requests information and comments concerning the subject matter of these rule amendments. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Donald J. Kyser
Waste Management Assistance Section
Solid and Hazardous Waste Division
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113

Oral statements will be received during regular business hours over the telephone at (612) 297-2727 and in person at the above address.

All statements of information and comment shall be accepted until October 22, 1981. Any written material received by the Minnesota Pollution Control Agency shall become part of the record in the event that the rule amendments are promulgated.

Office of the Secretary of State

Notice of Vacancies in Multi-member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-7876. **Application deadline is October 27, 1981.**

PHYSICAL THERAPY COUNCIL has 1 vacancy for a licensed physician pursuant to Minn. Stat. § 148.67. The council advises the Board of Medical Examiners on all matters relating to physical therapy; registers physical therapists; and takes action against them. Members are appointed by the Board of Medical Examiners and receive $35 per diem plus expenses. For specific information contact the Physical Therapy Council, #352, 717 Delaware St. S.E., Minneapolis 55440; (612) 296-5534.

REHABILITATION REVIEW PANEL has 1 vacancy for a representative for employers pursuant to Minn. Stat. § 176.102, subd. 3. The panel reviews rehabilitation plans and rules; advises Commissioner of Labor and Industry. Members are appointed by the Governor. Compensation for members is governed by § 15.0575. For specific information contact Rehabilitation Review Panel, Space Center, 444 Lafayette Road, St. Paul 55101; (612) 297-2684.

OCCUPATIONAL SAFETY AND HEALTH ADVISORY COUNCIL has 1 vacancy for a management representative. The council advises the Department of Labor and Industry on administration of the state Occupational Safety and Health Act. Members are appointed by the Governor. Meetings are at the call of the chairperson and held at the Space Center Building. Members receive $35 per diem. For specific information contact Occupational Safety and Health Advisory Council, Space Center Building, 444 Lafayette Road, St. Paul 55101; (612) 296-6529.

POWER PLANT SITING ADVISORY COMMITTEE has 20 to 30 vacancies open for members to serve until June 30, 1982. The committee will consider the effectiveness of the Environmental Quality Board in carrying out the policies of the Power Plant Siting Act. This includes a consideration of a methodology and criteria to be used by the board in evaluating the Power Plant

Siting Program and an evaluation of the program. Six day-long (Saturday) meetings and some evening meetings will be held; members are compensated for expenses. Members are appointed by the board. (According to state law, no officer, agent or employee of a utility may serve on this committee). For specific information contact Sheldon Mains, Room 101, Capitol Square Building, 550 Cedar, St. Paul 55101; (612) 296-2757.

STATE EMPLOYEES SUGGESTION BOARD has 1 vacancy for a state officer or employee. The board manages a state employee suggestion system for approximately 30,000 classified and unclassified state employees in order to provide tangible and intangible savings to the state, increase employee morale, and increase the safety of the employees and public. Members are appointed by the Governor. Monthly meetings are held at the Administration Building. Members receive no compensation. For specific information contact the State Employees Suggestion Board, 203 Administration Building, St. Paul 55155; (612) 296-6798.

Department of Transportation

Petition of the City of Cloquet for a Variance from State Aid Standards for Street Width

Notice is hereby given that the City Council of the City of Cloquet has made a written request to the Commissioner of Transportation for a variance from minimum design standards for street width along Doddridge Avenue between 7th Street and 14th 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 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 16th day of September, 1981.

Richard P. Braun
Commissioner of Transportation

Department of Transportation

Amended Order and Notice of Street and Highway Routes Designated and Permitted to Carry the Gross Weights Allowed under Minn. Stat. § 169.832

Order No. 66058

Whereas, the Commissioner of Transportation has made his Order No. 65851, which has been amended by Orders 65929, 65932, and 65963, designating and permitting certain street and highway routes, or segments of routes, to carry the gross weights allowed under Minnesota Statutes § 169.832, and

Whereas, the commissioner has determined that the additional following routes, or segment of routes, should be designated to carry the gross weights allowed under Minnesota Statutes § 169.832, and

Whereas, amended order No. 65929 was in error describing the T. H. 63 route, and

Whereas, the *State Register* dated Monday, July 27, 1981 was also in error in describing the T.H. 63 route.

It is hereby ordered that Commissioner of Transportation Order No. 65851 is amended this date by adding the following designated streets and highway routes, or segments of routes as follows:

Trunk Highways

T. H. 63	—	From Olmstead County State Aid Highway 6 to Junction I-90. (Correction to Order No. 65929 and *State Register* of Monday, July 27, 1981).
T. H. 220	—	From North Dakota border at Breckenridge to Junction I-94
T. H. 28	—	From Cyrus to Glenwood, MN

City Streets

*Rosemount	—	Pine Bend Trail from Junction TH 55 to 1.5 miles East.
Hutchinson	—	Michigan St. between T.H. 7 and Arch St. (temporary)
		Arch St. between Michigan St. and the Farmers Elevator (temporary)

*This segment of Pine Bend Trail was previously designated as a temporary route as per amended Order No. 65929, and *State Register* dated Monday, July 27, 1981, and is now being changed by this order to permanent seasonally posted status.

Dated this 25th day of September, 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

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FOR LEGISLATIVE NEWS

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

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

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

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

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

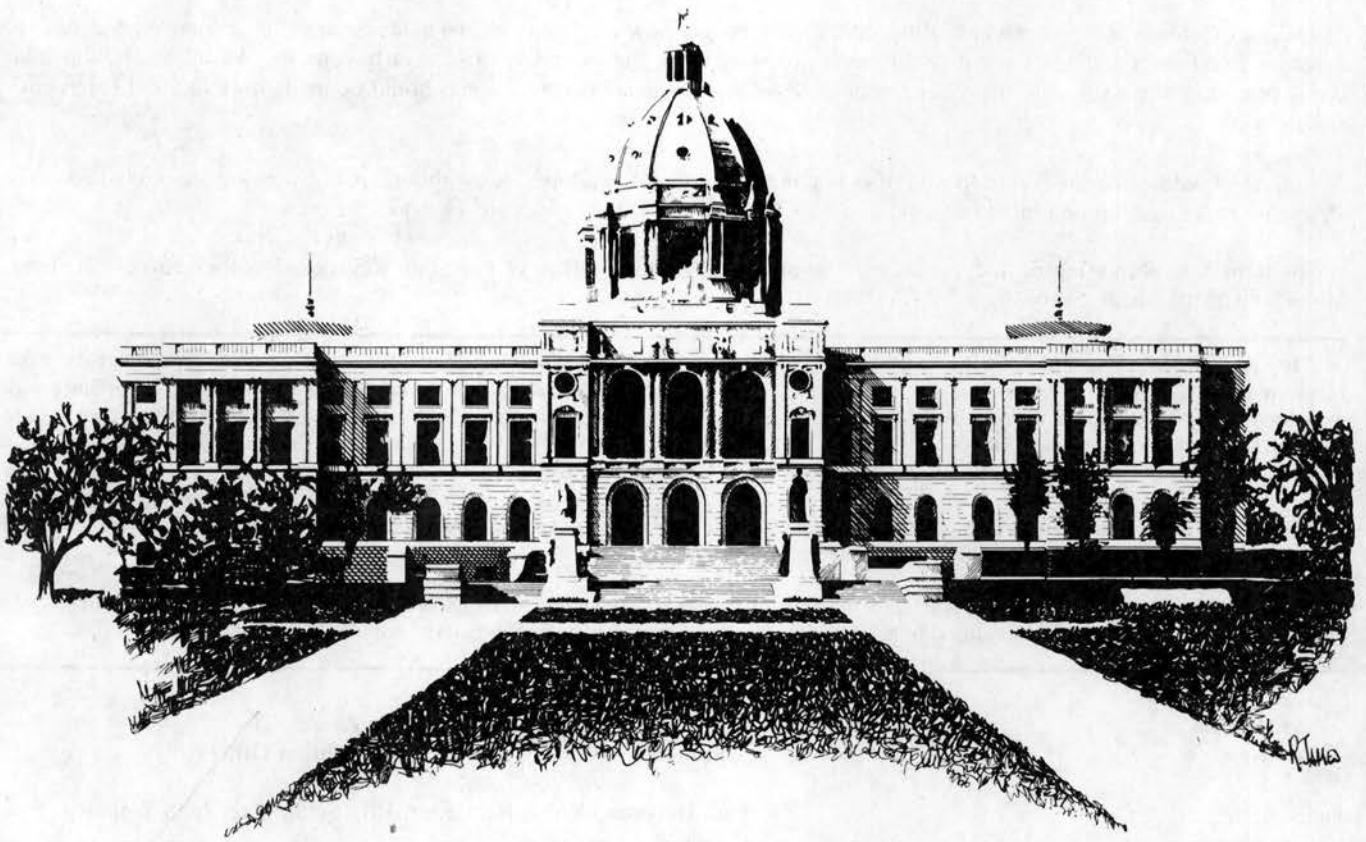
Planning Agency
Attn: Karen Whiting
101 Capitol Square
Interoffice

(cont'd p. 607) Joe Karen

MEQB Ex 4

STATE REGISTER

STATE OF MINNESOTA



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October 19, 1981

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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		
17	Monday Oct 12	Monday Oct 19	Monday Oct 26
18	Monday Oct 19	Monday Oct 26	Monday Nov 2
19	Monday Oct 26	Monday Nov 2	Monday Nov 9
20	Monday Nov 2	Friday Nov 6	Monday Nov 16

*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

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Director
State Register and
Public Documents Division

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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).
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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 listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

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Issues 14-25, inclusive
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PROPOSED RULES

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

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

and

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

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

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Minnesota Environmental Quality Board

Proposed Rules Governing the Environmental Review Program

Notice of Rescheduled Hearings

Notice is hereby given that public hearings on the above entitled matter will be held pursuant to Minn. Stat. § 15.0412, subd. 4, in the places and commencing at the times listed in this notice. A previous hearing notice and text of these rules were published at *State Register*, Volume 6, Number 10, p. 354, on September 7, 1981. A notice of postponement of public hearing was published at *State Register*, Volume 6, Number 14, p. 607, on October 5, 1981.

Hearings Schedule

State Office Building Auditorium, St. Paul, Minnesota

November 23, 1981	9:00 a.m. and 1:00 p.m.
November 24, 1981	1:00 p.m. and 7:00 p.m.
December 1, 1981	1:00 p.m.

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

December 2, 1981	1:00 p.m. and 7:00 p.m.

These hearings will continue 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.

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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 date 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, Minnestoa 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.

September 28, 1981

Robert F. Benner, Chairman
Environmental Quality Board

Department of Health
Environmental Health Division

Proposed Rules Governing Formaldehyde in Housing Units

Notice of Hearing

Notice is hereby given that a public hearing concerning the proposed rules captioned above will be held pursuant to Minn. Stat. § 15.0412, subd. 4 (1980) in Room 105, Minnesota Department of Health Building, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440, on Monday, November 23, 1981, commencing at 9:30 a.m. The proposed rules may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rules you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to George Beck, Hearing Examiner, Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone: (612) 296-8108, either before the hearing or within five (5) 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. All such statements will be entered into and become part of the record. For those wishing to submit written statements or exhibits, it is requested that at least three (3) copies be furnished. In addition, it is suggested, to save time and avoid duplication, that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write to the hearing examiner.

Notice is hereby given that twenty-five (25) days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This statement of need and reasonableness will include all of the evidence which the agency intends to present at the hearing to justify both the need for and the reasonableness of the proposed rules. However, additional evidence may be submitted in response to questions raised by interested persons. You are therefore urged to both review the statement of need and reasonableness before the hearing and to attend the hearing. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

If adopted, the proposals would have the following effect:

1. Set a maximum permissible ambient level of 0.4 parts formaldehyde per million parts of air for newly constructed housing units and for installations of urea formaldehyde foam insulation;

2. Prescribe the use of the National Institutes of Occupational Safety and Health (N.I.O.S.H.) chromatropic acid method for analyzing levels of formaldehyde;

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3. Specifies conditions under which air samples are to be collected; and

4. For newly constructed housing units, the rule sets an effective date of 30 days after the effective date prescribed in the state Administrative Procedures Act.

Statutory authority of the Commissioner of Health to promulgate the new rule is contained in Minn. Stat. § 144.495, 1980.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Ms. Laura Oatman, Minnesota Department of Health, Division of Environmental Health, 717 Delaware Street Southeast, Minneapolis, Minnesota 55440. Additional copies will be available at the door on the date of the hearing.

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

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (Supp. 1979) as any individual:

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

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

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

Promulgation of the proposed new rule will not result in the expenditure of public monies by local government units.

October 6, 1981

George R. Pettersen, M.D.
Commissioner of Health

Rule as Proposed (all new material)

7 MCAR § 1.448 Formaldehyde in housing units.

A. Applicability. This rule applies to newly constructed housing units and to installations of urea formaldehyde foam insulation. The rule establishes a maximum permissible ambient air level for formaldehyde and prescribes the methods for measuring levels of formaldehyde and the conditions under which the measurements are to be made.

B. Definitions. For the purpose of this rule, the following terms have the meanings given them.

1. "Building materials" has the meaning given it in Minn. Stat. § 325F.18, subd. 1a.

