

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

CH
12/4/91

RULE REVIEW CHECKLIST

File No. 1871
DATE RECEIVED 11-26-91
REVIEW DATE 12-4-91
DUE DATE 12-10-91
(DIS)APPROVED _____
WITHDRAWN _____

Docket No. 050009 0697
ADOPTED W/O HEARING _____
EMERGENCY RULE _____
TO REVISOR ON 12/5/91
REVISOR (DIS)APPROVED 12-10-91
FILED W/SEC. OF STATE 12-13-91
RETURNED TO AGENCY 12-13-91

✓ 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
July 23, 1991 Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
116.53 subd 2 Statutory Authority
✓ Small Business Statement
Statement but NA Expenditure of public money statement
8-22-91 Signature

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

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
August 23, 1991 Dated 30/25 days before adoption
_____ Notice attached indicates it is attached
_____ Copy of rule or summary attached

✓ Publication in State Register
August 26, 1991 Date 30/25 days before adoption

see notes 180-day deadline from: finals indicates must be done by Jan 1, 1988
missed deadline but Effective date of law requiring rule (14.12) (both rules) amendments don't apply
✓ end of comment period (§ 14.26) (rules without hearing)
_____ effective date of statutory authority (§ 14.29) (emergency rules)

✓ Resolution Adopting
Oct 23, 1991 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
Nov 4, 1991 Date

_____ Written Requests, Submissions or Comments

✓ Declaration of Attorney
Steve Shakman Name of SAAG representing agency

_____ Notice of Submission to Attorney General (if applicable)

_____ Affidavit of Mailing Notice to Attorney General (if applicable)

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

OFFICE MEMORANDUM

DATE: December 13, 1991

TO: PLACIDA VENEGAS
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, MN

FROM: MARY JO MURRAY
Special Assistant Attorney General
525 Park Street, Suite 500 (55103)

PHONE: 296-3258

SUBJECT: In the Matter of the Adopted Rule Relating to Priorities for Soil Lead Abatement

The above-referenced rule has been approved as to its legality by the Attorney General on December 10, 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.

MJM:sc
Enclosures
cc: Stephen Shakman
William Brown, Chief Judge
MaryAnn Hruby

Pollution Control Agency

Adopted Permanent Rules Relating to Priorities for Soil Lead Abatement

Rules as Adopted

4760.0500 SCOPE.

Parts 4760.0500 to 4760.0540 establish procedures for determining priorities for response action for residential sites and playgrounds in the state where soils are found to be contaminated with lead, as required by Minnesota Statutes, section 116.53, subdivision 2.

4760.0510 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 4760.0500 to 4760.0540, the following terms have the meanings given them.

Subp. 2. **Child.** "Child" means a human being under the age of six years.

Subp. 3. **Distributing authority.** "Distributing authority" means a governmental agency or entity, such as a local board of health, that distributes funds for the abatement of soil lead contamination.

Subp. 4. **Elevated blood lead level.** "Elevated blood lead level" means a confirmed concentration of 25 micrograms or more of lead in each deciliter of whole blood.

Subp. 5. **Person.** "Person" has the meaning given in Minnesota Statutes, section 116.06, subdivision 8.

Subp. 6. **Playground.** "Playground" means an open area, including vacant lots, used for outdoor games, recreation, and amusement that may contain swings, seesaws, slides, or other means for children's recreation and play.

Subp. 7. **Residence.** "Residence" means a house, duplex, apartment, or other building or structure used or intended for use as human habitation and the real property upon which the building or structure is located.

Subp. 8. **Response action.** "Response action" has the

meaning given in Minnesota Statutes, section 116.51, subdivision 5.

Subp. 9. **Site.** "Site" means an area of land that has been sampled for soil lead concentration. A site may be as small as a residence or as large as a census tract.

4760.0520 PRIORITY RANKING SYSTEM.

Subpart 1. **Priority one.** A site is a priority one site if the site contains more than 300 parts per million lead and the site is a residence of a child with an elevated blood lead level or the residence of a pregnant woman with a blood lead level of ten micrograms per deciliter or more.

Subp. 2. **Priority two.** A site is a priority two site if the site contains more than 300 parts per million lead and the site is a residence or a playground and the site is frequented by a child with an elevated blood lead level.

Subp. 3. **Priority three.** A site is a priority three site if it is a census tract that meets one or more of the following criteria:

A. it contains the residence of a child with an elevated blood lead level or a pregnant woman with a blood lead level of ten micrograms per deciliter or more;

B. any soil sample within the census tract indicates a soil lead level of more than 300 parts per million; or

C. the census tract is on the following list:

CENSUS TRACT NUMBER	CITY	LOWER CONFIDENCE LIMIT	MEAN	UPPER CONFIDENCE LIMIT
1. 84	Minneapolis	460.019	736.507	1179.170
2. 332	St. Paul	361.915	733.350	1485.990
3. 83	Minneapolis	358.645	460.916	592.350
4. 71	Minneapolis	340.962	514.736	777.080
5. 78	Minneapolis	336.858	459.276	626.180
6. 72	Minneapolis	324.952	412.103	522.630
7. 69	Minneapolis	322.637	407.247	514.050
8. 79	Minneapolis	310.606	514.142	851.050
9. 93	Minneapolis	291.339	640.391	1407.640
10. 18	Minneapolis	241.486	437.469	792.510
11. 23	Minneapolis	239.560	536.452	1201.290
12. 12	Duluth	250.261	519.718	1079.300
13. 82	Minneapolis	264.749	379.520	544.050
14. 25	Minneapolis	182.547	509.773	1423.570
15. 354	St. Paul	260.405	363.646	507.820
16. 15	Minneapolis	209.802	450.573	967.660
17. 366	St. Paul	112.570	588.720	3078.890
18. 47	Minneapolis	192.907	417.770	904.750

19.	70	Minneapolis	37.422	363.044	3522.060
20.	94	Minneapolis	187.400	400.858	857.460
21.	22	Minneapolis	251.728	346.117	476.720
22.	92	Minneapolis	112.740	495.288	2175.890
23.	86	Minneapolis	186.407	349.367	654.790
24.	337	St. Paul	245.707	319.574	415.650
25.	35	Minneapolis	160.398	338.992	716.440
26.	344	St. Paul	218.728	320.605	469.930
27.	57	Minneapolis	164.839	290.643	512.460
28.	65	Minneapolis	52.789	257.315	1254.250
29.	21	Minneapolis	66.709	255.534	978.840
30.	19	Minneapolis	171.870	282.398	464.000
31.	36	Minneapolis	94.638	254.595	684.910
32.	111	Minneapolis	110.134	257.701	602.990
33.	312	St. Paul	47.241	227.399	1094.610
34.	103	Minneapolis	40.160	218.218	1185.740
35.	368	St. Paul	3.343	136.804	5597.760
36.	2	Minneapolis	104.219	239.240	549.190
37.	17	Minneapolis	46.312	192.512	800.230
38.	27	Duluth	57.187	191.895	643.920
39.	85	Minneapolis	146.515	244.739	408.810
40.	16	Duluth	69.174	197.015	561.120
41.	54	Minneapolis	39.020	161.430	667.850
42.	50	Minneapolis	186.525	255.434	349.800
43.	95	Minneapolis	123.395	217.816	384.490
44.	320	St. Paul	0.124	31.690	8091.850
45.	325	St. Paul	122.539	213.922	373.450
46.	99	Minneapolis	79.929	189.789	450.650
47.	60	Minneapolis	114.333	204.372	365.320
48.	61	Minneapolis	74.229	173.984	407.800
49.	49	Minneapolis	56.477	159.926	452.870
50.	371	St. Paul	135.290	216.914	347.786
51.	18	Duluth	28.309	112.400	446.290
52.	75	Minneapolis	93.796	195.579	407.810
53.	340	St. Paul	99.113	183.212	338.672
54.	363	St. Paul	29.196	110.590	418.900
55.	350	St. Paul	22.960	99.916	434.810
56.	19	Duluth	90.188	196.893	429.840
57.	28	Duluth	56.699	139.281	342.145
58.	112	Minneapolis	48.806	126.633	328.561
59.	16	Minneapolis	29.691	98.646	327.741
60.	52	Minneapolis	0.750	16.699	372.000
61.	357	St. Paul	115.904	188.437	306.360
62.	73	Minneapolis	71.059	148.505	310.357
63.	349	St. Paul	58.097	136.714	321.717
64.	315	St. Paul	152.960	214.613	301.116

Subp. 4. **Prioritizing census tracts.** Priority three census tracts are further prioritized as described in items A to D.

A. A census tract is a priority A if the upper and lower confidence level values for soil lead, within a 95 percent confidence interval, exceed 300 parts per million and a child with an elevated blood lead level or a pregnant woman with a blood lead level of ten micrograms per deciliter or more resides within the census tract.

B. A census tract is a priority B if the upper confidence level value for soil lead, within a 95 percent confidence interval, exceed 300 parts per million and a child

with an elevated blood lead level or a pregnant woman with a blood lead level of ten micrograms per deciliter or more resides within the census tract.

C. A census tract is a priority C if the upper and lower confidence level values for soil lead, within a 95 percent confidence interval, exceed 300 parts per million.

D. A census tract is a priority D if the upper confidence level value for soil lead, within a 95 percent confidence interval, exceeds 300 parts per million.

Subp. 5. **Individual residences and playgrounds within a census tract.** A residence or playground within a census tract that meets the criteria for a priority one or a priority two site must be prioritized as a priority one or a priority two site.

Subp. 6. **Ranking.** A site must be ranked at the highest priority for which it qualifies, whether the site is a residence or a playground or a census tract.

4760.0530 ABATEMENT PRIORITY LIST.

Subpart 1. **Distributing authority.** A distributing authority shall prepare an abatement priority list that ranks known sites within the distributing authority's jurisdiction according to the priorities established in part 4760.0520. The abatement list shall list those known residences and playgrounds that are priority one or priority two and those known census tracts as priority 3A, 3B, 3C, or 3D. The abatement list shall be prepared before the distributing authority uses public funds to abate any site.

Subp. 2. **Amendment of list.** A distributing authority may at any time amend its abatement priority list. A distributing authority shall add additional sites to its abatement priority list at any time that information becomes available identifying new sites.

Subp. 3. **Additional sampling.** A distributing authority may elect to take additional samples before prioritizing a residence or playground or a census tract. The distributing

authority shall consider all sample results that the authority considers reliable in making a decision on the proper priority ranking for a particular residence or playground or census tract.

4760.0540 RESPONSE ACTION.

Subpart 1. **Use of public funds.** No distributing authority shall authorize public funds for abatement until the authority has prepared an abatement priority list. Public funds shall be used for abatement in order of priority established by the abatement priority list.

Subp. 2. **Additional abatement.** Nothing in parts 4760.0500 to 4760.0540 shall be construed to preclude any person from abating any site, regardless of priority, if the person pays for the abatement without the use of public funds or if the soil abatement is part of a publicly funded abatement project that is not strictly limited to soil lead abatement.

Subp. 3. **Abatement not required.** Parts 4760.0500 to 4760.0540 do not require:

A. any person to abate any site at that person's expense; or

B. a distributing authority to abate any site that does not exceed the soil lead standard of 300 parts per million.

Subp. 4. **Abatement procedures.** A person who undertakes abatement of a site contaminated with lead shall follow the abatement procedures in chapter 4760.

APPROVED AS TO FORM AND LEGALITY

Dec 10 1991

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY D Murray
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

DEC 13 1991

Joan Anderson Growe
Secretary of State

10:30 AM

PB

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155-3898
Telephone (612) 296-6300

FACSIMILE TRANSMITTAL SHEET

TO: Ms. Patty Nolte

COMPANY OR AGENCY: AG's Office

FACSIMILE NUMBER: 297-2576

SUBJECT: LCRAR Letter

FROM: Placida Venegas

COMPANY OR AGENCY: MPCA

TELEPHONE NUMBER: 297-8370

FACSIMILE NUMBER: 612/297-8676

DATE: 12/3/91

NUMBER OF PAGES (INCLUDING COVER SHEET): _____

IF YOU HAVE ANY QUESTIONS REGARDING THIS TRANSMITTAL, PLEASE CALL 612/297-8503.

DEC 03 '91 02:05PM MN.PCA - HAZ.WASTE P.1

LCRAR

Legislative Commission to Review Administrative Rules

Senator Gene Waldorf
Chair

Representative Peter Rodosovich
Vice-Chair

Maryanne V. Hruby
Director

DATE: September 6, 1990

TO: Placida Venegas, Hazardous Waste Division, Pollution Control Agency

FAX: 642-0465

FROM: Maryanne Hruby, Executive Director

NUMBER OF PAGES: 4 (Including this transmittal sheet)

If possible please check transmission immediately. If you are not receiving clearly, or if you have problems with the transmission call:

Michele Swanson at (612) 296-1143

Thank you.

