

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

RULE REVIEW CHECKLIST

File No. 1441
DATE RECEIVED 1/13/88
REVIEW DATE 1/22/88 - Friday
DUE DATE 1/27/88

APPROVED 1.22.88
DISAPPROVED
WITHDRAWN

Docket No. 05.0009.0488
ADOPTED W/O HEARING X
EMERGENCY RULE

REVISOR APPROVED
REVISOR DISAPPROVED
FIELD W/SEC.STATE
RETURNED TO AGENCY

✓ Rule as adopted (4 copies)
___ Notice to Solicit Outside Information/Opinion
___ Date published in State Register
___ Comments
___ Petition for Adoption of a Rule
✓ Board's Authorizing Resolution
✓ Proposed rule
✓ Revisor's Certificate
✓ Notice of Intent to Adopt Rule
11.5B.37 Statutory Authority
says no impact Small Business Statement
says no expenditure Expenditure of public money statement
yes Signature
✓ Statement of Need and Reasonableness
NO Small Business Statement
N/A Fees - § 16A.128
✓ Affidavit of Mailing Notice of Intent to Adopt Rule
11-12-87 Date 30/25 days before adoption
✓ Publication in State Register
11-16-87 Date 30/25 days before adoption
✓ Resolution Adopting
✓ Findings of Fact, Conclusions & Order Adopting
1-11-88 Date
✓ Written requests, submissions or comments
✓ Declaration of attorney
Steve Shakman Name of SAAG representing agency
___ Notice of Submission to Attorney General
N/A ___ Affidavit of Mailing Notice to Attorney General

ATTORNEY GENERAL

January 27, 1988

VIRGINIA L. REINER
Executive Director
Hazardous Substance Injury Board

MARTHA J. CASSERLY
Special Assistant
Attorney General

6-6839

In the Matter of the Adopted Rule Relating to
Death Benefits

The above-referenced rule has been approved as to its legality by the Attorney General on January 22, 1988.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must establish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJC:nah
Enclosures

cc: Maryanne Hruby
Duane Harves

Hazardous Substance Injury Compensation Board

Adopted Permanent Rules Relating to Death Benefits

Rules as Adopted

DEATH BENEFITS

7190.1000 DEFINITIONS.

Subpart 1. **Board.** "Board" means the Hazardous Substance Injury Compensation Board established by Minnesota Statutes, section 115B.26.

Subp. 2. **Claimant.** "Claimant" means a person who suffered an eligible personal injury as defined in Minnesota Statutes, section 115B.30, subdivision 1.

Subp. 3. **Value of household labor.** "Value of household labor" means the value determined by parts 7190.0100 to 7190.0108.

Subp. 4. **Wage.** "Wage" means the average gross weekly wage received by the claimant for the highest three of the five years immediately preceding death or the date of diagnosis of the injury causing the death, whichever is greater. If the claimant was self-employed, wage means the income of the claimant from the business for the highest three of the five years immediately preceding death or the date of diagnosis of the injury causing the death, whichever is greater. The claimant's dependents may request the board use the date of the exposure to the hazardous substance to calculate the wage, if the dependents document the date of exposure.

7190.1005 PAYMENT OF CLAIMS WHEN CLAIMANT DIES.

Subpart 1. **Death occurring during investigation.** If a claimant dies from an eligible injury during the investigation of the claim, the board shall amend the claim so that it seeks compensation for the claimant's estate for medical expenses and death benefits for the claimant's dependents. If the death of the claimant during the investigation is unrelated to the eligible injury, the board shall amend the claim ~~to compensate~~

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so that it seeks compensation for the claimant's dependents for eligible losses due to the injury up to the date of death.

Subp. 2. **Death occurring during payout.** If a claimant who is receiving compensation from the board dies, the board shall pay the remaining compensation due the claimant to the dependents in the order of the subparts in part 7190.1015. If there are no dependents, the board shall pay the remaining compensation to the claimant's estate.

Subp. 3. **Death after award.** If a claimant has received compensation from the board for future loss of wages and household labor due to the injury that caused the death, the board shall not accept a claim for death benefits.