2. "Commissioner" means the Commissioner of Health.

3. "Housing unit" means one or more rooms which are intended for long-term human habitation. It includes any mobile home, single family residence, or living unit in a multi-unit structure, regardless of type of ownership, and any health care facility such as a nursing home, boarding care home, intermediate care facility, or hospital.

4. "Newly constructed" means that the housing unit has not been previously occupied and that construction of the unit was completed more than 30 days after the effective date of this rule.

C. Maximum permissible formaldehyde level in housing units.

1. At the time of sale of a newly constructed housing unit, the ambient indoor air of any habitable room in the unit shall not contain more than 0.4 parts of formaldehyde per million parts of air as measured according to the procedures specified in D. and E. The seller is responsible for assuring that the unit complies with this level.

2. The installation of urea formaldehyde foam insulation in a housing unit which is not newly constructed shall not cause the ambient level of formaldehyde in any habitable room in the unit to exceed 0.4 parts per million as measured according to the procedures specified in D., E. and F. The installer of urea formaldehyde foam insulation is responsible for assuring that the installation complies with this level.

D. Test method.

1. Formaldehyde shall be measured according to the National Institute of Occupational Safety and Health (NIOSH) Manual of Analytical Methods, Volume 1, 2nd Edition, NIOSH 77-157-A, 1977, Method Number P&CAM 125.

2. For the purpose of determining compliance with C., measurements made using an alternate analytical method are valid only if the alternate method has been approved by the commissioner. The approval shall be granted if the proponent of the alternate method can demonstrate to the satisfaction of the commissioner that the alternate method results in numerical values which have at least the same precision, reliability and accuracy as those obtained with the use of the method described in 1.

E. Testing conditions. Whenever the level of formaldehyde is to be measured, all of the conditions prescribed in 1.-4. must be met before a measurement is considered valid for the purpose of determining compliance with this rule.

1. Testing shall be carried out at an indoor temperature within the range of 70 degrees Fahrenheit to 85 degrees Fahrenheit and at ambient relative humidity. The resulting formaldehyde test levels shall be corrected to a 78 degree Fahrenheit condition using the following formula:

$$C = C_o \times e^{-R(1/t - 1/t_0)}$$

Where,

C = test formaldehyde concentration level
C_0 = corrected formaldehyde concentration level
e = natural log base
R = coefficient of temperature = 9799
t = actual test condition temperature in degrees Kelvin
t_0 = corrected temperature in degrees Kelvin

2. The housing unit shall be prepared for measurement as follows:

a. For two hours prior to the close-up period, the housing unit shall be aired out at a ventilation rate of at least one outdoor air change per hour, with all interior doors, cabinets, closets and drawers open for maximum air exchange;

b. For the next two hours, the windows and exterior doors of the housing unit shall be closed. All nonvented gas appliances shall be turned off. No smoking shall be allowed;

c. Immediately after the two hour close-up period, the collection of air samples shall begin. The conditions prescribed for the close-up period shall be maintained until all samples have been collected; and

d. A housing unit equipped with a device to provide tempered outside air may be tested with the ventilation system operating at a maximum rate of one air change per hour.

3. At a minimum, a sample of air shall be taken from the kitchen and another sample shall be taken from one bedroom. Each air sample shall be taken in the center of the room, at a point which is approximately equidistant from opposing walls and at a height of 3½ to 4 feet above the floor.

4. Each sample of air shall be analyzed separately.

F. Special testing conditions for use with urea formaldehyde foam insulation. In order to assure compliance with C.2., procedures in addition to those prescribed in E. must be followed with urea formaldehyde insulation. Those procedures are:

1. The level of formaldehyde in a housing unit shall be measured no more than two weeks prior to installation and shall be measured again within 30 days after the installation of the urea formaldehyde foam insulation;

2. The consumer shall, at least two hours before the air samples are taken, cease any activity and remove from the unit any major source of formaldehyde which has been introduced by the consumer into the unit which may contribute to the level of formaldehyde in the air of the unit. The major sources include, but are not limited to the following: draperies, furniture made of plywood or particleboard and upholstered furniture, any of which are less than one year old; and

3. If the entire roof or all exterior walls are to be insulated, the preinstallation air samples shall be taken as prescribed in E.1.-2. If only a portion of the unit is to be urea formaldehyde foam insulated the preinstallation measurement for formaldehyde shall be made in those two rooms closest to the walls where the installation is to be made. Postinstallation air samples shall be collected from the same rooms as those which were sampled prior to installation.

G. Effective date. The levels prescribed in C. shall apply 30 days after the effective date of this rule.

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Board of Peace Officer Standards and Training

Proposed Rules of the Peace Officers Standards and Training Board Governing the Selection, Training and Licensing of Peace Officers and Constables

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Board of Peace Officer Standards and Training proposes to adopt the above-entitled rules without a public hearing. The board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, Subd. 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the notifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written request for a public hearing on a proposed rule within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or requests to:

Board of Peace Officer Standards and Training, 500 Metro Square Building, St. Paul, Minnesota 55101. (612) 296-2620.

Authority for the adoption of these rules is contained in Minn. Stat. §§ 626.76-626.855; Minn. Stat. § 214.; Laws of 1981, ch. 341; and Laws of 1981, ch. 310. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from the Board of Peace Officer Standards and Training upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to the Board of Peace Officer Standards and Training.

A copy of the proposed rules is attached to this notice.

Copies of this notice and the proposed rules are available and may be obtained by contacting the Board of Peace Officer Standards and Training.

Mark K. Shields
Executive Director

Rules as Proposed (all new material)

Rules of Peace Officer Standards and Training Board Governing the Selection, Training and Licensing of Peace Officers and Constables

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4 MCAR § 13.021 Introduction and scope. The Board of Peace Officer Standards and Training which operates pursuant to Minn. Stat. §§ 626.84-626.855, is authorized to promulgate rules and standards relating to the selection, training and licensing of peace officers, part-time peace officers and constables in the State of Minnesota. The following rules are adopted pursuant to Minn. Stat. §§ 214.12, 626.843, and 626.845.

4 MCAR § 13.022 Definitions.

A. Applicability. For the purpose of 4 MCAR §§ 13.021-13.039, the words and phrases in this rule have the meanings given them, unless another intention clearly appears.

B. Agency. "Agency" means local or state law enforcement agency employing peace officers, part-time peace officers or constables.

C. Appointing authority. "Appointing authority" means the public official, board, commission, or other person or group of persons responsible for the initial appointment and continued tenure of persons employed by the agency as peace officers, part-time peace officers and constables.

D. Appointment. "Appointment" means an official declaration by an agency that it has engaged the services of a peace officer, part-time peace officer or constable, beginning on a specified date.

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E. Basic course. "Basic course" means a course of study, including both academic and skills instruction as specified in 4 MCAR § 13.023 A. which must be completed by any individual seeking to be licensed as a peace officer and whose content, length, instruction and instructors have been approved by the board.

F. Board. "Board" means the Board of Peace Officer Standards and Training.

G. Certification. "Certification" means official acknowledgement by the board that a school meets all of the criteria listed in 4 MCAR §§ 13.023 and 13.024.

H. Chief law enforcement officer. "Chief law enforcement officer" means the highest ranking board licensed officer within an agency, or in the absence of one, the appointing authority.

I. Constable. "Constable" has the meaning given it in Minn. Stat. § 367.40, subd. 3.

J. Coordinator. "Coordinator" means an individual at each school who is recognized by the board and designated by the school to coordinate the basic course as taught at that school.

K. Eligible to be licensed. "Eligible to be licensed" means status of an individual who has passed the academic and skills examinations or the reciprocity examination, but who has not yet secured employment as a law enforcement officer.

L. Executive director. "Executive director" means executive director of the board.

M. Firearms training course. "Firearms training course" means a firearms training course which includes instruction in the legal limitations on the use of deadly force, conducted by a person who has completed a board recognized firearms instructor course and who is licensed or eligible to be licensed by the board.

N. First aid course. "First aid course" means any of the following officially recognized courses:

1. Red Cross advanced first-aid;
2. Emergency medical technician; or
3. EMS first responder (crash injury management).

O. Guest lecturer. "Guest lecturer" means a person who is invited by the instructor to teach occasionally in a school or a board-approved course in continuing education.

P. Inactive licensed officer. "Inactive licensed officer" means an individual who holds a currently valid peace officer license issued by the board, but who is not currently employed by an agency.

Q. Instructor. "Instructor" means a person who is recognized as being qualified to teach in a school or board-approved continuing education course.

R. Part-time peace officer. "Part-time peace officer" has the meaning assigned to it in Minn. Stat. § 626.84, subd. 1, clause (f).

S. Peace officer. "Peace officer" has the meaning assigned to it in Minn. Stat. § 626.84, subd. 1, clause (c).

T. School. "School" means any institution certified by the board to offer academic instruction, skills instruction or both.

4 MCAR § 13.023 Basic course.

A. Subject areas and skills instruction. The basic course minimally shall include the following subject areas:

1. Academic instruction in:
   a. Administration of justice;
   b. Minnesota Statutes;
   c. Criminal law;
   d. Human behavior;
   e. Juvenile justice;
   f. Law enforcement operations and procedures; and
   g. First aid.
2. Skills instruction in:
   a. Techniques of criminal investigation and testifying;
   b. Patrol functions;
   c. Traffic law enforcement;

d. Firearms;

e. Defensive tactics;

f. Emergency vehicle driving; and

g. Criminal justice information systems.

B. Waiver. Participation or continued instruction in a particular subject area enumerated in A. shall be waived by the coordinator upon satisfactory evidence of approved equivalent training.

C. Minimum requirements. All schools shall comply with the minimum requirements set forth in A.1. or 2. or both and shall furnish reasonable and necessary proof to the board to verify that the provisions of A. are being met. Nothing in 4 MCAR §§ 13.021-13.039 shall preclude any school from enacting rules which establish standards of training above the minimum requirements set forth in A.

D. Learning objectives. Periodically the board may issue specific learning objectives applicable to the content of the basic course as outlined in A.

E. Participation requirement. All students shall be capable of complete participation in all basic course activities. Any student unable to physically or psychologically participate in all aspects of the basic course may not be deemed as satisfactorily completing the basic course.

F. Coordinator duties. The coordinator shall be responsible for maintaining and making available to the board and executive director pertinent information on all classes conducted in the school. The coordinator shall notify the executive director of students who have successfully completed the school. Additionally, the coordinator shall certify to the board that these students have successfully completed a sequence of courses which includes material covering the applicable learning objectives promulgated by the board.

G. Instructor requirements. All instructors who teach law enforcement courses in a school shall possess an associate degree or greater from an accredited institution of higher learning, or have professionally recognized training and experience to teach the assigned subject matter. This rule shall not preclude the use of guest lecturers.

4 MCAR § 13.024 Certification of schools.

A. Application. Upon filing a proper application, a school desiring certification shall be reviewed by the board. No certification will be issued unless the school files with the board satisfactory proof that the school will offer courses meeting the prescribed learning objectives, has reasonable training equipment and facilities, and has qualified instructors. Further, the coordinator shall file with the board such other relevant information as the board may require. Relevant information may include lesson plans and course outlines.

B. Provisional certification. Upon receipt of a properly filed application, the board shall grant provisional certification to a school until such time as an on-site evaluation and inspection has been completed.

C. Certification. Not later than one year from the granting of provisional certification, the board shall grant or deny certification. Certification shall remain contingent upon periodic review by the board or by the executive director.

D. School disciplinary action. Failure of a school to comply with any of the following requirements will result in imposition of disciplinary sanctions by the board against the school:

1. Provision of instruction consistent with the published learning objectives in the subject areas for which the school was certified pursuant to 4 MCAR § 13.023 A.;

2. Filing with the board all information which the board requires;

3. Cooperation of the staff and faculty of a school with any board investigation relative to its certification status; and

4. Cooperation of the staff and faculty of a school with any board investigation of alleged misconduct by students, staff or faculty in the giving or taking of examinations, reports or investigations required by the board. The staff and faculty shall report any misconduct which is discovered to the board. For purposes of this requirement, the term "misconduct" includes, but is not limited to:

a. Cheating on any licensing examination or tests required by the rules of the board, or helping another to cheat;

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b. Filing of false reports with the board in cases where the board has requested reports; or

c. Obstructing a board investigation.

E. Sanctions. Sanctions for failure to comply with the requirements set forth in D. shall be one or more of the following:

1. A letter of censure to the coordinator of the school;

2. Formal or informal probation for the school; or

3. Suspension, revocation or non-renewal of certification of the school.

F. Disciplinary proceedings. Disciplinary proceedings under this rule shall be conducted pursuant to the Administrative Procedures Act, Minn. Stat. ch. 15, and the rules of the State Office of Administrative Hearings, 9 MCAR §§ 2.101-2.222.

4 MCAR § 13.025 Peace officer pre-employment education.

A. Academic examination. Students who successfully complete a school that meets the minimum requirements set forth in 4 MCAR § 13.023 A.1. are eligible to take the academic examination.

B. Skills school. Students who pass the academic examination are eligible to apply for enrollment in a skills school. Upon successful completion of a skills school, a student is eligible to take the skills examination.