Received 9/6/90
MH

P.2
DEC 03 '91 02:06PM MN.PCA - HAZ.WASTE
612 297 8676

LCRAR

Legislative Commission to Review Administrative Rules

Senator Gene Waldorf
Chair

Representative Peter Rodosovich
Vice-Chair

Maryanne V. Hruby
Director

September 6, 1990

Placida Venegas
Hazardous Waste Division
Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Dear Ms. Venegas:

Pursuant to our conversation on Tuesday, I enclose a copy of your agency's letter to the LCRAR dated 3/27/86 regarding compliance with section 14.12 for grants of mandatory rulemaking authority enacted in 1985. Of particular interest to you will be #4 on page 2. It refers to the rules required by section 116.53, subdivisions 1 and 2. Your agency's position in 1986 was that section 14.12's 180-day requirement to publish proposed rules or provide a reason for the failure to publish does not apply to section 116.53 because section 116.53 specifies that the rules must be adopted by January 1, 1988.

In 1986 when the LCRAR first began to monitor state agency compliance with section 14.12, the Commission would simply notify agencies of the existence of section 14.12 as a way to remind them that the 180-day requirement applies to all mandatory rulemaking grants, unless the legislature provided a specific date for adoption.

It is our current practice to provide agencies with a list of rulemaking grants that seem to us to trigger section 14.12. We then ask for a response for each grant.

Because section 116.53 specifically provides for an adoption date, we would not consider this rulemaking grant to be subject to section 14.12 because of the clause in section 14.12 "unless otherwise specified by law" which we interpret to modify the 180-day requirement. We, like you in 1986, would not be concerned about the 180-day requirement.

As for the rules required by section 116.53, we would be concerned only if a constituent or legislator brought to our attention that the rules were not adopted by January 1, 1988. We do not, pursuant to section 14.12, routinely track long standing grants of rulemaking authority.

I hope this information is useful to you. Please contact me if you have any questions.

Sincerely,

Maryanne Hruby

Maryanne Hruby

55 State Office Building • St. Paul, Minnesota 55155-1201 • 612/296-1143

Minnesota Pollution Control Agency

March 27, 1986

The Honorable Carl W. Kroening, Chair
Legislative Commission to Review
Administrative Rules
55 State Office Building
St. Paul, Minnesota 55155

Dear Senator Kroening:

This letter is in response to your February 14, 1986 request for information on the Minnesota Pollution Control Agency's (MPCA) compliance with Minn. Stat. § 14.12.

The MPCA was given four grants of mandatory rulemaking authority during the 1985 regular and special sessions. The authority and the actions taken by the MPCA pursuant to that authority are discussed below:

1. Minn. Laws 1985, First Spec. Sess., Ch. 13 § 232 (Minn. Stat. § 115A.914, subd. 1) gives the MPCA the authority to adopt emergency rules for administration of waste tire collector and processor permits, waste tire nuisance abatement and waste tire collection. Notice of Intent to Adopt Emergency Rules was published in the State Register on September 3, 1985. The rules were adopted by the MPCA on October 22, 1985.

2. Minn. Laws 1985, First Spec. Sess., Ch. 13 § 238 (Minn. Stat. § 116.49) directs the MPCA to adopt rules applicable to owners and operators of underground storage tanks. However the MPCA is directed to delay adopting such rules until the U.S. Environmental Protection Agency (EPA) publishes final regulations for underground storage tanks or February 8, 1989, whichever is earlier. To date EPA has not adopted such regulations.

3. Minn. Laws 1985, First Spec. Sess., Ch. 14, Art. 19, Sec. 3 (Minn. Stat. § 116.162, subd. 8) requires the MPCA to promulgate rules for the administration of the combined sewer overflow financial assistance program. The MPCA published Notice of Intent to Adopt Rules for this program in the State Register on October 14, 1985. Notice of Adoption of these rules was published in the State Register on February 24, 1986.

Phone: 296-7301
1935 West County Road B2, Roseville, Minnesota 55113-2785
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Equal Opportunity Employer

4. Minn. Laws 1985, First Spec. Sess., Ch. 14, Art. 19, Sec. 10 (Minn. Stat. § 116.53) requires the MPCA to adopt rules that establish standards for lead contamination in soil and that establish the priority for response actions. This provision provides that the MPCA is not required to adopt these rules until January 1, 1988.

If you wish further information on the MPCA's rulemaking activities please contact me or Barbara Lindsey Sims, Assistant Executive Director at 296-7305.

Sincerely,

Thomas J. Kalitowski
Executive Director

TJK/rj

DEC 03 '91 02:07PM MN.PCA - HAZ.WASTE
612 297 8676

end of comment period Sept 27, 1991

Stat Authority

By January 1, 1988, the agency must adopt rules establishing the priority for response actions. The rules must consider the potential for children's contact with the soil, ...

missed deadline but no penalty

12-3-91 called Placida Venegas she said they sent the letters to the LCAR, Leg. Committee and gov. going to send (2) some copies

Minnesota Pollution Control Agency
520 Lafayette Road, Saint Paul, Minnesota 55155-3898
Telephone (612) 296-6300

November 26, 1991

Ms. Patty Nolte
Legal Assistant
Office of the Attorney General
525 Park Street, Suite 500
St. Paul, Minnesota 55103

Dear Ms. Nolte:

RE: In the Matter of the Proposed Rules Governing Priorities for Response Action, Minn. Rules Pts. 4760.0500 through 4760.0540

On October 22, 1991, the Minnesota Pollution Control Agency adopted the above-captioned rules governing the priorities for soil lead abatement. Enclosed for your review are the following:

1. Rule as adopted (original and three copies).

2. Notice of Intent to Solicit Outside Opinion (15 State Register, page 2113, March 18, 1991).

3. Affidavit of no written comments received pursuant to Notice of Intent to Solicit Outside Opinion (October 30, 1991).

4. Certificate of Agency's Authorizing Resolution (July 23, 1991).

5. Rule as proposed with Revisor's Certificate.

6. Notice of Intent to Adopt Rules Without a Public Hearing, as mailed (August 22, 1991).

7. Statement of Need and Reasonableness.

8. Affidavit of Mailing the Notice of Intent to Adopt Rules Without a Public Hearing and Certificate of Mailing List.

9. Notice of Intent to Adopt Rules Without a Public Hearing and rules as proposed (16 State Register, pages 434-438, August 26, 1991).

10. Certificate of Resolution Adopting Rules (October 23, 1991).

11. Findings of Fact, Conclusions, and Order Adopting Rules (November 4, 1991).

12. Affidavit of Receiving No Requests for Notice of Submission of Rules Adopted Without a Public Hearing to the Attorney General (October 30, 1991).

13. Affidavit that no comments were received from the public (October 30, 1991).

14. Declaration of Counsel.

For purposes of billing, our attorney general client code is 0697. Please call me at 612/297-8370 if you have any questions.

Sincerely,

Placida L. Venegas

Placida L. Venegas
Rules Unit
Program Development Section
Hazardous Waste Division

PLV:cj

Enclosures

cc: Mr. Stephen Shakman, Special Assistant Attorney General

Office of the Revisor of Statutes

Administrative Rules

Carla M. Riehle
Assistant Revisor
297-2948

700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

RECEIVED
AUG 14 1991
MPCA, HAZARDOUS
WASTE DIVISION

August 13, 1991

Placida Venegas
Pollution Control Agency
520 Lafayette Rd.
St. Paul, MN 55155

RE: File No. 1885

Dear Ms. Venegas:

Enclosed are stripped copies of your proposed rules as published in the State Register. The copy shows the text of the rules as you proposed them with the stricken text deleted and the underscoring removed.

If your emergency rules or rules adopted without public hearing are adopted without modification, please submit the required number of copies of this document to the Attorney General for final approval. If these rules are to be modified, please use this copy to indicate the modifications you wish to make. Our office will then input the changes, approve the document as to form, and provide you with copies to submit to the Attorney General.

If your rules are adopted after public hearing without modification, please submit one copy of this document to our office for final approval as to form. If these rules are to be modified, please use this copy to indicate the modifications you wish to make. Our office will input the changes, approve the document as to form, and provide you with copies.

Very truly yours,

CMR/cs

Carla M. Riehle

Comments or requests should be submitted in person or by mail within the comment period to:

Industrial Section
Water Quality Division
Minnesota Pollution Control Agency
520 Lafayette Road
St. Paul, Minnesota 55155

Please be advised that the public is entitled to participate in the activities of both the Minnesota Pollution Agency Board and the Commissioner in accordance with the provisions of *Minnesota Rules* pts. 7000.1500 and 7000.1600. The general permit will be issued if the Agency determines that the proposed permittees will, with respect to the facility or activity to be permitted, comply or undertake a schedule of compliance to achieve compliance with all applicable state and federal pollution control statutes and rules administered by the Agency and the conditions of the general permit, and that all applicable requirements of *Minnesota Statutes* Chapter 116D and the rules promulgated thereunder have been fulfilled.

Pursuant to the waiver provisions authorized by 40 CFR Part 123.23, this draft general permit is within the class, type and size for which the Regional Administrator, U.S. Environmental Protection Agency, Region V, has waived his right to review, object or comment on this proposed permit action.

Please bring the foregoing to the attention of persons whom you know would be interested in this matter.

Minnesota Pollution Control Agency

Division of Hazardous Waste

Notice of Intent to Solicit Outside Information Regarding Proposed Rule Governing Priorities for Response Action

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) is seeking information or opinions from outside sources in preparing to propose the adoption of rules establishing priorities for responding to sites in the state that have been found to be contaminated with lead. The adoption of the rules is authorized by *Minnesota Statutes* § 116.53, subd. 2 (1990) which requires the Agency to adopt rules establishing the priority for response actions considering the potential for children's contact with the soil and existing level of lead in the soil, the risk to public health, size of the population at risk and blood lead levels of resident populations.

The Agency requests information and opinions concerning the subject matter of the rules. Interested persons or groups may submit data or views in writing or orally. Written or oral statements or comments should be directed to:

Placida Venegas
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
Telephone: 612/643-3474

Oral statements will be received during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday.

All statements of information and opinion will be accepted until April 24, 1990. Any written materials received by the Agency shall become part of the rulemaking record in the event that the rules are adopted.

Charles W. Williams
Commissioner

Office of the Secretary of State

Notice of Vacancies in Multi-Member Agencies

NOTICE IS HEREBY GIVEN to the public that vacancies have occurred in multi-member state agencies, pursuant to *Minnesota Statutes* 15.0597, subdivision 4. Application forms may be obtained from the Office of the Secretary of State, Open Appointments, 180 State Office Building, St. Paul, MN 55155-1299; (612) 297-5845, or in person at Room 174 of the State Office Building. More specific information about these vacancies may be obtained from the agencies listed below. The application deadline is April 9, 1991.

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing Priorities For Response Action, Minn. Rules Pts. 4760.0500 through 4760.0540.

AFFIDAVIT OF NO WRITTEN COMMENTS RECEIVED PURSUANT TO NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Placida L. Venegas, being duly sworn on oath deposes and says:

1. That she is the person named in the Notice of Intent to Solicit Outside Opinion (15 SR 2113, March 18, 1991) as the person to receive comments on the Minnesota Pollution Control Agency's intent to adopt the proposed rule concerning the above-entitled matter.

2. That the comment period set forth in the notice terminated at 5:00 p.m. on April 24, 1991.

3. That during the public comment period, there were no written comments received by the Minnesota Pollution Control Agency regarding the above-entitled matter.

Placida L. Venegas

Subscribed and sworn to before me this 31 day of October, 1991.

Diane Fox
Notary Public

DIANE FOX
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires 2-25-96

CERTIFICATE OF RESOLUTION AUTHORIZING RULES

I, Charles W. Williams, do hereby certify that I am the Commissioner of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the state of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called and held on the 23rd day of July 1991, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

BE IT RESOLVED, that the Commissioner of the Minnesota Pollution Control Agency is hereby granted the authority to sign and to give notice of the Minnesota Pollution Control Agency's intent to adopt, without a public hearing, the attached rules establishing priorities for soil lead abatement response action, Minn. Rules pts. 4760.0500 to 4760.0540, to all persons who have registered their names with the Minnesota Pollution Control Agency for that purpose and publish the notice and the rules in the State Register, and to perform any acts incidental thereto, including making any form changes in the rules that the Revisor of Statutes requires the Minnesota Pollution Control Agency to make in order to obtain the Revisor's Certification as required by Minn. Stat. § 14.07, subd. 2 (1990).

BE IT FURTHER RESOLVED, that the Commissioner of the Minnesota Pollution Control Agency is also granted the authority to call a hearing for the purpose of adopting the attached proposed rules of the Minnesota Pollution Control Agency governing priorities for soil lead abatement response action, Minn. Rules pts. 4760.0500 to 4760.0540, to sign the notice thereof, to act as the Minnesota Pollution Control Agency's representative at the hearing, and to perform any acts the Revisor of Statutes requires the Minnesota Pollution Control Agency to make in order to obtain the Revisor's certification as required by Minn. Stat. § 14.07, subd. 1 (1990).

