

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

DEPARTMENT: Office of the Attorney General **STATE OF MINNESOTA**

OFFICE MEMORANDUM

DATE: April 4, 1991

TO: MARY JO O'BRIEN
Deputy Commissioner of Health

FROM: CHARLENE HATCHER CH/mjc
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-9422

SUBJECT: In the Matter of the Adopted Rule Relating to Certification of Environmental Laboratories

The above-referenced rule has been approved as to its legality by the Attorney General on April 3, 1991.

Enclosed is your 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 along with any extra copies of documents which you submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published 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.

CH:sc
Enclosures
cc: Dick Wexler
William Brown, Chief Judge
MaryAnn Hruby

MAR 21 1991

Stat Authority
144.97 Certification of Environmental
Laboratories - Definitions

144.98
Subd 2 The commissioner may adopt rules
to implement this section

Subd 3 Fees

End of comment period stated as January 31, 1991 = 30 days

Sent SOLAR to LCARA

3/25
CH

RULE REVIEW CHECKLIST

File No. 1810
DATE RECEIVED 3-21-91
REVIEW DATE 4-1-91
DUE DATE 4-4-91
(DIS)APPROVED 4-3-91
WITHDRAWN _____

Docket No. 05 0009 1400
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 3/25/91
REVISOR (DIS)APPROVED _____
FILED W/SEC. OF STATE 4-3-91
RETURNED TO AGENCY 4-4-91

✓ Rule as adopted (4 copies)

~~Notice to Solicit Outside Information/Opinion (if applicable)~~
_____ ~~Date published in State Register~~
_____ ~~Comments~~

~~Petition for Adoption of a Rule~~

~~Board's Authorizing Resolution~~
_____ Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
144.97 144.98 Statutory Authority
_____ Small Business Statement
_____ Expenditure of public money statement
December 18, 1990 Signature

✓ Statement of Need and Reasonableness (if applicable)
have a statement Small Business Statement
NA Fees - § 16A.128

✓ ✓ Affidavit of Mailing Notice of Intent to Adopt Rule
December 27, 1990 Dated (30/25) days before adoption
✓ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register Corrected Notice January 22, 1991
December 31, 1990 Date (30/25) days before adoption

✓ 180-day deadline from:
✓ Effective date of law requiring rule (14.12) (both rules) amendments don't apply not mandatory
✓ end of comment period (§ 14.26) (rules without hearing)
_____ effective date of statutory authority (§ 14.29) (emergency rules)

~~Resolution Adopting~~
_____ Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
March 1, 1991 Date

✓ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Dick Weiler Name of SAAG representing agency

3-21-91 Notice of Submission to Attorney General 3-21-91

Department of Health

Adopted Permanent Rules Relating to Certification of Environmental Laboratories

Rules as Adopted

4740.2040 CERTIFIED TEST CATEGORIES.

[For text of subps. 1 to 3, see M.R.]

Subp. 4. **Metal chemistry.**

A. Metals analytes eligible for certification under the Clean Water Program are:

(1) aluminum;

(2) antimony;

(3) arsenic;

(4) barium;

(5) beryllium;

(6) boron;

(7) cadmium;

(8) calcium;

(9) chromium, hexavalent;

(10) chromium;

(11) cobalt;

(12) copper;

(13) gold;

(14) iridium;

(15) iron;

(16) lead;

(17) lithium;

(18) magnesium;

(19) manganese;

(20) mercury;

(21) molybdenum;

(22) nickel;

(23) osmium;

(24) palladium;

(25) platinum;

(26) potassium;

(27) rhodium;

(28) ruthenium;

(29) selenium;

(30) silver;

(31) sodium;

(32) thallium;

(33) tin;

(34) titanium;

(35) vanadium; and

(36) zinc.

B. Metals analytes eligible for certification under the Safe Drinking Water Program are:

(1) antimony;

(2) arsenic;

(3) barium;

(4) beryllium;

(5) cadmium;

(6) chromium;

(7) copper;

(8) lead;

(9) mercury;

(10) nickel;

(11) selenium; and

(12) thallium.

APPROVED AS TO FORM AND LEGALITY

April 3, 1991

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY Charlene Th. Hatcher
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 03 1991

Joan Anderson Growe
Secretary of State

3:50 P.M.

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of the Proposed Adoption of Amendments to Part 4740.2040, Subpart 4 Relating to Metal Analytes Eligible for Certification Under the Environmental Testing Laboratory Rules

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

Although the practice of laboratory testing of environmental samples has been ongoing for many years, it has historically related to human health concerns about waste water and drinking water. With the dawning of environmental awareness in the early 1970's, Congress enacted expansions of the narrowly focused environmental programs and developed ambitious new ones such as the Clean Water Act, the Safe Drinking Water Act, the Clean Air Act, the Resource Conservation and Recovery Act, and the Superfund. These programs covered a variety of environmental media including water, air, and land and caused an explosion in environmental testing.

The primary regulatory agency at the federal level, the U.S. Environmental Protection Agency (EPA), established environmental programs with substantial monitoring and testing requirements. A state could be delegated permit and regulatory authority from EPA if a state program existed that was consistent with and at least as stringent as the federal program. Minnesota received such authority to run the major environmental regulatory programs. The Minnesota Department of Health (hereinafter "MDH") has responsibility for enforcement of the Safe Drinking Water Act; the other major environmental programs are administered by the Pollution Control Agency.

The influx of environmental testing data placed a burden on the state agencies to determine data reliability. Judgments about compliance and impacts were only as good as the data upon which they were based. Although EPA inspected and certified the MDH laboratory, few other laboratories in Minnesota doing environmental testing were subject to review for the adequacy and reliability of their operation.

In 1986, Congress amended the Safe Drinking Water Act, increasing the number of chemical, biological, and radiochemical measurements in public water supplies from 23 to 83. Although the MDH Laboratory had performed all necessary tests on public water supplies under the Safe Drinking Water Act, this increased workload of necessity would need to be distributed among laboratories outside the Department of Health. In February, 1987, the Office of the Minnesota Legislative Auditor issued a report on "Water Quality Monitoring." The report recommended the establishment of a state certification program for environmental laboratories. Voicing concern about the amount of money spent on water quality monitoring in Minnesota and the impact the monitoring results have on regulatory decisions, the auditor stated: "It is important that decisions on these matters be based on accurate data. The best way to ensure accuracy is to require laboratories to demonstrate their ability to perform those analyses." In the 1988 session, the legislature authorized the Commissioner of Health (hereinafter "Commissioner") to certify laboratories that test environmental samples.

Although the legislation speaks broadly to environmental samples, to initiate the certification program the Commissioner decided to focus on environmental analytes in water and wastewater because these analytes have a long history of testing. Well established procedures exist to monitor them and the methodology is well defined and widely distributed. Historically, because of the human health concerns, dischargers of wastewater and providers of public drinking water supplies have had to monitor, and this type of monitoring is expanding and generates the majority of analytical environmental test data produced in Minnesota.

In view of the history and legislative authority, the Commissioner adopted Minn. Rules pts. 4740.2010 to 4740.2040 on January 29, 1990. The rules specify the administrative procedures associated with certification of environmental laboratories, requirements for base certification, and the various kinds of analytes for which the Commissioner will certify a laboratory's performance. These rules were adopted as the first phase of a multi-phased implementation of the legislation authorizing the Commissioner to certify environmental laboratories. The analytes contained in the rules basically covered the first three test categories listed in the fee section of the authorizing legislation. Minn. Stat. § 144.98, subd. 3. The proposed rule amendment, implementation phase two, solely expands the categories of analytes for which a laboratory may be certified. The amendment now brings in the fourth and fifth test categories listed in subdivision 3.

II. STATEMENT OF THE COMMISSIONER'S STATUTORY AUTHORITY

The Commissioner's statutory authority to adopt a rule related to certification procedures for environmental testing laboratories is set forth in Minn. Stat. § 144.98 which provides in relevant part that the Commissioner may adopt rules to implement this section, including the test categories for which certification is available as specified in Minn. Stat. § 144.98, subd. 3.

III. STATEMENT OF NEED

As noted above in the Introduction section, the Commissioner decided to implement laboratory certification in stages. The reason for doing so is that the Department of Health had not previously been involved in a certification role of this scope. Administratively, the Department would have found it difficult to perform its role if certification were implemented all at once. Thus, with the rules adopted in January, 1990, the Department established the application process and certification standards and started with a list of analytes in part 4740.2040 which involved the simplest tests to perform. These tests were also the easiest for the Department to verify because they involve better established procedures. This approach to certification also enabled the largest number of

laboratories to become certified because laboratories are more likely to perform the easier rather than the more complex tests.

The Department is now ready administratively to perform the verification process for more complex test categories and thus to increase the number and types of analytes for which environmental laboratories may be certified. The new analytes require the use of more complicated tests which require more sophisticated instrumentation. By adding these analytes, the Department will have covered the first five test categories listed in Minn. Stat. § 144.98, subd. 3. (The remaining test categories will be addressed in future amendments to the rule.)

The adoption of the rules in January, 1990, only started implementation of section 144.98. With this proposed rule amendment, the Department will take another step toward implementation of the section, which it must do in order to make it fully effective. There is also a need to enable environmental laboratories to become certified to perform these additional tests on environmental samples because under the federal Safe Drinking Water Act and Clean Water Act certification is required.

IV. STATEMENT OF REASONABLENESS

The proposed rule is reasonable because it meets the existing federal requirements and recommendations regarding analytes to be tested in drinking water laboratory certification programs, and in permits issued by the Minnesota Pollution Control Agency to entities which discharge wastewater. Because the entire certification program is driven by the federal water quality programs, it is only logical for the Commissioner to expand the certification program to include analytes for which tests must be conducted under federal requirements as soon as the Department is able to effectively administer the expanded program. The Department is now able to do that with the analytes listed in the proposed rule amendments. As soon as these analytes have been incorporated into the certification program, other analytes will be added in future rule amendments.

V. AMENDMENT TO PART 4740.2040, SUBPART 4, CERTIFIED TEST CATEGORIES FOR METAL CHEMISTRY

The analytes listed are the ones most commonly requested or required for the specific programs after the analytes already specified in the rules adopted in January, 1990. They are grouped according to familiar laboratory analysis categories for ease of use and for consistency with the fee schedule outlined in the state. (The methodology for these analytes already exists in the certification rules adopted in January, 1990, which adopts by reference methodology specified in federal rules. See Minn. Rules pt. 4740.2030, subp. 1.)

VI. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

The impact of the rules on small businesses was examined as required by Minn. Stat. § 14.115, subd. 2. As a general proposition, the subdivision asks an agency to consider whether regulatory requirements can be reduced or eliminated as applied to small business. The certification rules in general and the proposed amendments give businesses great latitude as demonstrated by the following:

1. Participation in the program is voluntary. There is no requirement to become certified.

2. The laboratory chooses as many or as few analytes for which it wants to be certified. There is no requirement for whole groups of analytes to be certified at once, possibly making it difficult for small laboratories. A small laboratory can proceed to add analytes according to its own schedule and capabilities or can delete analytes if they become uneconomical to analyze. No laboratory will be required to become certified for any of the analytes being added by the proposed amendments.

3. The laboratory chooses the methodology it uses for testing an analyte. A laboratory can review several approved methodologies and choose the one most consistent with its equipment and personnel constraints.

4. The primary measure of competency in testing analytes is a performance based standard, i.e. acceptable results in the analysis of performance

evaluation samples. Certification does not require certain design of facilities or numbers or degrees of personnel or kinds of analytical equipment.

5. The variance procedure allows the Commissioner to consider undue hardship if a laboratory has difficulty in complying with parts of the rule.

Participation by small businesses in the rulemaking process was encouraged in two ways as specified in Minn. Stat. § 14.115, subd. 4:

1. When the rules adopted in January, 1990, were being considered, at least one member of the technical advisory group which worked on the rules represented a small laboratory. The advisory group was aware of, and agreed with, the Department's proposal to add additional analytes in the future.

2. All laboratories currently certified by the Department or in the application process and other interested parties will be directly mailed copies of the proposed rules and invited to comment.