C. Eligibility for academic and skills examination. Students who successfully complete a school which meets the minimum requirements set forth in 4 MCAR § 13.023 A.1. and 2. are eligible to take both the academic and skills examinations.

D. Reciprocity licensing examination. Persons who successfully complete professionally recognized peace officer pre-employment education which the board has deemed comparable to the basic course are eligible to take the peace officer reciprocity licensing examination.

E. Peace officer licensing examination. Upon successful completion of the required peace officer licensing examination, a person is eligible for licensure as a peace officer for three years. If the person is not licensed after three years, the person may reinstate his eligibility by passing the appropriate licensing examination. The executive director shall determine what examination is appropriate under the circumstances.

4 MCAR § 13.026 Licensing examinations.

A. Application. Licensing examinations will be offered at least four times each year. The board shall establish the examination schedules. An applicant for any of the licensing examinations shall submit a written application on a form provided by the board prior to the date of the examination. An application shall be accompanied by the appropriate nonrefundable fee as set forth in B.

B. Nonrefundable fee. A nonrefundable fee shall be paid to the board prior to taking the following licensing examinations:

1. Academic examination	$12.50
2. Skills examination	$12.50
3. Reciprocity examination	$25.00
4. Peace officer license endorsement examination	$12.50
5. Part-time peace officer licensing examination	$12.50
6. Constable licensing examination	$25.00

C. Retaking examination. A person who fails an examination will only be allowed to retake that examination two times, upon furnishing to the board a renewed written application and appropriate fee.

4 MCAR § 13.027 Minimum selection standards.

A. Selection standards. A person eligible to be licensed shall meet the following minimum selection standards prior to being appointed to the position of peace officer. The appointing authority may certify that the applicant has already completed certain of these standards, but certification must be documented pursuant to B.

1. The applicant shall be a citizen of the United States.

2. The applicant shall possess a valid Minnesota driver's license; or in case of residency therein, a valid driver's license from a contiguous state; or eligibility to obtain either license.

3. The applicant shall complete a comprehensive written application.

4. The applicant shall submit to a thorough background search including, but not limited to, searches by local, state and federal agencies, to disclose the existence of any criminal record or conduct which would adversely affect the performance by the applicant of peace officer duties.

5. The applicant shall not have been convicted of a felony in this state or in any other state or federal jurisdiction or of any offense in any other state or federal jurisdiction which would have been a felony if committed in Minnesota.

6. The applicant shall be fingerprinted for the purpose of disclosure of any felony convictions. Fingerprint cards shall be forwarded to the appropriate divisions of the Bureau of Criminal Apprehension and the Federal Bureau of Investigation. The chief law enforcement officer shall immediately notify the board if a previous felony conviction is discovered.

7. A licensed physician or surgeon shall make a thorough medical examination of the applicant to determine that the applicant is free from any physical condition which might adversely affect the performance of peace officer duties.

8. An evaluation shall be made by a licensed psychologist to determine that the applicant is free from any emotional or mental condition which might adversely affect the performance of peace officer duties.

9. The applicant shall pass a job-related examination of the applicant's physical strength and agility to demonstrate the possession of physical skills necessary to the accomplishment of the duties and functions of a peace officer.

10. The applicant shall successfully complete an oral examination conducted by or for the agency to demonstrate the possession of skills necessary to the accomplishment of the duties and functions of a peace officer.

B. Documentation. The chief law enforcement officer shall maintain documentation necessary to show completion of A.1.-10. The documentation is subject to periodic review by the board, and shall be made available to the board at its request.

C. Requirements. An appointing authority may require a peace officer to meet some or all of the foregoing standards prior to appointment.

D. More rigid standards. An appointing authority may require an applicant to meet more rigid standards than those prescribed in this rule.

4 MCAR § 13.028 Licensing of peace officers.

A. Appointee notification. The chief law enforcement officer shall notify the board of the appointment of any person to the position of peace officer before the first day of the appointee's employment. Notification shall be made on a form provided by the board, and it shall include the appointee's full name, sex and date of birth, the effective date of the appointment, and an affirmation that the appointee has met all selection standards as prescribed in 4 MCAR § 13.027.

B. Application procedures. If the appointee is not already a licensed peace officer, but is eligible to be licensed, the appointee shall apply to be licensed at the time of appointment. Application shall be made on a form provided by the board, and both the applicant and the chief law enforcement officer shall affirm that the applicant is eligible to be licensed. The applicant shall also submit the licensing fee as prescribed in D.

C. License certificate. The executive director shall issue a license certificate to an applicant who has complied with the requirements set forth in 4 MCAR § 13.027 A.1.-10. and B. of this rule and whose affirmations are consistent with the board's records. The period of the initial licensure shall be determined according to the initial letter of the licensee's surname, the date of expiration being determined by the provisions set forth in 4 MCAR § 13.030 A.

D. Licensing fee. The appropriate licensing fee is $10 if the licensee is to be licensed for 30-36 months; $6.66 if the licensee is to be licensed for at least 18 months but less than 30 months; and $3.33 if the licensee is to be licensed for at least six months but less than 18 months. No fee is owing if the applicant is to be licensed for less than six months.

E. Surrender of license certificate. Licenses shall remain the property of the board. The license certificate and any renewal certificates shall be surrendered to the board if it is suspended or revoked.

4 MCAR § 13.029 Continuing education.

A. Statement of purpose. Pursuant to the authority vested in it by Minn. Stat. § 214.12, the board has determined that a program of continuing education for peace officers and constables is necessary to promote and ensure their professional competence.

B. Continuing education and license renewal. No peace officer or constable license may be renewed unless the licensee or the licensee's appointing authority furnishes the board proof that the licensee has successfully completed board-approved continuing education as provided in 4 MCAR § 13.030 C.

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C. Criteria for course approval. For the purpose of this rule, "course sponsor" means any agency, organization or person who provides continuing education courses and seeks board approval of these courses.

1. Prior to being eligible to receive board approval, the course sponsor shall make application for course approval. Application for approval must be submitted on forms provided by the board and must be received 30 days prior to the commencement of the continuing education course.

2. No approval will be granted unless the course sponsor files with the board satisfactory proof that the course meets a law enforcement training need and that the course has reasonable training equipment and facilities available. Further, the course sponsor shall furnish the board with the lesson plans and instructor credentials for the course and such other relevant information as the board may require. Relevant information may include handout material, attendance policy and evaluation.

3. No approval will be granted unless the course sponsor files all relevant information required by the board at least ten days prior to the commencement of the proposed course. A ten day extension may be granted by the executive director upon receipt of documentation showing a compelling reason for the extension.

4. Upon approval, the board shall issue a letter of approval to the course sponsor.

5. Instructors who teach in continuing education courses shall possess:

a. Professionally recognized training and experience in the assigned subject area; and

b. Board-recognized instructor training or specialized academic preparation in the assigned subject area, to include psychology, law and forensic pathology. Assigned subject areas may include, but are not limited to, psychology, law and forensic pathology.

6. Guest lecturers shall have their lesson planning and classroom activities supervised by an individual who has completed board-recognized instructor training.

7. Approval of continuing education courses shall be based upon relevance to the knowledge, skills and abilities needed to be a peace officer or constable.

8. The board will approve the course for continuing education credit hours based on each contact hour of proposed training. A contact hour shall consist of no less than one 50-minute class session.

9. The board may accredit a course sponsor to offer a continuing education course for a specific period of time without further documentation.

D. Mandatory courses. The board may mandate specific courses and required minimum hours in selected subject areas to ensure continued protection of the public interest. Nothing contained in this rule shall be construed as limiting an agency from requiring or furnishing more than the number of hours of continuing education required by the board.

E. Learning objectives. The board may issue specific learning objectives applicable to the content of continuing education courses.

F. Review. All continuing education courses are subject to periodic review and evaluation by the board.

G. Inactive licensed officer. An inactive licensed officer is eligible to attend continuing education courses. Priority may be given to active licensees.

H. Record-keeping. A list of licensees who successfully complete an approved continuing education course shall be maintained by the course sponsor and a copy transmitted to the board within ten days of the close of the course. The list shall be submitted on forms provided by the board and shall include the license number of each officer. Successful completion of the course shall be determined by the course sponsor.

I. Instructor credit. Peace officers or constables may earn up to one-half of their required continuing education credits for instructing in approved continuing education courses. The peace officer or constable may earn two hours of continuing education credit for each hour of instruction.

J. Credit for courses not directly approved by the board.

1. Peace officers or constables may request continuing education credit for courses which were not directly approved by the board provided the course was not denied approval, the licensee can show proof that the course was law enforcement related, and can prove successful completion of the course. Application for credit must be submitted on forms provided by the board. Continuing education credit will be granted according to C.7.-8.

2. College credit. Continuing education credit may be granted for courses completed at accredited colleges and universities according to C.7., and credit shall be granted with one semester credit equalling 15 continuing education credits and one quarter credit equalling ten continuing education credits.

K. Instances in which credit shall not be granted. No continuing education credit will be granted for courses which consist solely of television viewing, correspondence work or self-study. Video, motion picture or sound tape presentation may be used provided a qualified instructor is in attendance at all presentations to comment and answer questions.

L. Endorsements.

1. The board may issue endorsements to peace officer licenses. Endorsements shall acknowledge the acquisition of the knowledge, skills and abilities needed to perform specialized law enforcement functions.

2. Courses which lead to license endorsement shall meet the learning objectives specified by the board for endorsement.

3. Approval of license endorsement courses shall be according to C.1.-9.

4. Endorsement shall be awarded only after a peace officer successfully completes both the prescribed endorsement course and the appropriate peace officer license endorsement examination administered by the board.

5. The board may accredit a course sponsor to offer an endorsement course for a specified period of time without further documentation.

4 MCAR § 13.030 License renewal.

A. Renewal. Peace officer licenses issued by the board pursuant to 4 MCAR § 13.028 are valid until they expire according to the provisions of that rule, are revoked, or are surrendered by the licensee. Constable licenses issued by the board pursuant to 4 MCAR § 13.032 are valid until they expire according to the provisions of that rule, are revoked, or are surrendered by the licensee. Part-time peace officer licenses issued by the board pursuant to 4 MCAR § 13.031 are valid until they expire, are revoked, or are surrendered by the licensee.

1. The licenses of licensees whose surnames begin with the letters A through G are due for renewal on July 1, 1983 and on July 1 every third year thereafter.

2. The licenses of licensees whose surnames begin with the letters H through M are due for renewal on July 1, 1984 and on July 1 every third year thereafter.

3. The licenses of licensees whose surnames begin with the letters N through Z are due for renewal on July 1, 1982 and on July 1 every third year thereafter.

B. Application. The board shall require a written application for renewal of licenses.

C. Certificate of renewal. The executive director shall issue a certificate of renewal, which is valid for three years, to each applicant who has submitted the appropriate fee on or before June 30 of the year when the license becomes due for renewal and also completed the required hours of continuing education.

1. The appropriate fees are:

a. $10 for renewal of a peace officer license;

b. $5 for renewal of a part-time peace officer license; and

c. $10 for renewal of a constable license.

2. The required hours of continuing education are:

a. No hours for a part-time peace officer or for a peace officer or constable who has been licensed for less than six months;

b. Sixteen hours for a peace officer or constable who has been licensed for at least six months but less than 18 months, no more than two of which consist of on-line shooting;

c. Thirty-two hours for a peace officer or constable who has been licensed for at least 18 months but less than 30 months, no more than four of which consist of on-line shooting; and

d. Forty-eight hours for a peace officer or constable who has been licensed for at least 30 months, no more than six of which consist of on-line shooting.

D. Change of name. When a licensee's surname is changed by reason of marriage or a judicial order, the date of expiration of the licensee's license shall change in accordance with the initial letter of the licensee's new surname. The licensee shall pay a

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proportional added fee if the new date of expiration is later than it would have been, but the licensee will receive a proportional refund if the new date of expiration is earlier than it would have been.

4 MCAR § 13.031 Licensing of part-time peace officer.

A. Scope and purpose. In view of the Legislature's stated policy on part-time peace officers in Minn. Stat. § 626.8461 and the board's respect for the varied services of these supplemental and supervised part-time employees, the board deems that it is most appropriate for the chief law enforcement officer to be responsible for the training and continuing education of the part-time peace officers working in the chief law enforcement officer's agency. Although the board mandates continuing education for peace officers and constables, the board feels that it is incumbent upon each chief law enforcement officer to assess and meet the training needs of these part-time peace officers inasmuch as such assessment and training realistically can be best accomplished at the local level.

B. Notification of appointment of part-time officer. The chief law enforcement officer shall notify the board in writing before the first day of employment of an individual who has been appointed to the position of part-time peace officer. If the appointee is not already licensed, the appointee shall apply for a provisional license on a form provided by the board.

C. Minimum selection standards. The provisionally licensed part-time peace officer shall meet at least the minimum selection standards for part-time peace officers within six months of the initial appointment, unless the board grants an extension pursuant to Minn. Stat. § 626.8463, clause (a). The minimum selection standards for a part-time peace officer are as provided in 1.-3.