IN WITNESS WHEREOF, I have hereunto subscribed my name this 23 day of July 1991.

CHARLES W. WILLIAMS
Commissioner

Office of the Revisor of Statutes
Administrative Rules

Carla M. Riehle
Assistant Revisor
297-2948

700 State Office Building
100 Constitution Avenue
St. Paul, MN 55155-1297

July 11, 1991

Placida Venegas
Pollution Control Agency
520 Lafayette Rd.
St. Paul, MN 55155

RE: File No. 1885

Dear Ms. Venegas:

I am enclosing six copies of your rules, approved as to form. Please submit two copies to the State Register for publication.

If you have any questions, please call me.

Very truly yours,

Carla M. Riehle

Pollution Control Agency

Proposed Permanent Rules Relating to Priorities for Soil Lead Abatement

Rules as Proposed (all new material)

4760.0500 SCOPE.

Parts 4760.0500 to 4760.0540 establish procedures for determining priorities for response action for residential sites and playgrounds in the state where soils are found to be contaminated with lead, as required by Minnesota Statutes, section 116.53, subdivision 2.

4760.0510 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 4760.0500 to 4760.0540, the following terms have the meanings given them.

Subp. 2. **Child.** "Child" means a human being under the age of six years.

Subp. 3. **Distributing authority.** "Distributing authority" means a governmental agency or entity, such as a local board of health, that distributes funds for the abatement of soil lead contamination.

Subp. 4. **Elevated blood lead level.** "Elevated blood lead level" means a confirmed concentration of 25 micrograms or more of lead in each deciliter of whole blood.

Subp. 5. **Person.** "Person" has the meaning given in Minnesota Statutes, section 116.06, subdivision 8.

Subp. 6. **Playground.** "Playground" means an open area, including vacant lots, used for outdoor games, recreation, and amusement that may contain swings, seesaws, slides, or other means for children's recreation and play.

Subp. 7. **Residence.** "Residence" means a house, duplex, apartment, or other building or structure used or intended for use as human habitation and the real property upon which the building or structure is located.

Subp. 8. **Response action.** "Response action" has the

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meaning given in Minnesota Statutes, section 116.51, subdivision 5.

Subp. 9. **Site.** "Site" means an area of land that has been sampled for soil lead concentration. A site may be as small as a residence or as large as a census tract.

4760.0520 PRIORITY RANKING SYSTEM.

Subpart 1. **Priority one.** A site is a priority one site if the site contains more than 300 parts per million lead and the site is a residence of a child with an elevated blood lead level or the residence of a pregnant woman with a blood lead level of ten micrograms per deciliter or more.

Subp. 2. **Priority two.** A site is a priority two site if the site contains more than 300 parts per million lead and the site is a residence or a playground and the site is frequented by a child with an elevated blood lead level.

Subp. 3. **Priority three.** A site is a priority three site if it is a census tract that meets one or more of the following criteria:

A. it contains the residence of a child with an elevated blood lead level or a pregnant woman with a blood lead level of ten micrograms per deciliter or more;

B. any soil sample within the census tract indicates a soil lead level of more than 300 parts per million; or

C. the census tract is on the following list:

	CENSUS TRACT NUMBER	CITY	LOWER CONFIDENCE LIMIT	MEAN	UPPER CONFIDENCE LIMIT
1.	84	Minneapolis	460.019	736.507	1179.170
2.	332	St. Paul	361.915	733.350	1485.990
3.	83	Minneapolis	358.645	460.916	592.350
4.	71	Minneapolis	340.962	514.736	777.080
5.	78	Minneapolis	336.858	459.276	626.180
6.	72	Minneapolis	324.952	412.103	522.630
7.	69	Minneapolis	322.637	407.247	514.050
8.	79	Minneapolis	310.606	514.142	851.050
9.	93	Minneapolis	291.339	640.391	1407.640
10.	18	Minneapolis	241.486	437.469	792.510
11.	23	Minneapolis	239.560	536.452	1201.290
12.	12	Duluth	250.261	519.718	1079.300
13.	82	Minneapolis	264.749	379.520	544.050
14.	25	Minneapolis	182.547	509.773	1423.570
15.	354	St. Paul	260.405	363.646	507.820
16.	15	Minneapolis	209.802	450.573	967.660
17.	366	St. Paul	112.570	588.720	3078.890
18.	47	Minneapolis	192.907	417.770	904.750

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19.	70	Minneapolis	37.422	363.044	3522.060
20.	94	Minneapolis	187.400	400.858	857.460
21.	22	Minneapolis	251.728	346.117	476.720
22.	92	Minneapolis	112.740	495.288	2175.890
23.	86	Minneapolis	186.407	349.367	654.790
24.	337	St. Paul	245.707	319.574	415.650
25.	35	Minneapolis	160.398	338.992	716.440
26.	344	St. Paul	218.728	320.605	469.930
27.	57	Minneapolis	164.839	290.643	512.460
28.	65	Minneapolis	52.789	257.315	1254.250
29.	21	Minneapolis	66.709	255.534	978.840
30.	19	Minneapolis	171.870	282.398	464.000
31.	36	Minneapolis	94.638	254.595	684.910
32.	111	Minneapolis	110.134	257.701	602.990
33.	312	St. Paul	47.241	227.399	1094.610
34.	103	Minneapolis	40.160	218.218	1185.740
35.	368	St. Paul	3.343	136.804	5597.760
36.	2	Minneapolis	104.219	239.240	549.190
37.	17	Minneapolis	46.312	192.512	800.230
38.	27	Duluth	57.187	191.895	643.920
39.	85	Minneapolis	146.515	244.739	408.810
40.	16	Duluth	69.174	197.015	561.120
41.	54	Minneapolis	39.020	161.430	667.850
42.	50	Minneapolis	186.525	255.434	349.800
43.	95	Minneapolis	123.395	217.816	384.490
44.	320	St. Paul	0.124	31.690	8091.850
45.	325	St. Paul	122.539	213.922	373.450
46.	99	Minneapolis	79.929	189.789	450.650
47.	60	Minneapolis	114.333	204.372	365.320
48.	61	Minneapolis	74.229	173.984	407.800
49.	49	Minneapolis	56.477	159.926	452.870
50.	371	St. Paul	135.290	216.914	347.786
51.	18	Duluth	28.309	112.400	446.290
52.	75	Minneapolis	93.796	195.579	407.810
53.	340	St. Paul	99.113	183.212	338.672
54.	363	St. Paul	29.196	110.590	418.900
55.	350	St. Paul	22.960	99.916	434.810
56.	19	Duluth	90.188	196.893	429.840
57.	28	Duluth	56.699	139.281	342.145
58.	112	Minneapolis	48.806	126.633	328.561
59.	16	Minneapolis	29.691	98.646	327.741
60.	52	Minneapolis	0.750	16.699	372.000
61.	357	St. Paul	115.904	188.437	306.360
62.	73	Minneapolis	71.059	148.505	310.357
63.	349	St. Paul	58.097	136.714	321.717
64.	315	St. Paul	152.960	214.613	301.116

Subp. 4. **Prioritizing census tracts.** Priority three census tracts are further prioritized as described in items A to D.

A. A census tract is a priority A if the upper and lower confidence level values for soil lead, within a 95 percent confidence interval, exceed 300 parts per million and a child with an elevated blood lead level or a pregnant woman with a blood lead level of ten micrograms per deciliter or more resides within the census tract.

B. A census tract is a priority B if the upper confidence level value for soil lead, within a 95 percent confidence interval, exceed 300 parts per million and a child

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with an elevated blood lead level or a pregnant woman with a blood lead level of ten micrograms per deciliter or more resides within the census tract.

C. A census tract is a priority C if the upper and lower confidence level values for soil lead, within a 95 percent confidence interval, exceed 300 parts per million.

D. A census tract is a priority D if the upper confidence level value for soil lead, within a 95 percent confidence interval, exceeds 300 parts per million.

Subp. 5. **Individual residences and playgrounds within a census tract.** A residence or playground within a census tract that meets the criteria for a priority one or a priority two site must be prioritized as a priority one or a priority two site.

Subp. 6. **Ranking.** A site must be ranked at the highest priority for which it qualifies, whether the site is a residence or a playground or a census tract.

4760.0530 ABATEMENT PRIORITY LIST.

Subpart 1. **Distributing authority.** A distributing authority shall prepare an abatement priority list that ranks known sites within the distributing authority's jurisdiction according to the priorities established in part 4760.0520. The abatement list shall list those known residences and playgrounds that are priority one or priority two and those known census tracts as priority 3A, 3B, 3C, or 3D. The abatement list shall be prepared before the distributing authority uses public funds to abate any site.

Subp. 2. **Amendment of list.** A distributing authority may at any time amend its abatement priority list. A distributing authority shall add additional sites to its abatement priority list at any time that information becomes available identifying new sites.

Subp. 3. **Additional sampling.** A distributing authority may elect to take additional samples before prioritizing a residence or playground or a census tract. The distributing

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authority shall consider all sample results that the authority considers reliable in making a decision on the proper priority ranking for a particular residence or playground or census tract.

4760.0540 RESPONSE ACTION.

Subpart 1. **Use of public funds.** No distributing authority shall authorize public funds for abatement until the authority has prepared an abatement priority list. Public funds shall be used for abatement in order of priority established by the abatement priority list.

Subp. 2. **Additional abatement.** Nothing in parts 4760.0500 to 4760.0540 shall be construed to preclude any person from abating any site, regardless of priority, if the person pays for the abatement without the use of public funds or if the soil abatement is part of a publicly funded abatement project that is not strictly limited to soil lead abatement.

Subp. 3. **Abatement not required.** Parts 4760.0500 to 4760.0540 do not require:

A. any person to abate any site at that person's expense; or

B. a distributing authority to abate any site that does not exceed the soil lead standard of 300 parts per million.

Subp. 4. **Abatement procedures.** A person who undertakes abatement of a site contaminated with lead shall follow the abatement procedures in chapter 4760.

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by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Priorities for Soil Lead Abatement

AGENCY: Pollution Control Agency

MINNESOTA RULES: Chapter 4760

The attached rules are approved for
publication in the State Register

Carla M. Riehle
Assistant Revisor

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Permanent Rules Governing Priorities for Soil Lead Abatement, Minn. Rules pts. 4760.0500 through 4760.0540.

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

(1) NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act in Minn. Stat. §§ 14.22 to 14.28 (1990). The Agency's authority to adopt the rule is set forth in Minn. Stat. § 116.53, subd. 2 (1990).

(2) All persons have until 4:30 p.m. on September 27, 1991, to submit comments 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. (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 request in writing. (6) Any person requesting a public hearing must state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. (7) If a public hearing is required, the Agency will proceed pursuant to Minn. Stat. §§ 14.131 to 14.20 (1990).

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

Placida L. Venegas
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
612/297-8370

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

(11) Pursuant to Minn. Stat. § 116.53, subd. 2 (1990), the Agency must adopt rules establishing the priority for response actions for sites in the state found to be contaminated with soil lead. The rules must consider the potential for children's contact with soil and the existing level of lead in the soil and may consider the relative risk to the public health, the size of the population at risk, and blood lead levels of resident populations. The proposed rules establish procedures for determining priorities for response action. The proposed rules also provide for the creation of a list of census tract sites that have been determined to exceed the soil lead standard. One free copy of the rules is available upon request from Placida L. Venegas at the address and telephone number stated above.

(12) A STATEMENT OF NEED AND REASONABLENESS that includes a summary of all the evidence and arguments justifying both the need for and reasonableness of the proposed rules and that identifies the data and information relied upon during the preparation of the proposed rules is available from Placida L. Venegas upon request.

(14) You are hereby advised, pursuant to Minn. Stat. § 14.115 (1990), "Small business considerations in rulemaking," that the proposed rules will have no adverse impact on small businesses.

(13) As required under Minn. Stat. § 14.11 (1990), you are hereby advised that the proposed rule will not impose on local public bodies costs in excess of $100,000 per year for the first two years the rules are in effect. However, if public money is appropriated by the legislature to fund lead abatement, local agencies may be obliged to prepare estimates of cost under the proposed rules. Additionally, at some point a local agency through ownership of a residence or a playground, may have to abate contaminated soil. If public property is identified as a priority site for soil lead abatement, the proposed rules do not mandate that public funds be expended for that site, the proposed rules only mandate that if public funds are to be expended, they must be expended on sites in order of priority.

(9) If no hearing is required, upon adoption of the proposed rules, the rules and required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent 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 rules, must submit the written request to Placida L. Venegas.

Dated: 5/22/91

Charles W. Williams
Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Permanent Rules Governing Priorities for Soil Lead Abatement, Minn. Rules pts. 4760.0500 through 4760.0540.

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 RAMSEY)

Placida Venegas, 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 (1990) that their names be placed on the Minnesota Pollution Control Agency's rulemaking mailing list is accurate, complete, and current as of this 23rd day of August, 1991.