VII. OTHER CONSIDERATIONS IN RULEMAKING

The adoption of these rules will not require expenditure of public money by local public bodies of greater than $100,000 in either of the two years following promulgation, nor do these rules have any impact on agricultural land.

VIII. CONCLUSION

Based on the foregoing, the proposed rule amendments to the environmental testing laboratory certification rules are both needed and reasonable.

Dated: Dec. 17, 1990

Sr. Mary Madonna Ashton
SISTER MARY MADONNA ASHTON
Commissioner of Health

SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY GENERAL

STATE OF MINNESOTA

Office Memorandum

DATE : March 21, 1991

TO : **PATRICIA NOLTE**
Legal Assistant

FROM : **RICHARD A. WEXLER**
Assistant Attorney General

RECEIVED

MAR 21 1991

Office of the Attorney General
Government Services Section
Capitol Office Bldg., Suite 500
525 Park Street
St. Paul, MN 55103

PHONE : 297-5934

SUBJECT : **In the Matter of the Proposed Adoption of Amendments to Part 4740.2040, Subpart 4 Relating to Metal Analytes Eligible for Certification Under the Environmental Laboratory Rules**

Enclosed for your review, pursuant to Minn. Stat. § 14.26 (1990) and Minn. Rules pt. 2010.0300 (1989), are the following documents to support the above-referenced rule amendment:

1. Rules as proposed with a certificate of approval as to form by the Revisor of Statutes attached;
2. Notice of Intent to Adopt Rules Without a Public Hearing;
3. Statement of Need and Reasonableness;
4. Cover letter for submission of the Statement of Need and Reasonableness to the Legislative Commission to Review Administrative Rules;
5. Affidavit of Mailing the Notice of Intent to Adopt Rules Without a Public Hearing and Certificate of Mailing List;
6. Notice of Intent to Adopt Rules Without a Public Hearing (as published in the State Register on December 31, 1990);
7. Correction to Notice of Intent to Adopt Rules Without a Public Hearing as published in the State Register on January 22, 1991;
8. Rules as adopted (four copies);
9. Findings of Fact, Conclusions, and Order Adopting Rules Without a Public Hearing;
10. All written requests, submissions, or comments on the rule received by the agency (there are two letters);
11. Declaration of Counsel;

12. Notice of Submission to the Attorney General;

13. Affidavit of Mailing Notice of Submission to the Attorney General.

Item 6 above requires an explanation. The Notice of Intent to Adopt Rules Without a Public Hearing has three errors in it. In two different places in the body of the notice, the citation to the rule being amended has typographical errors in it. The third mistake is that the telephone number for Al Tupy, who is listed in the notice as the person to whom comments could be submitted, is wrong. (I just noticed that the telephone number is incorrectly listed only in the notice as published in the State Register. It is correct in the notice which the Department mailed out.)

On January 11, 1991, I met with Christie Eller and Marty Casserly regarding how to correct these problems. We discussed two questions. The first one was whether the Department had to send a correction notice to all individuals to whom it had mailed a copy of the original notice in addition to publishing a notice of correction in the State Register. The second issue was whether the Department would have to extend the comment period 30 days from the date the notice of correction was published. Christie and Marty both concluded that the publication of the correction notice in the State Register was sufficient and that extension of the 30-day comment period was unnecessary.

There were two reasons for these conclusions. A review of chapter 14 revealed that it did not explicitly require a citation to the rule being amended nor did it require the listing of the telephone number of the person in the agency to be contacted. Thus, Christie felt that they could make a determination as to whether the mistakes were so misleading as to require publication of a new notice. It was Christie and Marty's determination with respect to the rule citation that the mistake was inconsequential because the rule to be amended was properly cited at the end of the notice where the proposed amendment was listed. With respect to the telephone number, they believed that because the name and address were correct that people could, with a little extra effort, get ahold of Al if they wanted to speak to him. This belief was based on the fact that at the start of our meeting I called the incorrect telephone number (623-5690; the correct number is 623-5680) as listed in the notice. Tina Klein, in the Health Department's AIDS/STD Prevention Services Unit, answered the telephone. I asked for Al Tupy. She told me that I had the wrong number but that she would transfer me to him. I then identified myself and told her why I was calling and asked her if she had received other calls for Al Tupy. Tina informed me that she had and that she did for those callers exactly what she had done for me. Consequently, Christie and Marty concluded that people calling the incorrect number would be quickly led to Al.

If you have any questions about the foregoing, please contact me at 297-5934.

RAW:sv

Enclosures

cc: Al Tupy (with enclosures)

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

DEPARTMENT OF HEALTH

In the Matter of the Proposed Adoption of Amendments to Part 4740.2040, Subpart 4 Relating to Metal Analytes Eligible for Certification Under the Environmental Laboratory Rules

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

(1) **NOTICE IS HEREBY GIVEN** that the Minnesota Department of Health (hereinafter "Department") intends to adopt the above-entitled amendments to rules by expanding the list of metal analytes eligible for certification under the Clean Water Program and the Safe Drinking Water Program. To accomplish this purpose the Department intends to amend Minnesota Rules part 4740.2020, subpart 4, without a public hearing following the procedures set forth in the Administrative Procedure Act in Minnesota Statute §§ 14.22 to 14.28 (1990). The statutory authority to adopt the rules is Minnesota Statute §§ 144.97 and 144.98 (1990).

(2) All persons have until January 31, 1991 to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged.(3) Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the comment period, ending January 31, 1991.(4) If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. (6) 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.(7) If a public hearing is required, the Department will proceed pursuant to Minnesota Statutes, Sections 14.131 to 14.20 (1988).

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

Al Tupy
Laboratory Services Section
Public Health Laboratory Division
Minnesota Department of Health
717 Delaware Street Southeast
Minneapolis, Minnesota 55440
Telephone: (612) 623-5680

(8) The proposed rule amendments may be modified if the modifications are supported by data and views submitted to the Department and do not result in a substantial change in the proposed rules as noticed.

(11) The rule authorizes environmental testing laboratories to become certified by the Department to perform tests for certain specified analytes under two testing programs: the Safe Drinking Water Act, 42 United States Code, Section 300f et seq., Minnesota Statutes, Section 144.381 et seq., and 40 Code of Federal Regulations 141; and the Clean Water Act, 33 United States Code, Section 1251 et eq. and 40 Code of Federal Regulations, Section 136. This amendment increases the number of analytes listed in part 4790.2040, subpart 4.

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

(12) A Statement of Need and Reasonableness that describes the need for and reasonableness of the proposed amendment and identifies the data and information relied upon to support the proposed amendment has been prepared and is available from Al Tupy upon request at the above address.

Pursuant to Minnesota Statute Section 14.115, subdivision 2, the impact on small businesses has been considered in the promulgation of this rule amendment. (14) The Department's analysis and position regarding the impact of the amendment on small businesses is set forth in the Statement of Need and Reasonableness. Anyone wishing to present evidence or argument as to the amendment's effect on small businesses is encouraged to do so.

Pursuant to Minnesota Statute Section 14.115, subdivision 4 (c), the Department, in order to provide an opportunity for small businesses to participate in the rule making process, will mail copies of the proposed rule amendment and this Notice to all laboratories which are currently certified or in the application process. To the Department's knowledge this includes all laboratories which do environmental testing. These laboratories are encouraged to comment.

(9) If no hearing is required, upon adoption of the amendment, the amendment 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 amendment must submit the written request to Al Tupy at the above address.

Sister Mary Madonna Ashton
Commissioner
December 18, 1990

Department of Health

Proposed Permanent Rules Relating to Certification of Environmental Laboratories

Rules as Proposed

4740.2040 CERTIFIED TEST CATEGORIES.

[For text of subps. 1 to 3, see M.R.]

Subp. 4. **Metal chemistry.** ~~The analysis of lead is eligible to be certified for the Clean Water Program and the Safe Drinking Water Program.~~

A. Metals analytes eligible for certification under the Clean Water Program are:

(1) aluminum;

(2) antimony;

(3) arsenic;

(4) barium;

(5) beryllium;

(6) boron;

(7) cadmium;

(8) calcium;

(9) chromium, hexavalent;

(10) chromium;

(11) cobalt;

(12) copper;

(13) gold;

(14) iridium;

(15) iron;

(16) lead;

(17) lithium;

(18) magnesium;

(19) manganese;

(20) mercury;

(21) molybdenum;

(22) nickel;

Approved by Revisor

(23) osmium;

(24) palladium;

(25) platinum;

(26) potassium;

(27) rhodium;

(28) ruthenium;

(29) selenium;

(30) silver;

(31) sodium;

(32) thallium;

(33) tin;

(34) titanium;

(35) vanadium; and

(36) zinc.

B. Metals analytes eligible for certification under the Safe Drinking Water Program are:

(1) antimony;

(2) arsenic;

(3) barium;

(4) beryllium;

(5) cadmium;

(6) chromium;

(7) copper;

(8) lead;

(9) mercury;

(10) nickel;

(11) selenium; and

(12) thallium.

Approved
by Revisor _____

SF-00006-05 (4/86)

DEPARTMENT : HEALTH

STATE OF MINNESOTA

Office Memorandum

DATE : 12-20-90

TO : Maryanne V. Hruby, Executive Director
Legislative Commission to Review Administrative Rules

FROM : Al Tupy, Chief
Laboratory Services Section ACT

PHONE : 623-5680

SUBJECT : Proposed Rules--Laboratory Certification--Metal Analytes

As required in Minnesota Statute 14.23, attached for your use are a copy of the "Notice of Intent to Adopt Rules Without a Public Hearing" and the "Statement of Need and Reasonableness" for Amendments to Part 4740.2040, Subpart 4 Relating to Metal Analytes Eligible for Certification Under the Environmental Laboratory Rules.

This proposed rule will be published in the State Register on December 31, 1990. Also attached are the proposed rule, the current certification rule and the statute.

Enclosures

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

DEPARTMENT OF HEALTH

In the Matter of the Proposed Adoption of Amendments to Part 4740.2040, Subpart 4 Relating to Metal Analytes Eligible for Certification Under the Environmental Laboratory Rules

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Any person may make a written request for a public hearing on the rules within the comment period, ending January 31, 1991. If 25 or more persons submit a written request for a public

hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. 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 Department will proceed pursuant to Minnesota Statutes, Sections 14.131 to 14.20 (1988).

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The rule authorizes environmental testing laboratories to become certified by the Department to perform tests for certain specified analytes under two testing programs: the Safe Drinking Water Act, 42 United States Code, Section 300f et seq., Minnesota Statutes, Section 144.381 et seq., and 40 Code of Federal Regulations 141; and the Clean Water Act, 33 United States Code, Section 1251 et eq. and 40 Code of Federal Regulations, Section 136. This amendment increases the number of analytes listed in part 4790.2040, subpart 4.

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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 amendment must submit the written request to Al Tupy at the above address.

Date: Dec. 18, 1990

Sr. Mary Madonna Ashton

Sister Mary Madonna Ashton
Commissioner

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

COMMISSIONER OF HEALTH

In the Matter of the Proposed Adoption of Amendments to Part 4740.2040, Subpart 4 Relating to Metal Analytes Eligible for Certification Under the Environmental Testing Laboratory Rules

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The primary regulatory agency at the federal level, the U.S. Environmental Protection Agency (EPA), established environmental programs with substantial monitoring and testing requirements. A state could be delegated permit and regulatory authority from EPA if a state program existed that was consistent with and at least as stringent as the federal program. Minnesota received such authority to run the major environmental regulatory programs. The Minnesota Department of Health (hereinafter "MDH") has responsibility for enforcement of the Safe Drinking Water Act; the other major environmental programs are administered by the Pollution Control Agency.

The influx of environmental testing data placed a burden on the state agencies to determine data reliability. Judgments about compliance and impacts were only as good as the data upon which they were based. Although EPA inspected and certified the MDH laboratory, few other laboratories in Minnesota doing environmental testing were subject to review for the adequacy and reliability of their operation.

