

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

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

Version 3
August 20, 2018

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

OFFICE MEMORANDUM

DATE: February 28, 1992

TO: JEAN SMALL-JOHNSON
Harmful Substance Compensation Board
2700 University Avenue West, #115
St. Paul

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 Compensation for Property Damage Losses

The above-referenced rule has been approved as to its legality by the Attorney General on February 28, 1992.

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

Harmful Substance Compensation Board

Adopted Permanent Rules Relating to Compensation for Property Damage Losses

Rules as Adopted

7190.1100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 7190.1110 to 7190.2010 have the meanings given them in this part.

Subp. 2. **Contamination.** "Contamination" means:

A. the presence of a harmful substance in or on property that resulted from an intentional or accidental release of the harmful substance from a facility; or

B. the imminent and substantial threat of contamination due to the movement of the harmful substance in the direction of the property, as determined by the Pollution Control Agency or the Department of Health or for agricultural chemical contamination, as determined by the Department of Agriculture or the Department of Health.

Subp. 3. **Date of discovery of contamination.** "Date of discovery of contamination" means the date a claimant discovered or should have discovered the contamination of the property.

Subp. 4. **Harmful substance.** "Harmful substance" has the meaning given in Minnesota Statutes, section 115B.25.

Subp. 5. **Residential homestead.** "Residential homestead" means property that qualifies as the owner's homestead under Minnesota Statutes, section 273.124. If the homestead is also a family farm as defined in Minnesota Statutes, section 500.24, subdivision 2, paragraph (b), the property includes one acre of the land surrounding the residence, but does not include any other structures that may be located on it.

7190.1110 PRINCIPAL RESIDENCE.

For purposes of identifying property losses eligible for compensation under Minnesota Statutes, section 115B.34, the principal residence of the claimant is the property that is:

Approved by Revisor

A. the claimant's current principal residence under part 7190.1120;

B. a residence owned but not occupied by the claimant under part 7190.1130;

C. a residence that was purchased by the claimant after the date of discovery under part 7190.1140;

D. the claimant's intended principal residence under part 7190.1150;

E. the claimant's past principal residence under part 7190.1160; or

F. sold by the claimant under part 7190.1170.

7190.1120 CURRENT PRINCIPAL RESIDENCE.

The current principal residence of the claimant is the property that is the claimant's residential homestead, except that the residence must be owned and occupied by the claimant, and used for the purposes of a homestead as of the date of discovery of contamination, not the date of assessment.

7190.1130 RESIDENCE OWNED BUT NOT OCCUPIED.

A residence owned but not occupied by the claimant is eligible as the claimant's principal residence if it otherwise qualifies under part 7190.1120 and:

A. the claimant no longer resides at the residence because of marital separation or divorce; or

B. the claimant is a resident of a nursing home or boarding care facility.

7190.1140 PROPERTY PURCHASED AFTER DATE OF DISCOVERY.

A residence purchased by the claimant for use as a residential homestead after the date of discovery of contamination is eligible as the claimant's principal residence if it is used as the claimant's residential homestead and the claimant can show that:

A. a written purchase agreement or contract which committed the claimant to purchase the property was made prior to the date of discovery of contamination; or

Approved
by Revisor _____

B. the property was purchased with the reasonable expectation that the property damage would be fully remedied by public or other funding sources without cost to the claimant.

7190.1150 INTENDED PRINCIPAL RESIDENCE.

Subpart 1. **Description.** Property purchased by the claimant for the purpose of owning and occupying a residence including construction of a new residence on that property is eligible as the claimant's principal residence if the claimant:

A. had purchased the property, or contracted for the purchase of the property, as shown by a written purchase agreement, before the date of discovery of contamination; and

B. can demonstrate to the board that before the date of discovery of contamination the claimant intended to occupy a home as a residential homestead on the property.

Subp. 2. **Claimant's intent.** The intent to occupy a principal residence on the property before the date of discovery of contamination, as required in subpart 1, item B, may be demonstrated by construction contracts or plans, a public listing or advertisement to sell the current residence, or other documents or actions that make a similar showing.

7190.1160 PAST PRINCIPAL RESIDENCE.

Residential property owned by the claimant that is unoccupied and actively on the market for sale at the time of the discovery of contamination is eligible as the claimant's principal residence if:

A. the property was the residential homestead of the claimant immediately before or at the time of placing the property on the market; and

B. the commitment to change residence and sell the property, evidenced by a purchase agreement, contract for sale, contract with a realtor, or other documentation of active sale listing by the claimant, was made before the date of discovery of contamination.

7190.1170 RESIDENTIAL PROPERTY THAT HAS BEEN SOLD.

Approved
by Revisor _____

Residential property that has been sold by the claimant is eligible as the claimant's principal residence if:

A. the property was the residential homestead of the claimant on the date of discovery of contamination; and

B. the claimant was assessed or otherwise realized the loss before the sale or at the time of the sale, or the claimant expressly agrees in the sale agreement to reimburse the buyer when the amount of loss becomes known.

7190.1180 TWO PROPERTIES MAY QUALIFY.

If a claimant owns both a current principal residence under part 7190.1120 and an intended principal residence under part 7190.1150, both properties are eligible as the claimant's principal residence.

If a claimant owns both a current principal residence under part 7190.1120 and a past principal residence under part 7190.1160, both properties are eligible as the claimant's principal residence.

7190.1190 ELIGIBLE LOSSES RELATED TO REPLACEMENT OR DECONTAMINATION OF PRIMARY SOURCE OF DRINKING WATER.

Subpart 1. **Limitation.** Property damage losses related to the replacement or decontamination of the primary source of drinking water are limited to the costs of replacement or decontamination of the system that:

A. services the individual claimant's property only; or

B. extends distribution of an existing municipal water supply to the property.

The cost of construction of a system that provides for the expansion of the community water system or that provides benefits to the community in general is not eligible.

Subp. 2. **Operational as of date of discovery.** Except as provided in subpart 3, to be eligible for replacement or decontamination expenses, the primary source of drinking water for a claimant's property as described in subpart 1 must be operational and in use by the property owner on the date of

Approved
by Revisor _____

discovery of contamination.

Subp. 3. **Private wells under construction.** A private drinking water well located on property that qualifies as the claimant's principal residence under part 7190.1110 is eligible for replacement or decontamination expenses that exceed the anticipated contract costs for construction of the well if at the time of discovery of contamination:

A. the well is under construction on the property; or

B. a binding contract for construction of the well has been entered into.

7190.2000 HARDSHIP.

For purposes of determining eligibility for compensation for losses incurred in the sale of a principal residence under Minnesota Statutes, section 115B.34, subdivision 2, paragraph (a), clause (2), or losses incurred as a result of the inability of an owner to sell a principal residence under Minnesota Statutes, section 115B.34, subdivision 2, paragraph (a), clause (3), the factors in item A or B constitute a hardship to the owner.

A. An urgent need to sell the residence based on a special circumstance, including the following:

(1) loss of household income;

(2) owner's job relocation;

(3) catastrophic medical expenses for which the owner is responsible; or

(4) owner's physical disability.

