

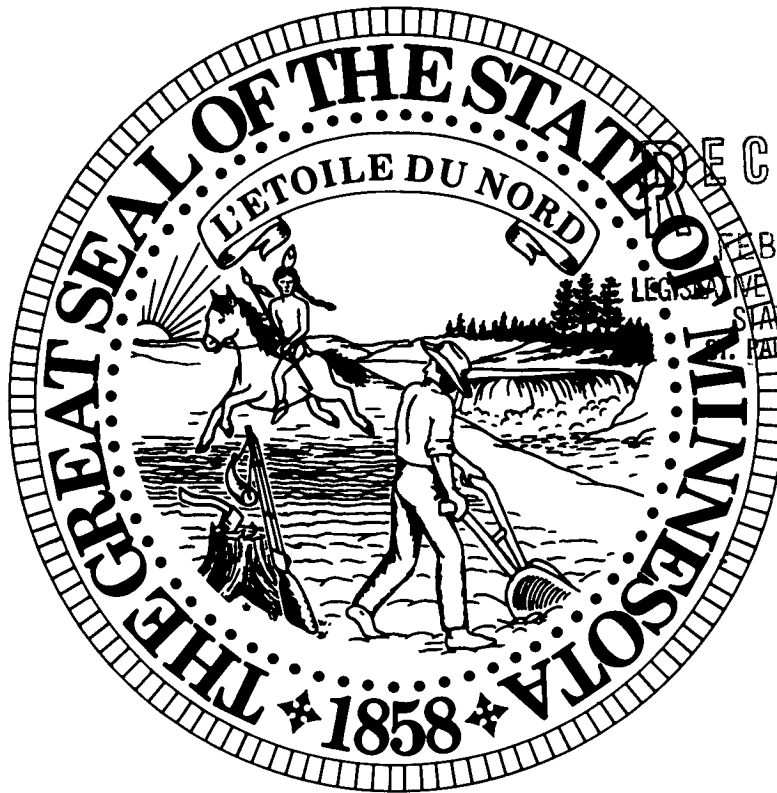
89, Feb. 27

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State of Minnesota

# STATE REGISTER

Department of Administration—Print Communications Division



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# STATE REGISTER

## Judicial Notice Shall Be Taken of Material Published in the *State Register*

The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, official notices to the public, state and non-state public contracts, contract awards, grants, supreme court and tax court decisions, and a monthly calendar of cases to be heard by the state supreme court.

### Printing Schedule and Submission Deadlines

Vol. 13 Issue Number	*Submission deadline for Adopted and Proposed Rules**	*Submission deadline for Executive Orders, Contracts, and Official Notices**	Issue Date
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36	Friday 17 February	Monday 27 February	Monday 6 March
37	Monday 27 February	Monday 6 March	Monday 13 March
38	Monday 6 March	Monday 13 March	Monday 20 March

\*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

\*\*Notices of public hearings on proposed rules and notices of intent to adopt rules without a public hearing are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the *State Register* editorial offices, 504 Rice Street, St. Paul, Minnesota 55103, (612) 296-4273.

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## NOTICE: How to Follow State Agency Rulemaking in the State Register

The *State Register* is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the *State Register*. Published every Monday, the *State Register* makes it easy to follow and participate in the important rulemaking process. Approximately 75 state agencies have the authority to issue rules. Each agency is assigned specific *Minnesota Rule* chapter numbers. Every odd-numbered year the *Minnesota Rules* are published. This is a ten-volume bound collection of all adopted rules in effect at the time. Supplements are published to update this set of rules. Proposed and adopted emergency rules do not appear in this set because of their short-term nature, but are published in the *State Register*.

If an agency seeks outside opinion before issuing new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION in the *Official Notices* section of the *State Register*. When rules are first drafted, state agencies publish them as **Proposed Rules**, along with a notice of hearing, or notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules and withdrawn proposed rules are also published in the *State Register*. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the *State Register* as **Adopted Rules**. These final adopted rules are not printed in their entirety in the *State Register*, only the changes made since their publication as **Proposed Rules**. To see the full rule, as adopted and in effect, a person simply needs two issues of the *State Register*, the issue the rule appeared in as proposed, and later as adopted. For a more detailed description of the rulemaking process, see the *Minnesota Guidebook to State Agency Services*.

The *State Register* features partial and cumulative listings of rules in this section on the following schedule: issues 1-13 inclusive; issues 14-25 inclusive; issue 26, cumulative for issues 1-26; issues 27-38 inclusive; issue 39, cumulative for 1-39; issues 40-51 inclusive; and issue 52, cumulative for 1-52. An annual subject matter index for rules appears in August. For copies of the *State Register*, a subscription, the annual index, the *Minnesota Rules* or the *Minnesota Guidebook to State Agency Services*, contact the Print Communications Division, 117 University Avenue, St. Paul, MN 55155 (612) 297-3000 or toll-free in Minnesota 1-800-652-9747.

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## 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.

## Board of Pharmacy

### Proposed Permanent Rules Relating to Dispensing and Distribution of Legend Medical Gases; Distribution of Veterinary Drugs and Devices

#### Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Board of Pharmacy (hereinafter "Board") proposes to adopt *Minnesota Rules* pts. 6800.9920, through 6800.9932 relating to medical gases and to veterinary drugs and devices. A copy of the proposed amendments is attached to this Notice. One additional free copy is available from the Board upon request. Procedures for the adoption of noncontroversial rules found in *Minnesota Statutes* 14.22 to 14.28 (1986) will be used.

THE PUBLIC IS HEREBY ADVISED that:

1. They have 30 days in which to submit comment in support of or in opposition to the proposed amendments, and comment is encouraged.
2. Each comment should identify the portion of the proposed rules addressed, the reason for the comments, and any change proposed.
3. In addition to submitting comments, interested persons may request in writing during the 30 day comment period that a hearing be held on the proposed rule amendment.
4. All comments, including requests for a public hearing, shall be submitted to David E. Holmstrom, Executive Director, Minnesota Board of Pharmacy, Room 107, Colonial Office Building, 2700 University Avenue West, St. Paul, Minnesota 55114-1079.
5. 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.
6. The proposed amendments may be modified if the modifications are supported by the data and views submitted and do not result in a substantial change in the proposed language.
7. A public hearing will be held only if 25 or more persons submit in writing requests for a hearing on the proposed rules or a portion thereof within 30 days of this notice. If a hearing is required, it will be held in accordance with the provisions of *Minnesota Statutes* 14.131 to 14.20 (1986).
8. Under the procedure for adopting noncontroversial rules, the Board must submit any action on its rules to the Attorney General for review of the form and legality of the rule change. Notice of the date of submission of the proposed amendments to the Attorney General for review will be mailed to any person requesting to receive the notice. Requests to receive notice must be submitted to Mr. Holmstrom at the above address.
9. Authority to adopt *Minnesota Rules* pts. 6800.9920 through 6800.9932 is contained in *Minnesota Statutes* sections 151.06 sub. 1 (c) and 151.19, Sub. 3. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of the proposed amendments has been prepared and is now available. Anyone wishing to receive a copy of this document may contact Mr. Holmstrom at the above address.
10. The approval of the Commissioner of Finance for adoption of rules relating to fees is required by *Minnesota Statutes* section 214.06, subd. 1. A document entitled "Commissioner of Finance Approval" in which the Commissioner has approved the

proposed *Minnesota Rules* pt. 6800.9921 and 6800.9931 is available. Anyone wishing to receive a copy of this document may contact Mr. Holmstrom at the above address.

11. Promulgation of the proposed fee changes will not result in the expenditure of public monies by local public bodies and will not affect agricultural land in the state. Likewise, it is not believed that the changes will have a quantitative or qualitative impact on any small business. Persons representing small businesses are nevertheless invited to participate in the rulemaking process.

12. Any rules adopted pursuant to this proceeding shall be effective five working days after publication in the *State Register* of a notice of the adoption of the rules.

Dated: 30 January 1989

David E. Holmstrom  
Executive Director

### Rules as Proposed (all new material)

#### DISPENSING AND DISTRIBUTION OF LEGEND MEDICAL GASES

##### 6800.9920 DISPENSING AND DISTRIBUTION OF LEGEND MEDICAL GASES.

Parts 6800.9920 to 6800.9924 apply to the retail sale and distribution of legend medical gases.

##### 6800.9921 REGISTRATION.

Subpart 1. **Annual registration required.** Every person or establishment selling or distributing legend medical gases in Minnesota at retail that is not currently licensed as a pharmacy, pharmacist, or practitioner as defined in *Minnesota Statutes*, section 151.01, shall annually apply for registration by the board. Employees of an establishment need not register if the establishment is registered or has applied for registration.