In 1986, Congress amended the Safe Drinking Water Act, increasing the number of chemical, biological, and radiochemical measurements in public water supplies from 23 to 83. Although the MDH Laboratory had performed all necessary tests on public water supplies under the Safe Drinking Water Act, this increased workload of necessity would need to be distributed among laboratories outside the Department of Health. In February, 1987, the Office of the Minnesota Legislative Auditor issued a report on "Water Quality Monitoring." The report recommended the establishment of a state certification program for environmental laboratories. Voicing concern about the amount of money spent on water quality monitoring in Minnesota and the impact the monitoring results have on regulatory decisions, the auditor stated: "It is important that decisions on these matters be based on accurate data. The best way to ensure accuracy is to require laboratories to demonstrate their ability to perform those analyses." In the 1988 session, the legislature authorized the Commissioner of Health (hereinafter "Commissioner") to certify laboratories that test environmental samples.

Although the legislation speaks broadly to environmental samples, to initiate the certification program the Commissioner decided to focus on environmental analytes in water and wastewater because these analytes have a long history of testing. Well established procedures exist to monitor them and the methodology is well defined and widely distributed. Historically, because of the human health concerns, dischargers of wastewater and providers of public drinking water supplies have had to monitor, and this type of monitoring is expanding and generates the majority of analytical environmental test data produced in Minnesota.

In view of the history and legislative authority, the Commissioner adopted Minn. Rules pts. 4740.2010 to 4740.2040 on January 29, 1990. The rules specify the administrative procedures associated with certification of environmental laboratories, requirements for base certification, and the various kinds of analytes for which the Commissioner will certify a laboratory's performance. These rules were adopted as the first phase of a multi-phased implementation of the legislation authorizing the Commissioner to certify environmental laboratories. The analytes contained in the rules basically covered the first three test categories listed in the fee section of the authorizing legislation. Minn. Stat. § 144.98, subd. 3. The proposed rule amendment, implementation phase two, solely expands the categories of analytes for which a laboratory may be certified. The amendment now brings in the fourth and fifth test categories listed in subdivision 3.

II. STATEMENT OF THE COMMISSIONER'S STATUTORY AUTHORITY

The Commissioner's statutory authority to adopt a rule related to certification procedures for environmental testing laboratories is set forth in Minn. Stat. § 144.98 which provides in relevant part that the Commissioner may adopt rules to implement this section, including the test categories for which certification is available as specified in Minn. Stat. § 144.98, subd. 3.

III. STATEMENT OF NEED

As noted above in the Introduction section, the Commissioner decided to implement laboratory certification in stages. The reason for doing so is that the Department of Health had not previously been involved in a certification role of this scope. Administratively, the Department would have found it difficult to perform its role if certification were implemented all at once. Thus, with the rules adopted in January, 1990, the Department established the application process and certification standards and started with a list of analytes in part 4740.2040 which involved the simplest tests to perform. These tests were also the easiest for the Department to verify because they involve better established procedures. This approach to certification also enabled the largest number of

laboratories to become certified because laboratories are more likely to perform the easier rather than the more complex tests.

The Department is now ready administratively to perform the verification process for more complex test categories and thus to increase the number and types of analytes for which environmental laboratories may be certified. The new analytes require the use of more complicated tests which require more sophisticated instrumentation. By adding these analytes, the Department will have covered the first five test categories listed in Minn. Stat. § 144.98, subd. 3. (The remaining test categories will be addressed in future amendments to the rule.)

The adoption of the rules in January, 1990, only started implementation of section 144.98. With this proposed rule amendment, the Department will take another step toward implementation of the section, which it must do in order to make it fully effective. There is also a need to enable environmental laboratories to become certified to perform these additional tests on environmental samples because under the federal Safe Drinking Water Act and Clean Water Act certification is required.

IV. STATEMENT OF REASONABLENESS

The proposed rule is reasonable because it meets the existing federal requirements and recommendations regarding analytes to be tested in drinking water laboratory certification programs, and in permits issued by the Minnesota Pollution Control Agency to entities which discharge wastewater. Because the entire certification program is driven by the federal water quality programs, it is only logical for the Commissioner to expand the certification program to include analytes for which tests must be conducted under federal requirements as soon as the Department is able to effectively administer the expanded program. The Department is now able to do that with the analytes listed in the proposed rule amendments. As soon as these analytes have been incorporated into the certification program, other analytes will be added in future rule amendments.

V. AMENDMENT TO PART 4740.2040, SUBPART 4, CERTIFIED TEST CATEGORIES FOR METAL CHEMISTRY

The analytes listed are the ones most commonly requested or required for the specific programs after the analytes already specified in the rules adopted in January, 1990. They are grouped according to familiar laboratory analysis categories for ease of use and for consistency with the fee schedule outlined in the state. (The methodology for these analytes already exists in the certification rules adopted in January, 1990, which adopts by reference methodology specified in federal rules. See Minn. Rules pt. 4740.2030, subp. 1.)

VI. SMALL BUSINESS CONSIDERATIONS IN RULEMAKING

The impact of the rules on small businesses was examined as required by Minn. Stat. § 14.115, subd. 2. As a general proposition, the subdivision asks an agency to consider whether regulatory requirements can be reduced or eliminated as applied to small business. The certification rules in general and the proposed amendments give businesses great latitude as demonstrated by the following:

1. Participation in the program is voluntary. There is no requirement to become certified.

2. The laboratory chooses as many or as few analytes for which it wants to be certified. There is no requirement for whole groups of analytes to be certified at once, possibly making it difficult for small laboratories. A small laboratory can proceed to add analytes according to its own schedule and capabilities or can delete analytes if they become uneconomical to analyze. No laboratory will be required to become certified for any of the analytes being added by the proposed amendments.

3. The laboratory chooses the methodology it uses for testing an analyte. A laboratory can review several approved methodologies and choose the one most consistent with its equipment and personnel constraints.

4. The primary measure of competency in testing analytes is a performance based standard, i.e. acceptable results in the analysis of performance

evaluation samples. Certification does not require certain design of facilities or numbers or degrees of personnel or kinds of analytical equipment.

5. The variance procedure allows the Commissioner to consider undue hardship if a laboratory has difficulty in complying with parts of the rule.

Participation by small businesses in the rulemaking process was encouraged in two ways as specified in Minn. Stat. § 14.115, subd. 4:

1. When the rules adopted in January, 1990, were being considered, at least one member of the technical advisory group which worked on the rules represented a small laboratory. The advisory group was aware of, and agreed with, the Department's proposal to add additional analytes in the future.

2. All laboratories currently certified by the Department or in the application process and other interested parties will be directly mailed copies of the proposed rules and invited to comment.

VII. OTHER CONSIDERATIONS IN RULEMAKING

The adoption of these rules will not require expenditure of public money by local public bodies of greater than $100,000 in either of the two years following promulgation, nor do these rules have any impact on agricultural land.

VIII. CONCLUSION

Based on the foregoing, the proposed rule amendments to the environmental testing laboratory certification rules are both needed and reasonable.

Dated: Dec. 17, 1990

Sr. Mary Madonna Ashton
SISTER MARY MADONNA ASHTON
Commissioner of Health

Department of Health

Proposed Permanent Rules Relating to Certification of Environmental Laboratories

Rules as Proposed

4740.2040 CERTIFIED TEST CATEGORIES.

[For text of subps. 1 to 3, see M.R.]

Subp. 4. **Metal chemistry.** ~~The analysis of lead is eligible to be certified for the Clean Water Program and the Safe Drinking Water Program.~~

A. Metals analytes eligible for certification under the Clean Water Program are:

(1) aluminum;

(2) antimony;

(3) arsenic;

(4) barium;

(5) beryllium;

(6) boron;

(7) cadmium;

(8) calcium;

(9) chromium, hexavalent;

(10) chromium;

(11) cobalt;

(12) copper;

(13) gold;

(14) iridium;

(15) iron;

(16) lead;

(17) lithium;

(18) magnesium;

(19) manganese;

(20) mercury;

(21) molybdenum;

(22) nickel;

Approved by Revisor

(23) osmium;

(24) palladium;

(25) platinum;

(26) potassium;

(27) rhodium;

(28) ruthenium;

(29) selenium;

(30) silver;

(31) sodium;

(32) thallium;

(33) tin;

(34) titanium;

(35) vanadium; and

(36) zinc.

B. Metals analytes eligible for certification under the Safe Drinking Water Program are:

(1) antimony;

(2) arsenic;

(3) barium;

(4) beryllium;

(5) cadmium;

(6) chromium;

(7) copper;

(8) lead;

(9) mercury;

(10) nickel;

(11) selenium; and

(12) thallium.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Certification of Environmental Laboratories

AGENCY: Department of Health

MINNESOTA RULES: Chapter 4740

The attached rules are approved for publication in the State Register

Kathleen T. Harrington
Assistant Revisor

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

DEPARTMENT OF HEALTH

In the Matter of the Proposed
Adoption of Amendments to
Part 4740.2040, Subpart 4
Relating to Metal Analytes Eligible
for Certification Under The
Environmental Laboratory Rules

FINDINGS OF FACT,
CONCLUSIONS, AND ORDER
ADOPTING RULES

The Department of Health (hereinafter "Department") initiated the above-captioned rulemaking proceeding to adopt rules without a public hearing pursuant to Minn. Stat. §§ 14.22 to 14.28 as well as all other provisions of Minn. Stat. ch. 14 applicable to this rulemaking proceeding. The comment period has closed without 25 or more persons requesting that a hearing be held on these rule amendments. Accordingly, the Commissioner of Health (hereinafter "Commissioner") having fully and thoroughly reviewed and considered the record in this matter, and based thereon, makes the following

FINDINGS:

1. The Department's Notice of Intent to Adopt the above-entitled rules without a public hearing was published in the State Register on December 31, 1990, and was sent by United States mail to all persons on the list maintained by the Department pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 on December 27, 1990. The Department also sent a copy of the Notice by United States mail to all environmental testing laboratories which are currently certified by the Department or which are in the certification process. The Department also published a correction to the Notice in the State Register on January 22, 1991.

2. The Statement of Need and Reasonableness was prepared before the Notice of Intent to Adopt Rules Without a Public Hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

3. All persons were given the opportunity to submit comment on the rules for more than 30 days after the notice of proposed rulemaking was published and mailed.

4. The Department received one request for a public hearing on the rules.

5. One person requested to be notified when the rulemaking record is submitted to the office of the Attorney General.

6. Two comments were received, one from Land O'Lakes, Inc. and the other from Braun Environmental Laboratories. Both address essentially the same issues but neither comment directly relates to the amendments proposed by the Department.

The purpose of the amendments is to do nothing other than to add to the list of metal analytes for which a laboratory may be certified. No laboratory, however, must be certified for every metal listed in the rules. They choose as many or as few of the metals for which they want to be certified. Thus, for example, if Braun is concerned about meeting the certification requirements for the metals listed in its letter, it may simply choose not to apply for them at this time.

7. The concern of Braun about the unavailability of trace metal samples on which to do a performance evaluation (hereinafter "PE") is misplaced. In order to be certified to test for a particular metal, a laboratory must first pass a PE. The purpose of the PE is to verify that the applicant laboratory can accurately test a sample for the metal in question. The usual process is for the laboratory to obtain and analyse a trace metal sample. A trace metal sample has a predetermined amount of the metal in it. A sample may be obtained from the State of Wisconsin, Analytical Products Group (hereinafter "APG") or the United States Environmental Protection Agency (hereinafter "EPA"). The amount of the metal in the sample is unknown to the applicant. The laboratory's test results are verified against the known amount of metal and this proof is submitted to the

Department. The Department uses these results to determine whether the laboratory has the ability to accurately test for the metal. Braun is only partially correct when it states that it cannot obtain trace metal samples for the metals listed in its letter from Wisconsin or APG. While these entities do not have the samples generally available, in fact, both of them will make up samples for those metals upon request. (EPA also does not have samples for these metals and will not make samples even if requested.)