B. An urgent need to sell a property due to a commitment to purchase a new residence, if the claimant:

(1) committed in writing to the purchase of the new residence and publicly listed or advertised to sell the property before the date of discovery of contamination; and

(2) the discovery of contamination occurred during the time the property was on the market.

7190.2010 ELIGIBLE LOSSES ASSOCIATED WITH THE NEED TO MAINTAIN TWO RESIDENCES.

Approved
by Revisor _____

Subpart 1. **Eligible losses.** Losses eligible for reimbursement under Minnesota Statutes, section 115B.34, subdivision 2, paragraph (a), clause (3), include all essential utilities, property tax, necessary homeowner's insurance, mortgage interest expenses, and other property maintenance expenses. The claimant must have incurred the expenses on the principal residence after it had been on the market for a time equal to the average days on the market for comparable home sales outside the area of contamination. Average days on the market shall be determined from the multiple listing service data of the local real estate association for the listing year and locale.

Subp. 2. **Additional expenses.** Additional property maintenance expenses are compensable to the extent that they are determined by the board to be necessary to maintain the property value and marketability.

Approved
by Revisor _____

APPROVED AS TO FORM AND LEGALITY

Feb 28 1992

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY _____
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

FEB 28 1992

Joan Anderson Growe
Secretary of State

RC
3:15P

MJM
2/25/92

RULE REVIEW CHECKLIST

File No. 1898
DATE RECEIVED 2-19-92
REVIEW DATE 2-28-92
DUE DATE 3-4-92
~~(DIS)~~APPROVED 2-28-92
WITHDRAWN

Docket No. 05,0009,0488
ADOPTED W/O HEARING
EMERGENCY RULE
TO REVISOR ON 2-25-92
REVISOR (DIS)APPROVED 2-27-92
FILED W/SEC. OF STATE 2-28-92
RETURNED TO AGENCY

✓ 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
Oct 14, 1991 Date adopted

✓ Proposed Rule
✓ Revisor's Certificate

✓ Notice of Intent to Adopt Rule
115B.39 sub 2 Statutory Authority
No statement Small Business Statement
Statement Expenditure of public money statement
undated Signature

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

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
Nov 21, 1991 Dated (30)/25 days before adoption
✓ Notice attached (indicates it is attached)
___ Copy of rule or summary attached

✓ Publication in State Register
Dec 9, 1991 Date (30)/25 days before adoption

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

✓ Resolution Adopting
Feb 10, 1992 Date adopted

✓ Findings of Fact, Conclusions & Order Adopting
missing - needed and reasonable see notes
Dec Feb 11, 1992 Date

✓ Written Requests, Submissions or Comments
one call for it

___ 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)

CERTIFICATE OF THE
HARMFUL SUBSTANCE COMPENSATION BOARD
AUTHORIZING RESOLUTION

I do hereby certify that I am a member and the chairperson of the Harmful Substance Compensation Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Harmful Substance Compensation Board duly and properly called and held on the 14th day of October, 1991, that a quorum was present, and that a majority of those present voted for the resolution which has not been rescinded or modified.

"RESOLVED, that Jean Small-Johnson, the Executive Director of the Harmful Substance Compensation Board, is hereby granted the authority and directed to sign and to give the Notice of the Board's Intent to Adopt a rule without a public hearing governing property damage claims to all persons who have registered their names with the Board for that purpose and publish the Notice and rule in the State Register, and to perform any and all acts incidental thereto.

IN WITNESS WHEREOF, I have hereunto subscribed my name this 14th day of October, 1991.

Chairperson

Mara K. Thompson
Board Member

HARMFUL SUBSTANCE COMPENSATION BOARD

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

Proposed Permanent Rules Relating to Compensation for Property Damage Claims

Notice of Proposed Adoption of a Rule Without a Public Hearing

(1) Notice is hereby given that the Harmful Substance Compensation Board proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in Minnesota Statutes, sections 14.22 to 14.28. The statutory authority to adopt the rule is Minnesota Statutes Section 115B.34, subdivision 2.

(2) All persons have 30 days in which to submit comment in support of or in opposition to the proposed rule or any part of the subpart of the rule. Comment is encouraged. (3) Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rule within the 30-day comment period. (4) 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. (6) Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. (7) If a public hearing is required, the agency will proceed pursuant to Minnesota Statutes, Sections 14.131 to 14.20.

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

Jean Small-Johnson
Harmful Substance Compensation Board
2700 University Avenue West, #115
St. Paul, Minnesota 55114
612/642-0455

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

A copy of the proposed rule is attached to this notice. (11)

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

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

(9) If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General to review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. Persons who wish to be

advised of the submission of this material to the Attorney General, or who wish to receive a copy of the adopted rule, must submit the written request to the executive director at the address listed above.

Jean Small-Johnson
Executive Director
Harmful Substance Compensation Board


APPROVED AS TO FORM AND LEGALITY
Feb 28 19 92
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA

HARMFUL SUBSTANCE COMPENSATION BOARD

In the Matter of the Proposed Permanent Rules Relating to Compensation for Property Damage Losses

FINDINGS OF FACT CONCLUSIONS AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

The above-entitled matter came for decision before the Harmful Substance Compensation Board (Board) on the 10th day of February, 1992. After affording all interested persons the opportunity to present comments to the Board, in accordance with statutory requirements regarding the adoption of noncontroversial rules, after considering the Statement of Need and Reasonableness and the written comments submitted to the Board, after considering all of the evidence adduced upon the records, files and proceedings herein, the Board, being fully advised in the premises, hereby adopts the following Findings of Fact and Conclusions.

FINDINGS OF FACT

1. The Board published its notice of intent to adopt the above-entitled rules, together with the proposed rules in the State Register on December 9, 1991 (16 S.R. 1426).

2. On November 21, 1991, the Board gave the same notice by United States mail to all persons who registered their names with the Board pursuant to Minn Stat. Section 14.14 (1990) and to interested persons.

3. The notice of the Board's intent to adopt the rules afforded all interested persons 30 days to submit data and views on the proposed rules. The notice was in all respects in compliance with the requirements of Minn. Stat. Section 14.22 (1990).

4. The Board prepared a Statement of Need and Reasonableness and made it available to the public upon the date of mailing of the notice of intent to adopt the rules.

5. The 30 day comment period, as set out on in the notice expired on January 10, 1992. No request for a public hearing on the rule was received by the Board. Therefore, the Board did not receive requests for a public hearing from 25 or more persons which were not withdrawn. No requests for notice of submission to the

Attorney General were received by the Board.

6. During the comment period, the Board received one written comment from the Minnesota Department of Agriculture.

7. The Board finds that the comment received supports one change in the rules as proposed, relating to the definition of "contamination". The proposed language in Part 7190.1100, Subpart 2 (B) of the proposed rule defines "contamination" to include the threat of contamination due to the movement of the harmful substance as determined by the Pollution Control Agency or the Department of Health. The determination by the Pollution Control Agency or the Department of Health was proposed because these State agencies have the expertise and authority to make such a determination regarding most harmful substance releases.