1. The part-time peace officer must not have been convicted of a felony in this state or in any other state or federal jurisdiction or of any offense in any other state or federal jurisdiction which would have been a felony if committed in Minnesota. To determine this, the applicant shall be fingerprinted for the purpose of disclosure of any felony convictions. Fingerprint cards shall be forwarded to the appropriate divisions of the Bureau of Criminal Apprehension and the Federal Bureau of Investigation. The chief law enforcement officer shall immediately notify the board if a previous felony conviction is discovered.

2. A licensed physician or surgeon shall make a thorough medical examination of the part-time peace officer to determine if the officer is free from any physical condition which would adversely affect the performance of part-time peace officer duties.

3. An evaluation shall be made by a licensed psychologist to determine that the applicant is free from any emotional or mental condition which might adversely affect performance of part-time peace officer duties.

D. First aid and firearms. The provisionally licensed part-time peace officer shall successfully complete a first aid course and a firearms training course within 12 months of the initial appointment.

E. Documentation. The appointing authority may certify that the provisionally licensed part-time peace officer has already completed certain of these standards but the certification must be documented pursuant to G.

F. Notification of compliance. Notification of compliance with C. and D. shall be furnished by the chief law enforcement officer on forms provided by the board. The notification shall be submitted within five working days of the respective deadlines. The provisional license shall expire if the provisionally licensed part-time peace officer has not complied within the time allowed.

G. Availability of documentation. The chief law enforcement officer shall maintain the documentation necessary to show compliance with C. and D. The documentation is subject to periodic review by the board and shall be made available to the board upon its request.

H. Expiration of license. The provisionally licensed part-time peace officer is eligible to take the licensing test for part-time peace officers upon completion of the requirements specified in C. and D. The provisional license expires 24 months after the initial appointment if the provisionally licensed part-time peace officer has not passed the part-time peace officer licensing examination, or if the provisionally licensed part-time peace officer has received a peace officer license.

I. Issuance of license. The executive director shall issue a part-time peace officer license to a provisionally licensed part-time peace officer who has passed the part-time peace officer licensing examination, submitted a written application for licensure, and paid the appropriate licensing fee. The period of initial licensure is determined by the initial letter of the licensee's surname, the date of expiration being determined by the provisions of 4 MCAR § 13.030 A. The appropriate licensing fee is $5 if the license is valid for at least 30 months but less than 36 months; $3.33 if it is valid for at least 18 months but less than 30 months; and $1.66 if it is valid for at least six months but less than 18 months. No fee is required if the applicant is to be licensed for less than six months.

J. Inactive status of part-time peace officer license.

1. The chief law enforcement officer shall notify the board within ten days of all voluntary or involuntary terminations of part-time peace officers. The notification shall include:

a. Name of licensee;

b. Licensee's forwarding address unless the licensee requests that this information not be divulged; and

c. Other information requested by the board.

2. An individual possessing a part-time peace officer license may maintain the license in inactive status provided that he meets the requirements of 4 MCAR § 13.030 C.

3. Inactive status. An individual who is appointed to the position of a part-time peace officer within one year of the date when the individual's license was placed on inactive status is not required to comply with selection standards outlined in C.1.-3. An individual who is appointed as a part-time peace officer more than one year after the date the individual's license was placed on an inactive status is required to comply with selection standards outlined in C.1.-3. prior to his first day of employment.

K. Inapplicability. This rule does not apply to peace officers who are employed on a part-time basis.

4 MCAR § 13.032 Constables.

A. Board notification. The appointing authority shall notify the board in writing before an individual appointed or elected to the position of constable assumes any duties in law enforcement. If the individual is not already licensed, he shall apply for a provisional license on a form provided by the board.

B. Requirements. The provisionally licensed constable shall meet the requirements set forth in 4 MCAR § 13.031 C.-D.

C. Certification. The appointing authority may certify that the provisionally licensed constable has already completed certain of these standards but such certification must be documented pursuant to E.

D. Notification of compliance. Notification of compliance with 4 MCAR § 13.031 C. and D. shall be furnished by the appointing authority on forms provided by the board. Notification shall be submitted within five working days of the respective deadlines. The provisional license expires if the provisionally licensed constable has not complied within the time allowed.

E. Documentation. The appointing authority shall maintain the documentation necessary to show compliance with 4 MCAR § 13.031 C. and D. The documentation is subject to periodic review by the board and shall be made available to the board upon its request.

F. Constable licensing examination. The provisionally licensed constable shall be eligible to take the constable licensing examination upon completion of the requirements specified in 4 MCAR § 13.031 C. and D. The provisional license expires 24 months after the initial election or appointment if the provisionally licensed constable has not passed the constable licensing examination or if the provisionally licensed constable has received a peace officer license.

G. Issuance of license. The executive director shall issue a constable license to a provisionally licensed constable who has passed the constable licensing examination, submitted a written application for licensure, and paid the appropriate licensing fee. The period of initial licensure is determined by the initial letter of the licensee's surname, the date of expiration being determined by the provisions of 4 MCAR § 13.030 A. The appropriate licensing fee is $10 if the license is valid for at least 30 months but less than 36 months; $6.66 if it is valid for at least 18 months but less than 30 months, and $3.33 if it is valid for at least six months but less than 18 months. No fee is required if the applicant is to be licensed for less than six months.

H. Inactive status of constable license.

1. The appointing authority shall notify the board within ten days of all voluntary or involuntary terminations of a constable. Notification shall include:

a. Name of licensee;

b. Licensee's forwarding address unless the licensee requests that this information not be divulged; and

c. Other information requested by the board.

2. An individual possessing a constable license may maintain the license in an inactive status provided that the individual meets the requirements of 4 MCAR § 13.030 C.

3. An individual who is appointed or elected to the position of constable within one year of the date the individual's

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license was placed on inactive status may not be required to comply with selection standards outlined in 4 MCAR § 13.031 C.1.-3. An individual who is appointed or elected as a constable more than one year after the date the individual's license was placed on inactive status shall be required to comply with selection standards outlined in 4 MCAR § 13.031 C.1.-3. prior to the individual's first day of employment.

I. Inapplicability. This rule does not apply to a peace officer who is elected or appointed to the position of constable.

4 MCAR § 13.033 Transition from part-time peace officer to peace officer.

A. Purpose. To meet the mandates of Laws of 1981, ch. 310, the board is hereby promulgating rules to provide a system whereby part-time peace officers may, upon fulfilling certain conditions and requirements, obtain peace officer licenses.

B. Eligibility. An appointing authority may, by formal declaration to the board, state its intention to have any part-time peace officer in its employ be eligible for peace officer licensing, subject to the following restrictions:

1. The individual named in this declaration must be a part-time peace officer who has worked 1040 hours as a part-time peace officer since the date the individual was licensed, pursuant to 4 MCAR § 13.031 I.; and

2. The individual shall complete all selection standards as outlined in 4 MCAR § 13.027 before the declaration is submitted to the board.

C. Declaration of intent.

1. The declaration of intent shall demonstrate a compelling need for having an agency's part-time peace officer or officers become peace officers.

2. The declaration must be in the form of a formal resolution made by the appointing authority. The board shall be provided with a copy of the resolution and the minutes of the meeting at which it was made. These documents shall be submitted to the board within ten days of the effective date of the resolution.

D. Removal of hour restriction.

1. The 20-hour per week limit prescribed by Minn. Stat. § 626.84, subd. 1., clause (f) for a part-time peace officer will be waived in accordance with Minn. Stat. § 626.84, subd. 1, clause (f) only after the board has formally approved the declaration submitted by the appointing authority. The 20-hour per week restriction may thereafter be waived at the discretion of the appointing authority for a period not to exceed one year. This one year limit may be extended only for compelling reasons, subject to board review and approval. No individual may have the hour restriction removed a second time if the individual fails to obtain a peace officer license within one year from the date the board approved the agency's declaration of intent to have the individual become a peace officer. Waiver of the hour restriction may only be effected in a single agency in cases where the officer works for more than one department. An individual working for more than one agency whose hourly restriction has been waived in one of these agencies shall still be bound to the 20-hour a week limit in all other agencies for which the individual works.

2. Upon acceptance by the board, the officer is exempted from the limitation on the number of hours that may be worked. The officer is subject to all other part-time peace officer requirements as outlined in Minn. Stat. §§ 626.8464 and 626.8465.

E. Specialized training school. Any part-time peace officer who has been formally designated by the appointing authority to seek peace officer licensing through the provisions of this rule and who has met all of the requirements stated herein, is eligible to attend a specialized training school pursuant to Minn. Stat. §§ 626.843, subd. 1, clause (g) and 626.845, subd. 1, clause (g), that meets the requirements set forth in 4 MCAR § 13.023 A.1. Upon successful completion of the specialized training school, an individual will be eligible to take the academic examination.

F. Skills school. Part-time peace officers who have successfully completed the academic examination are eligible to attend the skills school. Upon successful completion of the skills school, a part-time peace officer is eligible to take the skills examination.

G. Eligibility for licensing. Part-time peace officers who have successfully completed the skills examination are eligible to be licensed.

4 MCAR § 13.034 Inactive status of peace officer licenses.

A. Terminations. The chief law enforcement officer shall notify the board within ten days of all voluntary and involuntary terminations of peace officers. The notification shall include:

1. Name of licensee;

2. Licensee's forwarding address, unless licensee requests that this information not be divulged; and

3. Other information requested by the board.

B. Inactive status. An individual possessing a peace officer license may maintain the license in an inactive status, provided the individual meets the requirements of 4 MCAR § 13.030 C.

C. Selection standards. An individual who is appointed to a law enforcement position within one year of the date the individual's license was placed on inactive status shall not be required to comply with selection standards outlifed in 4 MCAR § 13.027 A.1.-10. An individual who is appointed to a law enforcement position more than one year after the date that individual's license was placed on inactive status shall be required to comply with selection standards as outlined in 4 MCAR § 13.027 A.1.-10., prior to his first day of employment.

4 MCAR § 13.035 Scope of standards of conduct.

A. Authority. This rule is adopted pursuant to Minn. Stat. §§ 626.843, subd. 1, clause (e), 626.845, subd. 1, clause (i), and ch. 214.

B. Scope. Nothing in 4 MCAR §§ 13.021-13.039 shall preclude or prevent any agency, political subdivision, civil service commission or other appointing authority from publishing and enforcing rules, policies or procedures which are more comprehensive than those minimum statewide standards set forth hereinafter. The responsibility for enforcing any rules, policies or procedures which are more comprehensive than the following minimum standards of conduct remains with the promulgating agency, political subdivision, commission or appointing authority.

C. Statement of purpose. The board believes that in order for the public to have confidence in the integrity and ability of law enforcement, it is paramount that peace officers demonstrate that they are capable of self-regulation. The board further believes that internal discipline is properly a function of the appointing authority and its political subdivision. These standards of conduct relate to licensure only and violations thereof do not enlarge on a peace officer's civil or criminal liability in any way.

4 MCAR § 13.036 Standards of conduct. Violations of the following standards of conduct by a licensee shall be grounds for revocation, suspension or nonrenewal of license:

A. The conviction of a felony in this state or in any other state or federal jurisdiction or of any offense in any other state or federal jurisdiction which would have been a felony if committed in Minnesota;

B. The use of deadly force when not authorized by Minn. Stat. § 609.066;

C. The making of any false material statement under oath to the board which the peace officer does not believe to be true;

D. The making of any false material statement to the board while obtaining or renewing a license;

E. Failure to comply with the board's continuing education requirements as set forth in 4 MCAR § 13.030 C.;

F. Failure to pay the appropriate license renewal fee;

G. Any violation of a board rule set forth in 4 MCAR §§ 13.021-13.039; or

H. Any obstruction, hindrance, interference or prevention of the execution of 4 MCAR § 13.037.

4 MCAR § 13.037 Complaint processing. For the purpose of this rule, "affected parties" means the complainant, the licensee who is subject to the complaint, and the chief law enforcement officer in the agency employing the officer who is a party to the complaint.

A. Scope. This rule shall constitute the code for regulating the management and processing of complaints concerning allegations of misconduct of all licensees. To the extent the terms of this rule are inconsistent with any other rules or agreements, the terms of this rule shall be controlling.

B. Complaint committee membership. The complaint investigation committee shall consist of three board members who shall supervise the processing of the complaint. At least two of these members shall be peace officers. The board chairman shall appoint the complaint investigation committee and the chairman.

C. Complaint committee quorum. All three committee members must be present to act and decisions of the committee shall be by majority volte.

D. Initial hearing. After any written complaint concerning the conduct of a licensee is received by the executive director of the board or his designee, a meeting of the committee shall be convened within a reasonable time.

1. Reasonable notice of the time, place and date of the meeting shall be given to the affected parties. The notice shall also

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state the nature of the complaint and advise those notified that they may attend the meeting and have a reasonable opportunity to address the committee. The notice shall advise the affected parties of any staff recommendations concerning the complaint and the purpose of the meeting.

2. After review of the evidence the committee shall take one of the following actions and shall inform the affected parties of the committee's decision:

a. The committee may refer the complainant to another state or local agency which has jurisdiction over the subject matter of the complaint;

b. The committee may find no arguable violation of a rule or statute which the board is empowered to enforce has occurred;

c. The committee may find an arguable violation of a rule or statute which the board is empowered to enforce has occurred. If the committee so finds, it shall also determine the appropriate agency to investigate the matter or, if the matter has been adequately investigated, it may refer the matter to the board for further action; or

d. The committee may continue this matter.