7190.1010 PRIORITY FOR DEATH BENEFITS.

The board shall pay death benefits to eligible dependents of a claimant in the following order:

A. allowances to presumed dependents;

B. allowances to wholly supported established dependents in the order in part 7190.1015; and

C. allowances to partially supported established dependents in the order in part 7190.1015.

7190.1015 ELIGIBLE DEPENDENTS.

Supbart 1. **Presumed dependents.** The board shall presume that the following persons are wholly supported dependents of the claimant:

A. the spouse, unless it is shown that the spouse and claimant were voluntarily living apart at the time of the injury or death;

B. a child under 18 years old;

C. a child under 25 years old if regularly attending an accredited educational institution on a full-time basis; and

D. a child 18 years old or older if physically or mentally incapacitated from earning.

Subp. 2. **Established dependents.** The board shall consider, in the following order, these persons as dependents of the claimant if the persons establish that the claimant

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contributed regularly to their support:

A. a child 18 years old or older;

B. a parent;

C. a grandparent;

D. a grandchild;

E. a sibling; and

F. a parent-in-law.

7190.1020 FACTORS GOVERNING AWARD OF DEATH BENEFITS.

Subpart 1. **Limitations.** The board shall award death benefits to presumed and established dependents until two-thirds of the claimant's wage is allocated. The board shall adjust any award of death benefits according to the limitations of Minnesota Statutes, sections 115B.34, subdivision 1, clause (d) and 115B.36. The benefit paid to established dependents shall not exceed the actual contribution by the claimant to their support.

Subp. 2. **Initiation.** The board shall calculate death benefits from the onset of disability leading to the death of the claimant or from the date of death, taking into consideration when the claimant's financial capability to provide reasonable support for the dependents diminished.

Subp. 3. **Determination of dependents.** The board shall determine the eligibility of a dependent based on the facts existing on the date of the board's decision.

Subp. 4. **Lump sum payment.** When the board chooses to pay death benefits in a lump sum, it shall discount benefits awarded for future years to current value ~~according to Minnesota Statutes, section 604.07, subdivision 4, clauses (1) and (2)~~ based on real rates of return obtainable through conservative investment.

Subp. 5. **Installment payment.** When the board chooses to pay death benefits in installments, it shall adjust future payments by the cost of living rate for the current year ~~according to Minnesota Statutes, section 604.07, subdivision 4, clause (2)~~.

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Subp. 6. **Collateral sources.** In calculating the total award of death benefits, the board shall subtract from the award losses recouped by the dependents from any government survivor program to the extent that the combined total of government survivor benefits and death benefits paid under this chapter exceeds 100 percent of the wage earned by the claimant.

Subp. 7. **Cessation of compensation.** The board shall cease compensation upon the death of any dependent or upon marriage of any dependent other than the spouse. The cessation of compensation to any dependent does not affect the compensation paid to any other dependent.

7190.1025 ELIGIBLE ALLOWANCES FOR PRESUMED DEPENDENTS.

Subpart 1. **Spouse, no dependent children.** If the claimant leaves a spouse and no dependent children, the board shall pay to the spouse for ten years one-half of the claimant's wage and one-half the value of the claimant's household labor.

Subp. 2. **Spouse, one dependent child.** If the claimant leaves a spouse and one dependent child, the board shall pay to the spouse for ten years, for the benefit of the spouse and child, three-fifths of the claimant's wage and three-fifths the value of the claimant's household labor. If the child is not dependent for ten years, the board shall pay to the spouse one-half the claimant's wage and one-half the value of the claimant's household labor in the years remaining after the child is no longer dependent. If the child is dependent for more than ten years, the board shall pay to the spouse for the child one-half of the claimant's wage and one-half the value of the claimant's household labor until the child is no longer dependent.

Subp. 3. **Spouse, two or more dependent children.** If the claimant leaves a spouse and two or more dependent children, the board shall pay to the spouse for ten years, for the benefit of the spouse and children, two-thirds of the claimant's wage and two-thirds the value of the claimant's household labor. If no child remains dependent for ten years, the board shall pay to

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the spouse one-half the claimant's wage and one-half the value of the claimant's household labor in the years remaining after the last child is no longer dependent. If a child is dependent for more than ten years, the board shall pay to the spouse, for the benefit of the child, one-half of the claimant's wage and one-half the value of the claimant's household labor.