The Department of Agriculture (DOA) has commented that the DOA has statutory authority and lead state agency responsibility for dealing with incidents or releases involving agricultural chemicals, and therefore would be the agency to make such a determination for any agricultural chemical release.

8. Modification of the proposed rule is needed given the fact that the Department of Agriculture, and not the Pollution Control Agency, is the lead agency for responding to agricultural chemical releases and would be the most appropriate authority to determine if an agricultural chemical release presents a threat of property contamination. The proposed modification is reasonable because it identifies the appropriate State agency to make a determination of contamination for agricultural chemical releases. The new language still specifies that the Department of Health may also make such a determination and is appropriate given the Department of Health's statutory authority to issue health risk and well advisories where the contamination presents a health threat.

9. The proposed modification is as follows:

Subp. 2. **Contamination.** "Contamination" means:

A. the presence of a harmful substance in or on property that resulted from an intentional or accidental release of the harmful substance from a facility; or

B. the imminent and substantial threat of contamination due to the movement of the harmful substance in the direction of the property, as determined by the Pollution Control Agency or the Department of Health, or for agricultural chemical contamination as determined by the Department of Agriculture or the Department of Health."

10. This modification is not substantially different from the rules as proposed.

11. Except as modified herein, the Board adopts the Statement of

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

CONCLUSIONS

1. The Board published and served due, timely and adequate notice of the intent to adopt the proposed rules without a public hearing.

2. The Harmful Substance Compensation Board has demonstrated its statutory authority to adopt the proposed rules and has fulfilled all other substantive and procedural requirements of statute and rule.

3. The change that is being made in the rules does not result in rules that are substantially different from what was proposed in the State Register.

4. Any Findings which might properly be termed Conclusions and any Conclusions which might properly be determined as Findings are hereby adopted as such.

ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

NOW THEREFORE IT IS ORDERED that the rule identified as Relating to Compensation for Property Damage Losses is adopted pursuant to the authority vested in the Board by Minnesota Statutes, section 115B.28.

Dated this 11th Day of February, 1992 (9)

HARMFUL SUBSTANCE COMPENSATION BOARD

Jean Small-Johnson

Jean Small-Johnson, Executive Director

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules; and
4. that the rule may be modified if the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

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

Harmful Substance Compensation Board

Proposed Permanent Rules Relating to Compensation for Property Damage Losses

Notice of Proposed Adoption of a Rule Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Harmful Substance Compensation Board proposes to adopt the above-entitled rule without a public hearing following the procedures set forth in *Minnesota Statutes*, sections 14.22 to 14.28. The statutory authority to adopt the rule is *Minnesota Statutes* Section 115B.34, subdivision 2.

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

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

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

Jean Small-Johnson
Harmful Substance Compensation Board
2700 University Avenue West, #115
St. Paul, Minnesota 55114
612/642-0455

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

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

A **STATEMENT OF NEED AND REASONABLENESS** that describes the rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request by writing or telephoning the Board's office at the address or telephone number listed above.

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

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

Jean Small-Johnson
Executive Director
Harmful Substance Compensation Board

Rules as Proposed (all new material)

7190.1100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 7190.1110 to 7190.2010 have the meanings given them in this part.

Subp. 2. **Contamination.** "Contamination" means:

A. the presence of a harmful substance in or on property that resulted from an intentional or accidental release of the harmful substance from a facility; or

B. the imminent and substantial threat of contamination due to the movement of the harmful substance in the direction of the property, as determined by the Pollution Control Agency or the Department of Health.

Subp. 3. **Date of discovery of contamination.** "Date of discovery of contamination" means the date a claimant discovered or should have discovered the contamination of the property.

Subp. 4. **Harmful substance.** "Harmful substance" has the meaning given in *Minnesota Statutes*, section 115B.25.

Subp. 5. **Residential homestead.** "Residential homestead" means property that qualifies as the owner's homestead under *Minnesota Statutes*, section 273.124. If the homestead is also a family farm as defined in *Minnesota Statutes*, section 500.24, subdivision 2, paragraph (b), the property includes one acre of the land surrounding the residence, but does not include any other structures that may be located on it.

7190.1110 PRINCIPAL RESIDENCE.

For purposes of identifying property losses eligible for compensation under *Minnesota Statutes*, section 115B.34, the principal residence of the claimant is the property that is:

A. the claimant's current principal residence under part 7190.1120;

B. a residence owned but not occupied by the claimant under part 7190.1130;

C. a residence that was purchased by the claimant after the date of discovery under part 7190.1140;

D. the claimant's intended principal residence under part 7190.1150;

E. the claimant's past principal residence under part 7190.1160; or

F. sold by the claimant under part 7190.1170.

7190.1120 CURRENT PRINCIPAL RESIDENCE.

The current principal residence of the claimant is the property that is the claimant's residential homestead, except that the residence must be owned and occupied by the claimant, and used for the purposes of a homestead as of the date of discovery of contamination, not the date of assessment.

7190.1130 RESIDENCE OWNED BUT NOT OCCUPIED.

A residence owned but not occupied by the claimant is eligible as the claimant's principal residence if it otherwise qualifies under part 7190.1120 and:

A. the claimant no longer resides at the residence because of marital separation or divorce; or

B. the claimant is a resident of a nursing home or boarding care facility.

7190.1140 PROPERTY PURCHASED AFTER DATE OF DISCOVERY.

A residence purchased by the claimant for use as a residential homestead after the date of discovery of contamination is eligible as the claimant's principal residence if it is used as the claimant's residential homestead and the claimant can show that:

A. a written purchase agreement or contract which committed the claimant to purchase the property was made prior to the date of discovery of contamination; or

B. the property was purchased with the reasonable expectation that the property damage would be fully remedied by public or other funding sources without cost to the claimant.

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.

7190.1150 INTENDED PRINCIPAL RESIDENCE.

Subpart 1. **Description.** Property purchased by the claimant for the purpose of owning and occupying a residence including construction of a new residence on that property is eligible as the claimant's principal residence if the claimant:

A. had purchased the property, or contracted for the purchase of the property, as shown by a written purchase agreement, before the date of discovery of contamination; and

B. can demonstrate to the board that before the date of discovery of contamination the claimant intended to occupy a home as a residential homestead on the property.

Subp. 2. **Claimant's intent.** The intent to occupy a principal residence on the property before the date of discovery of contamination, as required in subpart 1, item B, may be demonstrated by construction contracts or plans, a public listing or advertisement to sell the current residence, or other documents or actions that make a similar showing.

7190.1160 PAST PRINCIPAL RESIDENCE.

Residential property owned by the claimant that is unoccupied and actively on the market for sale at the time of the discovery of contamination is eligible as the claimant's principal residence if:

A. the property was the residential homestead of the claimant immediately before or at the time of placing the property on the market; and

B. the commitment to change residence and sell the property, evidenced by a purchase agreement, contract for sale, contract with a realtor, or other documentation of active sale listing by the claimant, was made before the date of discovery of contamination.