If the samples are simply not available, the existing rules also provide an alternative method by which a laboratory may demonstrate that it is capable of accurately testing for the metals. Minn. Rules part 4740.2030, subp. 2 states:

> If the Commissioner determines performance evaluation samples are not available for an analyte, the Commissioner may review the laboratory's quality control data to evaluate precision and accuracy for that analyte.

Thus, should a laboratory decide to become certified for the metals listed in the Braun letter, it should not have any difficulty in finding an available method by which to demonstrate its ability to test the analyte.

8. Braun and Land O'Lakes also raise the question of whether the Department will offer blanket certification of groups of metals as does the State of Wisconsin. Under this system, if a laboratory passes the PE for one metal in the group, it is certified for all metals in the group. This issue is not germane to the current rulemaking proceeding. When the Environmental Laboratory Certification rules were first promulgated the issue was decided in favor of requiring laboratories to do a separate PE for each metal for which it wanted to be certified. Minn. Rules part 4740.2030, subp. 2. The matter is not part of the amendments now under consideration.

9. The Commissioner incorporates herein as findings, the statement of need and reasonableness.

Based upon the above findings, the Commissioner with respect to the above-captioned rules makes the following **CONCLUSIONS:**

1. That all substantive and procedural requirements have been complied with;

2. That the rules are statutorily authorized; and

3. That the rules are both needed and reasonable. (8)

(9) NOW, THEREFORE, IT IS HEREBY ORDERED that the rules identified as In the Matter of the Proposed Adoption of Amendments to Part 4740.2040, Subpart 4 Relating to Metal Analytes for Certification Under the Environmental Laboratory Rules are adopted this 1 day of March, 1991, pursuant to authority vested in the Commissioner by Minn. Stat. §§ 144.97 and 144.98 (1990).

JOHN F. McCALLY
Commissioner of Health

Department of Health

Proposed Permanent Rules Relating to Certification of Environmental Laboratories

Rules as Proposed

4740.2040 CERTIFIED TEST CATEGORIES.

[For text of subps. 1 to 3, see M.R.]

Subp. 4. **Metal chemistry.** ~~The analysis of lead is eligible to be certified for the Clean Water Program and the Safe Drinking Water Program.~~

A. Metals analytes eligible for certification under the Clean Water Program are:

(1) aluminum;

(2) antimony;

(3) arsenic;

(4) barium;

(5) beryllium;

(6) boron;

(7) cadmium;

(8) calcium;

(9) chromium, hexavalent;

(10) chromium;

(11) cobalt;

(12) copper;

(13) gold;

(14) iridium;

(15) iron;

(16) lead;

(17) lithium;

(18) magnesium;

(19) manganese;

(20) mercury;

(21) molybdenum;

(22) nickel;

Approved by Revisor KTH

(23) osmium;

(24) palladium;

(25) platinum;

(26) potassium;

(27) rhodium;

(28) ruthenium;

(29) selenium;

(30) silver;

(31) sodium;

(32) thallium;

(33) tin;

(34) titanium;

(35) vanadium; and

(36) zinc.

B. Metals analytes eligible for certification under the Safe Drinking Water Program are:

(1) antimony;

(2) arsenic;

(3) barium;

(4) beryllium;

(5) cadmium;

(6) chromium;

(7) copper;

(8) lead;

(9) mercury;

(10) nickel;

(11) selenium; and

(12) thallium.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Certification of Environmental Laboratories

AGENCY: Department of Health

MINNESOTA RULES: Chapter 4740

The attached rules are approved for publication in the State Register

Kathleen T. Harrington
Assistant Revisor

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

DEPARTMENT OF HEALTH

In the Matter of the Proposed Adoption of Amendments to Part 4740.2040, Subpart 4 Relating to Metal Analytes Eligible for Certification Under the Environmental Laboratory Rules

AFFIDAVIT OF MAILING THE NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING AND CERTIFICATE OF MAILING LIST

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Al Tupy, being duly sworn says:

I hereby certify that the list of persons and associations who have requested, pursuant to Minn. Stat. §§ 14.14, subd. 1a, and 14.22 or 14.30, that their names be placed on the Department of Health rulemaking mailing list is accurate, complete, and current as of this 3 day of December, 1990.

That on the 27 day of December, 1990, at the City of Minneapolis, County of Hennepin, State of Minnesota, I mailed the attached Notice of Intent to Adopt Rules 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 attached as Exhibit A, as well as to all environmental testing laboratories which are currently certified by the Department or which are in the application process, the names and addresses of which are attached as Exhibit B.

Al Tupy

Subscribed and sworn to before me
this 27 of December, 1990.

Louise Kaniuk

LOUISE KANIUK
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES FEBRUARY 22, 1991

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

DEPARTMENT OF HEALTH

In the Matter of the Proposed Adoption of Amendments to Part 4740.2040, Subpart 4 Relating to Metal Analytes Eligible for Certification Under the Environmental Laboratory Rules

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the Minnesota Department of Health (hereinafter "Department") intends to adopt the above-entitled amendments to rules by expanding the list of metal analytes eligible for certification under the Clean Water Program and the Safe Drinking Water Program. To accomplish this purpose the Department intends to amend Minnesota Rules part 4740.2020, subpart 4, without a public hearing following the procedures set forth in the Administrative Procedure Act in Minnesota Statute §§ 14.22 to 14.28 (1990). The statutory authority to adopt the rules is Minnesota Statute §§ 144.97 and 144.98 (1990).

All persons have until January 31, 1991 to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the comment period, ending January 31, 1991. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. 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 Department will proceed pursuant to Minnesota Statutes, Sections 14.131 to 14.20 (1988).

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

Al Tupy
Laboratory Services Section
Public Health Laboratory Division
Minnesota Department of Health
717 Delaware Street Southeast
Minneapolis, Minnesota 55440
Telephone: (612) 623-5680

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

The rule authorizes environmental testing laboratories to become certified by the Department to perform tests for certain specified analytes under two testing programs: the Safe Drinking Water Act, 42 United States Code, Section 300f et seq., Minnesota Statutes, Section 144.381 et seq., and 40 Code of Federal Regulations 141; and the Clean Water Act, 33 United States Code, Section 1251 et eq. and 40 Code of Federal Regulations, Section 136. This amendment increases the number of analytes listed in part 4790.2040, subpart 4.

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

A Statement of Need and Reasonableness that describes the need for and reasonableness of the proposed amendment and identifies the data and information relied upon to support the proposed amendment has been prepared and is available from Al Tupy upon request at the above address.

Pursuant to Minnesota Statute Section 14.115, subdivision 2, the impact on small businesses has been considered in the promulgation of this rule amendment. The Department's analysis and position regarding the impact of the amendment on small businesses is set forth in the Statement of Need and Reasonableness. Anyone wishing to present evidence or argument as to the amendment's effect on small businesses is encouraged to do so.

Pursuant to Minnesota Statute Section 14.115, subdivision 4 (c), the Department, in order to provide an opportunity for small businesses to participate in the rule making process, will mail copies of the proposed rule amendment and this Notice to all laboratories which are currently certified or in the application process. To the Department's knowledge this includes all laboratories which do environmental testing. These laboratories are encouraged to comment.

If no hearing is required, upon adoption of the amendment, the amendment 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 amendment must submit the written request to Al Tupy at the above address.

Sister Mary Madonna Ashton
Commissioner
December 18, 1990

Department of Health

Proposed Permanent Rules Relating to Certification of Environmental Laboratories

Rules as Proposed

4740.2040 CERTIFIED TEST CATEGORIES.

[For text of subps. 1 to 3, see M.R.]

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(10) chromium;

(11) cobalt;

(12) copper;

(13) gold;

(14) iridium;

(15) iron;

(16) lead;

(17) lithium;

(18) magnesium;

(19) manganese;

(20) mercury;

(21) molybdenum;

(22) nickel;

Approved by Revisor

(23) osmium;

(24) palladium;

(25) platinum;

(26) potassium;

(27) rhodium;

(28) ruthenium;

(29) selenium;

(30) silver;

(31) sodium;

(32) thallium;

(33) tin;

(34) titanium;

(35) vanadium; and

(36) zinc.

B. Metals analytes eligible for certification under the Safe Drinking Water Program are:

(1) antimony;

(2) arsenic;

(3) barium;

(4) beryllium;

(5) cadmium;

(6) chromium;

(7) copper;

(8) lead;

(9) mercury;

(10) nickel;

(11) selenium; and

(12) thallium.

Approved
by Revisor _____

Exhibit A

St. Louis Co. Health Dept.
Public Health Nrsg. Admin.
1001 East First Street
Duluth, MN 55805

Eric M. Weller, Director
South Central MN EMS
Box 3367
Mankato, MN 56001

Michael J. Steffl
8370 Highway 23 Northeast
Willmar, MN 56201

Kathleen Welte
Ramsey Co. Medical Society
215 Lowry Prof. Bldg.
St. Paul, MN 55102

Shelly Stevens
Region 5 Development Cmsn.
611 Iowa Avenue
Staples, MN 56479

Colleen Wieck
State Planning Agency
300 Centennial Office Bldg.
658 Cedar Street
St. Paul, MN 55155

Harold A. Swift
5165 N St. Albans
St. Paul, MN 55126

Sue Zuidema
Hennepin Co. Community
Health Department
525 Portland Ave., Level 3
Minneapolis, MN 55415

Jim Temple
Chrestomathy Center
310 East 38th Street
Minneapolis, MN 55409

Randy S. Sellers
1935 Wilson Ave., #102
St. Paul, MN 55119

Jerry Thelen
Minneapolis Health Dept.
250 So. Fourth Street
Minneapolis, MN 55415

Joel Johnson
14920 Paul Ave., North
Marine on St.Croix, MN
55047-9751

Torgerson Well Co., Inc.
6855 Dogwood St.
Rockford, MN 55373

Lionel North
Family & Childrens Srvs.
414 S. 8th Street
Minneapolis, MN 55404

Gail Trenholm
14600 Minnetonka Blvd.
Minnetonka, MN 55345

Angie McCullom, Asst. Ombud.
Acute Care, Aging Prog.Div.
MN Dept. of Human Services
444 Lafayette Rd.
St. Paul, MN 55155

David Velde
Edina Health Dept.
4801 W. 50th Street
Edina, MN 55424

Georgianne Lowney
540 E. First St.
Waconia, MN 55387

David Lurie
Minneapolis Health Dept.
250 South Fourth St.
Minneapolis, MN 55415

Mary Luth
Washington County
Public Health
14900 N. 61st St.
P.O. Box 6
Stillwater, MN 55082

Ann Lutterman, R.N.
Director of Nrsg. Services
1554 Midway Parkway
St. Paul, MN 55108

Mantyla Well Drilling, Inc.
P.O. Box 797
1392 St. Croix Tr. N.
Lakeland, MN 55043

Mary Martin & Assocs.
1551 Livingston Ave.
Suite 102
West St. Paul, MN 55118

Scott Mayer
MN Chiropractic Association
1700 W. Highway 36 #130
St. Paul, MN 55113

MBW Company
801 Center Street
New Ulm, MN 56073

Phillip Newberg, Exec. Dir.
MN Bd. of Nrsg. Home Admin.
2700 University Ave. W.
Ste. 104
St. Paul, MN 55114-1082

Larry Mosow
5620 Wycliffe Road
Edina, MN 55436

National Association
of Social Workers
480 Concordia Avenue
St. Paul, MN 55103

Karen L. Nelson, Director
Wadena County Health Dept.
415 S. Jefferson
Wadena, MN 56482

Toni Nelson
Pine Ridge Homes, Inc.
915 - 18th Street
Cloquet, MN 55720

Richard W. O'Dea
92 Wildwood Beach Rd.
Mathomedi, MN 55115

PEOPLE, Inc.
379 University Ave. #204
St. Paul, MN 55103

Pine River Group Home, Inc.
Box 96
Pine River, MN 56474

Alfred Ross
6356 Ware Road
Lino Lakes, MN 55014

Marjorie L. Ross
1145 Quentin Ave. S.
Lakeland, MN 55043

Neil A. Rowland
923 South Main Street
Chatfield, MN 55923

Jeri Schoonover
LSS/Residence
945 Amble Road
Shoreview, MN 55126

Jackie Schwietz
MCCL
4249 Nicollet Avenue
Minneapolis, MN 55409

Jean Searles
38 Seventh Ave. N.
Hopkins, MN 55343

Kathryn Selseth-Kill
Presbyterian Family
Foundation, Inc.
901 Memorial Parkway
Willmar, MN 56201