Subp. 4. **Dependent children, no spouse.** If the claimant leaves a dependent child and no spouse, the board shall pay to the guardian of the child 55 percent of the claimant's wage and 55 percent of the value of the claimant's household labor; and for two or more children, the board shall pay to the guardian of the children two-thirds of the claimant's wage and two-thirds the value of the claimant's household labor until the last child is no longer dependent.

7190.1026 ELIGIBLE ALLOWANCES FOR ESTABLISHED DEPENDENTS.

Subpart 1. **Parents.** If the claimant leaves both parents wholly dependent on the deceased, the board shall pay to both parents jointly for ten years, 45 percent of the claimant's wage. If only one parent survives, the board shall pay to that parent for ten years 35 percent of the claimant's wage. If the claimant lived in the same household as both parents immediately before death, the board shall pay for ten years, 45 percent of the value of the claimant's household labor to both parents jointly. If the claimant lived in the household of one parent immediately before death, the board shall pay 35 percent of the value of the claimant's household labor to that parent for ten years.

Subp. 2. **Other established dependents.** If the claimant leaves a child, grandparent, grandchild, sibling, or parent-in-law wholly dependent, the board shall pay to that dependent for ten years, 30 percent of the claimant's wage. If the claimant leaves more than one of them, the board shall pay 35 percent of the claimant's wage divided among them in equal shares.

Subp. 3. **Partial support.** If an established dependent

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regularly received only partial financial support from the claimant, the board shall adjust the eligible allowance in subparts 5 and 6 according to the following formula:

$$b = A \times c/w$$

where: b is the benefit to be awarded;

A is the eligible allowance to the dependent;

c is the amount of weekly contribution to the dependent by the claimant; and

w is the wage of the claimant.

~~Subp. 4. Cessation of compensation. The board shall cease compensation upon the death of any dependent or upon marriage of any dependent other than the spouse. The cessation of compensation to any dependent does not affect the compensation paid to any other dependent.~~

Approved by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN 25 1988
8:29 AM
Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND LEGALITY
January 22 1988
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY MJ Cassedy
SPECIAL ASSISTANT ATTORNEY GENERAL

Hazardous Substance Injury Compensation Board

Proposed Permanent Rules Relating to Attorney Fees for Property Damage Claims

Rules as Proposed (all new material)

7190.0020 ATTORNEY FEES.

Subpart 1. **Entitlement.** An attorney is entitled to a fee for representing a claimant in a property damage claim before the board if the claimant accepts an award from the board. Representation includes preparation involved in filing an application, monitoring the claim progress, communication with the board and appearances before the board.

Subp. 2. **Maximum fee.** The fee must not exceed 15 percent of the amount the board awards the claimant for the property damage.

Subp. 3. **Variance not binding.** An agreement between the attorney and client that attempts to vary or change the provisions of this part is not binding upon the attorney and the client.

Approved by Revisor

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Attorney Fees for Property Damage Claims

AGENCY: Hazardous Substance Injury Compensation Board

MINNESOTA RULES: Chapter 7190

The attached rules are approved for publication in the State Register

David S. Niss
Assistant Revisor

Hazardous Substance Injury Compensation Board

Notice of Withdrawal of Rules as Proposed

Notice is hereby given that the rules proposed by the Hazardous Substance Injury Compensation Board regarding attorney fees and published in the State Register, Volume 11, Number 50, pages 2278-2279, June 15, 1987 (11 S.R. 2278) are withdrawn.

The Board has considered comments received in response to the rules proposed June 15, 1987 and is proposing new rules on attorney fees limited to property damage claims. A notice of Proposed Adoption of a Rule Without a Public Hearing is published below.

Proposed Permanent Rules Relating to Attorney Fees for Property Damage Claims

Notice of Proposed Adoption of a Rule Without a Public Hearing

Notice is hereby given that the Hazardous Substance Injury Compensation Board proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes Section 115B.37.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Virginia L. Reiner
Hazardous Substance Injury Compensation Board
2700 University Avenue West, #115
St. Paul, Minnesota 55114
612/642-0455

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

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

A Statement of Need and Reasonableness that describes the rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request by writing or telephoning the Board's office at the address or telephone number listed above.