E. Investigation. If the committee finds a possible violation has occurred, it shall refer the matter to the executive director who shall consult with the agency designated to investigate the complaint.

1. If the executive director finds that the appropriate agency has investigated the allegations in the complaint, the executive director shall obtain the information pursuant to Minn. Stat. § 214.10, subd. 5, and present it to the committee.

2. If the executive director finds that the appropriate agency has not investigated the allegations or has not provided the requested information, the executive director shall order the appropriate agency to conduct an investigation and provide its findings within 30 days. By majority vote, the committee may grant the agency a 15-day extension, subject to renewal upon request and approval of the majority of the committee members.

F. Second hearing. After the executive director receives the information, he shall call a meeting of the committee. The purpose of the meeting shall be to determine whether further board action is warranted.

1. Reasonable notice of the time, place and date of the meeting shall be given to the affected parties. The notice shall advise those affected parties that they may attend the meeting and have a reasonable opportunity to address the committee. It shall also advise the affected parties that the purpose of the meeting is solely to determine whether further board action is warranted.

2. After review of the evidence, the committee shall take one of the following actions and shall inform the affected parties of the committee's action:

a. The committee may find that no further board action is warranted;

b. The committee may find that further board action is warranted; or

c. The committee may continue the matter.

G. Appeals. Any member of the committee who has voted against any decision of the committee may appeal that decision to the full board by means of the following procedures:

1. The committee member bringing the appeal shall immediately inform the committee of the member's intention to do so and action on the committee's decision shall be stayed pending the outcome of the appeal;

2. The affected parties shall be promptly notified of the decision to appeal;

3. The board shall hear the appeal at the next regularly scheduled board meeting;

4. The appeal shall be on the record of the proceedings of the committee;

5. The committee member appealing the decision shall be given reasonable opportunity to present oral or written argument, or both, to the board;

6. The other committee members shall be given a reasonable opportunity to present oral or written argument, or both, to the board;

7. Committee members may vote on the issue under appeal; or

8. If a majority of the board members present reverse the decision of the committee, the matter will be remanded to the committee for action consistent with the reversal. In all other cases, the stay of action will be revoked and the matter will be remanded to the committee for further action.

H. Settlement. If a matter is referred to the executive director after a determination has been made that further board action is warranted, the executive director shall attempt to resolve the grievance or rectify improper activity through education,

conference, conciliation and persuasion of the appropriate parties. The executive director shall present a written report to the board of the result of his attempt in this regard.

I. Review by the board.

1. The affected parties shall be given reasonable notice of the board meeting at which the board will review the report of the executive director.

2. The board shall review the report of the executive director and based on this report and the total record shall by absolute majority of the board membership take one of the following actions:

a. The board may order an administrative hearing as provided by law;

b. The board may enter into a settlement agreement or compromise with the licensee. Violation of the terms of any such settlement may be grounds for additional board action;

c. The board may decide no further action is necessary; or

d. The board may continue this matter.

3. The board shall provide notice to the affected parties of the board's decision.

J. License hearings.

1. Administrative license hearings shall be conducted in the manner prescribed by the contested case procedures mandated by Minn. Stat. ch. 15, the Administrative Procedures Act, and 9 MCAR §§ 2.101-2.222, the rules of the Office of Administrative Hearings.

2. After receipt of the report of the hearing examiner, the board chairman shall convene a special meeting of the full board.

3. Before the board votes to take action concerning a a license it shall provide the affected parties notice of the hearing and shall provide a reasonable opportunity to be heard and comment upon the report of the hearing examiner. This hearing shall be public. It shall be recorded.

4. The board shall take one of the following actions:

a. Order a re-hearing;

b. Revoke the officer's license;

c. Suspend the officer's license;

d. Enter a settlement agreement or compromise with the officer. Violations of the terms of the settlement may be grounds for further board action;

e. Reprimand the licensee; or

f. Take no further action.

5. Any of the actions listed in 4.a.-f. require a decision by an absolute majority of the board.

6. The affected parties shall be sent written notice of the decision and the reasons for the decision.

4 MCAR § 13.038 Reimbursement to local units of government.

A. Annual reimbursement. Pursuant to Laws of 1981, ch. 341, § 1, the board shall provide annual reimbursement to help defray the costs that have been incurred by local units of government in making continuing education available to the peace officers or constables, or both, employed by them; provided, however, that the board's program of reimbursement is contingent upon the continued availability of funds designated for that purpose.

B. Equal shares of funds. Equal shares of the available funds shall be disbursed to the local units for each peace officer or constable who:

1. Has been employed by the same local unit during at least eight of the 12 months immediately preceding the local unit's application for reimbursement; and

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2. Has had at least 16 hours of board-approved continuing education made available to the constable or peace officer by the local unit during those 12 months.

C. Part-time peace officer shares. A share may be awarded when a peace officer has worked part-time for a local unit, but only one local unit shall be credited with a share for the same peace officer.

D. Application forms. The board shall furnish application forms to each local unit as soon as possible after July 1 of each year. The board shall also provide a list of the peace officers or constables, or both, who, according to the board's records, were employed by the local unit as of July 1. When applying for reimbursement, a local unit shall affirm that it is eligible to be reimbursed in accordance with the board's list, or that a correction should be made and the amount of reimbursement should be adjusted in accordance with the correction.

E. Signing of application forms. Application forms shall be signed by both the chief law enforcement officer and the official designated by resolution of the appointing authority. The forms shall be submitted to the executive director within 45 days of the distribution of the forms, except that the executive director may grant an extension of time which shall not exceed ten days.

F. Further information. The executive director may require such further information or documentation as may be necessary to substantiate a correction in the number of shares to be credited to an applicant for reimbursement. If the same peace officer or constable is claimed by more than one applicant, the executive director shall determine which applicant is eligible for the share. This determination shall be made by documented statements of hours worked. Reimbursement funds shall be disbursed to the county, municipal, or township treasurer as soon as possible after approval of the applications and computation of the amount per share to be awarded to each applicant.

4 MCAR § 13.039 Reimbursement to institutions providing skills training. For the purpose of this rule, a "board approved course in law enforcement skills training" means a skills school.

A. Reimbursement. Pursuant to Laws of 1981, ch. 341, § 1, the board shall provide reimbursement to institutions conducting board-approved courses in law enforcement skills training; provided, however, that the reimbursement program shall be conditional upon the continued availability of funds designated for this purpose.

B. Academic and skills programs. No reimbursement shall be awarded to a combined academic and skills program.

C. Student awards. Equal shares shall be awarded for each student successfully completing the board's skills licensing examination between July 1 and June 30 of a given fiscal year.

D. Application for reimbursement. Application shall be made through a written request signed by the coordinator of a skills course. The application shall state the names of the students for whom reimbursement is being sought.

E. Application approval. The executive director shall approve each application upon verification that the named students have successfully completed the skills licensing test within the period prescribed in C. Payment shall be made to the skills school.

Repealer. Rules 4 MCAR §§ 13.001-13.020 are repealed.

Department of Revenue
Income Tax Division

Proposed Rule Concerning Incorporation by Reference of the Internal Revenue Code (13 MCAR § 1.6102); Repealing Numerous Income Tax Rules

Notice of Intent to Adopt and Repeal Rules without a Public Hearing

Notice is hereby given that the Department of Revenue proposed to adopt the above-entitled rule and repeal numerous existing rules without a public hearing. The commissioner has determined that the proposed adoption of this rule and repeal of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subdivision 4h (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes § 15.0412, subdivisions 4-4f.

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Mr. Dale H. Busacker
Attorney, Income Tax Division
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145
(612) 296-3439

Authority for the adoption of this rule and repeal of these rules is contained in Minnesota Statutes § 290.52. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of the proposed rule and rule repealers and identifies the data and information relied upon to support the proposed rule and rule repealers has been prepared and is available from Mr. Busacker upon request.

Upon adoption of the final rules without a public hearing, the proposed rule and rule repealers, this notice, the statement of need and reasonableness, all written comments received, and the final rule and rule repealers as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule and rule repealers as proposed for adoption, should submit a written statement of such request to Mr. Busacker.

Copies of this notice and the proposed rule and rule repealers are available and may be obtained by contacting Mr. Busacker.

September 30, 1981

Clyde E. Allen, Jr.
Commissioner of Revenue

Rule as Proposed (all new material)

13 MCAR § 1.6102 Incorporation by reference of the Internal Revenue Code. An incorporation by reference of the Internal Revenue Code in Minn. Stat. ch. 290 or 290A shall be interpreted in accordance with any regulations or rulings adopted or issued by the Internal Revenue Service which govern the referenced provisions.

Repealer. Income tax rules 2003 (2); 2003 (3); 2004; 2005 (1); 2005 (2); 2005 (3); 2005 (4); 2006 (1); 2006 (2); 2006 (2) (a); 2006 (3); 2006 (4); 2006 (5); 2006 (8); 2007 (5)-1; 2007 (5)-2; 2007 (5)-3; 2007 (5)-4; 2007 (5)-5; 2007 (5)-6; 2007 (5)-7; 2007 (5)-8; 2007 (5)-9; 2007.2; 2007.6; 2008 (3)-1; 2008 (3)-2; 2008 (3)-3; 2008 (3)-4; 2008 (3)-5; 2008 (4); 2008 (5); 2008 (6); 2008 (11); 2008 (16); 2008 (20)-1; 2008 (20)-2; 2008 (20)-3; 2008 (20)-4; 2009 (3)-2; 2009 (3)-3; 2009 (5)-3; 2009 (5)-6; 2009 (12)-1; 2009 (12)-2; 2009 (12)-3; 2009 (12)-4; 2009 (14); 2009 (15); 2009 (18)-1; 2009 (18)-2; 2009 (18)-3; 2009 (18)-4; 2009 (19); 2009 (21)-1; 2009 (21)-2; 2009 (21)-3; 2009 (21)-4; 2009 (21)-5; 2009 (21)-6; 2009.5 (7)-6; 2010 (8); 2012 (1); 2012 (3); 2013 (4); 2013.1 (2)-1; 2013.1 (2)-2; 2013.1 (2)-3; 2013.1 (2)-4; 2013.1 (3); 2013.1 (4); 2013.1 (5); 2013.1 (6)-1; 2013.1 (6)-2; 2013.1 (6)-3; 2013.1 (7); 2013.2 (1); 2013.2 (2)-1; 2013.2 (2)-2; 2013.2 (2)-3; 2013.2 (2)-4; 2013.2 (2)-5; 2013.2 (2)-10; 2013.2 (2)-11; 2013.2 (2)-12; 2013.3 (2); 2013.3 (3)-1; 2013.3 (3)-2; 2013.3 (3)-3; 2013.3 (3)-4; 2013.4 (1); 2013.4 (2)-1; 2013.4 (2)-2; 2013.4 (2)-3; 2013.4 (2)-4; 2013.4 (2)-5; 2013.4 (2)-6; 2013.4 (2)-7; 2013.4 (3)-1; 2013.4 (3)-2; 2013.4 (3)-3; 2013.4 (3)-4; 2013.4 (3)-5; 2013.4 (4)-1; 2013.4 (4)-2; 2013.5 (1); 2013.5 (2)-1; 2013.5 (2)-2; 2013.5 (2)-3; 2013.5 (2)-4; 2013.5 (2)-5; 2013.5 (3)-1; 2013.5 (3)-2; 2013.5 (3)-3; 2013.5 (3)-4; 2013.5 (3)-5; 2013.5 (4)-1; 2013.5 (4)-2; 2013.5 (4)-3; 2013.6 (1)-1; 2013.6 (1)-2; 2013.6 (1)-3; 2013.6 (2); 2013.6 (3)-1; 2013.6 (3)-2; 2013.6 (3)-3; 2013.6 (3)-4; 2013.6 (3)-5; 2013.6 (4)-1; 2013.6 (4)-2;2; 2013.6 (4)-3; 2013.6 (4)-4; 2013.6 (5)-1; 2013.6 (5)-2; 2013.6 (6)-1; 2013.6 (6)-2; 2013.6 (6)-3; 2013.6 (6)-4; 2013.6 (7); 2013.6 (8)-1; 2013.6 (9)-1; 2013.6 (9)-2; 2013.6 (9)-3; 2013.7 (1)-1; 2013.7 (1)-2; 2013.7 (2); 2013.7 (3)-1; 2013.7 (3)-2; 2014 (7); 2016 (6); 2016 (7)-1; 2016 (7)-2; 2016 (7)-3; 2016 (7)-4; 2016 (12); 2016 (13)-1; 2017 (5); 2018 (2); 2021 (1); 2022; 2023 (2)-1; 2023 (2)-2; 2023 (2)-3; 2023 (5)-1; 2023 (5)-2; 2023 (5)-3; 2023 (5)-4; 2023 (5)-5; 2023 (5)-6; 2023 (5)-7; 2023 (5)-8; 2023 (6)-1; 2023 (6)-2; 2023 (6)-3; 2023 (6)-4; 2023 (6)-5; 2023 (7)-1; 2023 (7)-2; 2023 (7)-3; 2023 (7)-4; 2023 (7)-5; 2023 (7)-6; 2023 (7)-7; 2023 (7)-8; 2023 (8)-1; 2023 (8)-2; 2023 (8)-3; 2023 (8)-4; 2023 (9)-1; 2023 (9)-2; 2023 (9)-3; 2023 (9)-4; 2023 (9)-5; 2023 (9)-6; 2023 (9)-7; 2023 (9)-8; 2023 (9)-9; 2023 (10)-1; 2023 (10)-2; 2023 (10)-3; 2023 (10)-4; 2023 (10)-5; 2023 (10)-6; 2023 (10)-7; 2023 (10)-8; 2023 (11)-1; 2023 (11)-2; 2023 (11)-3; 2023 (11)-4; 2023 (11)-5; 2023 (11)-6; 2023 (11)-7; 2023 (11)-8; 2023 (12)-1; 2023 (12)-2; 2023 (12)-3; 2023 (13); 2023 (14)-1; 2023 (14)-2; 2023 (14)-3; 2023 (14)-4; 2023 (14)-5; 2024; 2025 (1)-1; 2025 (1)-2; 2025 (1)-3; 2025 (1)-4; 2025 (2)-1; 2025 (2)-2; 2025 (2)-3; 2025 (3)-1; 2025 (3)-2; 2025 (3)-3; 2025 (3)-4; 2025 (4)-1; 2025 (4)-2; 2025 (4)-3; 2025 (4)-4; 2025 (4)-5; 2025 (5); 2027-1; 2027-2; 2028 (1)-1; 2028 (1)-2; 2028 (2)-1; 2028 (2)-2; 2028 (2)-3; 2028 (2)-4; 2031 (28); 2036.1 (1); 2037 (1); 2037 (2); 2038 (2); 2040 (4); 2042 (5); 2044; 2045 (3); 2050 (2); 2050 (4); 2053 (3); 2053 (4); 2061; 2065 (1); 2065 (6); 2065 (7); 2092 (1)-1; 2092 (1)-5; 2092 (7)-3; 2092 (11); 2093.1-1; 2093.1-2; 2093.1-4; 2093.2-1; 2093.2-2; 2093.2-3; 2093.2-5; 2093.3-3; 2093.4-4; 2093.4-5; 2093.4-6; 2097.1 (1); 2097.1 (2); 2097.1 (3); 2097.2 (1); 2097.2 (2); 2097.2 (3); 2097.2 (5); and 2097.2 (6) of the Department of Revenue 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.