G. Richard Slade
Minneapolis College of Art
and Design
2501 Stevens Ave. S.
Minneapolis, MN 55404

Deborah Sonem
4780 - 15th St. Northeast
Sauk Rapids, MN 56379

South Center Manor
508 Park Island
Center City, MN 55012

Dominic J. Sposeto
2824 Irving Avenue S.
Minneapolis, MN 55408

Robert A. Harder
MN Dental Association
2236 Marshall Ave.
St. Paul, MN 55104

Lois Hacker, Prog. Spclst.
Anoka Co. Community Health
and Social Services
Courthouse - Fourth Floor
Anoka, MN 55303

Heartland Homes, Inc.
Box 214
Park Rapids, MN 56470

Thomas L. Heenan
4141 Douglas Drive
Crystal, MN 55422

Elisabeth Hennessey
Executive Director
ARC of Olmsted County
903 West Center St.
Rochester, MN 55904

Edward R. Henrich
Bergerson-Caswell
5115 Industrial Street
Maple Plain, MN 55359

Charles B. Hoffman
Director, Env. Affairs
Pickands Mather & Co.
Suite 811
200 W. Superior St.
Duluth, MN 55802

Hope Residence, Inc.
Box 63
Waterville, MN 56096

James Jack
Dept. of Recreation, Parks
and Leisure Services
Mankato State University
Mankato, MN 56002

Gaynold Jensen, R.D.
8400 Pennsylvania Rd. #327
Minneapolis, MN 55438

Sharon Kannenberg
Home and Community Options
252 W. Wabasha Street
Winona, MN 55987

Bob Kent
Lakeland Drilling
Rt. 1, Box 67-C
Wrenshall, MN 55797

David Ray Kiely
c/o ARRM
26 E. Exchange Street
St. Paul, MN 55101

Karen Knepper
N. Memorial Medical Ctr.
3300 North Oakdale
Robbinsdale, MN 55422

Ione Koep
125 N. Union
P.O. Box 764
Fergus Falls, MN 56537

Jim Koesling
Capitol Supply Co.
600 Lafayette Road
St. Paul, MN 55101

Julie Krause
119 Third Street
Long Prairie, MN 56347

Cynthia Kroeger
Executive Director
QSS, Inc.
P.O. Box 838
Faribault, MN 55021

Vicki Kunerth
3426 - 39th Ave. So.
Minneapolis, MN 55406

Sue Kvendra
Metropolitan Sr. Federation
1885 University Ave.
Suite 190
St. Paul, MN 55104

Byron Laher
404 S. Eighth Street
Minneapolis, MN 55404

Wayne Larson
Mount Olivet Rolling Acres
7200 Rolling Acres Road
Excelsior, MN 55331

Virgil H. Lee, R.Ph.
St. Mary's Hospital
Pharmacy
1216 Second St. S.W.
Rochester, MN 55902

Ernest K. Lehmann &
Associates, Inc.
Attn: Land Dept.
Suite 790-Kickernick Bldg.
430 First Ave. N.
Minneapolis, MN 55401-1713

Kathleen LeMay
400 W. Marie Avenue
W. St. Paul, MN 55118

Karen Lenander
Northern States Power Co.
A.S. King Plant
210 N. Tenth Avenue
Bayport, MN 55003

Shirley K. Loucks
Assisi Residences, Inc.
Box 454
Blue Earth, MN 56013

Michael J. Ahern
Moss & Barnett
4800 Norwest Center
Minneapolis, MN 55402-4119

Donna M. Anderson
Dakota County
Public Health Dept.
33 E. Wentworth Ave. #345
W. St. Paul, MN 55118

Herbert Anderson
418 Eighth St. S.
Virginia, MN 55792

Anoka Co. Env. Services
c/o Robert Hutchison
Courthouse - Fourth Floor
Anoka, MN 55303

Walter A. Baldus
Woodvale Management
Services, Inc.
P.O. Box 1047
Austin, MN 55912

Mary Ann Blade
808 S.E. Third St.
Little Falls, MN 56345

Lester Block
School of Public Health
Box 197 Mayo
University of Minnesota
Minneapolis, MN 55455

William Bond
MN State Pharmaceutical
Association
2221 University Ave. S.E.
Suite 326
Minneapolis, MN 55414

Broeker, Geer, Fletcher &
LaFond
8500 Normandale Lake Blvd.
Suite 1510
Minneapolis, MN 55437

Mark J. Brunner
MN Manufactured Housing
Association
555 Park Street, Ste. 400
St. Paul, MN 55103

Tim Burkett
CIP
1845 Stinson Blvd. N.E.
Minneapolis, MN 55418

William Carter, III
Executive Director
POST Board
1600 University Ave.
Suite 200
St. Paul, MN 55431

Jane Cavanaugh, QA Coord.
Share Health Plan
3600 W. 80th Street
Bloomington, MN 55431

Becky A. Comstock
Dorsey & Whitney
2200 First Bank Place E.
Minneapolis, MN 55402

Bill Conley
114 Mackubin St.
St. Paul, MN 55102

Mary Davies, Director
Dakota Mental Health Center
744 - 19th Avenue N.
So. St. Paul, MN 55075

Judith S. Douglas
The Phoenix Residence, Inc.
135 Colorado St. E.
St. Paul, MN 55107

John E. Drawz
1500 Northland Plaza Bldg.
3800 West 80th Street
Minneapolis, MN 55431-4409

Michael J. Duffy, Director
Community Health Serv. Bd.
325 Lake Ave. S., Ste. 604
Duluth, MN 55802

Ewald Consulting Group
26 East Exchange
St. Paul, MN 55101

Bob Fitzgerald, D.C.
133 W. Lake Street
Minneapolis, MN 55408

Iris C. Freeman
MN Alliance for Health
Care Consumers
5609 Lyndale Ave. S.
Minneapolis, MN 55419

Patti Cullen Garvey
Care Providers of MN
2850 Metro Drive, Ste. 200
Minneapolis, MN 55425

Steven D. Gatlin
Division of Public Works
City of Roseville
2660 Civic Center Drive
Roseville, MN 55113

Goodhue & Wabasha Counties
Public Health Service
419 Bush Street
Red Wing, MN 55066

Jerry Gross
Community Living, Inc.
Box 130
Victoria, MN 55386

Bob Hamper
Dept. of Human Services
444 Lafayette Road
St. Paul, MN 55155

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717 s.e. delaware st. p.o. box 9441 minneapolis 55440

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INTERPOLL LABORATORIES INC.
4500 BALL RD N E
CIRCLE PINES MN 55014



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LABORATORY DIRECTOR
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3 TOWER ROAD
NEW ULM MN 56073



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LABORATORY DIRECTOR
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801 WASHINGTON
NORTHFIELD MN 55057



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ALAN W. CIBUZAR , CEO
A.W. RESEARCH LABORATORIES
711 LAUREL STREET
BRAINERD MN 56401

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ALBERT LEA ENVIRONMENTAL HEALTH LABORATORY
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R.R. #3
ALBERT LEA MN 56007



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department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

EDWARD WILSON , CHIEF OPERATOR
ALEXANDRIA LAKE AREA SANITARY DISTRICT
2201 NEVADA STREET
ALEXANDRIA MN 56308



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department of health
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TODD R. USTBY , LAB DIRECTOR
AQUA LAB
511 EAST CENTER STREET
ROCHESTER MN 55904



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department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

WAYNE THUPINGER , CHIEF OPERATOR
AURORA WASTEWATER FACILITY
% CITY HALL 16 WEST 2ND AVENUE NO.
AURORA MN 55705

department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

KAREN CUMMINGS , LABORATORY DIRECTOR
BEMIDJI WASTEWATER TREATMENT FACILITY LABORATORY
401 MINNESOTA AVENUE
BEMIDJI MN 56601



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department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

ALLAN W. MEADOWS , ENIVRONMENTAL ENGINEER
BOISE CASCADE PAPERS
400 SECOND STREET
INTERNATIONAL FALLS MN 56649



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department of health
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LABORATORY DIRECTOR
BRAINERD WASTEWATER TREATMENT PLANT LABORATORY
101 LAUREL STREET, P.O. BOX 373
BRAINERD MN 56401



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LABORATORY DIRECTOR
BRAUN ENVIRONMENTAL LABORATORIES, INC.
6800 SOUTH T.H. 169 PO BOX 39108
EDEN PRAIRIE MN 55439

department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

LABORATORY DIRECTOR
CITY OF BUFFALO
212 CENTRAL AVENUE
BUFFALO MN 55315



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717 s.e. delaware st. p.o. box 9441 minneapolis 55440

MILTON BRAHMER , LABORATORY DIRECTOR
CITY OF DETROIT LAKES WATER & WASTEWATER LABORATORY
1025 ROOSEVELT AVENUE, PO BOX 647
DETROIT LAKES MN 56502



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TERRY JACKSON , LABORATORY DIRECTOR
CITY OF ELY LABORATORY
209 EAST CHAPMAN
ELY MN 55731



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RICHARD HOMOLA , LABORATORY DIRECTOR
CITY OF GILBERT
BOX 548 BROADWAY
GILBERT MN 55741

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717 s.e. delaware st. p.o. box 9441 minneapolis 5

ARLEN D. RUD , LABORATORY DIRECTOR
BYRON WASTEWATER TREATMENT PLANT
11 FOURTH STREET N.W.
BYRON MN 55920



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ROBERT BREDESON , LAB DIRECTOR
CAMBRIDGE WATER AND WASTEWATER LABORATORY
800 SW SEVENTH
CAMBRIDGE MN 55008



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717 s.e. delaware st. p.o. box 9441 minneapolis 5

VERNARD HAWKINSON , LABORATORY DIRECTOR
CANNON FALLS WASTEWATER LABORATORY
CANNON RIVER AVENUE
CANNON FALLS MN 55009



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NANCY SALMINEN , LABORATORY DIRECTOR
CHIPPEWA NATIONAL FOREST LABORATORY
ROUTE 3, BOX 244
CASS LAKE MN 56633

717 s.e. delaware st. p.o. box 9441 minneapolis 55440

TODD E. ARLANDER , SUPERINTENDENT
CITY OF PINE ISLAND WASTEWATER LABORATORY
COUNTY ROAD 11, BOX 1000
PINE ISLAND MN 55963



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LABORATORY DIRECTOR
CITY OF LITTLE FALLS WATER DEPARTMENT
100 SEVENTH AVENUE NE
LITTLE FALLS MN 56345



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717 s.e. delaware st. p.o. box 9441 minneapolis 554

LEE BUNDY , LABORATORY DIRECTOR
CITY OF WADENA WASTE WATER TREATMENT PLANT
P.O. BOX 30 AIRPORT ROAD
WADENA MN 56482



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717 s.e. delaware st. p.o. box 9441 minneapolis 55440

DELVIN DOMAGALA , LABORATORY DIRECTOR
CITY OF LUVERNE WASTE WATER TREATMENT PLANT
203 EAST MAIN
LUVERNE MN 56156-0348



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717 s.e. delaware st. p.o. box 9441 minneapolis 5544

BRUCE JASTER , DIRECTOR, ENV. SVCS. DIV. CCHD
CLAY COUNTY HEALTH DEPARTMENT
123 - 21ST STREET SOUTH
MOORHEAD MN 56560



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717 s.e. delaware st. p.o. box 9441 minneapolis 55440

ROBERT ZIMMERMAN , LABORATORY DIRECTOR
CITY OF MOORHEAD WASTEWATER TREATMENT FACILITY
PO BOX 779, 2121 - 28TH STREET N.
MOORHEAD MN 56560



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CLOQUET WATER LABORATORY
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CLOQUET MN 55720