Subp. 2. **Issuance.** Upon the filing of an application for registration, and upon the payment of a fee of \$50, the board shall issue a registration certificate in a form it prescribes.

Subp. 3. **Renewals.** The certificate expires on December 1 of each year, and must be renewed annually. Renewal applications received after December 1 are subject to a late filing fee of \$25 in addition to the renewal fee.

Subp. 4. **Separate registration required.** A separate registration is required for each location and is not transferable. The registration certificate must be displayed at the location for which it was issued. A change in the location of a registered facility will require reregistration.

##### 6800.9922 RESTRICTED SALES.

No person or establishment shall sell or distribute legend medical gases at retail to anyone other than:

A. a patient on the basis of a prescription from a practitioner; or

B. a hospital, a practitioner as defined in *Minnesota Statutes*, section 151.01, subdivision 23, a licensed pharmacy, or other institution or person licensed to possess these drugs for use in the usual course of practice. The distributor of these items shall determine if the purchaser is licensed to possess them.

##### 6800.9923 LABELING.

No person or distributor may sell or distribute any legend medical gas product at retail without the manufacturer's intact federally required label of "Caution: Federal Law Prohibits Dispensing Without Prescription."

##### 6800.9924 RECORDS.

A sale or distribution of legend medical gases by registered distributors of these items at retail must be limited to the prescription or order of a licensed practitioner. These orders or prescriptions must be maintained for at least two years, must be filed by patient name or date, and must be readily retrievable and available for inspection by the Board of Pharmacy. The prescription must bear at least the patient's name and address, date, name and quantity of legend medical gas distributed, and name and address of the prescriber. Refills of legend medical gases must be recorded on the patient's prescription record. The distributor of these articles is responsible for obtaining authority for refills from the prescriber.

**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.

## Proposed Rules

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### DISTRIBUTION OF VETERINARY DRUGS AND DEVICES

#### 6800.9930 DISTRIBUTION OF VETERINARY DRUGS AND DEVICES.

Parts 6800.9930 to 6800.9932 apply to the retail sale and distribution of veterinary drugs and devices.

#### 6800.9931 REGISTRATION.

Subpart 1. **Annual registration required.** Every person or establishment selling or distributing veterinary drugs and devices in Minnesota at retail that is not currently licensed as a pharmacy, pharmacist, or practitioner as defined in *Minnesota Statutes*, section 151.01, shall annually apply for registration by the board. Employees of an establishment need not register if the establishment is registered or has applied for registration.

Subp. 2. **Issuance.** Upon the filing of an application for registration and upon the payment of a fee of \$50, the board shall issue a registration certificate in a form it prescribes.

Subp. 3. **Renewals.** The certificate expires on December 1 of each year, and shall be renewed annually. Renewal applications received after December 1 are subject to a late filing fee of \$25 in addition to the renewal fee.

Subp. 4. **Separate registration required.** A separate registration is required for each location and is not transferable. The certificate shall be displayed at the location for which it was issued. A change in the location of the registered facility will require reregistration.

#### 6800.9932 PACKAGING.

A veterinary drug retailer shall deliver veterinary drugs to a client or a client's agent only in the original manufacturer's package.

## Pollution Control Agency

### Proposed Permanent Rules Relating to Acceptance of Hazardous Waste at the Stabilization and Containment Facility

#### Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (MPCA) intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes* §§ 14.22 to 14.28 (1988). The MPCA's authority to adopt the rules is set forth in *Minnesota Statutes* §§ 115A.175, subd. 5 and 116.07 (1988).

All persons have until 4:30 p.m. on March 29, 1989, 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 proposed 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 requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the MPCA will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20 (1988).

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

Carol Nankivel  
Minnesota Pollution Control Agency  
520 Lafayette Road North  
St. Paul, Minnesota 55155  
612/296-7260

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

The proposed rules if adopted, will govern the acceptance of waste at the stabilization and containment facility that is to be sited in Minnesota by the Environmental Quality Board under the authority of *Minnesota Statutes* § 115A. The facility will accept industrial waste, waste that has been rendered nonhazardous, and hazardous waste for stabilization and subsequent containment. The proposed amendments will establish standards for the acceptance of each of these types of wastes at the facility. The standards proposed for the acceptance of a hazardous waste are very specific. A person proposing a hazardous waste for containment must



meet several criteria before the waste may be accepted at the stabilization and containment facility. A hazardous waste may not be accepted until it has been determined that:

1. There is no feasible and prudent alternative to containment of the waste at the facility;
2. The waste will be treated by feasible and prudent technology that minimizes the possibility of migration of any hazardous constituents of the waste;
3. The waste meets the federal land disposal restriction standards; and
4. The proposer has acceptably attempted to have the waste rendered nonhazardous.

The proposed rules identify the means by which a person proposing a hazardous waste for containment would satisfy the criteria listed above. The proposed rule amendments are published below. One free copy of the rules is available upon request from Carol Nankivel at the address and telephone number stated above.

Questions regarding the content of the proposed rules should be directed to Carol Nankivel at the address and telephone number stated above.

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule amendments has been prepared and is available from Carol Nankivel upon request.

You are hereby advised, pursuant to *Minnesota Statutes* § 14.115 (1988), "Small business considerations in rulemaking," that the proposed rule amendments will have limited effect on small businesses. Use of the stabilization and containment facility is optional and small businesses will be subject to regulation under the proposed rules only to the extent that they seek use of the facility for the management of their own waste. However, under *Minnesota Statutes* § 115.175, subd. 5, the facility may not be permitted and begin operation until rules are adopted to govern the acceptance of hazardous waste at the facility. In this respect the rules will provide a benefit to small businesses by enabling them to use a waste management option that would be otherwise unavailable. For additional information regarding possible effects, please see part V of the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the 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 Carol Nankivel.

Gerald L. Willet  
Commissioner

### **Rules as Proposed (all new material)**

#### **7047.0010 SCOPE AND APPLICABILITY.**

Subpart 1. **Scope.** This chapter applies to the operator of the stabilization and containment facility, proposers of waste to be contained at the facility, generators of hazardous waste to be stabilized or contained at the facility, and operators of hazardous waste treatment facilities that treat hazardous waste proposed to be stabilized or contained at the facility.

Subp. 2. **Limitation.** Compliance with this chapter does not authorize acceptance of any waste at the facility if the acceptance of that waste would violate any operating permit for the facility or conflict with any restriction on the acceptance of waste imposed by any other agency of the state authorized to control the operation of the facility, including restrictions in any contract entered into by that state agency with the county where the facility is located or with the operator of the facility.

#### **7047.0020 DEFINITIONS.**

Subpart 1. **Scope.** As used in this chapter, the terms defined in this part have the meanings given them.

Subp. 2. **Agency.** "Agency" means the Minnesota Pollution Control Agency.

Subp. 3. **Characteristic hazardous waste.** "Characteristic hazardous waste" means a hazardous waste that has one or more of the characteristics of a hazardous waste as specified in part 7045.0131 or Code of Federal Regulations, title 40, sections 261.20 to 261.24, and is not a listed hazardous waste.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of the Pollution Control Agency.

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## Proposed Rules

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Subp. 5. **Containment.** "Containment" means isolating, controlling, and monitoring waste in a waste facility in order to prevent a release of waste from the facility that would have an adverse impact upon human health and the environment. Containment occurs at the facility.

Subp. 6. **Facility.** "Facility" means the hazardous waste stabilization and containment facility sited in Minnesota under *Minnesota Statutes*, sections 115A.175 to 115A.30.

Subp. 7. **Generator.** "Generator" means any person, by site, whose act or process produces hazardous waste identified or listed in this chapter, or whose act first causes a hazardous waste to become subject to regulation. Generator includes primary generators of hazardous waste, operators of facilities who become generators as a result of treatment or consolidation activities conducted on waste received from off-site, and the operator of the stabilization and containment facility.

Subp. 8. **Hazardous waste.** "Hazardous waste" has the meaning given in *Minnesota Statutes*, section 116.06, subdivision 13.

Subp. 9. **Industrial waste.** "Industrial waste" has the meaning given in *Minnesota Statutes*, section 115A.03, subdivision 13a.

Subp. 10. **Industrial waste management plan.** "Industrial waste management plan" means the plan required under part 7035.2535, subpart 5.

Subp. 11. **Listed hazardous waste.** "Listed hazardous waste" means a hazardous waste that is listed in part 7045.0135 or in Code of Federal Regulations, title 40, sections 261.30 to 261.33.