Board of Electricity

Adopted Rule Amending the Time and Fee Requirements for Certain Licenses and Authorizing a Duplicate License Fee

The rule proposed and published at *State Register*, Volume 6, Number 6, Pages 157-159, August 10, 1981 (6 S.R. 158) is now adopted with the following modifications:

Rule as Adopted

Repealer. Rule 4 MCAR § 11.032 as adopted at 6 *State Register* 233 is repealed on the effective date of this 4 MCAR § 11.032.

Effective date. The amendments to 4 MCAR § 11.032 are effective November 1, 1981.

Minnesota Housing Finance Agency

Adopted Temporary Rules Governing Income Limits for Limited Unit Developments and Eligibility for the Home Ownership Assistance Fund

The proposed temporary rules published at *State Register*, Volume 6, Number 6, pp. 159-161, August 10, 1981, (CITE 6 S.R. 159) were adopted on September 24, 1981, approved by the Office of the Attorney General on October 2, 1981, and filed with the Office of the Secretary of State on October 2, 1981, with the following amendments.

Temporary Rules as Adopted

12 MCAR § 3.002 O. "Persons and families of low and moderate income" means:

1. With respect to limited-unit mortgage loans pursuant to Chapter Four of these rules, development cost loans pursuant to Chapter Three of these rules, planning grants pursuant to Chapter Five of these rules, and American Indian housing loans pursuant to Chapter Eight of these rules, which loans and grants are intended for a limited-unit development, or a dwelling unit in a planned unit development or a condominium, those persons and families whose adjusted income does not exceed the amounts set forth in Exhibit ~~1 below~~ 12 MCAR § 3.002 O.-1. or such lower amount as shall be required to assure that the interest on obligations of the agency will be exempt from federal income taxation. "Metropolitan area" has the meaning given it in Minn. Stat. § 473.121, subd. 2.;

Exhibit ~~1~~ 12 MCAR § 3.002 O.-1.

	~~Regions 1-10~~ Nonmetropolitan Area	~~Region 11~~ Metropolitan Area
Mortgage Interest Rate	Maximum Adjusted Income	Maximum Adjusted Income
0-10.59%	$19,000	$24,000
10.50-11.09%	$20,000	$25,000
11.10-11.59%	$21,000	$26,000
11.60-12.00%	$22,000	$27,000

2. With respect to limited-unit mortgage loans to veterans and veterans' dependents to assist in making down payments

pursuant to Minn. Stat. § 462A.05, subd. 19, those persons and families whose adjusted income does not exceed $22,000 for the nonmetropolitan area and $27,000 for the metropolitan area regardless of the interest rate on the mortgage loan for which down payment assistance has been given;

12 MCAR § 3.133 Homeownership assistance fund.

A. Monthly assistance. The agency may provide eligible recipients with interest-free monthly assistance loans in the form of monthly payments of a portion of the principal and interest installment due on the limited-unit development mortgage on qualifying property. Such payments shall not exceed $100 per month and shall decrease by $10 per month or ~~(~~$120 per year~~)~~ each year. The maximum amount of monthly assistance to which a recipient is originally entitled shall be determined by the agency from time to time on the basis of the percentage of income which may reasonably be spent on mortgage payments, the interest rate charged for limited-unit development mortgage loans, and general housing and construction costs in the State of Minnesota, provided however, that the initial maximum monthly assistance which the agency shall determine to be available shall not exceed the following amounts for persons and families within the following annual adjusted income ranges as set forth in Exhibit ~~1 below~~ 12 MCAR § 3.133 B.-1. and Exhibit 12 MCAR § 3.133 C.-2. for various potential interest rates to be charged by the agency on its limited-unit development mortgage loans~~:~~.

B. Metropolitan area. Exhibit 12 MCAR § 3.133 B.-1. applies to eligible recipients whose qualifying property is in the metropolitan area as defined in Minn. Stat. § 473.121, subd. 2.

Exhibit ~~1 Region 11~~ 12 MCAR § 3.133 B.-1.

Mortgage Interest Rate		Initial Maximum Monthly Assistance				
		$100	$80	$60	$40	$20
0-10.59%	Adj. Hshld. Income	0-15000	15001-16000	16001-17000	17001-18000	18001-19000
10.60-11.09%	Adj. Hshld. Income	0-16000	16001-17000	17001-18000	18001-19000	19001-20000
11.10-11.59%	Adj. Hshld. Income	0-17000	17001-18000	18001-19000	19001-20000	20001-21000
11.60-12.00%	Adj. Hshld. Income	0-18000	18001-19000	19001-20000	20001-21000	21001-22000

C. Nonmetropolitan area. Exhibit 12 MCAR § 3.133 C.-2. applies to eligible recipients whose qualifying property is not in the metropolitan area as defined in Minn. Stat. § 473.121, subd. 2.

~~**Regions 1-10**~~
Exhibit 12 MCAR § 3.133 C.-2.

Mortgage Interest Rate		Initial Maximum Monthly Assistance				
		$100	$80	$60	$40	$20
0-10.59%	Adj. Hshld. Income	0-10000	10001-11000	11001-12000	12001-13000	13001-14000
10.60-11.09%	Adj. Hshld. Income	0-11000	11001-12000	12001-13000	13001-14000	14001-15000

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11.10-11.59%	Adj. Hshld. Income	0-12000	12001-13000	13001-14000	14001-15000	15001-16000
11.60-12.00%	Adj. Hshld. Income	0-13000	13001-14000	14001-15000	15001-16000	16001-17000

Reletter. Reletter 12 MCAR § 3.002 O.2.-4. as O.3.-5.

TAX COURT

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

State of Minnesota

Tax Court

Brown & Williamson Tobacco Corporation,

Appellant,

v.

The Commissioner of Revenue,

Appellee.

In the Matter of the Appeal from the Commissioner's Order dated February 20, 1979, relating to the income tax of Brown & Williamson Tobacco Corporation for the calendar years ending December 31, 1972; December 31, 1973; and December 31, 1974.

Order dated October 5, 1981
Docket No. 2869

The above matter has been submitted to the Minnesota Tax Court, Judge Carl A. Jensen presiding, on the basis of Stipulations of Fact agreed to by the parties and briefs filed by the parties.

Appellant is represented by John W. Windhorst, Jr. and Robert J. Dwyer, Jr. of the firm of Dorsey, Windhorst, Hannaford, Whitney and Halladay.

Appellee is represented by C. H. Luther, Deputy Attorney General.

Syllabus

Transfers of money between a parent corporation and a wholly owned subsidiary do not affect the net income of the parent corporation for Minnesota income tax purposes and such transfers will be disregarded even though they are labeled interest, commissions, or dividends, when the subsidiary corporation is strictly a paper corporation without any employees and has been established for the sole purpose of taking advantage of certain federal tax laws relating to domestic international sales corporations.

Findings of Fact

1. Appellant is a Delaware corporation with its principal business office in Louisville, Kentucky. It manufactures and sells tobacco products. It carries on its trade or business partly within and partly without Minnesota and pays Minnesota income tax based upon the three factor apportionment formula of Minnesota statutes.

2. B & W International Sales Corporation (hereinafter referred to as "International") is a wholly owned subsidiary corporation of Appellant organized under the laws of Delaware with its principal business office in Louisville, Kentucky. International has at all times been a Domestic International Sales Corporation (DISC), pursuant to the Internal Revenue Code.

3. International has never carried on a trade or business either partly or wholly within Minnesota and has never filed a Minnesota income tax return. During the audit period, all of the officers and directors of International were also officers or non-officer employees of Appellant. International had no employees during the audit period. All of its operations were conducted by employees of Appellant.

4. Various transactions occurred between Appellant and International whereby Appellant transferred funds to International labeled as commissions and sometimes as interest, and International transferred funds back to Appellant as dividends and loans. All of these transactions were entirely legal and served to provide Appellant certain tax benefits under federal tax laws. All of the transactions were paper transactions made entirely by Appellant's officers and employees.

5. Appellant computed its net income for federal income tax purposes and its apportionable net income for Minnesota income tax purposes during the audit period by taking certain deductions for commissions and interest paid to International and for certain payments made by International to Appellant as dividends. Appellee has audited Appellant's tax returns for the years in question and has recalculated the tax payable to Minnesota on the basis that all of these transactions and transfers were paper transactions and had no effect on the net income of Appellant. Said transfers were considered by Appellee to be the same as internal transfers within the same corporation.

6. Appellee is not bound by federal laws in determining net income apportionable to Minnesota for income tax purposes when Minnesota has no similar statutes. Appellee should redetermine the taxes payable for the audit in accordance with these findings.

Conclusions of Law

1. Transfers of money between a parent corporation and a wholly owned subsidiary do not affect the net income of the parent corporation for Minnesota income tax purposes and such transfers will be disregarded even though they are labeled interest, commissions, or dividends, when the subsidiary corporation is strictly a paper corporation without any employees and has been established for the sole purpose of taking advantage of certain federal tax laws relating to domestic international sales corporations.

2. Appellee is ordered to redetermine the taxes payable for the audit period in accordance with these Findings of Fact and Conclusions of Law.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

By the Court,
Carl A. Jensen, Judge
Minnesota Tax Court

Memorandum

For various reasons the Federal Revenue Laws allowed certain foreign exporting corporations to establish paper corporations known as Domestic International Sales Corporations (DISC). Under federal law the parent corporation was allowed to enter into certain transactions with its DISC.

These transactions involved payments of commissions by the parent corporation to the DISC, payments of dividends from the DISC to the parent corporation, loans by the DISC to the parent corporation, and payment of interest on the loans by the parent corporation to the DISC. All of these transactions were paper transactions and all accounting procedures were performed by officers and employees of the parent corporation.

In this case the DISC had no employees. All of the officers of the DISC were officers or employees of the parent corporation. The paper transactions resulted in certain favorable tax treatment under federal tax laws.

It would appear that under federal tax laws that these transactions would not have been allowed to change the net income of the parent corporation except as the DISC law specifically provided. Since Minnesota has no DISC law, none of these transactions should be considered in determining the net income of the parent corporation. All of the transactions should be considered as merely paper transfers not affecting in any way the net income for Minnesota income tax purposes.

Minnesota Statutes § 290.46 specifically provides that the Commissioner is to determine the correctness of the return. Minnesota Statutes § 290.07, subd. 2 provides as follows:

"If no such accounting system has been regularly employed, or if that employed does not clearly or fairly reflect income or the income taxable under this chapter, the computation 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."

It appears to this Court that the accounting system used by the Appellant does not fairly reflect income taxable under Minnesota laws and that the computation should be made in accordance with the Findings of Fact and Conclusions of Law stated herein.