CHARLES K. EVRIDGE , LABORATORY DIRECTOR
CITY OF OLIVIA
1009 WEST LINCOLN AVENUE
OLIVIA MN 56277

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ROY GINN , GENERAL MANAGER
DAIRY QUALITY CONTROL INSTITUTE, INC.
5205 QUINCY STREET
ST. PAUL MN 55112-1400



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LABORATORY DIRECTOR
ENVIRONMENTAL PROTECTION LABORATORIES
217 OSSEO AVENUE NORTH
ST. CLOUD MN 56303



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LABORATORY DIRECTOR
DAVY LABORATORIES
115 SOUTH 6TH STREET, SUITE D
LA CROSSE WI 54601



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717 s.e. delaware st. p.o. box 9441 minneapolis 55440

JOY FOSTER , LABORATORY DIRECTOR
ENVIRONMENTAL TESTING SERVICES
705 EAST 18TH STREET
GLENCOE MN 55336



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DELMAR P. HOGEN , LABORATORY DIRECTOR
DEEP PORTAGE CONSERVATION RESERVE LABORATORY
ROUTE 1, BOX 129
HACKENSACK MN 56452



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ROBERT D. MANGUS , PRESIDENT
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24 NORTH 21ST AVENUE WEST
DULUTH MN 55806



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717 s.e. delaware st. p.o. box 9441 minneapolis 5544C

WILLIAM L. OLSEN , LABORATORY DIRECTOR
ECO-AGRI LABORATORIES INC.
3009 EAST HIGHWAY 12
WILLMAR MN 56201

ROBERT D. MANGUSON , PRESIDENT
ERA LABORATORIES, INC.
24 NORTH 21ST AVENUE WEST
DULUTH MN 55806

717 s.e. delaware st. p.o. box 9441 minneapolis 55440

THOMAS NELSON , LABORATORY DIRECTOR
GRAND MARAIS WASTEWATER TREATMENT PLANT LABORATORY
PO BOX 600
GRAND MARAIS MN 55604



minnesota
department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

717 s.e. delaware st. p.o. box 9441 minneapolis 554

CLARE HYBBERT , LABORATORY DIRECTOR
FAIRMONT WASTEWATER TREATMENT LABORATORY
301 MARGARET STREET
FAIRMONT MN 56031



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717 s.e. delaware st. p.o. box 9441 minneapolis 554

RON KLINKER , LABORATORY DIRECTOR
HENNEPIN PAPER COMPANY
100 S.W. 5TH AVENUE
LITTLE FALLS MN 56345



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717 s.e. delaware st. p.o. box 9441 minneapolis 55440

LABORATORY DIRECTOR
FARIBAULT WASTEWATER TREATMENT PLANT
P.O. BOX 84
FARIBAULT MN 55021



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717 s.e. delaware st. p.o. box 9441 minneapolis 554

FLOYD NELSON , LABORATORY DIRECTOR
HOYT LAKES ENVIRONMENTAL TESTING LABORATORY
LEEDS ROAD
HOYT LAKES MN 55750



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MARVIN J. WENZEL , LABORATORY DIRECTOR
FIELD ENGINEERING, INC.
7608 - 119TH LANE
CHAMPLIN MN 55316



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717 s.e. delaware st. p.o. box 9441 minneapolis 5544

RANDY DEVRIES
HUTCHINSON WASTEWATER TREATMENT FACILITY
1300 HIGHWAY 22 SOUTH
HUTCHINSON MN 55350

LABORATORY DIRECTOR
GOLD'N PLUMP WASTEWATER LAB
EAST HIGHWAY 23
COLD SPRING MN 56320

department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

LABORATORY DIRECTOR
JACK FROST LAB
200 OSSEO AVENUE N.
ST. CLOUD MN 56303



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department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

LABORATORY DIRECTOR
JAMES M. MONTGOMERY, CONSULTING ENGINEERS, INC., WATER LAB
14910 - 28TH AVENUE N.
PLYMOUTH MN 55447



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717 s.e. delaware st. p.o. box 9441 minneapolis 55440

JEAN TORGERSON , LABORATORY DIRECTOR
JT TESTING SERVICE
14755 PALM ST. N.W.
ANDOVER MN 55304



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717 s.e. delaware st. p.o. box 9441 minneapolis 55440

ARRELL O. OPDAHL , WATER SUPERINTENDANT
ILOWATT LABORATORY
01 OAK STREET
RANITE FALLS MN 56241

department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 5544C

OKEY ABARA , CONTACT PERSON
IBP LABORATORY
HIGHWAY 35
DAKOTA CITY NE 68731



minnesota
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717 s.e. delaware st. p.o. box 9441 minneapolis 55440

PETER W. MELAND , PRESIDENT
INGMAN LABORATORIES, INC.
2945 - 34TH AVENUE SOUTH
MINNEAPOLIS MN 55406



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717 s.e. delaware st. p.o. box 9441 minneapolis 55440

DELMAN R. HOGEN , LABORATORY MANAGER
INSTRUMENTAL RESEARCH, INC.
7813 MADISON STREET N.E.
SPRING LAKE PARK MN 55432



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717 s.e. delaware st. p.o. box 9441 minneapolis 55440

LABORATORY DIRECTOR
INTERPOLL LABORATORIES, INC.
4500 BALL ROAD N.E.
CIRCLE PINES MN 55014

717 s.e. delaware st. p.o. box 9441 minneapolis 55440

LABORATORY DIRECTOR
LINCOLN, LYON, MURRAY & PIPESTONE COMM HLTH SERV LABORATORY
1210 EAST COLLEGE DRIVE
MARSHALL MN 56258





minnesota department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

PHILIP R. KANGAS , LABORATORY DIRECTOR
KOOCHICHING WATER QUALITY TESTING SERVICE
ROUTE 9, BOX 570
INTERNATIONAL FALLS MN 56649





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717 s.e. delaware st. p.o. box 9441 minneapolis 5544

DENNIS HOLTZ , LABORATORY DIRECTOR
LITCHFIELD WASTEWATER LABORATORY
NORTH ARMSTRONG AVENUE & HIGHWAY 24
LITCHFIELD MN 55355





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717 s.e. delaware st. p.o. box 9441 minneapolis 55440

DR. D.L. MICHAELIS , LABORATORY DIRECTOR
LAKE REGION HOSPITAL LABORATORY
712 SOUTH CASCADE
FERGUS FALLS MN 56537





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717 s.e. delaware st. p.o. box 9441 minneapolis 5544

LABORATORY DIRECTOR
LITTLE FALLS WASTE TREATMENT PLANT
100 N.E. 7TH AVENUE
LITTLE FALLS MN 56345





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LABORATORY DIRECTOR
LAKEWOOD WATER TREATMENT PLANT LABORATORY
8130 CONGDON BOULEVARD
DULUTH MN 55804





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717 s.e. delaware st. p.o. box 9441 minneapolis 5544

LABORATORY DIRECTOR
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P.O. BOX 847
HOYT LAKES MN 55750

SHERI PETERSON
LAND O'LAKES, INC. ANALYTICAL LABORATORY
P.O. BOX 116
MINNEAPOLIS MN 55440

717 s.e. delaware st. p.o. box 9441 minneapolis 55440

LISA K. FAHRENKAMP
M.A. GEDNEY
P.O. BOX 8
CHASKA MN 55318



717 s.e. delaware st. p.o. box 9441 minneapolis 5544(

ORATORY DIRECTOR
ROPOLITAN WASTE CONTROL COMM.-QUALITY CONTROL LABORATORY
0 CHILDS ROAD
PAUL MN 55106



minnesota department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

JIM JOYCOX , LABORATORY DIRECTOR
MANKATO WATER PLANT
SIBLEY PARK
MANKATO MN 56001



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ORATORY DIRECTOR
MERICA DAIRYMEN, INC. NORTHERN OPERATIONS

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HARRY S. MARKLEY , PRESIDENT
MARKLEY LABORATORIES, INC.
1853 OLD HIGHWAY 8
NEW BRIGHTON MN 55112



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ORATORY DIRECTOR
NEAPOLIS HEALTH DEPARTMENT
SOUTH FOURTH STREET
NEAPOLIS MN 55415-1372



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ERNEST SEPPI , LABORATORY DIRECTOR
MARSHALL WASTEWATER TREATMENT FACILITIES
600 ERIE ROAD
MARSHALL MN 56258

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ORATORY DIRECTOR
NEAPOLIS WATER SOFTENING PLANT LABORATORY
) MARSHALL STREET N.E.
NEAPOLIS MN 55421

717 s.e. delaware st. p.o. box 9441 minnea

LABORATORY DIRECTOR
MINNESOTA POWER ENVIRONMENTAL LABORATORY
1510 WEST SUPERIOR STREET
DULUTH MN 55806



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717 s.e. delaware st. p.o. box 9441 minnea

717 s.e. delaware st. p.o. box 9441 minneapolis 55440

LABORATORY DIRECTOR
NORTH KOOCHICHING SANITARY DISTRICT
P.P. BOX 1225
INTERNATIONAL FALLS MN 56649



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TOM BERG
MINNESOTA VALLEY TESTING LABORATORIES, INC.
1126 NORTH FRONT STREET
NEW ULM MN 56073



minnesota department of health
717 s.e. delaware st. p.o. box 9441 minnea

LABORATORY DIRECTOR
NORTHEAST TECHNICAL SERVICES, INC.
RIDGEWOOD DRIVE, P.O. BOX 1142
VIRGINIA MN 55792



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717 s.e. delaware st. p.o. box 9441 minneapolis 55440

LABORATORY DIRECTOR
MOORHEAD PUBLIC SERVICE DEPARTMENT
215 - 23RD STREET NORTH
MOORHEAD MN 56560



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717 s.e. delaware st. p.o. box 9441 minnea

KEVIN P. JEPSON , SR. PLANT CHEMIST
NORTHERN STATES POWER COMPANY-MNGP
2807 WEST HIGHWAY 75
MONTICELLO MN 55362



minnesota department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

LABORATORY DIRECTOR
MOWER COUNTY WATER LABORATORY
1105 1/2 - 8TH AVENUE N.E.
AUSTIN MN 55912

LABORATORY DIRECTOR
NSP TESTING LABORATORY
1518 CHESTNUT AVENUE
MINNEAPOLIS MN 55403

717 s.e. delaware st. p.o. box

LABORATORY DIRECTOR
NSP-SHERBURNE COUNTY GENERATING PLANT LAB
13999 INDUSTRIAL BOULEVARD
BECKER MN 55308-9611



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RICHARD BRISTOW , LABORATORY DIRECTOR
PLAINVIEW-ELGIN SANITARY SEWER DISTRICT
PO BOX 416
PLAINVIEW MN 55964



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717 s.e. delaware st. p.o. box 9441 minneapolis 554

LABORATORY DIRECTOR
OLMSTED COMMUNITY HEALTH CENTER ENVIRONMENTAL LAB
1650 FOURTH STREET S.E.
ROCHESTER MN 55904



minnesota department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 5544

JAMES ACKERMAN , LABORATORY DIRECTOR
PUBLIC UTILITIES COMM. WW TREAT
420 NO POKEGAMA AVENUE, PO BOX 68
GRAND RAPIDS MN 55744



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717 s.e. delaware st. p.o. box 9441 minneapolis 554

LABORATORY DIRECTOR
OWATONNA WASTEWATER TREATMENT FACILITY
540 WEST HILLS CIRCLE
OWATONNA MN 55060



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LABORATORY DIRECTOR
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RED WING MN 55066



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GOLDEN VALLEY MN 55422

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SAVAGE MN 55788

LABORATORY DIRECTOR
RMT INC.
744 HEARTLAND TRAIL, P.O. BOX 8923
MADISON WI 53708-8923





WAYNE DUNBAR, Ph.D. , LABORATORY DIRECTOR
SOUTHEAST MINNESOTA ANALYTICAL SERVICE
PASTEUR HALL, WINONA STATE UNIV.
WINONA MN 55987





DAVID L. PETERSEN , LABORATORY DIRECTOR
ROCHESTER WATER RECLAMATION PLANT
301 NW 37TH STREET
ROCHESTER MN 55901





DANIEL J. WARHOL , QUALITY ASSURANCE MANAGER
SPECTRUM LABS, INC
301 WEST COUNT ROAD E2
NEW BRIGHTON MN 55112





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208 WELSH POOL ROAD
LIONVILLE PA 19353





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ST. CLOUD PUBLIC UTILITIES - WASTEWATER
524 - 240TH STREET
ST. CLOUD MN 56301





LABORATORY DIRECTOR
SERCO LABORATORIES
1931 WEST COUNTY ROAD C-2
ST. PAUL MN 55113

LABORATORY DIRECTOR
ST. CLOUD PUBLIC UTILITIES - WATER
1000 - 5TH AVENUE NORTH
ST. CLOUD MN 56303

MITCH HAMS , LABORATORY DIRECTOR
THIEF RIVER FALLS WASTEWATER DEPARTMENT
P.O. BOX 528
THIEF RIVER FALLS MN 56701



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717 s.e. delaware st. p.o. box 9441 minnea ...is

LABORATORY DIRECTOR
ST. LOUIS COUNTY HEALTH DEPARTMENT LABORATORY
1001 EAST FIRST STREET
DULUTH MN 55805



minnesota department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 5544

LABORATORY DIRECTOR
TRAUT WATER ANALYSIS LABORATORY
151 - 72ND AVENUE SOUTH
ST. CLOUD MN 56301



minnesota department of health
717 s.e. delaware st. p.o. box 9441 minnea ...is.