Subp. 12. **Minimization.** "Minimization" means any activity that either reduces the total volume or reduces the hazardous properties of hazardous waste that would otherwise be stabilized and contained at the facility. Minimization includes source reduction, waste recovery, and waste recycling.

Subp. 13. **Person.** "Person" has the meaning given it in *Minnesota Statutes*, section 116.06, subdivision 8.

Subp. 14. **Proposer.** "Proposer" means any person who seeks approval from the commissioner to contain a waste at the facility. A proposer may be the operator of the facility, a generator, or the operator of a hazardous waste treatment facility.

Subp. 15. **Recycling.** "Recycling" means the use or reuse of hazardous waste as an effective substitute for a commercial product or as an ingredient or feedstock in an industrial process. Recycling includes the reclamation of useful constituent fractions within a waste material or the removal of contaminants from a waste to allow it to be reused.

Subp. 16. **Source reduction.** "Source reduction" means the reduction or elimination of hazardous waste at the source, usually within a process. Source reduction measures include process modifications, feedstock substitutions, improvements in feedstock purity, housekeeping and management practice changes, increases in the efficiency of equipment, and recycling within a process.

Subp. 17. **Stabilization.** "Stabilization" has the meaning given it in *Minnesota Statutes*, section 115A.03, subdivision 32a.

### 7047.0030 WASTES THAT MAY BE ACCEPTED FOR CONTAINMENT.

Subpart 1. **Acceptance of industrial wastes.** The commissioner shall approve an industrial waste for containment at the facility if the proposer provides to the commissioner a certification that the waste will be managed by the facility in compliance with parts 7035.0300 to 7035.2875 and with all applicable provisions of the facility's industrial waste management plan. Industrial wastes that are hazardous or hazardous wastes rendered nonhazardous shall also meet the requirements of subparts 2 and 3.

Subp. 2. **Acceptance of hazardous waste rendered nonhazardous.** The commissioner shall approve a hazardous waste that has been rendered nonhazardous for containment at the facility in accordance with the following procedures:

A. For a characteristic hazardous waste, the proposer must demonstrate that the waste has been treated to eliminate the characteristics that caused the waste to be subject to regulation as a hazardous waste. To demonstrate such treatment, the proposer must submit to the commissioner and obtain the commissioner's approval of an evaluation report for the treated waste as required by part 7045.0216.

B. For a listed hazardous waste, the proposer must submit to the agency and obtain the agency's approval, under part 7045.0075, subpart 2, of a petition for exclusion of the waste from regulation as a hazardous waste. If agency approval of the petition does not satisfy the requirements of Code of Federal Regulations, title 40, section 260.22, the proposer must also obtain Environmental Protection Agency approval to exclude the waste from regulation as a hazardous waste.

C. For any hazardous waste rendered nonhazardous, the proposer must provide to the commissioner a certification that the waste is managed by the facility in compliance with parts 7035.0300 to 7035.2875 and with applicable provisions of the facility's industrial waste management plan.

D. If required under part 7047.0060, the generator must submit to the commissioner and obtain the commissioner's approval of a waste minimization plan for that hazardous waste as provided in part 7047.0060.

Subp. 3. **Acceptance of listed hazardous waste.** The commissioner shall approve a listed hazardous waste for containment at a facility if the following conditions are met:

A. the proposer demonstrates an acceptable attempt to render the waste nonhazardous as provided in part 7047.0040;

B. the proposer demonstrates that there is no feasible and prudent alternative to containment of the waste that would minimize adverse impact upon human health and the environment as provided in part 7047.0050, subpart 3;

C. the proposer demonstrates that the waste is treated using feasible and prudent technology that minimizes the possibility of migration of any hazardous constituents of the waste as provided in part 7047.0050, subpart 2;

D. the proposer demonstrates that the waste meets the applicable land disposal restrictions provided in chapter 7045 and Code of Federal Regulations, title 40, section 268, as provided in part 7047.0050, subpart 1; and

E. the generator submits to the commissioner and obtains the commissioner's approval of a waste minimization plan for that hazardous waste as provided in part 7047.0060.

Subp. 4. **Listed hazardous wastes with no standard under land disposal restrictions.** If no treatment standard has been adopted for a particular listed hazardous waste under the land disposal restrictions provided in chapter 7045 or Code of Federal Regulations, title 40, section 268, the waste may not be accepted for containment at the facility.

Subp. 5. **Characteristic hazardous waste prohibited from acceptance at a facility.** No characteristic hazardous waste may be accepted for containment at the facility. All characteristic hazardous waste must be rendered nonhazardous before the waste may be accepted for containment at the facility.

Subp. 6. **Written notice of approval.** If the commissioner approves acceptance of a waste for containment under this part, the commissioner shall provide written notice of the approval to the proposer.

#### **7047.0040 DEMONSTRATION OF ATTEMPT TO RENDER A LISTED WASTE NONHAZARDOUS.**

Subpart 1. **Submittal of information by proposer.** To demonstrate an acceptable attempt to render a listed hazardous waste nonhazardous, a proposer must submit to the agency and obtain the agency's approval, pursuant to part 7045.0075, subpart 2, of a petition requesting that the waste be excluded from regulation as a hazardous waste. If agency approval of the petition does not satisfy the requirements of Code of Federal Regulations, title 40, section 260.22, the proposer must also obtain Environmental Protection Agency approval to exclude the waste from regulation as a hazardous waste.

Subp. 2. **Agency review.** If, upon review of the petition submitted under subpart 1, the agency finds that the proposer was unable to render the waste nonhazardous, the agency shall determine whether the proposer made an acceptable attempt to render the waste nonhazardous. The determination must be based upon the information provided in the petition and any additional information or explanation relevant to the determination that may be submitted by the proposer. In making the determination, the agency shall consider the completeness and technical adequacy of the petition. The factors the agency shall consider in determining whether a reasonable amount of information has been submitted are:

A. the number of constituents of the waste subject to testing and the frequency of tests required;

B. the availability of treatment technologies that could be applied to treat the waste sufficiently; and

C. the degree of variability of the waste or waste streams.

#### **7047.0050 DEMONSTRATION OF COMPLIANCE WITH LAND DISPOSAL RESTRICTIONS, FEASIBLE AND PRUDENT TREATMENT, AND NO FEASIBLE AND PRUDENT ALTERNATIVE TO CONTAINMENT.**

Subpart 1. **Compliance with land disposal restrictions.** To demonstrate that the hazardous waste meets the applicable land disposal restrictions provided in chapter 7045 and Code of Federal Regulations, title 40, section 268, the proposer shall submit to the commissioner a certification that the waste has been treated to the applicable standard established by the land disposal restrictions.

Subp. 2. **Treatment using feasible and prudent technology.** To demonstrate that a listed hazardous waste was treated using feasible and prudent technology that minimizes the possibility of migration of any hazardous constituent of the waste, the proposer shall submit the following to the commissioner:

A. certification as required under subpart 1;

B. for any residual of a listed hazardous waste treated in compliance with applicable land disposal restrictions that possesses a characteristic that would make it a characteristic hazardous waste if it were not derived from a listed hazardous waste, certification that the residual has been treated again to the same standards applicable to an untreated characteristic waste that possesses the same characteristics; and

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## Proposed Rules

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C. certification that the waste, after treatment as certified under items A and B, was stabilized using the stabilization process permitted for use at the facility.

Subp. 3. **No feasible and prudent alternative to containment.** A proposer who has made the demonstrations required under subparts 1 and 2, and who has made an acceptable attempt to render the waste nonhazardous as determined by the agency under part 7047.0040, subpart 2, is deemed to have demonstrated there is no prudent and feasible alternative to containment of the waste.

### 7047.0060 WASTE MINIMIZATION PLAN.

Subpart 1. **Minimization plan requirement.** A generator of waste that is proposed for containment at the facility, that was a hazardous waste when it was accepted for stabilization or proposed for containment at the facility, must prepare and submit to the commissioner a waste minimization plan for that hazardous waste. The plan must evaluate management alternatives for the reduction, recovery, and recycling of the waste and must identify specific minimization activities that will be undertaken by the generator during the term of the plan.