That on the 23rd day of August, 1991, at the City of St. Paul, County of Ramsey, 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 or in the United States mail for first class mailing a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Placida L. Venegas

Subscribed and sworn to before me
this 28th day of August, 1991.

Diane Fox
Notary Public

DIANE FOX
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires 2-25-96

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing Priorities for Response Action, Minn. Rules pts. 4760.0500 to 4760.0540.

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The Minnesota Legislature delegated the authority to the Minnesota Pollution Control Agency (hereinafter "Agency") to adopt rules establishing priorities for responding to sites in the state that have been found to be contaminated with lead. Minn. Stat. § 116.53, subd. 2 (1990).

To promulgate the proposed rules, the Agency must conduct its proceedings in accordance with the rulemaking requirements of the Administrative Procedure Act. Minn. Stat. ch. 14 (1990). Under Minn. Stat. ch. 14, the Agency, when engaged in rulemaking, is required to make an affirmative presentation of facts establishing the need for and reasonableness of the proposed rule, hence, the purpose of this document.

This Statement of Need and Reasonableness is composed of nine parts. Part I introduces the nature of the proposed rules and the process used to draft the proposed rules. Part II provides the Agency's statutory authority to adopt the proposed rules. Part III discusses the need for the proposed rules. Part IV discusses the reasonableness of the proposed rules. Part V presents the considerations for reducing the impact on small businesses. Part VI discusses how economic factors have been taken into account. Part VII provides a discussion of the need for a fiscal note. Part VIII provides the conclusion that the proposed rules are both needed and reasonable. Part IX contains a list

of exhibits relied on by the Agency to support the proposed rules. The exhibits are available for review at the Agency's offices at 520 Lafayette Road, St. Paul, Minnesota, 55155.

II. STATEMENT OF AGENCY'S STATUTORY AUTHORITY

The Agency's statutory authority to adopt the proposed rules is set forth in Minn. Stat. § 116.53, subd. 2 (1990) which provides:

> By January 1, 1988, the Agency must adopt rules establishing the priority for response actions. The rules must consider the potential for children's contact with the soil and the existing level of lead in the soil and may consider the relative risk to the public health, the size of the population at risk, and blood lead levels of resident populations.

Under this statute the Agency has the necessary statutory authority to adopt the proposed rules, Minn. Rules pts. 4760.0500 to 4760.0540.

III. STATEMENT OF NEED

Minn. Stat. ch. 14 (1990) requires the Agency to make an affirmative presentation of facts establishing the need for and reasonableness of the rules as proposed. In general terms, this means that the Agency must set forth the reasons for its proposal and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the Agency is appropriate. The need for the proposed rules is discussed below.

The need for these rules is established by two facts. One, the Legislature has directed the Agency specifically to prioritize lead contaminated sites for response action. Minn. Stat. § 116.53, subd. 2 (1990). Two, there is not enough public money available at this time to clean up all contaminated sites and some criteria must be established to determine which sites are of the highest priority.

The Legislature in 1985 directed the Agency to identify and develop a preliminary list of sites in the state where significant concentrations of lead in the soil are likely and where the probability exists for children's contact with the soil. Minn. Stat § 116.52, subd. 1 (1990). In 1987, the Agency submitted a report to the State Legislature describing the extent of lead concentration in the soil, the blood lead level of populations at contaminated sites, the size of the populations at risk from exposure to lead in the soil, and an estimate of the cost of response actions required to prevent exposure to soil contaminated by lead. See Exhibit No. 20.

Generally, the Agency found that the highest levels of lead are found in the inner cities in poor neighborhoods consisting of tightly spaced and poorly maintained housing. Furthermore, the highest lead concentrations were found immediately adjacent to the foundations of houses. Id. at 4.

Since it is not possible to abate all lead contaminated sites at the same time, abatement programs must be prioritized to ensure the most efficient use of resources. Soil lead abatement methods are expensive and sometimes difficult to carry out, so a soil lead priority ranking for targeting abatement is necessary to provide practical and cost-effective methods to reduce or eliminate lead exposure in the environment. Further, it is anticipated that there will be a need to utilize public funding to conduct much of the abatement that will be necessary. It is not likely that there will be enough public funding to pay for all the abatement that is necessary as more lead contaminated sites are discovered. Hence, the need for prioritizing abatement efforts is well established.

IV. STATEMENT OF REASONABLENESS

The Agency is required by Minn. Stat. ch. 14 (1990) to make an affirmative presentation of facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means that there is a rational basis for the Agency's proposed action. The reasonableness of the proposed rules is discussed below.

A. Reasonableness of the Rules as a Whole

Lead is a naturally occurring useful but toxic metal that has no known biological value. The industrial revolution dramatically increased the use of lead in various industrial processes and products. In the United States the lead industry produces about 1.3 million metric tons per year. For example, lead is used as solder in canned foods, in pipes, dyes, ink, printing, cosmetics, ammunitions, brass and bronze, crystal, silverware, dinnerware, gasoline, batteries, weights and sinkers, casting metals, cables, and in medical devices to shield personnel from x-ray radiation. As a result of industrialization, lead is widespread in the environment and people are exposed to lead in many aspects of daily life. See Exhibits Nos. 3 and 20.

Over the years the concept of risk associated with lead began to emerge. Numerous studies reported that lead is nonbiodegradable and possesses severe toxic properties. See Exhibits Nos. 3, 12, 13, and 16. Today, lead is a persistent cause of public concern. The concern centers on evidence that lead poisoning is the most common and socially devastating environmental disease of young children. Children, particularly those under the age of six, are at the greatest risk because the adverse effects of lead can permanently damage the developing brain. Reports conclude that the most affected groups are children who live in deteriorating buildings and in substandard conditions in urban areas. See Exhibits Nos. 11 and 15.

Although much of the initial concern over lead poisoning was focused on the already existing sources such as gasoline and paint, it is now recognized that lead exposure may embrace a variety of sources and an important one is soil lead. Many studies have examined the association between soil as a source of lead in the environment and a child's blood lead. It is well accepted that children are at the greatest risk of exposure to lead in soil because of the increased likelihood of children coming in direct contact with the soil. Children play outdoors and are likely to ingest soil inadvertently or by pica-mouthing behavior. In addition, lead concentration increases as soil particle size decreases and smaller particles are more easily moved into homes to become lead-rich house dust. Contact with soil and dust on their hands allows children to ingest soil particles. See Exhibits Nos. 4, 5, 8, 12, 16, and 17.

B. Reasonableness of Specific Rules

It is reasonable to identify areas where children are at the greatest risk from lead poisoning from lead in the soil. That is what these rules are about. The following discussion addresses the specific rules proposed by the Agency for establishing priorities for abating soil lead contamination.

1. Minn. Rules pt. 4760.0500

Minn. Rules pt. 4760.0500 establishes the scope of the proposed rules. It is typical and reasonable to provide at the start of a new set of rules a description of what the rules cover. These rules establish procedures for prioritizing lead contaminated sites for abatement.

2. Minn. Rules pt. 4760.0510 Definitions

Minn. Rules pt. 4750.0510 provides definitions for terms found in the body of the proposed rules.

It is typical and reasonable to include definitions for some of the words and terms used in a set of rules. The words and terms defined here are those for which a precise definition is important for implementation of the substantive requirements of the rules. The Agency staff conducted literature research and referred to existing federal and state statutes and rules to compose the definitions of the terms used in the proposed rules. The Agency has attempted to define these words and terms in ways that are consistent with other statutory and regulatory definitions.

Subp. 1. Scope

This subpart provides that the definitions contained in this part apply only to parts 4760.0500 to 4760.0540. It is reasonable to indicate to what rules the definitions apply.

Subp. 2. Child

The Legislature has directed the Agency to consider in this rulemaking the potential for children's contact with lead contaminated soil and the risks to public health. The word "child" or the word "children" is used on several occasions in the rules to determine the appropriate priority for a site. Because of the importance of determining the status of children with respect to a particular site, it is important to define precisely what is meant by the word "child" or the word "children."

The Agency has proposed to define the word "child" as a human being under the age of six. The Agency has chosen the age six as the cut-off point for a child because young children up to six years of age constitute the population at greatest risk from lead exposure. A recent report on lead concentrations in children by the Agency for Toxic Substances and Disease Registry estimated that most children who suffer from high blood lead levels are under six years of age. See Exhibit No. 2. It is well established that at a

given level of lead in the blood, children under the age of six suffer more ill effects from lead than do older children. See Exhibits Nos. 3, 16, and 19.

The main reasons that children are more at risk than adults are (1) children have a higher intake of lead per unit of body weight than adults due to their higher metabolism, (2) children absorb led from the gastrointestinal tract to a far greater degree than adults, (3) children exhibit mouthing behavior that can result in ingestion of lead from dust and soil, and (4) children are more sensitive to the toxic effects of lead, particularly in regard to neuro-behavioral effects. See Exhibits Nos. 2, 8, and 13.

A "child" is defined as a human being rather than as a person. The reason the words human being are used is because, as is explained later, the word "person has" a broad meaning and includes corporations and governmental bodies. A child can only be a human being.

Subp. 3. Distributing authority

Subpart 3 defines "distributing authority" as a governmental agency or entity, such as a local board of health that distributes funds for the abatement of soil lead contamination. It is necessary to define "distributing authority" because these are the governmental agencies that will provide public funds for the abatement of contaminated sites. The proposed rules do not specify which agencies will have the authority to spend public funds for abatement. The "distributing authority" could be a city council, a county board, a local board of health, or perhaps other governmental bodies. The definition is broad enough to include whatever local body will be making the decisions regarding public funding of abatement. It is reasonable to adopt this broad definition.

Subp. 4. Elevated blood lead level

The definition of "elevated blood lead level" is identical to the statutory definition in Minn. Stat. § 116.51, subd. 4 (1990). A similar definition is also found in Minn. Stat. § 144.871, subd. 6 (1990), the statute authorizing the Agency to adopt a lead standard for soil. It is reasonable to adopt the definition set by the Legislature.

A 25 micrograms per deciliter level is also consistent with the current recommendation of the Center for Disease Control. See Exhibit Nos. 2, 14, and 21.

The definition of "elevated blood lead level" is important in these rules for determining whether a child has an elevated blood lead level. A separate level has been proposed for pregnant women and that level is 10 micrograms per deciliter. That figure also comes from the statute. Minn. Stat. § 144.874, subd. 1(a) (1) (1990). The Agency believes that it is reasonable to rely on the same level of lead in the blood of a pregnant woman for setting priorities for abatement action as the Legislature has established to trigger the need for an assessment of her residence. Minn. Stat. § 144.874, subd. 1 (1990).

Subp. 5. Person

The Agency is proposing to incorporate the statutory definition of "person," which will make these rules consistent with the pollution control statutes and other rules adopted by the Agency. See Minn. Stat. § 116.06, subd. 8 (1990) for the definition and Minn. Rules pt. 7045.0020, subp. 66 for an example of where the same definition is used in other Agency rules.

Person is defined broadly because more than individual human beings can be involved in performing the tasks these rules establish. For example, under Minn. Rules pt. 4760.0540, subp. 2, 3, and 4, a corporation might be the

"person" who undertakes abatement. It is reasonable to adopt a definition of "person" that includes more than human beings.

Subp. 6. Playground

This subpart defines "playground" as an open area, including vacant lots, used for outdoor games, recreation, and amusement that may contain swings, seesaws, slides, or other means for children's recreation and play. It is necessary to define "playground" because playgrounds will be prioritized for response action in many situations. The Agency is proposing to adopt the identical definition to the one adopted by the Agency in its soil lead standard rules. Minn. Rules pt. 4760.0015, subp. 8. It is reasonable to adopt the same definition to provide consistency between where the standard applies and what area is to be cleaned up.

Including playgrounds in the proposed rules for response action is important because playgrounds can be the source of soil lead exposure to children. Young children spend time playing on playgrounds. Much of this time may be unsupervised. Children with high blood lead may reasonably be expected to pick up some lead from playground areas.

The definition is broad and includes areas such as vacant lots that, although are not a playground as many people conceive of a playground, with swing sets and jungle gyms, are often the places where children will play. It is reasonable to adopt a broad definition of the word "playground" to help ensure that the places where children are being exposed to lead are the places that have a high priority for soil lead abatement activities.

Subp. 7. Residence

"Residence" is defined as a house, duplex, apartment, or other building or structure used, or intended for use as human habitation and the real property upon which the building or structure is located. The Agency believes that

children and pregnant women who have elevated blood lead levels are reasonably expected to pick up that lead at home. The first place to look for sources of lead when a child or pregnant woman is discovered with elevated blood lead is at the place where that child or woman lives. Therefore, it is necessary to define "residence" in these rules.

The Agency is proposing to define "residence" as both the building and the property where people live. Both of these concepts are appropriate to include in the definition, the building because the house or the apartment is commonly thought of as the home, and the property because it is the soil that will be abated when a response action becomes necessary.