Promulgation of the proposed rule will not result in the expenditure of public monies by local public bodies, have an impact on agricultural land or an impact on small businesses.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to the executive director at the address listed above.

Virginia L. Reiner
Executive Director
Hazardous Substance Injury Compensation Board

STATE OF MINNESOTA
HAZARDOUS SUBSTANCE INJURY COMPENSATION BOARD

In the Matter of the proposed new permanent rules on attorney fees for property damage claims

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The Hazardous Substance Injury Compensation Board (Board) was created by the 1985 Legislature (Laws 1985, 1st special session, chapter 8) as part of revisions to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes, Chapter 115B. These revisions were codified as Minnesota Statutes Sections 115B.25-115B.37. The Board was established as a new state agency to administer a $2 million Hazardous Substance Injury Compensation Fund (Fund). The Board's primary responsibility is to investigate claims of certain types of property damage or personal injury caused by the release of hazardous substances into the environment, and to compensate eligible persons from the Fund for certain types of losses.

Since the administrative procedure for compensation before the Board is less formal and simpler than a court proceeding, an attorney is not required for the process. However, because a claimant may choose to be represented by an attorney, and because the amount of compensation the Board can award to a claimant is strictly limited by statute with no reimbursement for attorney fees, the legislature gave the Board authority to limit the fee charged by any attorney for representing a claimant before the Board.

On June 15, 1987, the Board proposed rules for attorney fees covering all types of claims. These rules limited fees for legal service including expenses to no more than 25 percent of the Board's award.

In response to that proposal, the Board received more than 25 requests for a hearing. The comments objecting to the rules focused primarily on two issues: 1) the inclusion of expenses with the legal fee, and 2) the need for the rules based on the lack of a successful personal injury claim. Several commentors expressed the opinion that the process of establishing causation in a personal injury action before the Board posed several procedural and substantive obstacles requiring the assistance of expert counsel.

Taking the comments under consideration, the Board decided to withdraw the June 15, 1987 proposed rules and to distinguish between the two types of claims for which it awards compensation. Based on several successful awards for property damage without attorney representation, and the simple, straightforward standard that must be met, the Board is proposing in these rules attorney fees for property damage claims that are contingent upon receipt of the award by the claimant and limited to 15 percent of that award. The Board has decided to review its experience with personal injury claims and the involvement of attorneys with the process at a later date and may propose rules to address attorney fees for personal injury claims in the future.

II. STATEMENT OF THE BOARD'S STATUTORY AUTHORITY

The Board's statutory authority to adopt rules relating to attorney fees is set forth in Minn. Stat. Section 115B.37 (1986), which states: "The board may by rule limit the fee charged by any attorney for representing a claimant before the board."

III. STATEMENT OF NEED

The need to adopt the proposed Minnesota Rule Part 7190.0020 arises from the need for the claimant to receive reasonable compensation for the economic losses suffered as a result of property damage caused by hazardous substances. Minnesota Statutes sections 115B.34 and 115B.36 limit the amounts a claimant may receive for various losses. Unlike a court, the board cannot award a claimant punitive damages; no noneconomic losses are compensable. The selected economic losses for which the board can award compensation in the property damage area include actual costs of an uncontaminated water supply and 75% of the decline in a home's value demonstrated upon a bona fide sale of the property. Each of these losses is further capped by statute at $25,000.

To assure that the claimant benefits from any reimbursement for losses the Board awards and to assure that small claims are not discouraged, it is necessary to limit costs to the claimant for seeking the compensation. Since a claimant may not be reimbursed by the board for attorney fees, it is necessary to limit these costs to the claimant.

IV. STATEMENT OF REASONABLENESS

The proposed rule is reasonable because it recognizes that the administrative proceedings place less burden on the claimant and the attorney than similar court proceedings. The Board investigates the claim to establish eligibility and validity and must compensate if it is "more likely than not" that 1) the claimant suffered property damage causing losses, and 2) the losses resulted from a hazardous substance on the property due to its release from a facility. Since the burden on the attorney is significantly reduced, it is reasonable that the fee should also be reduced from the customary contingency fee of one-third of the award.