Subp. 2. **Content of minimization plan.** A waste minimization plan must include the following elements:

- A. a description of the processes generating the hazardous waste;
- B. an inventory of the hazardous wastes that provides the hazardous waste codes and the quantities of wastes that are being sent to the facility for management, and includes wastes that are currently being generated and that are anticipated to be generated for the term of the plan;
- C. an evaluation of current waste management activities and costs;
- D. an evaluation of the management activities and costs associated with management of the hazardous waste at the facility;
- E. an assessment of the potential for reducing the volume and hazardous properties of the hazardous waste to be managed at the facility;
- F. an assessment of the potential for recycling or recovering the hazardous waste to be contained at the facility;
- G. a description of the steps that have been implemented to minimize the amount of hazardous waste to be managed at the facility; and
- H. a specific plan describing additional efforts to be undertaken in the next five years to minimize the amount or hazardous properties of the hazardous waste to be managed at the facility.

Subp. 3. **Operators of hazardous waste treatment facilities.** An operator of a hazardous waste treatment facility other than the stabilization and containment facility, that treats hazardous wastes generated at other sites, may submit to the commissioner a waste minimization plan for wastes treated by the facility. This plan may be submitted in lieu of any plan required under subpart 1. A minimization plan submitted by the operator of a treatment facility must include the following elements:

- A. a description of the efforts undertaken by the operator to minimize the hazardous waste to be managed at the facility including an evaluation of potential treatment processes that could reduce the volume or hazardous properties of the waste, an evaluation of all potential activities directed at the recycling or recovery of the wastes, and a discussion of any processes or activities that have been implemented to reduce the volume or hazardous properties of the waste and of the present method of managing the hazardous waste; and
- B. a discussion of the efforts undertaken by the operator of the multiple waste treatment facility to educate its client generators of waste minimization practices and to encourage them to minimize hazardous waste generation.

Subp. 4. **Revision of minimization plan.** The generator shall revise and resubmit the minimization plan when the generator makes changes in production or waste management methods that materially affect the minimization activities included in the plan but, in any event, at least every five years after the submission of the most recent plan or revised plan.

Subp. 5. **Term of minimization plan.** The minimization plan must address the generator's minimization activities for five years from the date the plan is submitted to the commissioner.

Subp. 6. **Commissioner's review of minimization plans.** The commissioner shall review each minimization plan that is submitted and determine whether the requirements of this part have been met. If the commissioner determines that the requirements of this part have been met, the commissioner shall issue to the generator written documentation of such approval.

### 7047.0070 PROHIBITIONS.

Subpart 1. **Acceptance prohibited without approval of agency or commissioner.** The operator of a facility may not accept any waste for containment and may not place any waste in a containment cell at the facility unless the waste has been approved for containment at the facility under part 7047.0030.

Subp. 2. **Knowing submittal of false information or certification.** A person submitting any information or certification to the agency or commissioner under parts 7047.0010 to 7047.0060 shall not submit any information or certification that the person knows is false in any material respect.

## **Telecommunication Access for Communication-impaired Persons Board**

### **Proposed Permanent Rules Relating to Eligibility for Services Under the Telecommunication Access for Communication-impaired Persons Act**

#### **Notice of Intent to Adopt a Rule Without a Public Hearing**

NOTICE IS HEREBY GIVEN that the Minnesota TACIP Board 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* §§ 14.22 to 14.28. The statutory authority to adopt the rule is contained in *Minnesota Statutes* § 237.51 subpart 5, subparagraph (9)(1988).

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

Any person may make a written request for a public hearing on the rule within the 30 day comment period. If 25 or more persons submit a written request for a public hearing within the 30-day comment period, a public hearing will be held unless a sufficient number withdraw their request 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(s) proposed. If a public hearing is required, the Board will proceed pursuant to *Minnesota Statutes* §§ 14.131 to 14.20.

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

Herb Pickell, Program Administrator	
TACIP Program	St. Paul, Minnesota 55101
790 American Center Building	(612) 296-0412 (Voice)
150 East Kellogg Boulevard	(612) 296-9863 (TDD)

The proposed rule 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.

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

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rule has been prepared and is available upon request from the TACIP Program Administrator at the address listed above.

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

TACIP Program	St. Paul, Minnesota 55101
790 American Center Building	(612) 296-0412 (Voice)
150 East Kellogg Boulevard	(612) 296-9863 (TDD)

Dated: 27 March 1989

Robert Cook  
TACIP Board Chair

**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.

# Proposed Rules

## Rules as Proposed (all new material)

### 8775.0100 DEFINITIONS.

Subpart 1. **Scope.** The terms used in this chapter have the meanings given them in this part.

Subp. 2. **Applicable median income.** "Applicable median income" means the median gross income in Minnesota as estimated by the Bureau of the Census in the most recent annual announcement of the United States Department of Health and Human Services Family Support Administration, published in the *Federal Register*. These announcements are incorporated by reference.

Subp. 3. **Appropriate communication device.** "Appropriate communication device" means a communication device that most efficiently allows access to the telephone system by a communication-impaired person.

Subp. 4. **Blind.** A person is "blind" if central visual acuity does not exceed 20/200 in the better eye with corrective lenses or, if greater than 20/200, visual acuity is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

Subp. 5. **Board.** "Board" means the Telecommunication Access for Communication-impaired Persons Board established in *Minnesota Statutes*, section 237.51.

Subp. 6. **Communication device.** "Communication device" means a device that when connected to a telephone enables a communication-impaired person to communicate with another person using the telephone system. A communication device includes a ring signaler, an amplification device, a telephone device for the deaf with auxiliary equipment the board considers necessary, and a telebraille unit.

Subp. 7. **Communication-impaired person.** "Communication-impaired person" means a person certified as deaf, severely hearing impaired, hard-of-hearing, speech impaired, or deaf and blind, by (1) determination of a qualified physician, audiologist, or speech and language pathologist, or (2) when made before the adoption of parts 8775.0100 to 8775.0600, determination of division staff under the authority of law or other rules relating to communication-impaired persons.

Subp. 8. **Deaf.** "Deaf" means the condition of a person whose hearing in both ears is impaired to the degree that the person is unable to understand speech, even when amplified. A deaf person requires use of a telephone device for the deaf to communicate effectively on the telephone.

Subp. 9. **Deaf and blind.** "Deaf and blind" means the conditions of a person who is (1) deaf, severely hearing impaired, or hard-of-hearing, and (2) blind or visually handicapped. A person affected by these conditions requires use of a telebraille unit or telephone device for the deaf with auxiliary equipment to communicate effectively on the telephone.

Subp. 10. **Division.** "Division" means the Deaf Services Division of the Minnesota Department of Human Services.

Subp. 11. **Economic hardship.** "Economic hardship" means an economic condition or level of subsistence on a household income that is at or below 60 percent of the applicable median income in the state.

Subp. 12. **Hard-of-hearing.** "Hard-of-hearing" means a condition of a person who has a reduced ability to understand speech. Some of the effects of the impairment can be overcome with proper amplification. A person that is hard-of-hearing may require a communication device to communicate effectively on the telephone.

Subp. 13. **Household criteria.** For determining priority when initially distributing equipment or receiving more than one communication device, "household criteria" means the higher priority given for a household having more than one communication-impaired person or for a household with a communication-impaired person living alone.

Subp. 14. **Household income.** "Household income" means the total income of a communication-impaired person and immediate family living in the same residence. The immediate family includes spouse and minor children. However, the income of a minor child must not be included unless the minor is over 15 years of age. If the communication-impaired person is a minor child, then parents and siblings residing with the minor are immediate family. If a dependent minor child is temporarily living outside the family or custodial parent's residence, the household income is considered to be the income of the parents or custodial parent plus the income of minor siblings over the age of 15 and residing with the parents or custodial parent.

Subp. 15. **Income.** "Income" means money received in the preceding calendar year from each of the following sources:

- A. money, wages, or salary;
- B. net income from nonfarm employment as defined for federal tax purposes;
- C. net income from farm self-employment as defined for federal taxes;
- D. income from any social security program;
- E. supplemental social security income;
- F. public assistance or welfare payments;

G. interest on savings or other investments that pay interest;

H. dividend income from estates or trusts, or net rental income;

I. veterans' payments, unemployment compensation payments, and workers' compensation payments;

J. private or public employee pensions; and

K. alimony, child support, regular contributions from persons not living in the household, and other periodic income. This definition of income comes from that of the Bureau of the Census and is interpreted according to its standards as published in "Consumer Income," series P-60, No. 156, Money, Income of Households, Families and Persons in the United States: 1985. These standards are incorporated by reference, are not subject to frequent change, and are located in the government publications reference department of the University of Minnesota and in the Minitex interlibrary loan system.

Subp. 16. **Resident of Minnesota.** "Resident of Minnesota" means an individual who lives in Minnesota or who has moved to Minnesota and intends to remain in Minnesota.