The Minnesota Supreme Court recently decided most of the issues in this case in *Bunge Corporation, et al v. Commissioner of Revenue*, 305 N.W. 2d 779, (Minn. May, 1981). The Supreme Court affirmed the decision of this Court in *Bunge Corporation v. Commissioner*, Tax Court Docket No. 2510, February 1, 1980. The Supreme Court noted that DISCs are given favorable income tax treatment under federal law. The Supreme Court also noted that the DISC paid no salaries and that all of its books and records were kept by employees of the parent corporation. The Supreme Court stated the following:

"The payments made by Bunge to the DISC cannot be considered ordinary and necessary business deductions for purposes of Sections 290.09."

The Supreme Court also noted that ultimately all commissions paid to the DISC are returned to the parent. The Supreme

Court also took note of Minnesota Statutes § 290.19, subd. 1a which states that sales made through DISCs shall not be considered to have been made within this state. The Court noted that the parent corporation asserted that this indicated that payments to a DISC would be ordinary and necessary business expenses. The Court disregarded this assertion and stated that deductions are a matter of legislative grace and statutes that provide for such deductions must be strictly construed.

This Tax Court had ruled that interest payments made by the parent corporation to the DISC were allowed as deductions. This issue was not appealed. The Minnesota Supreme Court affirmed the Tax Court ruling without making special findings relative to this issue.

As previously indicated in this decision, this Court now holds that all of the transactions between the Appellant and its DISC should be treated as internal transactions which do not affect its income tax liability under Minnesota Statutes. Obviously, interest payments made by a taxpayer to the taxpayer are not allowable deductions, unless of course that same interest had been shown as income.

The question was raised as to the apportionment of dividend credit. Although we do not feel that it is necessary for the determination of this case, we do hold that dividend credit would be allowed in the same proportion as net income is apportioned to this state.

C.A.J.

SUPREME COURT

Decisions Filed Friday, October 9, 1981

Compiled by John McCarthy, Clerk

51475/Sp., 51554, 51585, 51760 Minnesota Power & Light Company, petitioner, Appellant, v. 51475, 51554 Minnesota Public Service Commission, and Butler Taconite Project, *et al.*, intervenors, Appellants, v. 51585 Minnesota Public Service Commission, and Hibbing Taconite Co., a joint venture, Appellant, v. 51760 Minnesota Public Service Commission. (Other Parties Involved in These Appeals are as Follows:) Potlach Corporation, Intervenor-Respondent, Office of Consumer Service, Conwed Corporation, *et al.*, Intervenor-Respondents.

In arriving at a fair rate of return the incorrect application of the so-called "North Central" doctrine by the Public Service Commission did not impermissibly prejudice the appellant electric public utility where the commission otherwise made concessions in allowing the utility to earn a current return on a portion of its funds for construction work in progress.

The Public Service Commission's decision to allow Minnesota Power and Light Company to earn a current return on 50 percent of the qualifying Construction Work in Progress funds for Clay Boswell #4 [as opposed to a greater or lesser amount] was supported by substantial evidence and therefore the commission's failure to articulate the factual basis supporting its decision is not reversible error.

It was a proper legislative function of the Public Service Commission to allocate rates, affecting the taconite industry, not strictly in proportion to their consumptions, where the necessity for substantial expansion of a utility's generating capacity was made necessary by the demands of that industry.

Failure of the Public Service Commission to consider an increase in federal income tax rates for half of a utility's fiscal year was error of insufficient significance to require a reversal.

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

81-126/Sp. Christina Comty Nygren v. Teachers' Retirement Board of the State of Minnesota, Defendant, Mary Becker, Appellant. Hennepin County.

A "surviving dependent spouse" entitled under Minn. Stat. § 354.47, subd. 1 (1978) to receive the contributions made by a deceased member of the Teachers Retirement Association to the Teachers Retirement Fund is a spouse whose income alone is not sufficient to furnish him or her the reasonable necessaries of life.

Reversed and remanded with directions. Peterson, J.

81-181/Sp. Michael E. Wojciak v. Northern Package Corporation, defendant and third party plaintiff, and National Surety Corporation, *et al.*, third party defendants, Appellants. Hennepin County.

Defendant's workers' compensation and employers' liability policy afforded coverage for damages and punitive damages

authorized by Minn. Stat. § 176.82 (1980) and imposed on the insurer the duty to defend an employee's action for such damages. Having failed to defend that action, the insurer is liable for reasonable attorney fees incurred by defendant therein.

Affirmed in part, reversed in part. Peterson, J.

51333/5 Harriet Muscala, Appellant, v. Bernice Wirtjes, Personal Representative of the Estate of Edgar H. Karbo, deceased. Lincoln County.

On the facts of this case, we find no basis for an exception to the 6-month cut-off requirement of Minn. Stat. § 510.07 (1980).

Reversed. Wahl, J. Took no part, Scott, J.

51751/Sp. In the Matter of the Welfare of M.A., Appellant. Hennepin County.

Police questioning of juvenile during an investigatory stop was non-custodial in nature and therefore did not require a *Miranda* warning.

Custodial police interrogation of juvenile did not violate his constitutional right to counsel because (a) formal petition had not been filed and therefore constitutional right to counsel had not attached and (b) juvenile voluntarily waived his right to counsel and voluntarily confessed his guilt.

Affirmed. Simonett, J.

Decisions Filed Tuesday, October 6, 1981

81-289/So. State of Minnesota, petitioner, Appellant, v. Douglas R. Errington. Rice County.

Held, Domestic Abuse Act, Minn. Stat. § 518B (1980), as we interpret it, does not violate the separation-of-powers doctrine and does not require courts to perform nonjudicial functions.

Reversed and remanded. Sheran, C. J.

81-866/Sp., 81-867 State of Minnesota, County of Hennepin, v. Donald E. McClay, Appellant. State of Minnesota, County of Hennepin, v. John Scruggs, Appellant. Hennepin County.

Sentencing court was justified in departing from presumptive sentence and imposing longer prison term on defendants convicted of aggravated robbery because the robbery was a more aggravated kind of armed robbery than the typical one, with the conduct underlying the offense being particularly serious and representing a greater than normal danger to the safety of the public.

Where two separately tried codefendants with identical criminal history scores are convicted of the same offense based on the same behavioral incident and the basis for departure in the two cases is identical, the extent of the departure should be identical in both cases.

Affirmed as modified. 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 Education Vocational-Technical Division

Notice of Request for Proposals for Developing and Implementing Decision-Making Systems for the Department of Education, Vocational-Technical Division

The Division of Vocational-Technical Education, Department of Education is seeking proposals for the development of decision-making systems for the division and for the implementation of identified systems.

The current status of decision-making structures, systems, and practices shall be assessed. Idealistic or optimum decision-making systems shall be identified. Recommendations for accomplishment and responsibility for obtaining change shall also be included and assistance in implementation provided. This study shall include but is not limited to an examination of systems relating to facilities, equipment, instructional support, student services, staffing, funding, program approval, personnel management, and external impact. This project may be completed in stages with the first stage to be completed by August 31, 1982.

The amount of the contract is estimated to be $40,000, including expenses. Proposals must be received by 4:00 p.m. November 10, 1981, Room 548 Capitol Square Building. The formal request for proposals may be requested from and inquiries directed to:

Dr. Melvin Johnson, Manager
Operational Services
Vocational-Technical Education Division
Department of Education
548 Capitol Square Building
550 Cedar Street
Saint Paul, Minnesota 55101
Telephone (612) 296-2421

Department of Public Safety

Notice of Availability of Television PSA Production Contract for 1981-1982

The Minnesota Department of Public Safety is seeking proposals for videotaping and producing about five 30-second television public service announcements. Their content will be aimed at increasing the knowledge Minnesotans have about specific traffic safety related topics. The producer/vendor will be required to have the capability to help refine scripts provided by the department, provide creative cinematography, choose and arrange for appropriate sites and settings for videotaping, provide talent as required, select and provide music and voice for soundtrack as needed, edit videotape, insert titles, and tag PSAs with department ID. Producer/vendor may also be called upon to modify, with new tag or soundtrack, completed PSAs obtained by the department from other sources. They will also be expected to be able, on short notice, to provide whatever is necessary to tape footage of a sudden and unique event that the department would find and determine to be necessary for future production of a successful PSA.

The producer/vendor must be prepared to pick up and deliver materials to the department as needed, illustrate their professional broadcast quality capability with a ¾-inch U-matic demonstration tape, and accomplish everything required by the contract in a timely manner to meet department deadlines. Additional details of what the department requires from vendors submitting proposals are in a Request for Proposals available from Larry A. Etkin, Office of Public Information, Department of Public Safety, 318 Transportation Building, St. Paul, MN 55155.

Estimated cost for the contract is up to $12,000. The contract will run until September 30, 1982. The department will retain an option to renew the contract for a second year with the agreement of the producer/vendor.

Final date for requesting an RFP is November 4, 1981. No proposals will be accepted for consideration after November 9, 1981.

Office of the Secretary of State

Notice of Request for Proposals for Computerization Feasibility

The Office of the Secretary of State is requesting proposals from qualified consultants to analyze eight manual applications; determine each application's feasibility for automation considering the requirements and costs involved; and where it is determined that applications should be computerized recommend the methodology to be followed. The requested services are outlined in the Request for Proposal (RFP). The formal RFP, and background material may be requested from, and inquiries directed to:

Tom Durand
Office Director
Minnesota Secretary of State
Room 180, State Office Building
Saint Paul, Minnesota 55159
(612) 296-9219

It is anticipated that the activities to accomplish this study will not exceed $14,000. A bidders' conference will be held on October 23, 1981. The deadline for submission of completed proposals will be at 4:00 p.m., November 9, 1981.

OFFICIAL NOTICES

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

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

Department of Economic Security Training and Community Services Division

Notice of Availability for Public Review of the State Transition Plan for the Use of Community Services Block Grant Funds

Beginning October 1, 1981 funding authorized under the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, will be available in Minnesota to make grants to ameliorate the causes of poverty in the state. Funds will be used to provide a range of services having a major impact on the causes of poverty and to provide activities for low-income persons, including the elderly, in areas of employment, education, money management, housing, and removing obstacles to self-sufficiency.

Minnesota's share of a total $225 million Community Services Block Grant appropriation is $2.56 million.

Governor Quie has signed and submitted to the Federal Department of Health and Human Services a transition plan for the use of Community Services Block Grant funds during the first quarter of FFY 1982. The transition plan is available for public review at Regional Development Commission offices, community action agencies and public libraries.

Minnesota is required by P.L. 97-35 to use 90% of the funds available in FFY 1982 to make grants to officially designated community action agencies, community action programs, or to migrant or farmworker organizations. Minnesota Laws of 1981, chapter 356, section 63, requires in the event that block grant monies which replace categorical monies previously granted directly to local governments or nongovernmental entities become available to the State while the Legislature is not in session, the block grant monies must be distributed to the same entities and in the same proportions as the categorial grants they replace.

Requests for a single copy of the plan may be made to:

Office of Economic Opportunity
Department of Economic Security
390 North Robert Street
St. Paul, MN 55101

Minnesota Pollution Control Agency

Application of Northern States Power Company for a Variance from APC 4(c) (2) for the Operation of its Sherburne County Coal Fired Electric Generating Units 1 and 2 Located Near Becker, Minnesota

Order for Hearing and Notice Thereof

It is hereby ordered and notice is hereby given that a contested case hearing concerning the above-entitled matter will be held by the Minnesota Pollution Control Agency (MPCA) on November 18, 1981, in Council Chambers of the City Hall, 215 Sherburne Avenue, Becker, Minnesota, beginning at 2:00 p.m. and continuing until all persons can be heard.

The hearing will be held before Ms. Phyllis Reha, Office of Administrative Hearings, Room #300, 1745 University Avenue, Saint Paul, Minnesota 55104, (612) 296-8109, a hearing examiner appointed by the chief hearing examiner of the State of Minnesota. All parties have the right to be represented by legal counsel, themselves, or any other representative of their choice, if not otherwise prohibited as the unauthorized practice of law. The hearing will be conducted pursuant to the contested case procedures set out in Minn. Stat. §§ 15.0411-15.052, the rules of the Office of Administrative Hearings, 9 MCAR § 2.201-2.299, and the MPCA Rules of Procedure, MPCA 1-13, to the extent the latter rules do not conflict with the former rules. Questions concerning informal disposition or discovery may be directed to Special Assistant Attorney General Jocelyn F. Olson, (612) 296-7343, Minnesota Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota 55113.

The purpose of the hearing will be to receive and consider evidence bearing upon the application of Northern States Power Company (NSP) for a variance from the opacity standard contained in APC 4(c) (2) for the operation of its Sherburne County Coal Fired Electric Generating Units 1 and 2 located near Becker, Minnesota. APC 4(c) (2) provides that:

No owner or operator of indirect heating equipment shall cause to be discharged into the atmosphere from said equipment

any gases which exhibit greater than 20% opacity; except that a maximum of 60% opacity shall be permissible for four (4) minutes in any 60 minute period and that a maximum of 40% additional minutes in any 60 minute period.

The MPCA is authorized to hold such a hearing and grant such a variance by Minn. Stat. § 116.07, subd. 5 (1980) and pursuant to MPCA 6.