7190.1170 RESIDENTIAL PROPERTY THAT HAS BEEN SOLD.

Residential property that has been sold by the claimant is eligible as the claimant's principal residence if:

A. the property was the residential homestead of the claimant on the date of discovery of contamination; and

B. the claimant was assessed or otherwise realized the loss before the sale or at the time of the sale, or the claimant expressly agrees in the sale agreement to reimburse the buyer when the amount of loss becomes known.

7190.1180 TWO PROPERTIES MAY QUALIFY.

If a claimant owns both a current principal residence under part 7190.1120 and an intended principal residence under part 7190.1150, both properties are eligible as the claimant's principal residence.

If a claimant owns both a current principal residence under part 7190.1120 and a past principal residence under part 7190.1160, both properties are eligible as the claimant's principal residence.

7190.1190 ELIGIBLE LOSSES RELATED TO REPLACEMENT OR DECONTAMINATION OF PRIMARY SOURCE OF DRINKING WATER.

Subpart 1. **Limitation.** Property damage losses related to the replacement or decontamination of the primary source of drinking water are limited to the costs of replacement or decontamination of the system that:

A. services the individual claimant's property only; or

B. extends distribution of an existing municipal water supply to the property.

The cost of construction of a system that provides for the expansion of the community water system or that provides benefits to the community in general is not eligible.

Subp. 2. **Operational as of date of discovery.** Except as provided in subpart 3, to be eligible for replacement or decontamination expenses, the primary source of drinking water for a claimant's property as described in subpart 1 must be operational and in use by the property owner on the date of discovery of contamination.

Subp. 3. **Private wells under construction.** A private drinking water well located on property that qualifies as the claimant's principal residence under part 7190.1110 is eligible for replacement or decontamination expenses that exceed the anticipated contract costs for construction of the well if at the time of discovery of contamination:

A. the well is under construction on the property; or

B. a binding contract for construction of the well has been entered into.

7190.2000 HARDSHIP.

For purposes of determining eligibility for compensation for losses incurred in the sale of a principal residence under *Minnesota Statutes*, section 115B.34, subdivision 2, paragraph (a), clause (2), or losses incurred as a result of the inability of an owner to sell a principal residence under *Minnesota Statutes*, section 115B.34, subdivision 2, paragraph (a), clause (3), the factors in item A or B constitute a hardship to the owner.

A. An urgent need to sell the residence based on a special circumstance, including the following:

(1) loss of household income;

(2) owner's job relocation;

(3) catastrophic medical expenses for which the owner is responsible; or

(4) owner's physical disability.

B. An urgent need to sell a property due to a commitment to purchase a new residence, if the claimant:

(1) committed in writing to the purchase of the new residence and publicly listed or advertised to sell the property before the date of discovery of contamination; and

(2) the discovery of contamination occurred during the time the property was on the market.

7190.2010 ELIGIBLE LOSSES ASSOCIATED WITH THE NEED TO MAINTAIN TWO RESIDENCES.

Subpart 1. **Eligible losses.** Losses eligible for reimbursement under *Minnesota Statutes*, section 115B.34, subdivision 2, paragraph (a), clause (3), include all essential utilities, property tax, necessary homeowner's insurance, mortgage interest expenses, and other property maintenance expenses. The claimant must have incurred the expenses on the principal residence after it had been on the market for a time equal to the average days on the market for comparable home sales outside the area of contamination. Average days on the market shall be determined from the multiple listing service data of the local real estate association for the listing year and locale.

Subp. 2. **Additional expenses.** Additional property maintenance expenses are compensable to the extent that they are determined by the board to be necessary to maintain the property value and marketability.

Department of Jobs and Training

Proposed Permanent Rules Governing Designation and Recognition of Community Action Agencies and Granting of Funds for Community Action Programs

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the State Department of Jobs and Training (DJT) proposes to adopt the above-entitled rules without a public hearing following the procedures set forth in *Minnesota Statutes*, section 14.22 to 14.28.

This notice applies to the proposed rules for which the DJT previously published a **Notice of Intent to Adopt Rules Without a Public Hearing** in the *State Register* on March 4, 1991 (15 SR 1902). All comments received during the comment period after the March 4, 1991 notice will be made a part of this rulemaking proceeding.

The proposed rules interpret those parts of *Minnesota Statutes*, sections 268.52 through 268.54 which designate and recognize community action agencies and define the activities and projects funded as community action programs. These rules have been developed as authorized by *Minnesota Statutes*, sections 268.021 and 268.0122, subdivision 5, which permit the Commissioner of the Department of Jobs and Training to adopt rules governing programs the Commissioner administers under *Minnesota Statutes*, chapter 268.

Persons interested in these rules will have 30 days in which to submit comment in support of or in opposition to the proposed rules or any part or subpart of the rules and 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 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 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*, sections 14.131 to 14.20. To verify whether a hearing will be held, please call the Department of Jobs and Training on or after January 10, 1992 at (612) 297-1094.

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.

Stat Authority 115B.34 subd 2

"... Appraisals are subject to board approval. The board may adopt rules governing approval of appraisals, criteria for establishing a hardship, and other matters necessary to administer this subdivision."

Findings of Fact

missing K (8) rule as adopted is needed and reasonable

made change

HARMFUL SUBSTANCE COMPENSATION BOARD

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

2-19-92

February 18, 1992

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 Compensation for Property Damage Losses, Minn. Rules Parts 7190.1100 through 7190.2010.

On February 10, 1992, the Harmful Substance Compensation Board adopted the above-captioned rules governing Board decisions regarding compensation for claims of property damage losses. Enclosed for your review are the following:

1. Rule as adopted (original and three copies)

2. Certificate of Board's Authorizing Resolution (October 14, 1991).

3. Rule as proposed with Revisor's Certificate.

4. Notice of Intent to Adopt Rules Without a Public Hearing, as mailed (November 21, 1991).

5. Statement of Need and Reasonableness.

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

7. Notice of Intent to Adopt Rules Without a Public Hearing and rules as proposed (16 State Register, pages 1426-1429, December 9, 1991).

8. Certificate of Resolution Adopting Rules (February 10, 1992).

9. Findings of Fact, Conclusions, and Order Adopting Rules (February 11, 1992).

10. Declaration of Counsel.

For purposes of billing, our attorney general client code is 0488. Please call me at 612/642-0455 if you have any questions.

Sincerely,

Jean Small-Johnson

Jean Small-Johnson
Executive Director

enclosures

cc: Mr. Stephen Shakman, Special Assistant Attorney General

Harmful Substance Compensation Board

Proposed Permanent Rules Relating to Compensation for Property Damage Losses

Rules as Proposed (all new material)

7190.1100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in parts 7190.1110 to 7190.2010 have the meanings given them in this part.

Subp. 2. **Contamination.** "Contamination" means:

A. the presence of a harmful substance in or on property that resulted from an intentional or accidental release of the harmful substance from a facility; or

B. the imminent and substantial threat of contamination due to the movement of the harmful substance in the direction of the property, as determined by the Pollution Control Agency or the Department of Health.

Subp. 3. **Date of discovery of contamination.** "Date of discovery of contamination" means the date a claimant discovered or should have discovered the contamination of the property.

Subp. 4. **Harmful substance.** "Harmful substance" has the meaning given in Minnesota Statutes, section 115B.25.