Subp. 17. **Severely hearing impaired.** "Severely hearing impaired" means a condition in which hearing in both ears is impaired to the degree that the affected person is unable to understand speech, even when amplified. These individuals require use of a telephone device for the deaf to communicate effectively on the telephone.

Subp. 18. **Significant visual impairment.** "Significant visual impairment" means a visual disability that does not constitute legal blindness but which constitutes a substantial handicap to employment or limits the person's ability to live independently, perform self-care activities, or grow and develop.

Subp. 19. **Special needs.** "Special needs" means the needs of an eligible person that may require that the person be given priority when initially distributing the equipment or be given more than one communication device because of severity of communication impairment or presence of multiple disabilities.

Subp. 20. **Speech impaired.** "Speech impaired" means a condition that renders a person physically incapable of speaking clearly. The severity of the impairment may vary; however, it renders speech on an ordinary telephone unintelligible or impossible and requires a communication device to communicate effectively on the telephone.

Subp. 21. **TACIP.** "TACIP" means telecommunication access for communication-impaired persons.

#### **8775.0200 PURPOSE AND CONSTRUCTION.**

The purpose of this chapter is to develop and implement a statewide program to distribute telephone communication devices to eligible communication-impaired persons for improving access to telephone communications services for communication-impaired persons. This chapter is to be liberally construed to further these purposes.

#### **8775.0300 ELIGIBILITY FOR TACIP SERVICES.**

Subpart 1. **Information provided.** On request, the division shall offer to a person an application form developed by the division and a brochure that describes the TACIP eligibility requirements and application process.

Subp. 2. **Application process.** The applicant shall complete the application form and return it to the division's regional service center for hearing-impaired people. An application may be made by the applicant, the applicant's spouse, or a person authorized by the applicant to act in the applicant's behalf.

Subp. 3. **Documenting, verifying, and reviewing eligibility.** The division shall verify the applicant's household income, age, and access to telephone service, and that the applicant is a communication-impaired person. When a condition of eligibility changes, the division may verify eligibility:

A. In a timely manner, an applicant shall document income or authorize the division to verify the income. The division shall help an applicant or recipient obtain documents that the applicant does not possess and cannot obtain. Information previously verified and retained by the division need not be verified again unless the information no longer applies to current circumstances.

B. The division shall not request information about an applicant for or recipient of TACIP services that is not of public record from a source other than within the division without the applicant's or recipient's previous written consent. The division may request information about an applicant or recipient that is not of public record from the telephone companies by obtaining the applicant's or recipient's previous written consent on an application or recertification form. The division shall not provide third parties with access

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## Proposed Rules

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to information about an applicant's eligibility status or other case record information without the previous written consent of that applicant or recipient, except when access to specific case information is granted to agencies designated by the Minnesota Government Data Practices Act, *Minnesota Statutes*, chapter 13. Information designated as confidential by the Minnesota Government Data Practices Act may only be made available to agencies granted access under that law and must not be provided to an applicant, recipient, or third party.

C. The division shall inform the recipient of the recipient's responsibility to report permanent changes in circumstances that affect eligibility within ten days of each change.

Subp. 4. **Eligibility criteria.** To be eligible for the TACIP program, a person must:

A. be at least five years of age;

B. be a communication-impaired person;

C. be a resident of Minnesota;

D. be a resident in a household at or below the applicable median income in the state, except that a deaf and blind person applying for a telebraille unit may reside in a household that has a median income no more than 150 percent of the applicable median household income in the state; and

E. have or have applied for telephone service and been assigned a telephone number. A person who at the time of application does not have telephone service, but meets all other eligibility requirements, will be declared "conditionally eligible" and, in order to be declared "eligible," must apply for telephone service and be assigned a telephone number.

Subp. 5. **Persons not eligible.** Persons who are residents of residential or treatment facilities that receive federal funds under the Rehabilitation Act of 1973, *United States Code*, title 29, section 774, and are eligible for and can obtain communication devices through federal provisions are not eligible to receive TACIP services under this chapter.

Subp. 6. **Notification of eligibility.** Within 30 days of the receipt of the application and the necessary documentation the division shall notify the applicant in writing whether the applicant is found eligible and, if the applicant is denied, the reasons for denial.

Subp. 7. **Determination of appropriate communication device.** The division shall determine the appropriate communication device for a recipient.

### 8775.0400 PRIORITY FOR INITIAL DISTRIBUTION OF COMMUNICATION DEVICES.

Subpart 1. **First priority: deaf and blind.** The first in priority are those eligible, deaf and blind persons having special needs, experiencing economic hardship, or meeting the household criteria standards.

Subp. 2. **Second priority: deaf.** The second in priority are those eligible, deaf persons having special needs, experiencing economic hardship, or meeting the household criteria standards.

Subp. 3. **Third priority: impaired speech.** The third in priority are those eligible, speech-impaired persons having special needs, experiencing economic hardship, or meeting the household criteria standards.

Subp. 4. **Fourth priority: hard-of-hearing.** The fourth in priority are those eligible, hard-of-hearing persons having special needs, experiencing economic hardship, or meeting the household criteria standards.

Subp. 5. **Fifth priority: others without special needs.** The fifth in priority are those eligible, communication-impaired persons having no special needs, not experiencing economic hardship, and not meeting the household criteria standards.

Subp. 6. **Use of priority system.** Initially, the priority system must be used to determine the priority of eligible applicants for receiving telecommunication devices, for example, to establish a waiting list of eligible applicants. Only if allotted program money is insufficient to provide all eligible applicants with needed equipment may the priority system be used to determine which individuals will receive equipment.

### 8775.0500 HOUSEHOLDS ELIGIBLE TO RECEIVE SEVERAL DEVICES.

Subpart 1. **Deaf.** A communication-impaired person who is deaf or severely hearing impaired is eligible for a telephone device for the deaf and a ring signaler.

Subp. 2. **Deaf and blind.** A communication-impaired person who is deaf and blind is eligible to receive use of a telephone device for the deaf with auxiliary equipment approved by the board and necessary for efficient communication.

Subp. 3. **Two or more eligible persons.** If a household contains more than one eligible communication-impaired person with various communication impairments, the board may approve more than one telephone device as necessary for efficient communication.

Subp. 4. **Hard-of-hearing.** A communication-impaired person who is hard-of-hearing is eligible for a ring signaler and amplification device if both devices are necessary for efficient communication.



**8775.0600 TRAINING AND MAINTENANCE.**

The commissioner of human services shall maintain the communication devices until the five-year warranty period expires and provide training, without charge, to first-time users of the devices.

**8775.0700 OWNERSHIP.**

Communication devices distributed under this chapter are and must remain the property of the state of Minnesota.

**8775.0800 APPEALS.**

Subpart 1. **Aggrieved party.** An aggrieved party may appeal a decision of the division. An aggrieved party is an applicant:

- A. who is determined ineligible for TACIP service under part 8775.0300, subpart 4;
- B. who disagrees with the division's determination regarding the appropriate communication device under part 8775.0300, subpart 6;
- C. who disagrees with the division's decision regarding priority for initial distribution of communication devices under part 8775.0400; or
- D. whose TACIP service is terminated.

Subp. 2. **Procedure.** Requests for appeal must be made within 30 calendar days of receiving notice of adverse action or, for good cause shown, within 60 calendar days of receiving the notice. Requests for appeal can be made through written, telephone, or face-to-face contact with a designated representative of the Regional Service Center for the Hearing Impaired.

Subp. 3. **Conciliation conference.** Within ten calendar days of receiving a request for appeal, a representative of the Regional Service Center for the Hearing Impaired shall meet with the aggrieved party and attempt to resolve informally the matter leading to the appeal. Within five calendar days of the conciliation conference, the representative shall prepare a written summary of the issues addressed at the conciliation conference and shall send a copy of the written summary to the aggrieved party and to the board.

Subp. 4. **Formal hearings.** If still dissatisfied after receiving a copy of the conciliation conference summary, the aggrieved party may request a hearing before the board by making written, telephone, or face-to-face contact with a designated representative of the Regional Service Center for the Hearing Impaired. A hearing before the board must be scheduled within 90 days. At the hearing, the aggrieved party may introduce evidence relevant to the issues on appeal. An aggrieved party may be represented by legal counsel or a lay advocate at the hearing.

Subp. 5. **Service pending appeal.** Termination of TACIP services must be stayed pending an appeal.

## Adopted Rules

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.14-14.28 have been met and five working days after the rule is published in *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

An emergency rule becomes effective five working days after the approval of the Attorney General as specified in Minn. Stat. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted emergency rule will be published in the manner provided for adopted rules under § 14.18.