The Applicant, NSP, is a party to the hearing at the present time, pursuant to MPCA 9. In addition, the MPCA staff intends to file a petition to intervene as a party. Any other person who desires to become a party to this case must submit a timely petition to intervene pursuant to 9 MCAR § 2.210, showing how that person's legal rights, duties and privileges may be affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought and indicate petitioner's statutory right to intervene should one exist. A party to a case has the right to present evidence and argument with respect to the issue and to cross-examine witnesses. Interested persons may present oral or written statements at the hearing without becoming parties.

Any person desiring to intervene as a party must submit to the hearing examiner and serve upon all existing parties a petition to intervene by November 9, 1981. A petition may be filed after November 9, 1981, if there is good cause for the petition's failure to file the petition in a timely manner. The agency requests that copies of any petition to intervene be served upon the following:

Mr. Joseph D. Bizzano, Jr.
Attorney for Northern States
Power Company
414 Nicollet Mall
Minneapolis, MN 55401

Ms. Jocelyn F. Olson
Attorney for MPCA Staff
MN Pollution Control Agency
1935 West County Road B2
Roseville, MN 55113

A notice of appearance form must be filed with the hearing examiner on or before November 9, 1981, if a party intends to appear at the hearing. In addition, the agency requests that the notice of appearance be served upon the persons named above.

In the absence of a petition to intervene, any person at the hearing will nevertheless be allowed to offer testimony and introduce exhibits, note his/her appearance or question witnesses, but no person shall become, or be deemed to have become, a party by reason of such participation. Persons offering testimony or exhibits may be questioned by parties to the hearing.

All persons are advised that no factual information or evidence which is not part of the hearing record shall be considered by the hearing examiner or the MPCA in determination of the above-entitled matter. Persons attending the hearing should bring all factual information or evidence bearing on the case which they wish to have included in the record.

NSP and the MPCA staff have agreed that prefiled testimony will be filed with the hearing examiner on or before October 30, 1981. Should other persons intervene as parties, the hearing examiner will determine when, if at all, prefiled testimony shall be filed by such party.

The applicant, Northern States Power Company, is hereby advised pursuant to 9 MCAR § 2.204.A.9. that its failure to appear at the hearing may result in denial of its request for a variance.

If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the hearing examiner as soon as possible but, in any event, at least five days prior to the hearing. A copy of the request must be served on the MPCA staff and any other parties.

The procedural rules are available for inspection at the Office of Administrative Hearings or may be purchased from the *State Register* and Public Documents Division of the Department of Administration, 117 University Avenue, Saint Paul, Minnesota 55155, telephone (612) 297-3000. Copies of rules and other documents pertinent to the variance application are available for review by all interested persons during normal business hours at the Minnesota Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota 55113.

October 9, 1981

Louis J. Breimhurst, Executive Director
Minnesota Pollution Control Agency

Waste Management Board

Notice of Proposed Inventory of Preferred Areas for Hazardous Waste Processing Facilities

On Friday, September 11, the Minnesota Waste Management Board proposed that 18 local areas be included in an "inventory

of preferred areas'' for hazardous waste processing facilities. The areas range from 5 acres to 7 square miles in size, and are in or near 15 Minnesota communities.

The final inventory—to be issued by the board in February, 1982—will include ''preferred areas'' for each of three types of facilities: hazardous waste incinerators, chemical waste processing facilities and transfer/storage facilities for hazardous wastes. The board will not specifically site or construct facilities, but will designate areas ''preferred'' by the state—based on criteria developed in a series of public meetings—where it will encourage private firms to establish these facilities.

The board proposed six preferred areas in the seven-county Metropolitan area and 12 areas outstate. Eight areas were designated as suitable for more than one type of facility. The board designated the following numbers of areas, statewide, for each facility category: transfer/storage, 17 areas; incineration, 7; chemical waste processing, 8.

Included in the 18 ''proposed'' areas are two sites volunteered by local concerns: a site in Plymouth volunteered by Anchor Industries, and the former PCI hazardous waste incinerator site in Shakopee, volunteered by Shakopee's mayor and city council.

Public hearings will be conducted during November and December in each of the communities affected by the board's September 11 proposal. A hearings schedule will appear in an upcoming issue of the *State Register*.

The board also announced on September 11 that it will give further, special consideration to 13 existing power plants, proposed by five Minnesota utility companies, for possible conversion to hazardous waste incinerators. The utilities involved are Northern States Power, United Power Association, Minnesota Power and Light and Interstate Power.

The following lists the communities affected by the board's proposal and the facilities for which the Waste Management Board considers the local areas suitable:

These 18 areas were proposed by the Waste Management Board September 11 as ''preferred'' for hazardous waste processing facilities (areas are designated for the type of facility for which the board considers them suitable: T = transfer/storage; I = incineration; C = chemical processing):

—Duluth: two separate areas, a 4.10-square mile area west of Morgan Park, bisected by Commonwealth Avenue, and a 20-acre site immediately south of Smithville. (T, I, C)

—Grand Rapids: 4.5 square miles on the south side of the city, near the municipal airport. The area includes parts of Grand Rapids and Harris Townships. (T)

—St. Cloud No. 1: a 5.8-square-mile area at the southwest end of St. Cloud includes parts of Waite Park and industrial areas. (T)

—St. Cloud No. 2: 2.8 square miles north and west of the central portion of St. Cloud, including industrial areas within the city as well as parts of St. Cloud and St. Joseph Townships. (T)

—St. Cloud No. 3: portions of Sauk Rapids, Sauk Rapids and Minden Townships, covering a 3.8-square mile area northeast of central Sauk Rapids. (T, C)

—Crookston: a long, irregular-shaped area on the south side of the city—including parts of Fairfax, Lowell and Andover Townships—totalling 2.2 square miles. (T)

—Fergus Falls No. 1: 7.3 square miles along the northwest side of the city. The area's boundary stretches from Kennedy Park in the southwest to Trinity cemetery on the northeast. (T)

—Fergus Falls No. 2: 3.4 square miles on the southeast of the city, including areas within the city limits as well as parts of Buse, Aurdal and Dane Prairie Townships. (T)

—Mankato: 5.1 square miles on the north side of Mankato—including several industrial areas and parts of Mankato and Lime Townships. (T. I. C)

—Owatonna: the 6.3-square-mile area on the west side of Owatonna—immediately west of the Straight River—also includes parts of Owatonna and Clinton Falls Townships. (T, C)

—Rochester: approximately 2 square miles at the south end of the city, surrounding the intersection of Highways 52 and 63 and including portions of Rochester Township. (T)

—Willmar: 3 square miles at the southwest end of the city, immediately south of the airport. The entire area is west of Highway 71 and is bisected by the Great Northern Railway tracks. (T)

—Inver Grove Heights: a nearly-square, 3.8 square mile section bounded on the south by the Rosemount city limits. The Pine Bend refinery—outside the proposed area—is adjacent to the area's southeast corner. (T, I, C)

—Coon Rapids: 2.5 square-miles—also irregularly shaped—east of the Mississippi River and bordering on Fridley. (T, I, C)

—Blaine: 3 square miles on the northeast side of the city, surrounding the Blaine Airport. (T, I, C)

—Burnsville: 2.9 square miles south of the Minnesota River and along the north side of the city, including areas both east and west of the Interstate 35-Highway 13 interchange. (T)

Volunteered Sites:

—Plymouth: an approximately 250-acre site volunteered by the AgLite Company west of Interstate 494 between County Roads 9 and 10. (T, I, C)

—Shakopee: a five-acre site formerly owned by Pollution Control, Inc., and volunteered for the Board's consideration by Shakopee Mayor Walter Harbeck and the city council. (I)

Waste Management Board

Proposed Hazardous Waste Processing Facility Area in the City of Blaine

Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a hearing concerning the proposed hazardous waste processing facility area in the City of Blaine will be held by the Waste Management Board on November 4, 1981, at City Hall (Council Chambers), 9150 Central Avenue N.E., Blaine, Minnesota, commencing at 1:00 p.m. An evening session will be held at 7:00 p.m., on November 4, 1981, at the same location in order to provide an opportunity to participate to those who cannot attend the day sessions. If necessary, the hearing will be continued at 9:00 a.m. at the same location and thereafter until adjournment.

The purpose of the hearing is to gather additional information on the proposed area which may be helpful to the board in determining which areas should be placed on the final inventory of hazardous waste processing areas (see Minnesota Laws 1980, Chapter 352, § 10). The procedures which will be followed at the hearing were published in the *State Register* on September 14, 1981. (6 S.R. 467). A copy of these procedures may be obtained from the Waste Management Board at the address noted below. The hearing will be held before Kent B. Roberts, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8112, a hearing examiner of the State of Minnesota.

The selection of proposed processing areas was based on criteria developed by the board pursuant to Minn. Stat. § 115A.09, subd. 2. A copy of the criteria is available on request from:

Minnesota Waste Management Board
Attn: Sharon Decker
123 Thorson Building
7323-58th Avenue North
Crystal, MN 55428
Metro: (612) 536-0816
Toll free: 1-800-652-9747

The following proposed area will be considered at this hearing:

An area in the southern portion of Blaine the approximate boundaries of which are: on the west Polk Street N.E., on the north 109th Avenue, on the east the Anoka County Airport, and on the south County Road J (85th Avenue).

Specific details on the location of the area may be obtained by contacting Sharon Decker at the address and phone number listed above.

Robert G. Dunn, Chairman

Proposed Hazardous Waste Processing Facility Area in the City of Coon Rapids

Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a hearing concerning the proposed hazardous waste processing facility area in the City of Coon Rapids will be held by the Waste Management Board on November 9, 1981, at Coon Rapids City Hall (Council Chamber) 1313 Coon Rapids Blvd., Coon Rapids, commencing at 1:00 p.m. An evening session will be held at 7:00 p.m., on November 9, 1981, at the same location in order to provide an opportunity to participate to those who cannot attend the day sessions. If necessary, the hearing will be continued at 9:00 a.m. at the same location and thereafter until adjournment.

The purpose of the hearing is to gather additional information on the proposed area which may be helpful to the board in determining which areas should be placed on the final inventory of hazardous waste processing areas (see Minnesota Laws 1981, Chapter 352, § 10). The procedures which will be followed at the hearing were published in the *State Register* on

September 14, 1981. (6 S.R. 467). A copy of these procedures may be obtained from the Waste Management Board at the address noted below. The hearing will be held before Alan R. Nettles, Meyer, Njus, Johnson & Nettles, 1814 First Bank Plaza West, Minneapolis, Minnesota 55402, (612) 341-2181, a hearing examiner of the State of Minnesota.

The selection of proposed processing areas was based on criteria developed by the board pursuant to Minn. Stat. § 115A.09, subd. 2. A copy of the criteria is available on request from:

Minnesota Waste Management Board
Attn: Sharon Decker
123 Thorson Building
7323-58th Avenue North
Crystal, MN 55428
Metro: (612) 536-0816
Toll free: 1-800-652-9747

The following proposed area will be considered at this hearing:

An area in the southeast corner of Coon Rapids the approximate boundaries of which are: on the east by the Blaine city limits, on the south by the Fridley city limits, on the west by the Mississippi River and on the north by Coon Rapids Boulevard.

Specific details on the location of the area may be obtained by contacting Sharon Decker at the address and phone number listed above.

Robert G. Dunn, Chairman

Proposed Hazardous Waste Processing Facility Area in the City of Plymouth

Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a hearing concerning the proposed hazardous waste processing facility area in the City of Plymouth will be held by the Waste Management Board on November 12, 1981, at City Hall, 3400 Plymouth Boulevard, Plymouth, Minnesota, commencing at 1:00 p.m. An evening session will be held at 7:00 p.m., on November 12, 1981, at the same location in order to provide an opportunity to participate to those who cannot attend the day sessions. If necessary, the hearing will be continued at 9:00 a.m. at the same location and thereafter until adjournment.

The purpose of the hearing is to gather additional information on the proposed area which may be helpful to the board in determining which areas should be placed on the final inventory of hazardous waste processing areas (see Minnesota Laws 1981, Chapter 352, § 10). The procedures which will be followed at the hearing were published in the *State Register* on September 14, 1981. (6 S.R. 467). A copy of these procedures may be obtained from the Waste Management Board at the address noted below. The hearing will be held before Alan Nettles, Meyer, Njus, Johnson & Nettles, 1814 First Bank Plaza West, Minneapolis, Minnesota 55402, a Hearing Examiner of the State of Minnesota.

The selection of proposed processing areas were based on criteria developed by the board pursuant to Minn. Stat. § 115A.09, subd. 2. A copy of the criteria is available on request from:

Minnesota Waste Management Board
Attn: Sharon Decker
123 Thorson Building
7323-58th Avenue North
Crystal, MN 55428
Metro: (612) 536-0816
Toll free: 1-800-652-9747

The following proposed area will be considered at this hearing:

An area of approximately 250 acres located in the central part of Plymouth west of Interstate 494, south of Mud Lake, and east and southeast of Pomerleau Lake. The property is owned by Anchor Industries and includes their Aglite facility.

Specific details on the location of the area may be obtained by contacting Sharon Decker at the address and phone number listed above.

Robert G. Dunn, Chairman

STATE OF MINNESOTA

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

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