Subp. 5. **Residential homestead.** "Residential homestead" means property that qualifies as the owner's homestead under Minnesota Statutes, section 273.124. If the homestead is also a family farm as defined in Minnesota Statutes, section 500.24, subdivision 2, paragraph (b), the property includes one acre of the land surrounding the residence, but does not include any other structures that may be located on it.

7190.1110 PRINCIPAL RESIDENCE.

For purposes of identifying property losses eligible for compensation under Minnesota Statutes, section 115B.34, the principal residence of the claimant is the property that is:

A. the claimant's current principal residence under part 7190.1120;

Approved by Revisor

B. a residence owned but not occupied by the claimant under part 7190.1130;

C. a residence that was purchased by the claimant after the date of discovery under part 7190.1140;

D. the claimant's intended principal residence under part 7190.1150;

E. the claimant's past principal residence under part 7190.1160; or

F. sold by the claimant under part 7190.1170.

7190.1120 CURRENT PRINCIPAL RESIDENCE.

The current principal residence of the claimant is the property that is the claimant's residential homestead, except that the residence must be owned and occupied by the claimant, and used for the purposes of a homestead as of the date of discovery of contamination, not the date of assessment.

7190.1130 RESIDENCE OWNED BUT NOT OCCUPIED.

A residence owned but not occupied by the claimant is eligible as the claimant's principal residence if it otherwise qualifies under part 7190.1120 and:

A. the claimant no longer resides at the residence because of marital separation or divorce; or

B. the claimant is a resident of a nursing home or boarding care facility.

7190.1140 PROPERTY PURCHASED AFTER DATE OF DISCOVERY.

A residence purchased by the claimant for use as a residential homestead after the date of discovery of contamination is eligible as the claimant's principal residence if it is used as the claimant's residential homestead and the claimant can show that:

A. a written purchase agreement or contract which committed the claimant to purchase the property was made prior to the date of discovery of contamination; or

B. the property was purchased with the reasonable expectation that the property damage would be fully remedied by

Approved
by Revisor _____

public or other funding sources without cost to the claimant.

7190.1150 INTENDED PRINCIPAL RESIDENCE.

Subpart 1. **Description.** Property purchased by the claimant for the purpose of owning and occupying a residence including construction of a new residence on that property is eligible as the claimant's principal residence if the claimant:

A. had purchased the property, or contracted for the purchase of the property, as shown by a written purchase agreement, before the date of discovery of contamination; and

B. can demonstrate to the board that before the date of discovery of contamination the claimant intended to occupy a home as a residential homestead on the property.

Subp. 2. **Claimant's intent.** The intent to occupy a principal residence on the property before the date of discovery of contamination, as required in subpart 1, item B, may be demonstrated by construction contracts or plans, a public listing or advertisement to sell the current residence, or other documents or actions that make a similar showing.

7190.1160 PAST PRINCIPAL RESIDENCE.

Residential property owned by the claimant that is unoccupied and actively on the market for sale at the time of the discovery of contamination is eligible as the claimant's principal residence if:

A. the property was the residential homestead of the claimant immediately before or at the time of placing the property on the market; and

B. the commitment to change residence and sell the property, evidenced by a purchase agreement, contract for sale, contract with a realtor, or other documentation of active sale listing by the claimant, was made before the date of discovery of contamination.

7190.1170 RESIDENTIAL PROPERTY THAT HAS BEEN SOLD.

Residential property that has been sold by the claimant is eligible as the claimant's principal residence if:

Approved
by Revisor _____

A. the property was the residential homestead of the claimant on the date of discovery of contamination; and

B. the claimant was assessed or otherwise realized the loss before the sale or at the time of the sale, or the claimant expressly agrees in the sale agreement to reimburse the buyer when the amount of loss becomes known.

7190.1180 TWO PROPERTIES MAY QUALIFY.

If a claimant owns both a current principal residence under part 7190.1120 and an intended principal residence under part 7190.1150, both properties are eligible as the claimant's principal residence.

If a claimant owns both a current principal residence under part 7190.1120 and a past principal residence under part 7190.1160, both properties are eligible as the claimant's principal residence.

7190.1190 ELIGIBLE LOSSES RELATED TO REPLACEMENT OR DECONTAMINATION OF PRIMARY SOURCE OF DRINKING WATER.

Subpart 1. **Limitation.** Property damage losses related to the replacement or decontamination of the primary source of drinking water are limited to the costs of replacement or decontamination of the system that:

A. services the individual claimant's property only; or

B. extends distribution of an existing municipal water supply to the property.

The cost of construction of a system that provides for the expansion of the community water system or that provides benefits to the community in general is not eligible.

Subp. 2. **Operational as of date of discovery.** Except as provided in subpart 3, to be eligible for replacement or decontamination expenses, the primary source of drinking water for a claimant's property as described in subpart 1 must be operational and in use by the property owner on the date of discovery of contamination.

Subp. 3. **Private wells under construction.** A private

Approved
by Revisor _____

drinking water well located on property that qualifies as the claimant's principal residence under part 7190.1110 is eligible for replacement or decontamination expenses that exceed the anticipated contract costs for construction of the well if at the time of discovery of contamination:

A. the well is under construction on the property; or

B. a binding contract for construction of the well has been entered into.

7190.2000 HARDSHIP.

For purposes of determining eligibility for compensation for losses incurred in the sale of a principal residence under Minnesota Statutes, section 115B.34, subdivision 2, paragraph (a), clause (2), or losses incurred as a result of the inability of an owner to sell a principal residence under Minnesota Statutes, section 115B.34, subdivision 2, paragraph (a), clause (3), the factors in item A or B constitute a hardship to the owner.

A. An urgent need to sell the residence based on a special circumstance, including the following:

(1) loss of household income;

(2) owner's job relocation;

(3) catastrophic medical expenses for which the owner is responsible; or

(4) owner's physical disability.

B. An urgent need to sell a property due to a commitment to purchase a new residence, if the claimant:

(1) committed in writing to the purchase of the new residence and publicly listed or advertised to sell the property before the date of discovery of contamination; and

(2) the discovery of contamination occurred during the time the property was on the market.

7190.2010 ELIGIBLE LOSSES ASSOCIATED WITH THE NEED TO MAINTAIN TWO RESIDENCES.

Subpart 1. **Eligible losses.** Losses eligible for reimbursement under Minnesota Statutes, section 115B.34,

Approved
by Revisor _____

subdivision 2, paragraph (a), clause (3), include all essential utilities, property tax, necessary homeowner's insurance, mortgage interest expenses, and other property maintenance expenses. The claimant must have incurred the expenses on the principal residence after it had been on the market for a time equal to the average days on the market for comparable home sales outside the area of contamination. Average days on the market shall be determined from the multiple listing service data of the local real estate association for the listing year and locale.