The Minnesota workers' compensation statute states: "A fee for legal services of 25 percent of the first $4000 of compensation awarded to the employee and 20 percent of the next $27,500 of compensation awarded to the employee is permissible..." [M.S. § 176.081, subd. 1(a)]. To represent a property damage claimant before the Board requires much less specialized knowledge and skill then to represent an injured worker in the more complex workers' compensation system. It is thus reasonable to set a fee limit of 15 percent of the award from the Board to property damage claimants.

Additionally, nationwide fees for attorneys in workers' compensation cases range from 10 percent (with $100 maximum) to 25 percent with no dollar maximum. Several states allow 15 to 30 percent on the first $300, $500, or $1000, then a smaller percent

on the excess.[1] The proposed 15 percent limit thus reasonably lies within the typical range within which attorney fees are limited by statute.

The other provisions of the proposed rule making the fee contingent upon the acceptance of the award and invalidating other agreements are reasonable because of their consistency with fee limitations in the workers' compensation system. Minnesota Rule Part 5220.2910 states: "No fee will be awarded unless the attorney is successful in obtaining workers' compensation benefits or services for the employee." Minnesota Statutes § 176.081, subd. 5(c) states: "No attorney-client fee contract or arrangement is binding in any workers' compensation matter."

V. CONCLUSION

Based on the foregoing, the proposed rules for attorney fees for property damage claims are both needed and reasonable.

Nov 2, 1987
Date

Virginia L. Reiner
Virginia L. Reiner
Executive Director

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1 Arthur Larson, "Workmen's Compensation for Occupational Injuries and Death," Desk Edition, Vol. 2, page 15-132. Matthew Bender Publisher, 1986.

In the Matter of the Proposed Adoption of the Rule of the State Hazardous Substance Injury Compensation Board Relating to Attorney Fees for Property Damage Claims

AFFIDAVIT OF MAILING THE NOTICE OF PROPOSED ADOPTION OF A RULE WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA
COUNTY OF RAMSEY

JANICE WIEHLE, being first duly sworn deposes and says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the State Hazardous Substance Injury Compensation Board rulemaking mailing list, is accurate, complete, and current as of this 12th day of November, 1987.

That on the 12th day of November, 1987, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Proposed Adoption of a Rule Without a Public Hearing by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Janice Wiehle
Signature

Subscribed and sworn to before me
this 12th day of November, 1987.

Arlayne Nelson
(Notary Public)

ARLAYNE J. NELSON
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES APRIL 13, 1993

Hazardous Substance Injury Compensation Board

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2700 University Avenue West, #115
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The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

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

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Promulgation of the proposed rule will not result in the expenditure of public monies by local public bodies, have an impact on agricultural land or an impact on small businesses.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to the executive director at the address listed above.

Virginia L. Reiner
Executive Director
Hazardous Substance Injury Compensation Board

Hazardous Substance Injury Compensation Board

Proposed Permanent Rules Relating to Attorney Fees for Property Damage Claims

Rules as Proposed (all new material)

7190.0020 ATTORNEY FEES.

Subpart 1. **Entitlement.** An attorney is entitled to a fee for representing a claimant in a property damage claim before the board if the claimant accepts an award from the board. Representation includes preparation involved in filing an application, monitoring the claim progress, communication with the board and appearances before the board.

Subp. 2. **Maximum fee.** The fee must not exceed 15 percent of the amount the board awards the claimant for the property damage.

Subp. 3. **Variance not binding.** An agreement between the attorney and client that attempts to vary or change the provisions of this part is not binding upon the attorney and the client.

Approved by Revisor DSN/

RULES MAILING LIST
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Minneapolis, MN 55402

1370.0130 APPLICABLE REQUIREMENTS.

Subpart 1. **Incorporation by reference.** "Interim Guidelines for Building Occupant Protection from Tornadoes and Extreme Winds," TR-83A January 1980, sections 1 and 2, published by the Federal Emergency Management Agency, Washington, D.C., is incorporated by reference and must be used to determine design loads and as a guide for use in designing storm shelters. The document is not subject to frequent change and is available: (1) in the Minnesota State Law Library; (2) from the Printing and Publications Division, Federal Emergency Management Agency, P.O. Box 8181, Washington, D.C. 20024; and from the Minnesota Department of Public Safety, Division of Emergency Services, 85 State Capitol, Saint Paul, Minnesota 55155.