DIANE NEISIUS , LAB MANAGER
ST. PAUL DIVISION OF PUBLIC HEALTH - LABORATORY
555 CEDAR STREET
ST. PAUL MN 55101



minnesota department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 554

LABORATORY DIRECTOR
TRI-CITY PUBLIC HEALTH LABORATORY
5146 EDEN AVENUE SOUTH
EDINA MN 55436



minnesota department of health
717 s.e. delaware st. p.o. box 9441 minneap...

LABORATORY DIRECTOR
ST. PAUL WATER UTILITY LABORATORY
1900 NORTH RICE STREET
ST. PAUL MN 55113



minnesota department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 554

LABORATORY DIRECTOR
TWIN CITY TESTING CORPORATION
662 CROMWELL AVENUE
ST. PAUL MN 55114

EDWARD C. MARSOLEK
SUPERIOR NATIONAL FOREST LABORATORY
118 SOUTH 4TH AVENUE EAST
ELY MN 55731

DONOVAN ERICKSON , LABORATORY DIRECTOR
WATER DOCTOR ANALYTICAL LABORATORY/MAS>
330 S. CLEVELAND STREET, PO BOX 349
CAMBRIDGE MN 55008





KEVIN KLOEPPNER , LABORATORY DIRECTOR
WATER LABORATORY, INC.
429 E. MAIN STREET, PO BOX 388
ELK RIVER MN 55330





LABORATORY DIRECTOR
WESTERN LAKE SUPERIOR SANITARY DISTRICT
27TH AVENUE WEST & THE WATERFRONT
DULUTH MN 55808





LABORATORY DIRECTOR
WESTON/GULF COAST LABORATORIES
2417 BOND STREET
UNIVERSITY PARK IL 60466



WILLIAM VAN ARSDAL , LABORATORY DIRECTOR
TWIN CITY WATER CLINIC, INC.
617 - 13TH AVENUE SOUTH
HOPKINS MN 55343





KEN SCHREADER , LABORATORY DIRECTOR
U C LABORATORIES
129 NORTH MAIN STREET, BOX 551
JANESVILLE MN 56048





LABORATORY DIRECTOR
USPCI ANALYTICAL SERVICES
4322 SOUTH 49TH WEST AVENUE
TULSA OK 74107





LABORATORY DIRECTOR
WADSWORTH/ALERT LABORATORIES, INC.
4101 SHUFFEL DR. N.W.
NORTH CANTON OH 44720

minnesota department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

DONNIE BOB JONES , LABORATORY DIRECTOR
WILLMAR WASTEWATER TREATMENT PLANT
1400 S.E. 7TH STREET
WILLMAR MN 56201



minnesota department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

KENNETH P. STOUB , LAB DIRECTOR
WMI ENVIRONMENTAL MONITORING LABORATORIES, INC.
2100 CLEANWATER DRIVE
GENEVA IL 60134



minnesota department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

LABORATORY DIRECTOR
WW ENGINEERING & SCIENCE INC., ENV. LAB DIVISION
5555 GLENWOOD HILLS PARKWAY
GRAND RAPIDS MI 49588



Tony Bush
Q.A.L.
10537 South Harding
Chicago, IL 60655

Ken Kuhl
Tri-State Labs.
PO Box 939
Grand Forks, ND 58206

Fred Lindeman
Interstate Power Company
1000 Main Street
Dubuque, IA 52001

Scott Martin
New Dimension Plating
540 - 3rd Avenue NW
Hutchinson, MN 55350

McNeil Seymour
634 So Snelling Ave, #1A
St. Paul, MN 55116

Shawn Kovajecz
Lakehead Pipeline Company
PO Box 789
Superior, WI 54880

Paul Norr
Pillsbury Company
330 University Avenue SE
Minneapolis, MN 55414

Star Plating, Inc.
544 - 3rd Street SE
Winnebago, MN 56098

Dave Schuler
St. Paul Water Utility
85 E. Vadnais Boulevard
Vadnais Heights, MN 55127

Phyllis Kovacs
Mobile Oil Corporation-TSL
PO Box 1027
Princeton, NJ 08543-1027

Dave Moench
Dexter Water Mgmt. Systems Div.
5155 E. River Road, Suite 403
Minneapolis, MN 55421

Francis Osborne
RCM and Associates
Box 130
Minnetonka, MN 55343

Willard Brosz
Pillsbury Center
Mail Station 23A4
Minneapolis, MN 55402

Ken Goldman
10701 - 93rd Ave No, Suite I
Maple Grove, MN 55369

Deborah Lazowski
Tenco Labs
1150 Junction Avenue
Schererville, IN 46375

John Clare
18815 - 7th Avenue East
Clearwater, MN 55320

Homer Madison
Commercial Testing Lab, Inc.
514 Main Street
Colfax, WI 54730

Al Bly
Nalco Chemical Company
2415 Annapolis Lane, Suite 170
Plymouth, MN 55441

Ronald C. Arneson, TS/3
WI Dept of Natural Resources
PO Box 7921
Madison, WI 53707

KNL Laboratories
PO Box 1833
Tampa, FL 33601

Kay Jacobs
1501 West Knife River Road
Two Harbors, MN 55616

Willie Pasion
Autochem
PO Box 188
Blooming Prairie, MN 55917

Jerry Anderson
Honeywell
600 - 2nd Street NE
Hopkins, MN 55343

Frank Altmayer
Scientific Control Labs
3158 South Kolin
Chicago, IL 60623

Bill Erickson
1118 Lake Street
Alexandria, MN 56308

Daniel Boyce, General Mgr.
Water and Light Department
PO Box 322
E. Grand Forks, MN 56721

Gary Hanson
Donohue and Associates
4738 No. 40th St., PO Box 1067
Sheboygan, WI 53082-1067

George Psihos
Equad, Inc.
4607 Wooddale Avenue
Edina, MN 55424

Ann Rosecrane, Quality Assurance Dir.
Core Laboratories Dir.
10205 Westheimer, PO Box 1407
Houston, TX 77251

Bob Behrens
People's Natural Gas
1815 Capitol Avenue
Omaha, NE 68102

Kevin Carlson
A and A Chemical Laboratory
2400 Diagonal Road
LaCrosse, WI 54601

Walt Annerer
Wastewater Plant Superintendent
City Hall
Grand Marais, MN 55604

Tom Sobolik
826 - 3rd Avenue NW
Grand Rapids,
Minnesota 55744

Paul Duffy
WMI-EML
2100 Clean Water Drive
Geneva, IL 60134

Mary Wisdom
CH2M Hill
Montgomery Laboratory
2567 Fairlane Drive
Montgomery, Alabama 36116

John Ameel
NRRI
5013 Miller Trunk Hwy.
Duluth, MN 55811

Ted Stern
Circuit Research
702 So. 7th Street
Delano, MN 55328

Tom Wyzykowski
Delta Env. Consultants Inc.
900 Long Lake Road, Suite 300
St. Paul, MN 55112

Mike Natysin
A2307 Government Center
300 South 6th Street
Minneapolis, MN 55487

Dale Ellison
Douglas County Hospital
111 - 17th Avenue East
Alexandria, MN 56308

Christine Johnson
General Engineering Laboratories
2040 Savage Road
Charlseton, SC 29410

Earl Knutson
City of Benson
1411 Pacific Avenue
Benson, MN 56215

Mary Fralish
Mankato Wastewater Treatment Plant
End of Pine Street
Mankato, MN 56001

Tom Herman
Northern Lakes Service
400 N. Lake Avenue
Crandon, WI 54520

Jim Newell
National Testing Labs, Inc.
6151 Wilson Mills Road
Cleveland, OH 44143

minnesota department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

JOHN DAVENPORT
MN POLLUTION CONTROL AGENCY
520 LAFAYETTE RD
ST PAUL MN 55155

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minnesota department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

JAMES O'CONNOR
MN DPT OF TRANSPORTATION
6000 M'HAHA AVE
MPLS MN 55406

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CURT REETZ
CITY OF ARLINGTON
312 W ALDEN
ARLINGTON MN 55307

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minnesota
department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

ALLIAN TECHSYSTEMS M&PE
1625 ZARTHAN AVE
ST LOUIS PARK MN 55416



minnesota
department of health
717 s.e. delaware st. p.o. box 9441 m

TRI-COUNTY WATER CONDITIONING
C/O DON HANTGE
P O BOX 65
HUTCHINSON MN 55350



minnesota
department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

AUSTIN WASTEWATER TREATMENT FACILITY
1205 SO MAIN STREET
AUSTIN MN 55912



minnesota
department of health
717 s.e. delaware st. p.o. box 9441 m

WORTHINGTON WASTE WATER LABORAT(
27TH STREET NORTH
WORTHINGTON MN 56187



minnesota
department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

GRANITE FALLS WASTEWATER LABORATORY
986 WEST PARK
GRANITE FALLS MN 56241



minnesota
department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

TRI-COUNTY WATER CONDITIONING
C/O DON HANTGE
P O BOX 65
HUTCHINSON MN 55350

Celebrate MINNESOTA 1990

minnesota department of health
717 s.e. delaware st. p.o. box 9441 minneapolis 55440

LAB DIRECTOR
MID AMERICA DAIRYMEN INC
212 E FIRST STREET
P O BOX Z
WINTHROP MN 55396

DIRECTOR
3M CHEMOLITE CENTER ENV. LABORATORY
10746 CHEMOLITE RD
ST PAUL MN 55133

717 s.e. delaware st. p.o. box 9441 minneapolis 55440

NO. STATES POWER (Prairie Island)
1717 WAKONADE DRIVE EAST
WELCH MN 55089

LABORATORY DIRECTOR
S.M.C.S. Laboratory
P.O. Box 500
Renville MN 56284

LAB DIRECTOR
CITY OF WASECA WASTEWATER TREATMENT PLANT
508 SO STATE STREET
WASECA MN 56093

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, 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 25 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 the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Health

Proposed Permanent Rules Relating to Certification of Environmental Laboratories

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Department of Health (hereinafter "Department") intends to adopt the above-entitled amendments to rules by expanding the list of metal analytes eligible for certification under the Clean Water Program and the Safe Drinking Water Program. To accomplish this purpose the Department intends to amend *Minnesota Rules* part 4740.2020, subpart 4, without a public hearing following the procedures set forth in the Administrative Procedure Act in *Minnesota Statute* §§ 14.22 to 14.28 (1990). The statutory authority to adopt the rules is *Minnesota Statute* §§ 144.97 and 144.98 (1990).

All persons have until January 31, 1991 to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the comment period, ending January 31, 1991. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. 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 Department will proceed pursuant to *Minnesota Statutes*, Sections 14.131 to 14.20 (1988).