Subp. 2. **Additional expenses.** Additional property maintenance expenses are compensable to the extent that they are determined by the board to be necessary to maintain the property value and marketability.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Compensation for Property Damage Losses

AGENCY: Harmful Substance Compensation Board

MINNESOTA RULES: Chapter 7190

The attached rules are approved for publication in the State Register

Carla M. Riehle

Carla M. Riehle
Assistant Revisor

STATE OF MINNESOTA

HARMFUL SUBSTANCE COMPENSATION BOARD

In the matter of the proposed new permanent rules relating to compensation for property damage losses

STATEMENT OF NEED AND REASONABLENESS

I. INTRODUCTION

The Hazardous Substance Injury Compensation Board (Board) was created by the 1985 Legislature (Laws 1985, 1st special session, chapter 8) as part of revisions to the Minnesota Environmental Response and Liability Act (MERLA), Minnesota Statutes, Chapter 115B. These revisions were codified as Minn. Stat. Sections 115B.25 - 115B.37. The Board was established as a new state agency to administer a $2 million Hazardous Substance Compensation Account (Account), now located within the State Environmental Fund. The Board's primary responsibility wass to investigate claims of certain types of property damage or personal injury caused by the release of hazardous substances into the environment, and to compensate eligible persons from the account for certain types of losses. Amendments to the Board's statute in the 1989 legislative session expanded the scope of substance releases eligible for compensation to include releases of agricultural chemicals and

petroleum compounds and the Board's name was changed to the Harmful Substance Compensation Board.

The Legislature directed the Board to adopt rules describing various aspects of this compensation system and also authorized the Board to adopt additional rules including those which are the subject of the rulemaking. The Board has, to date, adopted rules governing board procedures, the value of household labor lost due to eligible injury or disease, death benefits, and attorney's fees. The currently proposed rules governing compensation for property damage losses provide specific criteria for evaluating eligibility of claimants under the terms of the statute, including the special circumstances of persons buying or selling property with damage losses, and set forth criteria for fairly evaluating the extent of such losses due to harmful substance releases in Minnesota.

II. STATEMENT OF THE BOARD'S STATUTORY AUTHORITY

The Board's statutory authority to adopt rules relating to compensation for property damage losses is set forth in Minn. Stat Section 115B.34, Subd.2, (1989) which states: " The Board may adopt rules governing approval of appraisals, criteria for establishing a hardship, and other matters necessary to administer this subdivision."

III. STATEMENT OF NEED

The need to adopt the proposed Minn. Rules Parts 7190.1100 through 7190.2010 arises from the need of property owners, in varying circumstances, to receive fair and equitable compensation for losses which can be attributed to harmful substance releases. Property damage claims make up greater than 90% of all applications received and 100% of all claims compensated by the Board to date, yet the statute is brief in setting forth the eligibility criteria and considerations for awarding such claims.

Eligibility requirements set forth in the statute limit compensation to losses at the claimant's principal residence yet the statute does not provide criteria for clearly and fairly distinguishing a claimant's principal residence, particularly for property owners who are in transition between two residences. The Board's struggle to fairly decide these claims in the past is indicative of the need for rules to govern such decisions and the need to make future decisions consistent. As explained in the text to follow, it is also necessary for the Board to consider the timing of the claimant's decision to purchase or sell a given property relative to the discovery of the property damage and associated losses.

Based on the Board's investigations of property damage claims for replacement or decontamination of drinking water supplies, the

Board recognizes a distinction between replacement costs for properties served by private wells and community assessments for municipal drinking water supplies which generally provide additional community benefits. The proposed rules address the need for identifying and limiting compensation to the claimant's true replacement expenses and to exclude payment for other community benefits from municipal water supplies, i.e. fire protection and improved property values.

IV. STATEMENT OF REASONABLENESS

The proposed new rules are reasonable because they provide a fair and consistent basis for the Board's consideration of all property damage claims.

Part 7190.1100 Definitions

This proposed rule sets forth definitions of words or phrases used in the rule. It is reasonable to define these terms to shorten the language in the rule and clarify possible ambiguity.

In particular, **residential homestead** is defined because it is a key determinant in establishing the claimant's principal residence under Part 7190.1120. More explanation of this definition is found under Part 7190.1120.

Part 7190.1110 Principal Residence

Minn. Stat. Section 115B.34, Subd. 2 provides that losses compensable by the account for property damage are limited to specific losses caused by damage to the principal residence. It is reasonable to establish criteria for qualifying a claimant's property as a principal residence given the wide range of circumstances under which a claimant may own residential property.

Part 7190.1120 Current Principal Residence

Part 7190.1120 defines current principal residence as the property that is the claimant's residential homestead. Part 7190.1100 defines residential homestead as the property that qualifies as the claimant's homestead under Minnesota Statutes Chapter 273.124, i.e. for tax credit purposes. By establishing this definition of residential homestead as a necessary determinant for principal residence, a consistent and easily verifiable means of identifying residential property is established. This definition requires that the claimant must both own and reside at the property. Ownership of the property is required under Minn. Stat. 115B.30, subd. 2, which provides that damage to real property in Minnesota owned by the claimant is eligible for compensation from the account if the damage results from the presence in or on the property of a harmful substance released from a facility.

The residential homestead requirement appropriately excludes all other residences, such as vacation homes or rental property, and business property, as is the intent of the statute in limiting compensation to a principal residence. Furthermore, Chapter 273 addresses the circumstances of property owners where a property is both a residence and also has business, agricultural, or other uses. Under the definitions in Part 7190.1100, a deviation from Chapter 273 is made to limit the amount of property on a family farm which can qualify as a residential homestead and principal residence. It is reasonable to limit family farm property to the residence itself and as much of the land surrounding the homestead not exceeding one acre, to exclude losses for agricultural land and other farm buildings from eligibility for reimbursement. Such reimbursement would exceed the Board's statutory authority to reimburse for losses caused by damage to the principal residence.

Part 7190.1120 further specifies that the claimant's residential homestead must be owned and occupied by the claimant, and used for purposes of a homestead as of the date of discovery of contamination, not the date of assessment. It is reasonable that the determination of principal residence be made without regard to whether residency on that date would qualify the claimant for homestead tax credit in the year of the date of discovery of contamination because the tax laws set forth separate qualifying dates relative to the preparation of assessments, which are not relevant to the Board's decision.

It is reasonable that the principal residence must be owned and occupied by the claimant and used for purposes of a homestead as of the date of discovery of contamination because it is consistent with the intent of the Board's statute that victims of harmful substance releases be compensated for their losses. A claimant who owns and occupies a property at the time of the discovery of contamination is forced to suffer the losses associated with the property damage and is, therefore, a victim of the contamination. A claimant who chooses to own and reside at a property after the contamination of the property is known, is not a victim of the contamination because the claimant knowingly came to the problem and may in fact have benefitted by purchasing the property at a reduced cost.

Without this rule, a person purchasing property in Minnesota after the discovery of the property damage and with full knowledge of the amount of compensable loss could potentially buy the property at a discount and take advantage of the Board's compensation, thus receiving a financial benefit. In addition, the seller of the property could be eligible for a hardship loss in the sale. Thus, without the rule limitation as proposed, the Board could potentially reimburse both the buyer and the seller for the same property damage.