Subp. 8. Response action

These proposed rules set priorities for response actions. Therefore, it is appropriate to define the term "response action." The Agency is proposing to adopt the statutory definition of "response action" in Minn. Stat. § 116.51, subd. 5 (1990). It is reasonable to incorporate the statutory definition to ensure consistent interpretation and application of the term.

This definition will ensure that local governmental bodies do not begin any action at a site to clean up contaminated soil without first establishing its abatement priority. Because "response action" is defined as action to limit exposure to lead contaminated soil sites, a local governmental body will be required to develop its priorities before undertaking any action to clean up a site. This will allow local governmental bodies to spend limited public funds on the highest priority sites.

The Agency has adopted a lead standard and rules for abatement of contaminated sites. Minn. Rules pts. 4760.0010 to 4760.0050. Several times in these proposed rules the Agency uses the word "abatement." It should be pointed out that "abatement" is a "response action." The Agency has decided to use both

terms because "response action" is the term the Legislature used in authorizing the Agency to adopt these rules and "abatement" is what the Legislature authorized the Agency to establish by rule in Minn. Stat. § 144.874 (1990). The Agency does not believe that the use of both terms will prove confusing, particularly when abatement is provided for in detail in Minn. Rules pt. 4760.0030.

Subp. 9. Site

This subpart defines "site" as an area of land that has been sampled for soil lead concentration. A site may be as small as a residence or as large as a census tract.

It is important to define the word "site" because under the rules as proposed, the priority setting for response actions will be done according to sites. The Agency has made it clear in the definition that a "site" may be an individual residence or an entire census tract. It is reasonable to define "site" in these terms because response actions are likely to be taken in both ways: cleanup of an individual property and cleanup of all soils within a census tract.

Defining "site" to be an individual residence needs little explanation. Obviously, if a child or a pregnant woman has an elevated blood lead level and the soil at that child's or woman's house is contaminated, that will be a site requiring response action. However, it is also possible that a local governmental body may determine that all properties in an entire census tract need to be cleaned up. It may be too expensive to go out and sample every property and test for lead concentration; yet the governmental body may well determine that, based on the sampling within the census tract that has been

done, it is likely that all properties within the census tract are as contaminated as the ones that were sampled. It is reasonable then to provide that an entire census tract may be a "site" that is placed on a priority list.

3. Minn. Rules pt. 4760.0520 Priority Ranking System

Minn. Rules pt. 4760.0520 is the crux of these rules -- it is the language that establishes the system for prioritizing lead-contaminated sites for cleanup.

The Legislature made it clear in promulgating Minn. Stat. § 116.53, which directs the Agency to establish the priority for response actions, that considerations should be given to children's potential contact with the soil, the existing level of lead in the soil, the relative risk to the public health, the size of the population at risk, and the blood lead levels of resident populations.

To meet the statutory requirements, the Agency establishes in the proposed rules a priority ranking system that will provide a rational sequence to abate soil lead. In so doing, a site which presents the greatest risk to children is given the highest priority followed by those sites that have the potential to poison children in the future. Notably, in creating priority ranking, the Agency included those tracts that are found to be contaminated with soil lead even though they are based on limited soil samples. This strategy is reasonable since it will address sites identified with the potential to poison children and thus is consistent with the statute.

Subp. 1. Priority One

Subpart 1 establishes the first priority for response actions. This subpart states that a site is priority one site if it contains more than 300 ppm soil lead and is a residence of a child with an elevated blood lead level or of

a pregnant woman with a blood lead level of ten micrograms per deciliter or more.

The highest priority is given to those sites where the soil is contaminated and a child or pregnant woman who lives at the site has developed an elevated blood lead level. These are the children and women who are at the greatest risk because the level of lead in their blood is already threatening the health of the child, the woman, or the unborn fetus. Prompt action is necessary to lower the blood lead level of these people. Abatement of the soil may be one way to do that.

The 300 ppm level is the standard that was established by the Agency for soil lead. Minn. Rules pt. 4760.0020. It is reasonable to use the standard as the measure of contamination at a site.

The Agency for Toxic Substances and Disease Registry has recommended that the highest priority for lead cleanup should be given to those situations where a child under the age of six has been poisoned with lead. See Exhibit Nos. 2 and 21. That is precisely what the Agency is proposing to do under the proposed rules.

Subp. 2. Priority Two

Subpart 2 establishes the second priority for response actions. This subpart provides that a site is a priority two site if it contains more than 300 ppm soil lead, is a residence or a playground and is frequented by a child with an elevated blood lead level.

Priority two sites are similar to priority one sites except that priority two sites are not residences where the children live but instead are the residences and playgrounds where the children visit and play. These children are being exposed to lead from some source and, if it is not from their own homes, it could likely be from the homes of neighbors, friends and relatives, or

perhaps the home of the day care provider where the soil is contaminated, or at the playground where the child plays. Abating soil at these residences and playgrounds will also provide some primary protection because there are likely other children, whose blood lead levels have not risen yet, who also frequent these homes and playgrounds. Abating the soil will help avoid lead poisoning of additional children.

Children are the ones most at risk from lead sources in the environment. If children have elevated blood lead levels, they are getting it from somewhere in their environment. Focusing on the homes and playgrounds and other places that these children frequent will not only help those children but will help prevent lead poisoning of other children who might live in those residences in the future.

Subp. 3. Priority Three

The third priority for response actions are entire census tracts. The reason for including entire census tracts within a priority classification is because data are more readily available regarding lead levels throughout the census tract than for individual residences and playgrounds. As more individual residences and playgrounds are sampled, the more priority one and priority two sites can be identified. However, lacking that data, it is reasonable to identify entire census tracts that are known to provide some risk to the public from exposure to lead.

It is also reasonable to include entire census tracts because the lead that is contaminating residences and playgrounds within a census tract often does not come from some localized, identifiable sources but instead comes from an area-wide source like peeling paint or gasoline emissions from automobile traffic. If a few samples within a census tract show contamination, it is likely that other residences within the census tract are contaminated as well.

A census tract is an area that has been defined by the U.S. Census Bureau in the 1980 United States Census. A census tract may be composed of many residences. In the inner cities of St. Paul and Minneapolis, where most of the census tracts with high soil lead levels are located, it makes sense to conclude that if sampling shows lead contamination at a few sites, residences throughout the entire census tract may be contaminated because the same source of lead for the sampled residences also contaminated the nonsampled residences.

The Agency has identified two kinds of census tracts that need to be included in the priority three category. These two categories are (1) those census tracts where children and pregnant women with high blood lead levels have been found and (2) those census tracts where high soil lead levels have been found to exist. There is actually a third category listed in the rule, but these are simply those census tracts that the Agency already knows fit into category (2) -- they have already been sampled and have been found to have high soil lead levels.

It is reasonable to require that all census tracts that either have pregnant women or children with elevated blood lead levels or that have contaminated soil be placed on a list for abatement priority. An entire census tract should not take priority over individual residences or playgrounds that fit into priority one or priority two categories, but these census tracts certainly are areas that are a threat to public health from exposure to lead in the environment.

Therefore, the proposed rule prioritizes among the census tracts that fit the applicable criteria for inclusion on the abatement list. One of the difficulties in prioritizing census tracts is that the tract is large and the sampling results are few. For example, some of the census tracts listed in Subp. 3, item C have had only three soil samples taken for the entire census

tract. The Agency is reluctant to give a high priority to an entire census tract on the basis of three data points, yet, on the other hand, the Agency does not want to ignore the fact that high lead has been found at least at one place in the tract.

Subp. 4. Prioritizing census tracts

The Agency is proposing to create four categories of priority within a priority three census tract. Which category a census tract fits into depends on whether children or pregnant women with elevated blood lead levels have been found, and also on how much data the Agency has to determine whether soil throughout the census tract is contaminated.

Priorities A and B for census tracts are those census tracts with residences of children or pregnant women with elevated blood lead levels. Data on blood lead levels, when it is available, is quite reliable. Usually, if the results of a blood sample analysis indicate high lead, the results can be relied upon to conclude that there is reason for concern about these children and pregnant women.

On the other hand, data about the extent of soil contamination within the census tract are often sketchy. Therefore, the Agency has created a mechanism for recognizing the fact that data are often limited regarding soil lead levels in the census tract.

Minn. Stat. § 116.52 required that the Agency submit a report to the Legislature that among other things, described "the extent of lead contamination in the soil." In order to determine the extent of soil lead contamination in Minnesota, the Agency conducted an extensive soil sampling and testing program. The results of this program were published in the Agency's Soil Lead Report to the Minnesota State Legislature. See Exhibit 20.

To obtain data on soil lead contamination, Agency staff sampled soils from various areas in 27 counties and five cities in Minnesota - St. Paul, Minneapolis, Duluth, Rochester and St. Cloud. A total of 2,485 soil samples were collected throughout the state. The soil lead data provided in subp. 3, item C is derived from this statewide sampling program. The census tracts identified in the proposed rules are those tracts which, based on the sampling data, have been determined to have levels of soil lead which exceed the state standard of 300 ppm.

A 95 percent confidence interval has been calculated for the mean of the samples from each census tract. Where there are few samples and lead concentrations vary widely, the sampling error would be high so that the range of estimate for the population mean would be wide. This range of estimate or confidence interval on the sample mean defines the lower and the upper limit on the population mean. For example, for census tract 320 in St. Paul, only three samples were taken. The sample mean is 31.690 ppm, but the small number of samples and high variability in sample readings produce a confidence interval ranging from 0.124 ppm to 8091.85 ppm. Hence, the sample mean is not efficient in estimating the population mean, indicating a wide range for the mean lead concentration in the census tract. The Agency is reluctant to conclude that the entire census tract is contaminated based on these three samples, but neither does the Agency want to ignore the results and not focus on a need for abatement within the census tract.

The proposed rules provide that if all three numbers - the lower confidence level number, the mean, and the upper confidence level number - all exceed 300 ppm, those census tracts will be given a higher priority than those census tracts for which only the upper confidence level number exceeds 300 ppm. In the latter case, there is a probability that the population mean could exceed

300 ppm, albeit a lower probability when compared to the 100 percent probability in the first case. Once a census tract qualifies for inclusion on an abatement priority list, the entire census tract could be abated if that is the decision of the proper local governmental body and if no higher priority sites exist.

The Agency has prioritized the census tracts listed in subp. 3, item C according to the available data. The results of that prioritization are shown in Minn. Rules pt. 4760.0520, subp. 3, item C.

In order to prioritize the census tracts, the Agency developed a reasonable procedure for effective application of the available soil lead data. The Agency based its prioritization of census tracts on the confidence limits calculated for the geometric mean of the samples. The geometric mean was used instead of the arithmetic mean in order to compensate for extremely high values of several samples. This changed the skew of the distribution with a long right hand tail (due to extremely high values) into a symmetric bell-shaped curve. From this symmetric curve, the lower and upper confidence limits on the sample mean were determined. The population mean of the census tract will be within these limits, and the lower confidence level value defines the expected minimum value of the population mean. For census tracts with lower confidence level values exceeding 300 ppm, the Agency ranked each tract according to its lead concentration value at this lower confidence level. High lead concentration values at the lower confidence level received a high ranking. The population mean of the census tract will equal or exceed this lead concentration value 95 percent of the time.

If the census tract shows a lower confidence level value below 300 ppm but an upper confidence level value above 300 ppm, there could be a fair chance that the population mean will exceed 300 ppm. In this case, the Agency computed the probability that the population mean will exceed 300 ppm, based on the

sample mean, standard error, sample size and distribution. High probabilities of exceeding 300 ppm, received high ranking. In case of equal probabilities, the Agency ranked the census tracts further according to the mean lead concentration of the samples. High mean lead concentration caused high ranking for the census tract.

The Agency believes that it is entirely reasonable to focus on all census tracts that have any data showing high soil contamination, regardless of the number of samples. It would not be reasonable to ignore these census tracts just because the data were inconclusive. These data may not warrant a complete cleanup of the entire census tract but they do warrant keeping the census tract on the priority list when considering lead abatement response actions. There is always the opportunity to gather additional soil data, and provisions for factoring in this additional data are discussed below.

Subp. 5. Individual residences and playgrounds within a census tract

One way that additional data are taken into account in prioritizing sites is to separate out from the census tract those residence and playgrounds that meet the qualifications for a priority one or priority two site. Any time data are available to show a child or a pregnant woman with elevated blood lead levels and contaminated soil at the residence or playground frequented by that child or woman, that site will become either a priority one or a priority two site. That residence or playground will not be classified with the entire census tract as a priority three site. It is reasonable to address these individual residences and playgrounds separately because, since money for abatement will be limited, these highest priority sites must be abated before all others. It makes little sense to abate one entire census tract, including residences where no children presently live or visit, while an individual residence of a child with an elevated blood lead level goes unabated. Subpart 5

will ensure that the residences and playgrounds of children and pregnant women with elevated blood lead levels continue to get the highest priority.