## Department of Public Safety

### Adopted Permanent Rules Relating to Deputy Registrars; Motor Vehicle Registration Fee; Reports and Deposits

The rule proposed and published at *State Register*, Volume 13, Number 7, pages 344-346, August 15, 1988 (13 S.R. 344) is adopted with the following modifications:

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# Adopted Rules

## Rules as Adopted

### 7406.0450 REPORTING AND DEPOSITING PRACTICES.

Subpart 1. **Definition.** For purposes of this part, the words "next working day" mean the twenty-four hour period following the daily close of the deputy registrar's records. A working day does not include Saturdays, Sundays, or legal holidays listed in Minnesota Statutes, section 645.44, subdivision 5; nonbanking days of approved state depositories; or holidays authorized under Minnesota Statutes, section 373.052, subdivision 1, for deputies who are county officers or employees.

Subp. 1a. Submitting documentation. Deputy registrars shall deliver the completed motor vehicle registration and title forms and applications to the registrar, mail the forms and applications in the United States mail addressed to the registrar, or send the forms and applications to the registrar by a package delivery service before the end of the next working day following the receipt of the completed forms or applications.

Subp. 2. **Reporting registrations, fees, and taxes.** Deputy registrars shall report to the registrar, on a form prescribed or approved by the registrar, a summary of the motor vehicle registrations made each working day. The summary must contain a list of the names of the transferees or registrants, excluding the names of parties applying solely for renewal, the type of transaction for which registration was required, and the amount of fees and taxes collected. Each working day the deputy registrars shall report to the registrar and to the Minnesota state treasurer, on forms supplied by the Department of Finance, the total amount of registration fees and taxes collected and deposited under subpart 3. Deputy registrars shall deliver the ~~daily registration, fee, and tax collection reports~~ summary report of daily motor vehicle registrations and the report of the registration fees and taxes collected to the registrar and the Minnesota state treasurer by mailing the reports in the United States mail addressed to the registrar and to the Minnesota state treasurer, or by sending the reports to the registrar and to the Minnesota state treasurer by a package delivery service, before the end of the next working day following the day for which the reports are made.

Subp. 3. **Depositing fees and taxes.** Before the end of each working day, deputy registrars shall deposit an amount equal to the motor vehicle fees and taxes collected the previous working day, excluding the filing fees collected under *Minnesota Statutes*, section 168.33, subdivision 2. Deputy registrars shall make the deposits in approved state depositories to the credit of the state, in accordance with *Minnesota Statutes*, section 168.33, subdivision 2. The date of deposit is the actual day on which the deposit is made regardless of whether that date is the same as the date the deposit is recorded by the state depository. Deposit may be made by any method acceptable to the state depository including wire transfer.

Subp. 5. **Penalty.** On discovering a violation of subpart 3, the registrar must send a warning notice to the deputy registrar. The notice must identify the violation and tell the deputy registrar that if the deputy registrar violates subpart 3 again in the following month, a money penalty will be imposed. For each month immediately following a month for which the deputy registrar is warned or penalized, in which the deputy registrar violates ~~this chapter subpart 3~~ again, the registrar shall impose a penalty of \$10 or an amount computed by the following formula, whichever is greater.

$$\text{Days Late} \times \text{Delinquent Amount} \times \text{Daily Rate} = \text{Penalty}$$

where:

$$\text{Days Late} = \text{Actual number of days each deposit is delinquent}$$

$$\text{Delinquent Amount} = \text{Actual amount each deposit is delinquent}$$

Daily Rate = Interest on all state funds without authority to be invested separately, as determined by the Minnesota Department of Finance, for the month the deposit was due, divided by the number of days in the month the deposit was due. In determining the number of days a deposit is late, weekends and holidays must be included only if the deposit is determined to be already at least two days late. The registrar shall continue to impose monthly penalties until the deputy registrar is no longer in violation of this part.

Subp. 6. **Notice of penalty.** The registrar shall send a written notice of penalty by certified mail. The notice must identify the violations of *Minnesota Statutes*, section 168.33, and ~~this chapter subpart 3~~ for which the penalty is imposed. The notice must also tell the deputy registrar when the penalty is due, how the penalty must be paid, and how to obtain a review of the penalty.

Subp. 8. **Administrative review.** When the registrar notifies a deputy registrar that a penalty has been imposed:

B. The deputy registrar may request a formal hearing ~~before an impartial hearing officer appointed by the registrar~~, with or without undergoing the review process set out in item A. The request must be in writing and must be received within 30 days of the day the notice of penalty was mailed. ~~The hearing officer shall conduct a formal hearing in person or by telephone within 30 days of the receipt of the deputy registrar's request. The hearing officer shall mail a written decision to the deputy registrar within ten days of the conclusion of the hearing. When a formal hearing is requested, the registrar will arrange a contested case hearing before an administrative law judge under Minnesota Statutes, chapter 14. The hearing officer may~~ After the hearing, the administrative law judge may recommend that the registrar affirm, modify, or rescind reverse the penalty. The hearing officer may affirm the penalty will only be affirmed if the penalty was calculated correctly and the late deposit was the result of foreseeable circumstances within the control of the deputy registrar.

# Official Notices

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Pursuant to the provisions of Minnesota Statutes § 14.10, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

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## Minnesota Pollution Control Agency

### Proposed Approval of Petition to Exclude Ash Generated from the Incineration of Coal and Mineral Oil Dielectric Fluid Containing Less Than 500 Parts Per Million Polychlorinated Biphenyls from the Requirements of *Minnesota Rules* Chapters 7045 and 7046

### Notice of Public Informational Meeting and Intent to Solicit Comment on Proposed Approval of the NSP Minnesota Valley Generating Plant Petition to Exclude Certain Ash from Subtitle C Hazardous Waste Regulation

NOTICE IS HEREBY GIVEN that the Commissioner of the Minnesota Pollution Control Agency (MPCA) has made a preliminary determination to approve Northern States Power's (NSP) petition to exclude the ash produced at its Minnesota Valley Generating Plant from regulation under *Minnesota Rules* Chapters 7045 and 7046. The exclusion will apply only when mineral oil dielectric fluid originally containing less than 500 ppm polychlorinated biphenyls (PCBs) is burned with coal in an oil-to-coal ratio not to exceed ten (10) percent oil by volume, provided the plant operates in compliance with the MPCA Air Emission Permit (No. 202M-85-0T-1 as amended) and proposed Amendment Number 4 to Air Emission Facility Permit Number 202M-85-0T-1, and there is no change in the processes that produce the PCB contaminated oil or in the processes by which it is blended with coal and incinerated.

The public may participate in the Commissioner of the MPCA's consideration of the delisting petition before a final decision on the petition is made. Interested persons may submit written comments on the approval of the delisting petition.

Comments must be submitted by 4:30 p.m. on April 10, 1989, and must be mailed to:

Linda Tanner  
Hazardous Waste Division  
Minnesota Pollution Control Agency  
520 Lafayette Road  
St. Paul, Minnesota 55155  
Telephone: 612/296-7349

Interested persons who submit comments to the MPCA shall set forth:

1. A statement of the person's interest in the delisting petition;
2. A statement of the action the person wishes the MPCA to take, including specific references to the portions of the preliminary determination that the person believes should be changed or are incorrect; and
3. The reasons supporting the person's position, stated with sufficient specificity as to allow the Commissioner of the MPCA to investigate the merits of the person's positions.

It is anticipated that the proposed action on the petition will be discussed at a public informational meeting on March 13, 1989, in an evening session beginning at 7:30 p.m. at the Granite Falls High School Auditorium, 450 Ninth Avenue, Granite Falls, Minnesota. All written comments received during the public comment period and during the informational meeting will be reviewed and considered by the Commissioner of the MPCA and be made available at the public informational meeting.

The proposed action on the delisting petition is published below. The proposed action includes a summary of all the evidence and rationale used by the Commissioner of the MPCA to support approval of the delisting petition.

Copies of the proposed action on the delisting petition and the "Petition to Delist Ash Generated from Incineration of PCB Contaminated Oil" may be viewed at the following locations:

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## Official Notices

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MPCA Library  
520 Lafayette Road North  
St. Paul, Minnesota 55155  
612/296-7719

Granite Falls Public Library  
155 Seventh Avenue  
Granite Falls, Minnesota  
612/564-3738

MPCA  
Marshall Regional Office  
FLC Building  
109 South Fifth Street  
Marshall, Minnesota 56258  
507/537-7146

Any person may request a contested case hearing on this matter in accordance with *Minnesota Rules* Part 7000.1000, subps. 2 and 3. Whether a hearing will be held depends upon whether:

1. There exists a material issue of fact or of application of fact to law;
2. Whether the MPCA has jurisdiction to decide such material issue; and
3. Whether a contested case hearing on the issue would help the MPCA to make a final decision.