Subp. 2. **Dual purpose storm shelters.** A dual purpose storm shelter must comply with other applicable requirements of the state building code for its other intended uses.

1370.0140 PLANS, SPECIFICATIONS, PERMITS.

Storm shelter plans, engineering calculations, diagrams, and other required data must be prepared by a registered architect or engineer licensed to practice in Minnesota. For permit procedures, see section 304 of the Uniform Building Code, incorporated by reference in parts 1305.0100 and 1305.0800.

1370.0150 SPACE REQUIREMENTS.

A minimum of four square feet per person must be provided within a storm shelter. A ceiling height of not less than seven feet must be provided over 60 percent of the floor area.

1370.0160 REQUIRED EXITS.

Subpart 1. **Exits; openings.** At least two exits must be provided in compliance with chapter 33 of the Uniform Building Code. The second exit from a single purpose storm shelter may have an opening of at least nine square feet with a minimum of 20 inches in width and the bottom of the opening not more than 44 inches from the floor.

Openings in the exterior walls of the shelter must be protected to prevent flying missiles from entering the interior of the shelter.

Subp. 2. **Handicapped access.** At least one of the exits must comply with chapter 1340, facilities for the handicapped.

Subp. 3. **Exit to exterior.** When a portion of a structure is designed as a storm shelter, one exit must be directly to the exterior of the building or to an exit system complying with the state building code.

1370.0170 DRY INTERIOR.

Provisions must be made to construct storm shelters outside of flood-prone areas and other nonwater ponding areas and so that the interiors remain reasonably dry.

1370.0180 UTILITY LINE HAZARDS.

Hazardous utility lines must not be located in or near a storm shelter. The underground electrical service required by part 1370.0200 is exempt from this requirement.

1370.0190 MINIMIZING FIRE DANGER.

Storm shelters must be constructed to minimize the danger of fire from both external and internal sources.

1370.0200 ELECTRICAL POWER.

Underground electrical service must be provided to a storm shelter.

1370.0210 ILLUMINATION.

Subpart 1. **Minimum illumination.** At least five foot candles of illumination must be provided at floor level.

Subp. 2. **Source.** An emergency lighting system must be supplied from storage batteries or an on-site generator installed in accordance with the requirements of the National Electrical Code, incorporated by reference in chapter 1315.

1370.0220 VENTILATION.

Ventilation must comply with the criterion on page nine of the interim guidelines incorporated in part 1370.0130.

1370.0230 SANITATION FACILITIES.

Sanitation facilities and water for drinking are not required for storm shelters.

Hazardous Substance Injury Compensation Board

Notice of Withdrawal of Rules as Proposed

Notice is hereby given that the rules proposed by the Hazardous Substance Injury Compensation Board regarding attorney fees

and published in the *State Register*, Volume 11, Number 50, pages 2278-2279, June 15, 1987 (11 S.R. 2278) are withdrawn.

The Board has considered comments received in response to the rules proposed June 15, 1987 and is proposing new rules on attorney fees limited to property damage claims. A notice of Proposed Adoption of a Rule Without a Public Hearing is published below.

Hazardous Substance Injury Compensation Board

Proposed Permanent Rules Relating to Attorney Fees for Property Damage Claims

Notice of Proposed Adoption of a Rule Without a Public Hearing

Notice is hereby given that the Hazardous Substance Injury Compensation Board proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes* Section 115B.37.

All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20.

Comments or written requests for a public hearing must be submitted to:

Virginia L. Reiner
Hazardous Substance Injury Compensation Board
2700 University Avenue West, #115
St. Paul, Minnesota 55114
612/642-0455

The proposed rule may be modified if the modifications are supported by data and views and do not result in a substantial change in the proposed rule as noticed.

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

A Statement of Need and Reasonableness that describes the rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request by writing or telephoning the Board's office at the address or telephone number listed above.