Subp. 6. Ranking

This subpart merely provides that a site, whether it is a residence or a playground or a census tract, be given the highest priority to which it is entitled. Therefore, if new data becomes available to change the lower and upper confidence levels to numbers above 300 ppm, when the previous lower confidence level number was below 300 ppm, that census tract has to be re-ranked from a priority 3D to a 3C. If a child with an elevated blood lead level is later discovered to live in that census tract, that census tract must be raised to a 3A priority. Also, if data on the specific residence of the child with elevated blood lead shows 300 ppm, that child's residence must be given a priority one ranking. It is reasonable to provide a mechanism in the rules so that a site can be given the highest priority ranking to which it is entitled to ensure that those sites providing the greatest threat to public health will be abated as soon as possible.

4. Minn. Rules pt. 4760.0530 Abatement Priority List

Subp. 1. Distributing authority

This provision places an obligation on the local unit of government that is planning to utilize public funds to abate soil contamination to first prepare an abatement priority list. In order to carry out the legislative mandate to prioritize lead contaminated sites, this abatement priority list must be prepared.

The local unit of government must follow the criteria established in Minn. Rules pt. 4760.0520 in preparing its abatement priority list. The list will include all priority one sites, all priority two sites, and all applicable census tracts broken down into 3A, 3B, 3C, and 3D priorities.

The rule does not specify any particular public comment procedures that the local unit of government must follow. The Agency believes that the procedures will vary from community to community and each community can best determine how to solicit public comment on the list. It is reasonable to rely on local procedures for obtaining public input. The Agency does anticipate, however, that the public will have an opportunity to participate in the development of the abatement priority list.

The only timing requirement that this rule imposes is that the list must be prepared before any public funds are spent for lead abatement. The Agency decided not to specify a certain time period during which the list must be adopted. Instead, the Agency expects that those communities with money for abatement will proceed expeditiously to adopt its abatement priority list.

Subp. 2. Amendment of list

This subpart does two things: (1) it allows the local unit of government to amend the list whenever that is appropriate, and (2) it requires the local unit of government to amend the list when new sites are identified. Both of these procedures are reasonable because the increasing attention directed toward soil lead exposure among children will likely result in new data being generated frequently. Local units of government should keep their abatement lists current.

On the other hand, previously identified contaminated soil lead sites may have been put through extensive soil lead abatement and thus can be removed from the abatement priority list. Recognizing the existence of these possibilities, the Agency provides in the proposed rules that list be amended whenever it is appropriate.

Subp. 3. Additional Sampling

This subpart provides that a distributing authority may take additional soil samples before prioritizing a resident or a playground or a census tract for abatement. A local unit of government may be reluctant to list an entire census tract on its priority list based only on three samples. This rule recognizes that is is perfectly legitimate for the local governmental body to go out and take additional samples before prioritizing the census tract.

This rule also provides that all results that are available that are reliable should be considered in prioritizing a site. This is simply a recognition that the local governmental body should not ignore sample results, nor should it consider results that for one reason or another are unreliable.

4. Minn. Rules pt. 4760.0540. Response Action

This subpart is divided into four subparts. Subpart 1 establishes the use of public funds; subpart 2 provides for conditions for additional abatement; subpart 3 addresses when abatement is not required, and subpart 4 directs a person who undertakes abatement to an applicable rule for abatement procedures.

Subp. 1. Use of Public Funds

As presented above subpart 1 establishes the use of public funds for abating soil lead. Society would greatly benefit from the lead poisoning prevention programs, be it through increased awareness or abatement or a combination of efforts by the public and private sectors. Since this is a worthwhile public health activity, the focus of the proposed rules is on the use of public funds. However, in order to provide a cost-effective process, the proposed rules require that a distributing authority must prepare an abatement priority list before public funds can be made available for soil lead abatement.

The Agency believes that requiring the distributing authority to prepare an abatement priority list before authorizing the use of public funds is reasonable because it will result in targeting sites which are most likely to poison children, and thus markedly increase the efficiency and benefits of any abatement program.

Subp. 2. Additional Abatement

Subpart 2 provides for additional abatement that is not within the requirements of the proposed rules. This provision gives any person who pays for the abatement without the use of public funds some discretion to reduce environmental lead contamination. It is reasonable to provide such provision in the proposed rules because there are persons who would like to take actions to further reduce lead exposure from various sources and it is essential that they not be discouraged from acting to eliminate lead in our environment.

The proposed rules do not impose the priority ranking system on soil abatement projects that are publicly funded but which are not strictly limited to soil lead abatement. The Agency believes that public funding may some time become available for local units of government to conduct property renovations to abate lead in residences, but that public funding may only rarely be available for an abatement program that is limited to soil lead abatement. In such cases, where the abatement program is focused toward the cleanup of the structure, the proposed rules do not prohibit the distributing authority from also conducting soil lead abatement at those sites, even though those sites may not be highly ranked on the soil lead abatement priority list. This is a reasonable exception to the priority ranking system. If the residence is being cleaned up because the structure has been identified as a health hazard, it is reasonable to complete the project by also abating lead in the surrounding soil.

The Agency does not intend that funds for soil lead abatement at such projects be withheld simply because the site does not rank highly enough on the soil abatement priority ranking system.

The Agency believes that in many cases the residences that will receive public funding for lead abatement will also be priority one sites because the renovation of the residence will be prompted by a case of lead poisoning and there will be no conflict. However, if that is not the case, if for example the property is not occupied and there are no reports of elevated blood lead levels associated with the site, the Agency does not intend that the rules be an obstacle to the complete abatement of a lead contaminated residence.

Subp. 3. Abatement Not Required

Subpart 3 establishes two circumstances when the proposed rules are not applicable to abatement measures. The first circumstance is regarding the use of private funds. As discussed previously, the proposed rules are only applicable to the ranking of sites where soil lead will be abated with the use of public funding. Clearly if a private entity is going to conduct lead abatement activities, that entity will have its own priorities for the use of its funds and it is not reasonable to apply the same priority ranking system to their activities as will be applicable to a public priority ranking system.

Nothing in the proposed rules prevent a person from using private funds to address their own priorities. A landlord who owns several properties may choose to abate the soil lead at those properties in a particular sequence even though there are no cases of lead poisoning or even if the soil lead levels at those properties does not exceed 300 ppm. Although the MPCA encourages privately funded abatement measures, the proposed rules neither require such abatement measures nor do they prohibit them. However, it is important to note that although the proposed priority ranking rules are not applicable, the owner

of property that exceeds the state soil lead standard of 300 ppm may be required to abate that soil under the requirements of Minn. Rules pts. 4760.0010 to 4760.0050.

The second exception to the requirements of the proposed rules is for publicly funded abatement of sites that do not exceed the state soil lead standard of 300 ppm. The proposed rules specify that they should not be construed to require that abatement be conducted on sites with soils that do not exceed 300 ppm of lead. An entire census tract may be classified as a priority three site and within that census tract there may be areas where the soil lead does not exceed 300 ppm. Although those sample locations which have been found to contain less than 300 ppm lead have been considered in the statistical development of the list of abatement priorities for entire census tracts, the Agency recognizes that those specific locations do not exceed the state soil lead standard.

When a distributing authority has completed its list of priorities and is actually conducting abatement of soils within an entire census tract, the proposed rules provide for the distributing authority to make decisions regarding the best use of funds and do not require abatement activities at those locations within the tract that can be shown to have less than 300 ppm of lead in the soil. The Agency recognizes that public funding will be limited and does not require that public money be spent on abatement of soils that do not exceed the 300 ppm standard. However, neither do the rules prohibit the use of public funds to abate soils that do not exceed the standard if those soils are within a census tract which has a high priority for abatement. The Agency recognizes that there may be circumstances when it is more cost effective and protective of public health to address all sites in an area and the distributing authority

will want to conduct soil abatement of an entire census tract. In this circumstance it is reasonable for the Agency to allow some discretion in the application of the abatement requirements.

Subp. 4. Abatement Procedures

Subpart 4 requires that any person who undertakes abatement of a site contaminated with soil lead follow the abatement procedures established under Chapter 4760. The Agency recognizes that an effective soil lead abatement procedure is an essential component of a strategy to eliminate childhood lead poisoning. Guided by this view, the Agency believes that is is reasonable to require any person who undertakes abatement to follow the abatement procedures provided under Chapter 4760 because it is a well-designed process and has all the merits of an effective abatement procedure for soil lead.

V. SMALL BUSINESS CONSIDERATION IN RULEMAKING

Minn. Stat. § 14.115, subd. 2 (1990), requires the Agency when proposing rules which may affect small businesses to consider the following factors for reducing the impact on small businesses:

(a) the establishment of less stringent compliance or reporting requirements for small businesses;

(b) the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(c) the consolidation or simplification of compliance or reporting requirements;

(d) the establishment of performance standards for small businesses to replace design or operational standards required in the rule; and

(e) the exemption of small businesses from any or all requirements of the rules.

There is nothing in the proposed rules that will impose any obligation on small businesses. The proposed rules only establish priorities for soil lead response actions which will be conducted with public funds. A small business which is identified under these rules as a priority site, such as a rental property owner or day care center, will not be required to conduct soil lead abatement activities as a result of these proposed rules. These rules will only ensure that that contaminated property is properly identified for consideration when and if public funds become available for soil lead abatement activities. Other rules, however, such as part 4760.0040, may require a small business to abate a contaminated residence, but these rules do not mandate any activities at a small business owner's expense.

The proposed rules could be considered to have a limited positive effect on certain small businesses. At this time the owner of a rental property which has soil lead contamination can be issued an order by the local board of health to have the property cleaned up to eliminate any risk to human health. Although there are no existing programs for the distribution of public funds for soil lead abatement, such programs may be developed in the future. If public funds become available for such cleanup measures, the owner of contaminated property may benefit by having the property ranked as a high priority for receiving funds for abatement measures or may benefit from community wide soil abatement activities.

VI. CONSIDERATION OF ECONOMIC FACTORS

In exercising powers the Agency is required by Minn. Stat. § 116.07, subd. 6 (1990) to give due consideration to economic factors. The statute provides:

> In exercising all its powers the Minnesota Pollution Control Agency shall give due consideration to the establishment, maintenance, operation and expansion of business, commerce, trade, industry, traffic, and other economic factors and other material matters affecting the feasibility and practicability of any proposed action, including, but not limited to, the burden on a municipality of any tax which may result therefrom, and shall take or provide for such action as may be reasonable, feasible, and practical under the circumstances.

In proposing the rules governing priorities for response actions, the Agency has given due consideration to available information as to any economic impacts the proposed rules would have with regard to the above statutory provision.

The Agency is mandated to adopt rules to establish priority ranking for sites contaminated with soil lead. However, the Agency is not required, nor has the Agency been granted any authority, to require the expenditure of funds for soil lead abatement activities at the identified priority sites. The priority ranking system proposed in this rulemaking will only be applicable to the distribution of public funding that has been made available for soil lead abatement. There will be no adverse economic impact as a result of the proposed rules because if funding is not available, the rules do not require any actions to be taken or any costs incurred.

As is true for many health-related choices, a balance must be struck between the efficiency of the methods and the costs incurred. Any abatement activity must be conducted with appropriate protection of public health and environment and must be within a realistic financial budget. Although the

proposed rules provide for a rational sequence in which to conduct abatement, the approach is to safely and cost-effectively reduce soil lead exposure and to protect public health. Under the proposed rules, the benefits to society are markedly increased in relation to economic impacts on funding sources.

VII. FISCAL NOTE

Minn. Stat. § 14.11, subd. 1 (1990) provides that if the adoption of a new rule by an Agency will require the expenditure of more than $100,000 by local governmental bodies, in either of the first two years the rule is in effect, the Agency must include with its notice of proposed rulemaking an estimate of the total cost to local public bodies for the first two years. The Agency has determined that these proposed rules will not impose on local public bodies costs in excess of $100,000 in either of the first two years the rules are in effect.

Minn. Stat. § 14.131 provides that an Agency must prepare a fiscal note before it publishes a rulemaking notice if required by Minn. Stat. § 3.982. That section of the statute requires a fiscal note when new legislative action would force a local agency or school district to incur costs, if the local agency or school district could suffer civil liability, criminal penalty and substantial economic sanction such as loss of funding, or severe administrative sanctions such as closure of a facility or program if the local agency or school district failed to comply with the new law.

In the Agency's view, a fiscal note is not required for this rulemaking because no obligations are being imposed on local agencies and school districts by the proposed rules. The proposed rules establish priorities for response action before abatement is undertaken. There is no civil liability, criminal penalty, substantial economic sanction or severe administrative sanction that could fall upon a local agency or school district.

A fiscal note is not required because nothing is being imposed on local agencies and school districts. It is only if public money is to be expended do any obligations result under these rules. At the time the legislature considers appropriating public funding for lead abatement, a fiscal note will be appropriate. At that time estimates of the cost on local agencies to prepare an abatement priority list and the possibility of sanctions if a local agency should expend the public funds without following the priority criteria of these rules can be addressed.