Any person may request a copy of the MPCA's final determination in this matter. Please send a written request to Linda Tanner at the address noted above.

### ACTION AS PROPOSED

#### I. Background:

Northern States Power (NSP) owns approximately 250,000 pieces of electrical equipment. Most of this equipment contains mineral oil dielectric fluid (MODEF). Approximately ten to fifteen percent (10-15%) of this equipment was contaminated with over 50 parts per million (ppm) polychlorinated biphenyls (PCBs) at the manufacturer or through servicing. This amounts to about 1,500,000 gallons of MODEF. When equipment is removed from service to be sold, repaired, or disposed of, the mineral oil is drained and tested for PCB content. Any oil that contains over 50 ppm PCB is regulated under Federal Toxic Substances Control Act (TSCA) rules and is considered a hazardous waste in Minnesota. NSP will continue to generate PCB contaminated MODEF for many years as old equipment is serviced or removed for disposal. Under current regulations all 50 to 500 ppm PCB contaminated MODEF must be destroyed when disposed. NSP generated approximately 150,000 gallons of mineral oil that required disposal in 1988. Similar volumes are expected in future years. NSP has proposed to dispose of these oils through incineration at its Minnesota Valley Plant. PCB contaminated MODEF will be used as a fuel supplement to generate electricity.

A list of hazardous wastes from non-specific and specific sources is found under *Minnesota Rules* Part 7045.0135. These wastes are listed because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in *Minnesota Rules* Part 7045.0131 [i.e., ignitability, oxidativity, corrosivity, reactivity, toxicity and Extraction Procedure (EP) Toxicity] or meet the criteria for listing contained in *Minnesota Rules* Part 7045.0129.

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, *Minnesota Rules* Part 7045.0075, subp. 2 provides an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must provide sufficient information to allow the Minnesota Pollution Control Agency (MPCA) to determine: (1) that the waste to be excluded is nonhazardous based upon the criteria for which it was listed; (2) that no other hazardous constituents are present in the waste at levels of regulatory concern; and (3) that the waste does not exhibit any of the hazardous characteristics (see *Minnesota Rules* Part 7045.0075).

In addition to the wastes specifically listed as hazardous in *Minnesota Rules* Part 7045.0135, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes are also eligible for exclusion and remain hazardous wastes until excluded (see *Minnesota Rules* Part 7045.0214, subp. 3).

#### II. Discussion:

Northern States Power Company (NSP), Minnesota Valley Generating Plant, located in Granite Falls, Minnesota, submitted a petition on June 17, 1988, and a revised petition on September 21, 1988, to exclude ash generated from the incineration of polychlorinated biphenyls (PCBs) originally containing less than 500 ppm burned with coal in an oil-to-coal ratio not to exceed ten (10) percent oil by volume in the Minnesota Valley Generating Plant, located in Granite Falls, Minnesota, from Minnesota hazardous waste regulations (*Minnesota Rules* Chapters 7045 and 7046). The petition conforms to the requirements of the MPCA rule on delisting petitions found in *Minnesota Rules* Part 7045.0075, subp. 2. NSP used the delisting petition outline found in "Petitions to

Delist Hazardous Waste—A Guidance Manual,” U.S. EPA Office of Solid Waste [EPA/530-SW-85-003], April 1985, to prepare their petition. The listed constituents of concern are PCBs. PCBs are presently listed as hazardous pursuant to *Minnesota Rules* Part 7045.0135, subp. 5. The Minnesota waste code for PCB waste is MN03. NSP has requested that the incineration residues from the treatment of this waste should be excluded because they will not meet the criteria for which they were listed. NSP also believes that the waste is not hazardous for any other reasons (i.e., there are no additional constituents or factors that could cause the waste to be hazardous). NSP has estimated that a total of 400 tons of ash will be produced annually.

The MPCA staff review of this petition is described fully in the attached Exhibits. Briefly, the MPCA staff first evaluated the petition to determine whether the waste could be hazardous based on factors for which the waste was originally listed. The MPCA staff agrees with the petitioner that the waste will not meet the criteria for which it was originally listed. In fact the level of PCBs found in the waste is below the 2 ppm level used in nationwide permits issued by U.S. EPA staff administering the Toxic Substances Control Act of 1976 (TSCA) if a company is incinerating PCBs with an original concentration of greater than 500 ppm. The PCB level found in the NSP ash was less than 1 ppm for all samples.

The MPCA staff also evaluated the petition to determine whether the waste could be characteristically hazardous. The MPCA staff agrees with the petitioner that the waste does not exhibit any characteristic of hazardous waste.

Finally, the MPCA staff evaluated the petition to determine whether any other factor exists that warrants retaining the classification of the waste as hazardous. The MPCA staff agrees with the petitioner that there are no additional constituents or factors that would cause the waste to be classified as hazardous.

### **III. Conclusions:**

The MPCA staff reviewed the petition and all accompanying data. The approach used to evaluate the data is fully described in Attachment 1. Basically, the data is evaluated by using a Vertical and Horizontal Spread model (VHS) which is a worst-case scenario used, in this case, to predict the heavy metals and PCB concentration in the ground water at a hypothetical compliance point if the ash proposed to be delisted were placed in an unlined landfill.

The U.S. EPA regulatory levels and health-based standards with which test samples are compared are subject to change. Petitioners may be required to meet any new regulatory levels and/or health-based standards set by U.S. EPA and MPCA to retain approval of their petition and may be required to comply with other regulations or orders as a result of changed levels.

As stated in the above discussion, the MPCA staff agrees with the petitioner that: 1) the waste does not meet the criteria for which it was originally listed as hazardous waste; 2) the waste does not exhibit any characteristic of hazardous waste; 3) the waste is not a Minnesota acute hazardous waste; and 4) there are no additional constituents or factors that would cause the waste to be classified as hazardous.

### **IV. Recommendation:**

As a result of the evaluation, the MPCA staff will recommend that the MPCA Board approve NSP's petition based on current U.S. EPA and MPCA regulatory levels and health-based standards. Further, depending on disposal method, the solid wastes (ash) will be regulated under all applicable provisions of *Minnesota Rules* Chapters 7000, 7001, 7035, or 7040, and in accordance with prior approval from the MPCA's Ground Water and Solid Waste Division.

Gerald L. Willet  
Commissioner

## **ATTACHMENT 1**

### **Description of Approach Used to Evaluate Delisting Petitions**

Following is a brief description of the approach the Commissioner used to evaluate NSP's delisting petition. It also represents the approach that will be used to evaluate any comments submitted to the Commissioner addressing the Commissioner's findings or methodology.

The Commissioner first evaluates the petition to determine whether the waste is hazardous based on the factors for which the waste was originally listed. If the Commissioner believes that, based on the original listing factors, the waste is still hazardous on this basis, it will propose to deny the petition. If, however, the Commissioner agrees with the petitioner that the waste is nonhazardous with respect to original listing criteria, the waste will then be evaluated with respect to other factors if there is reasonable basis to believe that such additional factors could cause the waste to be hazardous.

The Commissioner uses a hierarchical approach to evaluate petitions for the other factors (e.g., for constituents listed in *Minnesota Rules* Part 7045.0141). See 50 FR 7882 (February 26, 1985). This approach may, in some cases, eliminate the need for additional testing. The petitioner can choose to submit a raw materials list and process descriptions. The Commissioner evaluates the information to determine whether any hazardous constituents are used or formed in the treatment or incineration processes and are likely to be present in the waste at significant levels. If so, the Commissioner then will request that the petitioner perform additional

## Official Notices

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analytical testing. If the petitioner disagrees, the petitioner may present arguments on why the toxicants would not be present in the waste, or, if present, why they would pose no toxicological hazard. The reasoning may include descriptions of closed or segregated systems, or mass balance arguments relating volumes of raw materials used to the volume of waste generated. If the Commissioner finds that the arguments presented by the petitioner are not sufficient to eliminate the reasonable likelihood of the toxicant's presence in the waste at levels of regulatory or health concern, the petition would be tentatively denied on the basis of insufficient information. The petitioner then may choose to submit the additional analytical data on representative samples of the waste during the public comment period.

Rather than submitting a raw materials list, petitioners may test their waste for any additional toxic constituents that may be present and submit these data to the Commissioner. In this case, the petitioner must demonstrate why any additional toxic constituents, for which no testing was done, would not be present in the waste or, if present, why they would not be present at concentrations that would pose a toxicological hazard.