Under Minn. Stat. Section 115B.03 of MERLA, a property owner will be liable for damage caused by a release if the person had the

required knowledge and "engaged in conduct associating that person with the release". Purchasing contaminated property at less than market value is one factor which may be considered as conduct associating a person with the release.

To avoid duplicate reimbursements for the same property loss following the sale of contaminated property and consistent with MERLA language, it is reasonable that the Board establish by rule that a person purchasing after the contamination is known has chosen to assume responsibility for any subsequent loss and is not eligible for reimbursement. The seller of the property remains eligible for losses incurred during or prior to the sale (under Part 7190.1170).

Exceptions to this rule are described under Parts 7190.1130 through 7190.1170.

Part 7190.1130 Residence Owned But Not Occupied

In circumstances where a property owner does not reside at the property for reasons of marital separation or divorce, or is a resident of a nursing home or boarding care facility, it is reasonable that the property not be excluded as the principal residence because these situations represent personal hardship circumstances which make the owner unable to occupy the property. The language is consistent with similar language found in Minn.

Stat. Section 273 for determining residential homestead.

Part 7190.1140 Property Purchased After The Date Of Discovery.

The proposed rule makes an exception for property purchased after the date of discovery of contamination where a claimant can show that a written contract was made to purchase the residence prior to the date of discovery of contamination. It is reasonable that a person with a purchase contract made prior to the discovery of contamination be eligible because this person did not knowingly assume responsibility for the losses at the time of the contract and is not free to abandon the purchase after the discovery of contamination has been made.

The proposed rule also makes an exception where the claimant purchased the property after the contamination was known but can show that there existed a reasonable expectation that the property damage would be fully remedied by public or other funding sources without cost to the claimant. For example, such expectation might be caused by government assurances regarding available funding which is later found to be unavailable or limited in its application, as has occured in past claims submitted to the Board. It is reasonable to provide this exception to the rule, because the claimant in this situation did not knowingly assume responsibility for the loss.

Part 7190.1150 Intended Principal Residence

This part provides that a property purchased by the claimant prior to the date of discovery of contamination with intent to own and occupy a new residence, including construction of a new residence, be eligible as the claimant's intended principal residence even though the claimant did not reside at the property on the date of discovery of contamination. It is reasonable that a property which the claimant either owns or is clearly committed to purchase be eligible because the property owner is forced to suffer any loss due to the contamination and does not, at the time the damage is discovered have any reasonable means of avoiding the loss. It is reasonable that the claimant demonstrate to the Board their intent to own and occupy a principal residence through documents or other actions to assure that the criteria established in the rule are being met. Property purchased for uses other than a principal residence is not eligible under this proposed rule.

Part 7190.1160 Past Principal Residence

Part 7190.1160 provides for a homeowner who has made a commitment to move to a new home, placed the former home on the market for sale, and subsequently moved to the new home prior to the date of discovery of contamination. On the date of discovery of contamination, the property is owned by the claimant, vacant, and actively on the market for sale. The claimant is forced to

continue with attempts to sell the property in the face of a sudden and unexpected decline in the marketability of the property. As the owner and seller of the property, the claimant is responsible for costs to provide a safe drinking water supply and may be forced to suffer a loss in the sale. If the property cannot be sold, the claimant is forced to pay expenses to maintain the property. It is reasonable that losses for this property, called the past principal residence, be eligible for compensation, because the claimant is a victim of the contamination and did not knowingly assume responsibilty for the loss. The property is not rental, business, or vacation property, and meets the Legislature's intent to compensate for a principal residence.

Part 7190.1170 Residential Property That Has Been Sold

This section provides that persons selling property be eligible for reimbursement for their expenses to replace or decontaminate the water supply if the claimant realized the loss prior to or during the sale and the property was the residential homestead of the claimant on the date of the discovery of contamination, even though the claimant is not the current resident of the property. It is reasonable that a claimant selling property under these circumstances be compensated for these expenses, because, as the seller, the claimant is forced to suffer the loss. Persons selling residential property with damage to the drinking water supply usually must provide for the replacement or decontamination of that

drinking water supply in order to sell the property. Lenders generally will not approve loans for a property without a potable drinking water supply. Any municipal assessment against the property is usually paid by the seller in the sales agreement. It is reasonable that this rule give compensation to the seller in making the property marketable and may, moreover, in the case of the hardship sale of a residence, reduce the amount of compensation which the Board might otherwise award to the seller for loss in the sale.

As described in Part 7190.1120, the buyer of the property in this situation is not eligible for compensation because the buyer made the purchase with knowledge of the contamination and, therefore, assumes responsibility for any loss not otherwise paid by the seller.

Part 7190.1180 Two Properties May Qualify

The Board recognizes that a person in transition from one principal residence to another can potentially have ownership (or committment to ownership) of two residences on the date of discovery of contamination, meeting the criteria described in these proposed rules for current principal residence, intended principal residence, or past principal residence. This situation can occur as

part of the normal practice of changing residences. It is reasonable that more than one property may be eligible because the claimant may potentially be a victim of property damage at either location and did not knowingly assume responsiblity for the loss. The properties are not business, rental, or vacation property.

Part 7190.1190 Eligible Losses Related to the Replacement or Decontamination of the Primary Source of Drinking Water

Part 7190.1190, Subpart 1, limits compensation for replacement or decontamination of the drinking water supply to cover only those expenses which provide equivalent safe drinking water to the claimant's property. This would include construction costs for a replacement private well on the claimant's property, as well as individual service connection costs from the claimant's property to an existing municipal system. It would not include additional municipal expenses assessed to the claimant for new construction of a municipal water supply and distribution system.

In deciding these types of claims to date, the Board has determined that municipal drinking water systems provide community benefits which go beyond the basic replacement of a drinking water supply. Municipal water systems are often designed to provide adequate supply and pressure for community fire protection and expansion capability for future community growth. A municipal water supply is considered a municipal improvement and generally enhances

individual property values.

A municipal water supply can generally be described in three parts: 1) the supply (one or more wells, pumps, treatment systems, storage tank), 2) the distribution system (piping from the supply to residential streets), and 3) the individual service connection (service piping from the street to the house plumbing). Each municipality is different in terms of community needs, and the related design and enhancement features of the water supply and distribution system.

Funding mechanisms and residential property assessments also differ greatly from one community to the next. Multiple government funding sources are available to communities to assist in paying for system construction where contamination of the previous source of drinking water is discovered. Community residents are frequently assessed the remaining portion of the construction expense after all other sources of funding have been applied.

The Board has found no single, clear and consistent formula for identifying those water supply and distribution system expenses assessed to the property owners, which relate solely to the replacement of drinking water supply to affected claimants and separating those expenses from the additional costs (more pipe, larger pipe sizes, larger well capacity, larger storage capacity, etc.) required for fire protection, expandability, and service to

non-affected residents. Such a calculation would require that the Board also factor out any portion of other funding sources which may have been applied by the municipality to fairly determine the portion of the claimant's individual assessment which relates to the replacement of the claimant's drinking water.