It is possible that at some point a local agency through ownership of a residence or a playground, may have to abate contaminated soil. However, nothing in these proposed rules mandates such an obligation. If public property is identified as a priority site for soil lead abatement, the proposed rules do not mandate that public funds be expended for that site, the proposed rules only mandate that if public funds are to be expended, they must be expended on sites in order of priority.

VIII. CONCLUSION

Based on the foregoing, the proposed Minn. Rules pts. 4760.0500 to 4760.0540 are both needed and reasonable.

IX. EXHIBITS

1. Minn. Stat. § 116.53, subd. 2 (1990).

2. Agency for Toxic Substances and Disease Registry. "The Nature and Extent of Lead Poisoning in Children in the United States". A Report by the U.S. Department of Health and Human Services to Congress. Atlanta: 1988.

3. Angle C. and M. McIntire, "Children, the Barometer of Environmental Lead". Advances in Pediatrics, Vol. 29, 1982, 3-31.

4. Barltrop, D. et. al. " Absorption of Lead from Dust and Soil". Postgraduate Medical Journal, 51, 1975, 801-804.

5. Bornschein, R. L. et. al. "The Influence of Social and Environmental Factors on Dust Lead, Hand Lead, and Blood Lead Levels in Young Children". Environmental Research, 38, 1985, 108-118.

6. Bornschein, R. L. et. al. "Soil Lead, Interior House Dust Lead and Childhood Lead Exposure in an Urban Environment". A Report by the Society For Environmental Geochemistry and Health. 1986.

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Dated 7-12-91

Cynthia C Jepsen

Charles W. Williams
Commissioner

Subd. 2. **Agency.** "Agency" means the pollution control agency.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of health.

Subd. 4. **Elevated blood lead level.** "Elevated blood lead level" means a confirmed concentration of 25 micrograms or more of lead in each deciliter of whole blood.

Subd. 5. **Response action.** "Response action" means action to limit exposure to lead contaminated soil sites, including fencing, covering sites with vegetation, removal and replacement of contaminated soil, and other appropriate measures.

History: *1Sp1985 c 14 art 19 s 8*

116.52 IDENTIFICATION OF LEAD CONTAMINATED SOIL SITES.

Subdivision 1. **Preliminary screening.** By January 1, 1986, the agency must identify and develop a preliminary list of sites in the state where significant concentrations of lead in soil are likely and where the probability exists for children's contact with the soil. In identifying these sites the agency must consider:

(1) both stationary and mobile lead emission sources;

(2) dispersion and depositional patterns of lead emissions; and

(3) the presence of populations susceptible to lead exposure or lead absorption, including children at day care centers, schools, parks, and playgrounds, children who have elevated levels of lead in their blood, and children whose socioeconomic status has given them a higher exposure to lead or increased lead absorption.

Subd. 2. **Soil testing.** By January 1, 1987, the agency must sample sites on the preliminary list to determine the concentration of lead in the soil. After adoption of the rules under section 116.53, subdivision 1, the agency shall refer to the commissioner all sites with concentrations above the standard for lead in soil.

Subd. 3. **Access to property.** The agency or a person authorized by the agency may, upon presentation of credentials, enter public or private property to conduct surveys or investigations.

Subd. 4. **Health screening.** For each site referred by the agency, the commissioner must review the existing health data on the resident population or collect data on the level of lead in the blood if the present data are inadequate. If the level of lead in the blood is elevated in a population at a site, the commissioner shall examine the site for all sources of lead exposure and report to the agency findings and recommendations to reduce the level of lead in the blood.

History: *1Sp1985 c 14 art 19 s 9; 1990 c 533 s 1*

116.53 RULES.

Subdivision 1. **Standard for lead in soil.** By January 1, 1988, the agency shall adopt rules that establish a standard of lead contamination in the soil that threatens the health or welfare of susceptible populations.

Subd. 2. **Priorities for response action.** By January 1, 1988, the agency must adopt rules establishing the priority for response actions. The rules must consider the potential for children's contact with the soil and the existing level of lead in the soil and may consider the relative risk to the public health, the size of the population at risk, and blood lead levels of resident populations.

History: *1Sp1985 c 14 art 19 s 10*

116.54 INJECTION OF CERTAIN MATERIALS.

The pollution control agency shall authorize and may monitor not less than one or more than five projects to test the controlled injection of oxygen-bearing materials and appropriate microbiological systems into sites of water or soil contamination. An applicant for authority to conduct one of the tests shall describe to the agency plans for the test injection project including at least the following:

(1) the quantity and type of chemicals and microbes to be used in the injection project;

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

The rules proposed for adoption relate to increasing the fee for preparing new birth certificates, correcting records and filing delayed registrations from $5.00 to $20.00, increasing the fee for issuing copies of affidavits from $5.00 to $8.00, and increasing the hourly rate for searching vital records from $10.00 to $20.00. A free copy of the rules is available upon request from Frederick L. King.

A STATEMENT OF NEED AND REASONABLENESS that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Frederick L. King upon request.

Minnesota Statutes § 14.115 requires administrative agencies, when preparing a rule or amendment to an existing rule, to consider various methods for reducing the impact of the proposed rule or amendment on small business and to provide opportunity for small business to participate in the rulemaking process. It is the Commissioner's conclusion that *Minnesota Statutes* § 14.115 does not apply to the proposed rule amendment. The reasons for this conclusion are set forth in the **STATEMENT OF NEED AND REASONABLENESS.**

As the promulgation of the proposed rule will not result in the expenditures set forth in *Minnesota Statutes* § 14.11 (1990), no written statement of costs of local public bodies is required. These rules will not have an impact on agricultural land. Pursuant to *Minnesota Statutes* § 16A.128 (1990) the Department of Finance approved these amendments on June 25, 1991, and the Department of Health on August 5, 1991, submitted copies of these amendments to the chairs of the house appropriations and senate finance committees.

If no hearing is required, upon adoption of the rule amendment, the rule 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 rules must submit the written request to Frederick L. King.

Dated: 6 August 1991

Marlene E. Marschall
Commissioner of Health

Rules as Proposed

4600.0900 FEES.

[For text of subpart 1, see M.R.]

Subp. 2. **Replacement.** Effective December 1, 1991, the fee for the replacement of a birth certificate ~~shall be $5~~ following adoption, legitimation, adjudication of paternity, or acknowledgment of paternity is $20.

Subp. 3. **Filing delayed registration.** Effective December 1, 1991, the fee for the filing of a delayed registration of birth or death ~~shall be $5~~ is $20.

Subp. 4. **Alteration, correction, or completion.** Effective December 1, 1991, the fee for the alteration, correction, or completion of a birth or death certificate when requested more than one year after the filing of the certificate ~~shall be $5~~ is $20.

Subp. 5. **Fee for verification.** Effective December 1, 1991, the fee for the verification of information from or noncertified copies of a birth, death, or marriage record ~~shall be~~ is $8 when the applicant furnishes specific information to locate the record. When the applicant does not furnish specific information the fee ~~shall be $10~~ is $20 per hour for staff time expended. Specific information shall include the correct date of the event and the correct name of the registrant.

Subp. 6. **Copies of other documents.** Effective December 1, 1991, the fee for issuance of a certified or noncertified copy of any document on file pertaining to a vital record or a certification that a document cannot be found ~~shall be $5~~ is $8.

Pollution Control Agency

Proposed Permanent Rules Relating to Priorities for Soil Lead Abatement

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act in *Minnesota Statutes* §§ 14.22 to 14.28 (1990). The Agency's authority to adopt the rule is set forth in *Minnesota Statutes* § 116.53, subd. 2 (1990).

All persons have until 4:30 p.m. on September 27, 1991, to submit comments 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. 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 request in writing. Any person requesting a public hearing must state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Agency will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1990).

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

Placida L. Venegas
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
612/297-8370

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

Pursuant to *Minnesota Statutes* § 116.53, subd. 2 (1990), the Agency must adopt rules establishing the priority for response actions for sites in the state found to be contaminated with soil lead. The rules must consider the potential for children's contact with soil and the existing level of lead in the soil and may consider the relative risk to the public health, the size of the population at risk, and blood lead levels of resident populations. The proposed rules establish procedures for determining priorities for response action. The proposed rules also provide for the creation of a list of census tract sites that have been determined to exceed the soil lead standard.

The proposed rules are published below. In addition, one free copy of the rules is available upon request from Placida L. Venegas at the address and telephone number stated above.

A STATEMENT OF NEED AND REASONABLENESS that includes a summary of all the evidence and arguments justifying both the need for and reasonableness of the proposed rules and that identifies the data and information relied upon during the preparation of the proposed rules is available from Placida L. Venegas upon request.

You are hereby advised, pursuant to *Minnesota Statutes* § 14.115 (1990), "Small business considerations in rulemaking," that the proposed rules will have no adverse impact on small businesses.

As required under *Minnesota Statutes* § 14.11 (1990), you are hereby advised that the proposed rule will not impose on local public bodies costs in excess of $100,000 per year for the first two years the rules are in effect. However, if public money is appropriated by the legislature to fund lead abatement, local agencies may be obliged to prepare estimates of cost under the proposed rules. Additionally, at some point a local agency through ownership of a residence or a playground, may have to abate contaminated soil. If public property is identified as a priority site for soil lead abatement, the proposed rules do not mandate that public funds be expended for that site, the proposed rules only mandate that if public funds are to be expended, they must be expended on sites in order of priority.

If no hearing is required, upon adoption of the proposed rules, the rules and requiring supporting documents will be submitted to the Attorney General for review as to legality and form to the extent 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 rules, must submit the written request to Placida L. Venegas.

Charles W. Williams
Commissioner

Rules as Proposed (all new material)

4760.0500 SCOPE.

Parts 4760.0500 to 4760.0540 establish procedures for determining priorities for response action for residential sites and playgrounds in the state where soils are found to be contaminated with lead, as required by *Minnesota Statutes*, section 116.53, subdivision 2.

4760.0510 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 4760.0500 to 4760.0540, the following terms have the meanings given them.

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.

Subp. 2. **Child.** "Child" means a human being under the age of six years.

Subp. 3. **Distributing authority.** "Distributing authority" means a governmental agency or entity, such as a local board of health, that distributes funds for the abatement of soil lead contamination.

Subp. 4. **Elevated blood lead level.** "Elevated blood lead level" means a confirmed concentration of 25 micrograms or more of lead in each deciliter of whole blood.

Subp. 5. **Person.** "Person" has the meaning given in *Minnesota Statutes*, section 116.06, subdivision 8.

Subp. 6. **Playground.** "Playground" means an open area, including vacant lots, used for outdoor games, recreation, and amusement that may contain swings, seesaws, slides, or other means for children's recreation and play.

Subp. 7. **Residence.** "Residence" means a house, duplex, apartment, or other building or structure used or intended for use as human habitation and the real property upon which the building or structure is located.

Subp. 8. **Response action.** "Response action" has the meaning given in *Minnesota Statutes*, section 116.51, subdivision 5.

Subp. 9. **Site.** "Site" means an area of land that has been sampled for soil lead concentration. A site may be as small as a residence or as large as a census tract.

4760.0520 PRIORITY RANKING SYSTEM.

Subpart 1. **Priority one.** A site is a priority one site if the site contains more than 300 parts per million lead and the site is a residence of a child with an elevated blood lead level or the residence of a pregnant woman with a blood lead level of ten micrograms per deciliter or more.

Subp. 2. **Priority two.** A site is a priority two site if the site contains more than 300 parts per million lead and the site is a residence or a playground and the site is frequented by a child with an elevated blood lead level.