Promulgation of the proposed rule will not result in the expenditure of public monies by local public bodies, have an impact on agricultural land or an impact on small businesses.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to the executive director at the address listed above.

Virginia L. Reiner
Executive Director
Hazardous Substance Injury Compensation Board

Rules as Proposed (all new material)

7190.0020 ATTORNEY FEES.

Subpart 1. **Entitlement.** An attorney is entitled to a fee for representing a claimant in a property damage claim before the board

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.

if the claimant accepts an award from the board. Representation includes preparation involved in filing an application, monitoring the claim progress, communication with the board and appearances before the board.

Subp. 2. **Maximum fee.** The fee must not exceed 15 percent of the amount the board awards the claimant for the property damage.

Subp. 3. **Variance not binding.** An agreement between the attorney and client that attempts to vary or change the provisions of this part is not binding upon the attorney and the client.

Pollution Control Agency

Proposed Permanent Rules Relating to Air Quality Permit Fees

Notice of Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) will hold a public hearing in the above-entitled matter in the Board Room of the Agency, Lower Level, 520 Lafayette Avenue North, St. Paul, Minnesota, commencing at 9:30 a.m. on Thursday, December 17, 1987. All interested or affected persons will have an opportunity to participate by submitting either oral or written data, statements, or arguments. Statements or briefs may be submitted without appearing at the hearing. A public hearing was previously held on these same rules on September 1, 1987, and no changes have been made to the proposed rules.

The matter will be heard before Administrative Law Judge Allan Klein, Office of Administrative Hearings, 5th Floor, Flour Exchange Building, 310 Fourth Avenue South, Minneapolis, Minnesota 55415, (612) 341-7609. The rule hearing procedure is governed by *Minnesota Statutes* §§ 14.131 to 14.20 (1986) and by the rules of the Office of Administrative Hearings, *Minnesota Rules* Parts 1400.0200 to 1400.1200 (1987). Questions concerning the rule hearing procedure should be directed to the Administrative Law Judge at the address and telephone number stated above.

The subject of the hearing will be proposed amendments to rules governing air quality permit fees, *Minnesota Rules* Parts 7002.0010 to 7002.0110. The proposed rule amendments are authorized by *Minnesota Statutes* § 116.07, subd. 4d (1986). The proposed rule amendments are published below. One free copy of the rule amendments is available on request by contacting:

Ahto Niemioja
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
(612) 296-7485

Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the Agency offices and at the Office of Administrative Hearings. The Statement of Need and Reasonableness includes a summary of all the evidence and argument which the Agency anticipates presenting at the hearing justifying both the need for and reasonableness of the proposed rule amendments. Copies of the Statement of Need and Reasonableness may be reviewed at the Agency offices or at the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Any person may present his or her views on the proposed rule amendments in one or more of the following ways: by submitting written data to the Administrative Law Judge at any time before the close of the hearing; by submitting oral or written data at the hearing; and by submitting written data to the Administrative Law Judge during the comment period following the hearing. The comment period will be not less than five working days after the public hearing ends. The comment period may be extended for a longer period not to exceed 20 calendar days if ordered by the Administrative Law Judge at the hearing. The written material received during the comment period shall be available for review at the Office of Administrative Hearings. Within three business days after the expiration of the comment period, the Agency and interested persons may respond in writing to any new information received during the comment period; however, no additional evidence may be submitted during this three-day period.

The Agency requests that any person submitting written views or data to the Administrative Law Judge prior to the hearing or during the comment period also submit a copy of the written data to Ahto Niemioja at the address stated above.

The proposed rule amendments may be modified if the data and views received during the hearing process warrant modification and the modification does not result in a substantial change in the proposed rules.

Any person may request notification of the date on which the Administrative Law Judge'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. If you desire to be so notified, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rule amendments are adopted and filed with the Secretary of State. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Agency at any time prior to the filing of the rules with the Secretary of State.