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

Al Tupy
Laboratory Services Section
Public Health Laboratory Division
Minnesota Department of Health
717 Delaware Street Southeast
Minneapolis, Minnesota 55440
Telephone: (612) 623-5690

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

The rule authorizes environmental testing laboratories to become certified by the Department to perform tests for certain specified analytes under two testing programs: the Safe Drinking Water Act, 42 United States Code, Section 300f et seq., *Minnesota Statutes*, Section 144.381 et seq., and 40 Code of Federal Regulations 141; and the Clean Water Act, 33 United States Code, Section 1251 et. eq. and 40 Code of Federal Regulations, Section 136. This amendment increases the number of analytes listed in part 4790.2040, subpart 4.

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

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

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of the proposed amendment and identifies the data and information relied upon to support the proposed amendment has been prepared and is available from Al Tupy upon request at the above address.

Pursuant to *Minnesota Statute* Section 14.115, subdivision 2, the impact on small businesses has been considered in the promulgation of this rule amendment. The Department's analysis and position regarding the impact of the amendment on small businesses is set forth in the Statement of Need and Reasonableness. Anyone wishing to present evidence or argument as to the amendment's effect on small businesses is encouraged to do so.

Pursuant to *Minnesota Statute* Section 14.115, subdivision 4 (c), the Department, in order to provide an opportunity for small businesses to participate in the rule making process, will mail copies of the proposed rule amendment and this Notice to all laboratories which are currently certified or in the application process. To the Department's knowledge this includes all laboratories which do environmental testing. These laboratories are encouraged to comment.

If no hearing is required, upon adoption of the amendment, the amendment 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 amendment must submit the written request to Al Tupy at the above address.

Dated: 18 December 1990

Sister Mary Madonna Ashton
Commissioner

Rules as Proposed

4740.2040 CERTIFIED TEST CATEGORIES.

[For text of subps. 1 to 3, see M.R.]

Subp. 4. **Metal chemistry.** ~~The analysis of lead is eligible to be certified for the Clean Water Program and the Safe Drinking Water Program.~~

A. Metals analytes eligible for certification under the Clean Water Program are:

(1) aluminum;

(2) antimony;

(3) arsenic;

(4) barium;

(5) beryllium;

(6) boron;

(7) cadmium;

(8) calcium;

(9) chromium, hexavalent;

(10) chromium;

(11) cobalt;

(12) copper;

(13) gold;

(14) iridium;

(15) iron;

(16) lead;

(17) lithium;

(18) magnesium;

(19) manganese;

(20) mercury;

(21) molybdenum;

(22) nickel;

(23) osmium;

(24) palladium;

(25) platinum;

(26) potassium;

(27) rhodium;

(28) ruthenium;

(29) selenium;

(30) silver;

(31) sodium;

(32) thallium;

(33) tin;

(34) titanium;

(35) vanadium; and

(36) zinc.

B. Metals analytes eligible for certification under the Safe Drinking Water Program are:

(1) antimony;

(2) arsenic;

(3) barium;

(4) beryllium;

(5) cadmium;

(6) chromium;

(7) copper;

(8) lead;

(9) mercury;

(10) nickel;

(11) selenium; and

(12) thallium.

Department of Revenue

Proposed Permanent Rules Relating to the Valuation and Assessment of Utilities

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Revenue, Local Government Services Division proposes to adopt the above-entitled rules without a public hearing. The Commissioner 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*, section 14.21 to 14.28.

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 twenty-five or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment

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.

Rules as Proposed

2890.0080 INELIGIBLE COSTS.

All costs associated with actions that do not minimize, eliminate, or clean up a release to protect the public health and welfare or the environment are ineligible costs. Ineligible costs include, but are not limited to, any costs related to the permanent repair or replacement of a tank, upgrading tanks, removal of tanks, loss of income, attorney's fees, permanent relocation of residents, decreased property values, reimbursement for the responsible person's own time spent in planning and administering a corrective action plan, aesthetic improvements, or any work performed that is not in compliance with safety codes including but not limited to Occupational Safety and Health Administration requirements, well codes, and fire codes. Other ineligible costs include corrective action costs which are covered under an insurance or other contract for initial and supplemental applications received by the board after the effective date of this part.

Department of Health

Corrections to Proposed Permanent Rules Relating to Certification of Environmental Laboratories

Corrected Rule Citation and Phone Number for Comments

The *Minnesota Rules* cited in the notice appearing on page 1505 of Vol. 15, #27, Dec. 31, 1990 *State Register* were wrong. The correct citation in the first paragraph and the second to the last paragraph on that page should be *Minnesota Rules* part 4740.2040, subp. 4. The correct telephone number for comments is (612) 623-5680.

Minnesota Racing Commission

Proposed Permanent Rules Relating to Pari-mutuel Horse Racing

Notice of Proposed Adoption of a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Racing Commission 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 240.23 (1990).

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:

Richard Krueger
Minnesota Racing Commission
11000 West 78th Street, Suite 201
Eden Prairie, MN 55344
Telephone: (612) 341-7555

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.

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.

6800 South TH-169, P.O. Box 39108
Minneapolis, Minnesota 55439
Phone 612/941-5600 Fax: 612/942-4844

BRAUN
ENVIRONMENTAL LABORATORIES

Quality Services Since 1957



January 15, 1991

Mr. Al Tupy
Laboratory Services Section
Public Health Laboratory Division
Minnesota Department of Health
717 Delaware Street Southeast
Minneapolis, MN 55440

RE: In the Matter of the Proposed Adoption of Amendments to Part 4740.2040, Subpart 4, Relating to Metal Analytes Eligible for Certification Under the Environmental Laboratory Rules

Dear Mr. Tupy:

Our concern with the proposed amendment change is specifically aimed at the metal analytes eligible for certification under the Clean Water Program. Several of the metals listed are not on any current EPA check sample series, e.g. Water Pollution. These metals are:

Boron
Chromium, Hexavalent
Gold
Iridium
Lithium
Osmium
Palladium
Platinum
Rhodium
Ruthenium
Tin

The Wisconsin Proficiency Testing samples do not include any of these samples. Analytical Products Group (APG) trace metal samples do not include these metals.

Because of the lack of available outside performance evaluation samples for these metal analytes, we would like clarification on how the health department will certify for these metals. Will the state provide P.E. samples? Would the health department offer blanket certification for certain groups of metals like the Wisconsin DNR program?

We feel that the health department needs to more clearly define how they will handle metals not currently on any P.E. check series.

Sincerely,

BRAUN INTERTEC ENVIRONMENTAL, INC.

Louise R. Ogden
Quality Assurance Coordinator

Anne L. Ochs
Laboratory Manager

LRO/ALO:nlb4\Tupy.Jan

BRAUN™

Land O'Lakes, Inc.

4001 LEXINGTON AVE. N., ARDEN HILLS, MINNESOTA

Mailing address: P.O. Box 116, Minneapolis, MN 55440-0116
Telephone: (612) 481-2222

JAN 1991
MN Dept of Health
DIV OF
LABORATORIES

December 28, 1990

Al Tupy
Laboratory Services Division
Division of Public Health Laboratories
Minnesota Department of Health
P.O. Box 9441
Minneapolis, MN 55440

RE: Proposed Adoption of Amendments to Part 4740.2040, Subpart 4 Relating to Metal Analytes Eligible for Certification Under the Environmental Laboratory Rules.

Dear Mr. Tupy:

Please advise me of the submission of the material referenced above to the Attorney General and send me a copy of the corresponding adopted amendment.

Also, I would like to comment that the requirement of analyzing a performance sample for every metal analyte eligible for certification is very costly for laboratories in general. In addition, most metals are analyzed using the same technique and type of equipment such as AA Flame (Absorbance/Emission), AA Furnace or ICP.

In particular, our laboratory would be in favor of a program such as that used by the State of Wisconsin where metal analytes are assigned to specific groups and acceptable performance of specific metal analytes determined by the State would certify a laboratory for a group of metal analytes. With this in mind, I would be in favor of a public hearing.

Thank you for the opportunity to comment on the proposed adoption of Amendments as referenced above. If you have any questions, please feel free to contact me.

Sincerely,

Sheri L. Haines Peterson

Sheri L. Haines Peterson
QC Chemist, Analytical Laboratory
Mail Station AH0075
(612) 481-2282

SP90-42

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

DEPARTMENT OF HEALTH

In the Matter of the Proposed
Adoption of Amendments to
Part 4740.2040, Subpart 4
Relating to Metal Analytes
Eligible for Certification
Under the Environmental
Laboratory Rules

DECLARATION OF COUNSEL

I, Richard A. Wexler, Assistant Attorney General, do hereby declare that I have examined the above-captioned rules and the supporting rulemaking record and that, based on my examination, the Administrative Procedure Act and Minn. Rules ch. 2010 have been followed. Any exceptions are listed below. For Attorney General billing purposes, the four-digit docket client code is 1400.

Dated: March 21, 1991.

RICHARD A. WEXLER
Assistant Attorney General

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

DEPARTMENT OF HEALTH

In the Matter of the Proposed Adoption of Amendments to Part 4740.2040, Subpart 4 of the Department of Health Relating to Metal Analytes Eligible for Certification Under the Environmental Testing Laboratory Rules

NOTICE OF SUBMISSION OF RULES ADOPTED WITHOUT A PUBLIC HEARING TO THE ATTORNEY GENERAL

Pursuant to your request and in accordance with Minn. Stat. 14.26:

PLEASE TAKE NOTICE that the above-captioned rules as adopted were submitted to the Attorney General on the date of this notice, March 21, 1991, for review as to legality and form to the extent form relates to legality. The proposed rules, the rules as adopted, all the notices, the statement of need and reasonableness, all written comments and requests for a hearing received, and other required documents also have been submitted to the Attorney General.

The proposed rules which were published in the State Register December 31, 1990, were adopted without any changes.

The rules must be approved or disapproved by the Attorney General within 14 calendar days of the date of submission to the Attorney General. You may submit written comments to the Attorney General on the legality of the rules. Any written comments must be submitted within eight calendar days of the date of submission of the rules to the Attorney General. Your comments must address only the issue of legality of the rules or the legality of the specific parts or subparts of the rules. Attorney General standards for

review are set forth in Minn. Rules pt. 2010.1000. You may receive a copy of the Attorney General's decision upon written request to the Attorney General. Your comments or requests for the decision must be directed to:

Attorney General's Office
Public Finance Division
Capitol Office Building - Fifth Floor
525 Park Street
St. Paul, Minnesota 55103
Telephone: (612) 297-2040

Any written comments submitted to the Attorney General must be submitted simultaneously to:

Al Tupy, Chief
Public Health Laboratory Division
717 Delaware Street
P.O. Box 9441
Minneapolis, Minnesota 55440
Telephone: (612) 623-5680

Dated: March 21, 1991

for Pauline Brooks
John F. McCally
Commissioner of Health

STATE OF MINNESOTA

COUNTY OF HENNEPIN

BEFORE THE MINNESOTA

DEPARTMENT OF HEALTH

In the Matter of the Proposed Adoption of Amendments to Part 4740.2040 Subpart, 4 of the Department of Health Relating to Metal Analytes Eligible for Certification Under the Environmental Testing Laboratory Rules

AFFIDAVIT OF MAILING THE NOTICE OF SUBMISSION OF RULES ADOPTED WITHOUT A PUBLIC HEARING TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Al Tupy, being duly sworn says:

That on the 21 day of March, 1991, in the City of Minneapolis, County of Hennepin, State of Minnesota, I mailed the attached Notice of Submission of Rules Adopted Without a Public Hearing to the Attorney General 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 who requested notice that the rules in the above-entitled matter have been submitted to the Attorney General.

Al Tupy

Al Tupy
Chief Laboratory Services

Subscribed and sworn to before me
This 21st day of March, 1991

Christine Grinsteinner

CHRISTINE GRINSTEINNER
NOTARY PUBLIC-MINNESOTA
DAKOTA COUNTY
MY COMMISSION EXPIRES MARCH 8, 1995