Subp. 3. **Priority three.** A site is a priority three site if it is a census tract that meets one or more of the following criteria:

A. it contains the residence of a child with an elevated blood lead level or a pregnant woman with a blood lead level of ten micrograms per deciliter or more;

B. any soil sample within the census tract indicates a soil lead level of more than 300 parts per million; or

C. the census tract is on the following list:

	Census Tract Number	City	Lower Confidence Limit	Mean	Upper Confidence Limit
1.	84	Minneapolis	460.019	736.507	1179.170
2.	332	St. Paul	361.915	733.350	1485.990
3.	83	Minneapolis	358.645	460.916	592.350
4.	71	Minneapolis	340.962	514.736	777.080
5.	78	Minneapolis	336.858	459.276	626.180
6.	72	Minneapolis	324.952	412.103	522.630
7.	69	Minneapolis	322.637	407.247	514.050
8.	79	Minneapolis	310.606	514.142	851.050
9.	93	Minneapolis	291.339	640.391	1407.640
10.	18	Minneapolis	241.486	437.469	792.510
11.	23	Minneapolis	239.560	536.452	1201.290
12.	12	Duluth	250.261	519.718	1079.300
13.	82	Minneapolis	264.749	379.520	544.050
14.	25	Minneapolis	182.547	509.773	1423.570
15.	354	St. Paul	260.405	363.646	507.820
16.	15	Minneapolis	209.802	450.573	967.660
17.	366	St. Paul	112.570	588.720	3078.890
18.	47	Minneapolis	192.907	417.770	904.750
19.	70	Minneapolis	37.422	363.044	3522.060
20.	94	Minneapolis	187.400	400.858	857.460
21.	22	Minneapolis	251.728	346.117	476.720
22.	92	Minneapolis	112.740	495.288	2175.890
23.	86	Minneapolis	186.407	349.367	654.790
24.	337	St. Paul	245.707	319.574	415.650
25.	35	Minneapolis	160.398	338.992	716.440

	Census Tract Number	City	Lower Confidence Limit	Mean	Upper Confidence Limit
26.	344	St. Paul	218.728	320.605	469.930
27.	57	Minneapolis	164.839	290.643	512.460
28.	65	Minneapolis	52.789	257.315	1254.250
29.	21	Minneapolis	66.709	255.534	978.840
30.	19	Minneapolis	171.870	282.398	464.000
31.	36	Minneapolis	94.638	254.595	684.910
32.	111	Minneapolis	110.134	257.701	602.990
33.	312	St. Paul	47.241	227.399	1094.610
34.	103	Minneapolis	40.160	218.218	1185.740
35.	368	St. Paul	3.343	136.804	5597.760
36.	2	Minneapolis	104.219	239.240	549.190
37.	17	Minneapolis	46.312	192.512	800.230
38.	27	Duluth	57.187	191.895	643.920
39.	85	Minneapolis	146.515	244.739	408.810
40.	16	Duluth	69.174	197.015	561.120
41.	54	Minneapolis	39.020	161.430	667.850
42.	50	Minneapolis	186.525	255.434	349.800
43.	95	Minneapolis	123.395	217.816	384.490
44.	320	St. Paul	0.124	31.690	8091.850
45.	325	St. Paul	122.539	213.922	373.450
46.	99	Minneapolis	79.929	189.789	450.650
47.	60	Minneapolis	114.333	204.372	365.320
48.	61	Minneapolis	74.229	173.984	407.800
49.	49	Minneapolis	56.477	159.926	452.870
50.	371	St. Paul	135.290	216.914	347.786
51.	18	Duluth	28.309	112.400	446.290
52.	75	Minneapolis	93.796	195.579	407.810
53.	340	St. Paul	99.113	183.212	338.672
54.	363	St. Paul	29.196	110.590	418.900
55.	350	St. Paul	22.960	99.916	434.810
56.	19	Duluth	90.188	196.893	429.840
57.	28	Duluth	56.699	139.281	342.145
58.	112	Minneapolis	48.806	126.633	328.561
59.	16	Minneapolis	29.691	98.646	327.741
60.	52	Minneapolis	0.750	16.699	372.000
61.	357	St. Paul	115.904	188.437	306.360
62.	73	Minneapolis	71.059	148.505	310.357
63.	349	St. Paul	58.097	136.714	321.717
64.	315	St. Paul	152.960	214.613	301.116

Subp. 4. **Prioritizing census tracts.** Priority three census tracts are further prioritized as described in items A to D.

A. A census tract is a priority A if the upper and lower confidence level values for soil lead, within a 95 percent confidence interval, exceed 300 parts per million and a child with an elevated blood lead level or a pregnant woman with a blood lead level of ten micrograms per deciliter or more resides within the census tract.

B. A census tract is a priority B if the upper confidence level value for soil lead, within a 95 percent confidence interval, exceed 300 parts per million and a child with an elevated blood lead level or a pregnant woman with a blood lead level of ten micrograms per deciliter or more resides within the census tract.

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

C. A census tract is a priority C if the upper and lower confidence level values for soil lead, within a 95 percent confidence interval, exceed 300 parts per million.

D. A census tract is a priority D if the upper confidence level value for soil lead, within a 95 percent confidence interval, exceeds 300 parts per million.

Subp. 5. **Individual residences and playgrounds within a census tract.** A residence or playground within a census tract that meets the criteria for a priority one or a priority two site must be prioritized as a priority one or a priority two site.

Subp. 6. **Ranking.** A site must be ranked at the highest priority for which it qualifies, whether the site is a residence or a playground or a census tract.

4760.0530 ABATEMENT PRIORITY LIST.

Subpart 1. **Distributing authority.** A distributing authority shall prepare an abatement priority list that ranks known sites within the distributing authority's jurisdiction according to the priorities established in part 4760.0520. The abatement list shall list those known residences and playgrounds that are priority one or priority two and those known census tracts as priority 3A, 3B, 3C, or 3D. The abatement list shall be prepared before the distributing authority uses public funds to abate any site.

Subp. 2. **Amendment of list.** A distributing authority may at any time amend its abatement priority list. A distributing authority shall add additional sites to its abatement priority list at any time that information becomes available identifying new sites.

Subp. 3. **Additional sampling.** A distributing authority may elect to take additional samples before prioritizing a residence or playground or a census tract. The distributing authority shall consider all sample results that the authority considers reliable in making a decision on the proper priority ranking for a particular residence or playground or census tract.

4760.0540 RESPONSE ACTION.

Subpart 1. **Use of public funds.** No distributing authority shall authorize public funds for abatement until the authority has prepared an abatement priority list. Public funds shall be used for abatement in order of priority established by the abatement priority list.

Subp. 2. **Additional abatement.** Nothing in parts 4760.0500 to 4760.0540 shall be construed to preclude any person from abating any site, regardless of priority, if the person pays for the abatement without the use of public funds or if the soil abatement is part of a publicly funded abatement project that is not strictly limited to soil lead abatement.

Subp. 3. **Abatement not required.** Parts 4760.0500 to 4760.0540 do not require:

A. any person to abate any site at that person's expense; or

B. a distributing authority to abate any site that does not exceed the soil lead standard of 300 parts per million.

Subp. 4. **Abatement procedures.** A person who undertakes abatement of a site contaminated with lead shall follow the abatement procedures in chapter 4760.

Technical Colleges Board

Proposed Permanent Rules Relating to President's License

Notice of Intent to Adopt a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Board of Technical Colleges intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, Section 14.22 to 14.28. The statutory authority to adopt the rules is *Minnesota Statutes* 136C.04, Subdivision 9.

All persons have 30 days until 4:30 p.m., Thursday, September 26, 1991, 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 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 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 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 either:

CERTIFICATE OF RESOLUTION ADOPTING RULES

I, Charles W. Williams, do hereby certify that I am the Commissioner of the Minnesota Pollution Control Agency, an agency duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Minnesota Pollution Control Agency duly and properly called and held on the twenty-second day of October 1991, that a quorum was present at said meeting, that a majority of those present voted for the resolution and that said resolution will be set forth in the minutes of said meeting and has not been rescinded or modified:

BE IT RESOLVED, that the Minnesota Pollution Control Agency hereby approves and adopts Minn. Rules pts. 4760.0500 through 4760.0540 governing priorities for response action for lead contaminated residential sites, under the authority of Minn. Stat. § 116.53, subd. 2 (1990), as published in the State Register, Vol. 16, August 26, 1991, pages 434 to 438, pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. §§ 116.07, subd. 4 and 116.53, subd. 2 (1990).

BE IT FURTHER RESOLVED, that prior to publishing the rules adopted in the State Register, the Commissioner is authorized to make any changes in the rules that the Revisor of Statutes requires the Minnesota Pollution Control Agency to make in order to obtain the Revisor's Certification as required by Minn. Stat. § 14.07, subd. 2 (1990).

BE IT FURTHER RESOLVED, that the Minnesota Pollution Control Agency adopts the Findings of Fact, Conclusions, and Order to Adopt Rules and that the Commissioner is hereby authorized to sign the above-mentioned document on behalf of the Minnesota Pollution Control Agency and to perform the necessary acts to provide that the rules shall have the force and effect of law.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 23 day of October, 1991.

CHARLES W. WILLIAMS
Commissioner

STATE OF MINNESOTA
MINNESOTA POLLUTION CONTROL AGENCY

In The Matter Of The Proposed Rules Governing Priorities For Response Action For Lead Contaminated Residential Sites, Minn. Rules Pts. 4760.0500 Through 4760.0540

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULES

The above-entitled matter came on for decision before the Minnesota Pollution Control Agency (MPCA) on the twenty-second day of October 1991. After affording all interested persons the opportunity to present written and oral data, statements and arguments to the MPCA, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness, after considering all of the evidence adduced upon the records, files and proceedings herein, the MPCA, being fully advised in the premises, hereby adopts the following Findings of Fact, Conclusions and Order:

FINDINGS OF FACT

(1) 1. Notice of the MPCA's intent to adopt the above-entitled rules without a public hearing was published in the State Register on August 26, 1991, (16 State Register 434-438), and was sent by mail to all persons on the list maintained by the MPCA pursuant to Minn. Stat. §§ 14.14, subd. 1a and 14.22 (1990) on August 23, 1991.

(2) 2. The Statement of Need and Reasonableness was prepared prior to mailing and publication of the notice and was made available to the public.

(4) 3. All persons were given the opportunity to submit comments on the rules for 32 days after notice of proposed rulemaking. The 32-day comment period, as set out in the notice, expired on September 27, 1991.

(5) 4. No requests for public hearing were received during the comment period.

5. No requests for notice of submission of the adopted rules to the Attorney General were received by the MPCA.

6. No written comments were received by the MPCA during the comment period.

7. The MPCA adopts the Statement of Need and Reasonableness, in its entirety, as the factual basis for the proposed rules. The MPCA hereby incorporates the Statement of Need and Reasonableness into these findings.

8. The above-captioned rules are needed and reasonable.

CONCLUSIONS

1. The Minnesota Pollution Control Agency duly acquired and has jurisdiction over this proceeding.

2. The Minnesota Pollution Control Agency published and served due, timely, and adequate notice of the intent to adopt the rules without a public hearing.

3. All relevant legal and procedural requirements of statute and rules have been complied with.

ORDER

NOW, THEREFORE, IT IS ORDERED, that the attached Minn. Rules pts. 4760.0500 through 4760.0540 governing priorities for response action for lead contaminated residential sites, are adopted pursuant to the authority vested in the Minnesota Pollution Control Agency by Minn. Stat. § 116.53, subd. 2 (1990).

Dated: 11-4-91

Cynthia C Jepsen
Charles W. Williams
for Commissioner

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed
Rules Governing Priorities
for Response Action, Minn. Rules
Pts. 4760.0500 through 4760.0540

AFFIDAVIT OF RECEIVING NO REQUESTS FOR NOTICE OF SUBMISSION OF RULE ADOPTED WITHOUT PUBLIC HEARING TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Placida L. Venegas, being duly sworn says:

1. That she is the person named in the Notice of Intent to Adopt Rules Without a Public Hearing (16 SR 434-438, August 26, 1991) as the person to receive requests for notification of submission of rule adopted without a public hearing to the Attorney General concerning the above-entitled matter.

2. That there were no requests received by the the Minnesota Pollution Control Agency for notification of submission of rule adopted without a public hearing to the Attorney General concerning the above-entitled matter.

Placida L. Venegas

Subscribed and sworn to before me
this 30 day of October, 1991.

Diane Fox
Notary Public

DIANE FOX
NOTARY PUBLIC — MINNESOTA
RAMSEY COUNTY
My commission expires 2-25-96

STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules Governing Priorities For Response Action, Minn. Rules Pts. 4760.0500 through 4760.0540.

AFFIDAVIT REGARDING COMMENTS RECEIVED PURSUANT TO NOTICE OF INTENT TO ADOPT RULE WITHOUT A PUBLIC HEARING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Placida L. Venegas, being duly sworn on oath deposes and says:

1. That she is the person named in the Notice of Intent to Adopt Rule Without A Public Hearing (16 SR 434-438, August 26, 1991) as the person to receive comments on the Minnesota Pollution Control Agency's intent to adopt the proposed rule concerning the above-entitled matter.

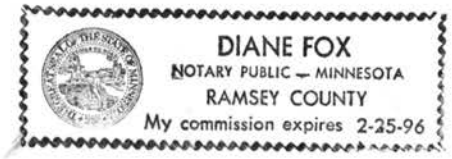
2. That the comment period set forth in the notice terminated at 4:30 p.m. on September 27, 1991.

3. That during the public comment period, there were no written comments received by the Minnesota Pollution Control Agency regarding the above-entitled matter.

Placida L. Venegas

Subscribed and sworn to before me this 30 day of October, 1991.

Diane Fox
Notary Public



STATE OF MINNESOTA
POLLUTION CONTROL AGENCY

In the Matter of the Proposed Rules
Governing Priorities for Response
Action, Minn. Rules pts. 4760.0500
through 4760.0540

DECLARATION OF COUNSEL

I, Stephen Shakman, Special 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 Minnesota Rules ch. 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is .0697.

Dated: November 25, 1991.

Stephen Shakman
Special Assistant
Attorney General