CERTIFICATE OF THE
HAZARDOUS SUBSTANCE INJURY COMPENSATION BOARD
RESOLUTION ADOPTING THE RULE

I, Byron E. Starns, do hereby certify that I am a member and the chairperson of the Hazardous Substance Injury Compensation Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the board, duly and properly called and held on the 11th day of January, 1988, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

"RESOLVED, that the rule relating to attorney fees for property damage claims is approved and adopted, pursuant to authority vested in the Hazardous Substance Injury Compensation Board by Minnesota Statutes, section 115B.28. Virginia L. Reiner, the executive director of the board, is authorized to sign the findings of fact, conclusions and order adopting the rule and further is authorized to modify the rule if necessary to obtain the approval of the rule by the attorney general when such modification does not raise significant new legal issues and to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 11th day of January, 1988.

Byron E. Starns

BYRON E. STARNS
Chairperson

Board Member

STATE OF MINNESOTA
HAZARDOUS SUBSTANCE INJURY COMPENSATION BOARD

In the Matter of the Proposed Adoption of the Rule of the State Hazardous Substance Injury Compensation Board Governing Attorney Fees for Property Damage Claims

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Board's proposed adoption of the above-entitled rule was published in the State Register on November 16, 1987 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on November 12, 1987. The statement of need and reasonableness was prepared before the date of the notice of proposed adoption of a rule without a public hearing and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule were received by the board.

One comment letter on the rule was received by the board. No requests for notice of submission to the attorney general were received by the board.

Based on the comments and evidence in the record before the agency, I find the following:

The above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Attorney Fees for Property Damage Claims is adopted this 11th day of January, 1988, pursuant to authority vested in the Board by Minnesota Statutes, section 115B.28.

Virginia L. Reiner

VIRGINIA L. REINER
Executive Director

In the Matter of the Adoption of the Rule of the State Hazardous Substance Injury Compensation Board Governing Attorney Fees for Property Damage Claims

DECLARATION OF COUNSEL

I, Stephen Shakman, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking record, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is 0488.

Stephen Shakman

STEPHEN SHAKMAN
Special Assistant Attorney General

1/13/88
Dated

CERTIFICATE OF THE
HAZARDOUS SUBSTANCE INJURY COMPENSATION BOARD
AUTHORIZING RESOLUTION

I, Byron E. Starns, do hereby certify that I am a member and the chairperson of the Hazardous Substance Injury Compensation Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Hazardous Substance Injury Compensation Board duly and properly called and held on the 12th day of October, 1987, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

"RESOLVED, that Virginia L. Reiner, the executive director of the Hazardous Substance Injury Compensation Board, is hereby granted the authority and directed to sign and to give the Notice of the Board's intent to withdraw the proposed rules relating to Attorney Fees published in the June 15, 1987 State Register (11 S.R. 2278-2279) and of the Board's intent to adopt a rule without a public hearing governing attorney fees for property damage claims to all persons who have registered their names with the Board for that purpose and publish the notice and rule in the State Register, and to perform any and all acts incidental thereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 12th day of October, 1987.

Byron E. Starns

BYRON E. STARNS
Chairperson

Board Member

HAZARDOUS SUBSTANCE INJURY COMPENSATION BOARD

2700 University Avenue W. #115 • St. Paul, MN 55114 • 612/642-0455

January 13, 1988

Ms. Rita Desmond
Office of the Attorney General
515 Transportation Building
John Ireland Blvd.
St. Paul, Minnesota 55155

Dear Ms. Desmond:

RE: In the Matter of Proposed Rules Governing Attorney Fees for Property Damage Claims

On January 11, 1988, the Hazardous Substance Injury Compensation Board adopted the above-captioned rules governing attorney fees. Enclosed for your review are the following:

1. Certificate of Authorizing Resolution
2. Rules as Proposed
3. Notice of Intent to Adopt Rules Without a Public Hearing, as mailed
4. Statement of Need and Reasonableness
5. Affidavit of Mailing the Notice of Intent to Adopt Rule Without a Public Hearing and Certificate of Mailing List
6. Notice of Intent to Adopt Rules Without a Public Hearing and Rules as Proposed (12 S.R. 1035)
7. Rules as Adopted (four copies)
8. Certificate of Resolution Adopting Rules

9. Findings of Fact, Conclusions, and Order Adopting Rules

10. Declaration of Attorney

Sincerely,

Virginia L. Reiner

Virginia L. Reiner
Executive Director

VLR/jw

Enclosures