For this reason, it is reasonable that the Board limit payment of municipal system expenses to only those portions of the system which are shown to directly service the claimant's property and provide a safe drinking water supply. This would include hook-up expenses from the main pipe in the street to the house, whether billed directly to the claimant or assessed as a portion of the municipal expense if that portion can be determined. To reimburse for any portion of the construction of a new municipal supply or distribution system would place the Board in a position of providing for a community and property improvement in excess of the true replacement cost. The Board recognizes that a minor extension of an existing distribution system to a claimant's residence for the purpose of providing a replacement water supply to that residence may be compensable.

In subpart 2, it is reasonable to limit reimbursement for replacement or decontamination of a drinking water supply to only those drinkng water supplies which were operational and in use by the property owner on the date of discovery of contamination

because to do otherwise would place the Board in the position of providing a property improvement, that is to provide a functional water supply where one did not exist previously. An exception, found in subpart 3, is made for a drinking water supply which is under construction or which is under a contract for construction at the time of discovery of contamination. It is reasonable that such a supply be eligible for replacement expenses which exceed the anticipated expenses of the contract because the claimant was under obligation to pay for the supply prior to any discovery of the property damage and is, therefore, a victim of any increased expenses caused by the contamination.

Part 7190.2000 Hardship

Part 7190.2000 further clarifies the definition of hardship provided in the statute. The scope of hardship circumstances is properly determined by the Board's evaluation of individual circumstances because it is difficult to anticipate the many types of hardship which force an owner to sell a property. Loss of household income is one such circumstance which the Board has encountered in past claims which is not specifically listed in the statute. The list provided in the proposed rule also does not preclude the Board from identifying additional hardship circumstances.

The Board has also recognized the difficult circumstances of property owners who, in the normal course of changing residences, have committed to the purchase of a new residence and are attempting to sell a former residence at the time that the contamination is discovered (also described as past principal residence under Part 7190.1160). Such a claimant is not free to abandon the effort because of suddenly unfavorable market conditions. As of the date of discovery of contamination, the claimant is forced to continue to market and/or maintain the property. Because these market conditions are a direct result of the contamination and could not be anticipated as a normal risk of real estate transactions, it is reasonable that these circumstances be included within the definition of hardship circumstances which force the claimant to sell the property and that such claimants be eligible for compensation.

Part 7190.2010 Eligible Losses Associated with the Need to Maintain Two Residences

Minn. Stat. 115B.34, Subd. 2 (3) as amended in 1989 provides that compensable losses include "losses incurred as a result of the inability of a property owner in hardship circumstances to sell the property due to the presence of harmful substances, limited to the increase in costs associated with the need to maintain two residences". The statute does not specify the types of costs

associated with maintaining a residence which would be eligible nor does it consider the typical costs associated with property maintenance during the period a home is on the market which may be unrelated to the chemical contamination.

It is reasonable to specify costs associated with the need to maintain two residences to include essential utilities, property tax, mortgage interest, and necessary homeowner's insurance to make it clear to potential claimant's the types of costs which are compensable. Mortgage interest expense, and not total mortgage expense, is specified because the Board recognizes that mortgage prinicipal is generally recovered in the sale.

It is reasonable that compensation for losses to maintain a residence under the statute be limited to only those losses which were incurred after the home had been on the market for a period of time equal to the average days on the market for homes without contamination in that locale and year to eliminate the other market conditions which would have affected the home's date of sale. Costs to maintain a property during the average time on the market are presumed to be due to typical market conditions and not due to the contamination. Average days on the market is best determined by a professional analysis of the multiple listing service data of local realtors for a given locale and year.

It is reasonable that repair and maintenance expenses necessary to maintain the value and marketability of a property be compensable in order to expedite the sale and minimize the claimant's loss.

V. SMALL BUSINESS CONSIDERATIONS

Because the Board awards compensation only to eligible persons with eligible personal injury or property damage at the person's principal residence, and the statute explicitly excludes occupational exposure the rules have no impact on small business. The proposed rules are exempted from small business considerations in rulemaking under Minn. Stat. Section 14.115, subd. 7 (b).

VI. CONCLUSION

Based on the foregoing, the proposed rules relating to compensation for property damage losses are both needed and reasonable.

December 2, 1991

Dated

Jean Small-Johnson

Executive Director

In the Matter of the Proposed Adoption of the Rule of the State Harmful Substance Compensation Board Relating to Compensation for Property Damage Claims

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

STATE OF MINNESOTA
COUNTY OF RAMSEY

Marilyn Arneson, being first duly sworn deposes and says:

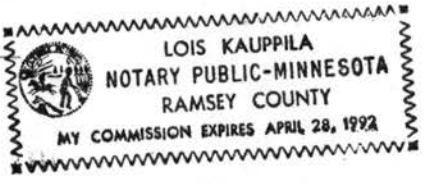
I hereby certify that the list of persons and associations who have requested, pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 or 14.30, that their names be placed on the State Harmful Substance Compensation Board rulemaking mailing list, is accurate, complete, and current as of this 21st day of November, 1991.

That on the 21st, day of November, 1991, at the City of St. Paul, County of Ramsey, State of Minnesota, I mailed the attached Notice of Proposed Adoption of a Rule Without a Public Hearing by depositing in the interoffice mail those addressed to Minnesota State offices, and as to all others, by depositing in the State of Minnesota Central Mail System for United States mailing, a copy thereof, with postage prepaid, to all persons and associations on the aforementioned mailing list.

Marilyn Arneson
Signature

Subscribed and sworn to before me
this 21st day of November. 1991.

Lois Kauppila
(Notary Public)



CERTIFICATE OF THE
HARMFUL SUSTANCE COMPENSATION BOARD
RESOLUTION ADOPTING THE RULE

I, Peter Westerhaus, do hereby certify that I am a member and the vice-chairperson of the Harmful Substance Compensation Board, a board duly authorized under the laws of the State of Minnesota, and that the following is a true, complete, and correct copy of a resolution adopted at a meeting of the Board, duly and properly called and held on the 10th day of February, 1992, that a quorum was present, and that a majority of those present voted for the resolution which will be set forth in the minutes of said meeting and has not been rescinded or modified.

"RESOLVED, that the Board adopts the rule relating to compensation for property damage losses and the attached Findings of Fact and Conclusions, pursuant to authority vested in the Harmful Substance Compensation Board of Minnesota Statutes, section 115B.28. Jean Small-Johnson, the Executive Director of the Board, is authorized to sign the findings of fact, conclusions and order adopting the rule and further is authorized to modify the rule if necessary to obtain the approval of the rule by the Attorney General or by the Revisor of Statutes when such modification does not raise significant new legal issues and to perform the necessary acts to provide that the rule shall have the force and effect of law."

IN WITNESS WHEREOF, I have hereunto subscribed my name this 10 day of February, 1992.

Peter M Westerhaus
PETER WESTERHAUS
Vice-Chairperson

Mara K Thompson
Board Member

In the Matter of the Adoption
of the Rule of the State
Harmful Substance Compensation
Board Governing Compensation for
Property Damage Losses

DECLARATION OF
COUNSEL

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

Stephen Shakman

STEPHEN SHAKMAN
Special Assistant Attorney General

12 Feb, 1992
Dated