In making a delisting determination, the Commissioner also evaluates each petitioned waste against the listing criteria and factors cited in *Minnesota Rules Part 7045.0129*. Specifically, the Commissioner considers whether the waste is acutely toxic and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and bioaccumulate, their persistence in the environment once released from the waste, plausible types of management of the waste, and the quantities of the waste generated. In this regard, the Commissioner has developed and currently is using an analytical approach to evaluate wastes that are landfilled and land treated. See 50 *FR* 7882 (February 26, 1985), 50 *FR* 48886 (November 27, 1985), 50 *FR* 48943 (November 27, 1985), and 51 *FR* 41082 (November 13, 1986). The overall approach, which includes a ground water transport model, is used to predict reasonable worst-case contaminant levels in ground water in nearby receptor wells (i.e., the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). The land treatment model also has an air component and predicts the concentration of specific toxicants at some distance downwind of the facility. The compliance-point concentration determined by the model then is compared directly to a level of regulatory concern. If the value at the compliance point predicted by the model is less than the level of regulatory concern, then the waste could be considered non-hazardous and a candidate for delisting. If the value at the compliance point is above this level, however, then the waste probably still will be considered hazardous, and not excluded from Subtitle C control.

This approach has resulted in the development of a sliding regulatory scale which suggests that a large volume of waste exhibiting a particular extract level would be considered hazardous, while a smaller volume of the same waste could be considered non-hazardous. Other factors may result in the denial of a petition, such as actual ground water monitoring data or spot-check verification data. The approach used by the MPCA predicts that the larger the waste volume, the higher the levels of toxicants at the compliance point. The Commissioner believes this to be a reasonable outcome because a larger quantity of waste (and/or the toxicants in the waste) might not be attenuated sufficiently to result in compliance-point concentrations that are less than the levels of regulatory concern. For wastes that are landfilled, the mathematical relationship (with respect to ground water) yields at least a six-fold dilution of the toxicant concentration initially entering the aquifer (i.e., any waste exhibiting extract levels equal to or less than six times a level of regulatory concern will generate a toxicant concentration at the compliance point equal to or less than that level of regulatory concern). Depending on the volume of waste, an additional five-fold dilution may be imparted, resulting in a total dilution of up to thirty-two times.

Under certain circumstances, a petitioner may request an "upfront" delisting (i.e., for waste that has not yet been generated or that will be subject to further treatment). An upfront delisting (when treatment is planned) allows an exclusion to be granted based on untreated waste characteristics, pilot-scale (i.e., scaled down versions of the proposed treatment system operated in either the laboratory or the field) treatment data if available, process descriptions and batch testing requirements (i.e., required analytical testing of representative samples obtained from the full-scale treatment system verifying that the treatment system is on-line and operating as described in the petition). To show that, once on-line, a treatment system can meet the Commissioner's verifications testing limitations (i.e., the maximum allowable level of the hazardous constituents of concern present in the waste, below which, the waste would not be considered hazardous) and can demonstrate that the treated waste will not be hazardous.

Requirements for upfront delisting of wastes not requiring treatment are identical to those for treated wastes, except that analytical testing would be performed on the raw (untreated) waste generated by pilot-scale manufacturing processes, and on-line batch testing (one of the conditions of the exclusion) would be performed on the raw waste generated by full-scale manufacturing process.

For upfront delisting of either treated or untreated wastes, a list of constituents is developed for the verification testing and tentative maximum allowable treated waste concentrations for these constituents can be (and are presently) derived by back-calculating from the regulatory standards through the VHS model and organic leachate model (OLM). These levels (i.e., "delisting levels") are made conditions of the delisting.

Upfront delisting has the advantage of allowing the applicant to know what treatment levels for constituents should be sufficient to render specific wastes non-hazardous, before investing in new or modified waste treatment systems. Therefore, upfront delisting will allow new facilities to receive exclusions prior to generating waste, which, without upfront exclusions, would unnecessarily have

been considered hazardous. Upfront delisting for existing facilities could be processed concurrently during construction or permitting activities; therefore, new or modified treatment systems should be capable of producing wastes that are considered non-hazardous sooner than otherwise would be possible. At the same time, conditional batch testing requirements to submit data verifying that the delisting levels are achieved by the fully operational manufacturing/treatment systems will guarantee the integrity of the delisting program and will ensure that only non-hazardous wastes are removed from Subtitle C control.

The Commissioner is using this approach in determining the potential impact of the unregulated disposal of petitioned waste on human health and the environment and has used this approach in evaluating the wastes proposed for exclusion in today's publication. As a result of this evaluation, the Commissioner is proposing to grant the petition discussed in this notice.

Finally, the Hazardous and Solid Waste Amendments of 1984 specifically require the Commissioner to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made for a petition until all public comments are addressed.

**TABLE B: Test Burn Total PCDF Results for Ash Samples from Granite Falls (ng/g)**

		Composite A	Composite B	Composite C	Composite D	Ash Blank*	Laboratory Method Blank*
TCDF	FLY ASH	(0.044)	(0.026)	(0.055)	(0.080)	(0.052)	(0.055)
	BOTTOM ASH	(0.046)	(0.088)	(0.11)	(0.10)	(0.13)	(0.055)
PCDF	FLY ASH	(0.032)	(0.045)	(0.023)	(0.059)	(0.027)	(0.018)
	BOTTOM ASH	(0.033)	(0.036)	(0.041)	0.035	(0.067)	(0.018)
HxCDF	FLY ASH	0.029	0.068	(0.040)	(0.076)	0.019	(0.081)
	BOTTOM ASH	(0.058)	(0.064)	0.017	0.12	0.45	(0.081)
HpCDF	FLY ASH	(0.060)	(0.090)	(0.047)	(0.12)	(0.031)	0.10
	BOTTOM ASH	(0.093)	(0.076)	(0.055)	0.12	0.085	0.10
OCDF	FLY ASH	(0.10)	(0.13)	(0.059)	(0.78)	(0.032)	0.084
	BOTTOM ASH	(0.10)	(0.14)	(0.069)	(0.64)	(0.11)	(0.084)

Parentheses indicate analyte not detected; value represents detection limit.

\*Ash Blank and Laboratory Method Blank are included for comparison.

**TABLE C: Test Burn Total PCDD Results for Ash Samples from Granite Falls (ng/g)**

		Composite A	Composite B	Composite C	Composite D	Ash Blank*	Laboratory Method Blank*
TCDF	FLY ASH	(0.11)	(0.13)	(0.11)	(0.11)	(0.11)	(0.073)
	BOTTOM ASH	(0.10)	(0.11)	(0.21)	(0.22)	(0.23)	(0.073)
PCDD	FLY ASH	(0.17)	(0.29)	(0.094)	(0.39)	(0.10)	(0.17)
	BOTTOM ASH	(0.19)	(0.30)	(0.019)	(0.22)	(0.35)	(0.17)
HxCDD	FLY ASH	(0.069)	(0.099)	(0.037)	(0.12)	(0.045)	(0.067)
	BOTTOM ASH	(0.075)	(0.14)	(0.045)	(0.13)	(0.12)	(0.067)
HpCDD	FLY ASH	0.074	0.12	(0.053)	(0.34)	0.075	0.26
	BOTTOM ASH	(0.22)	(0.15)	(0.084)	0.45	0.11	0.26
OCDD	FLY ASH	0.085	0.11	0.080	(1.1)	0.055	0.38
	BOTTOM ASH	0.18	(0.32)	(0.12)	0.50	0.12	0.38

Parentheses indicate analyte not detected; value represents detection limit.

\*Ash Blank and Laboratory Method Blank are included for comparison.

**TABLE D: 2, 3, 7, 8—PCDF Results for Ash Samples from Granite Falls (ng/g)**

		Composite A	Composite B	Composite C	Composite D	Ash Blank*	Laboratory Method Blank*
2,3,7,8—TCDF	FLY ASH	(0.044)	(0.026)	(0.055)	(0.080)	(0.052)	(0.055)
	BOTTOM ASH	(0.046)	(0.088)	(0.11)	(0.10)	(0.13)	(0.055)

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1,2,3,7,8—PCDF	FLY ASH	(0.032)	(0.045)	(0.023)	(0.059)	(0.027)	(0.018)
	BOTTOM ASH	(0.033)	(0.036)	(0.41)	0.035	(0.067)	(0.018)
2,3,4,7,8—PCDF	FLY ASH	(0.030)	(0.018)	(0.032)	(0.056)	(0.031)	(0.027)
	BOTTOM ASH	(0.040)	(0.046)	(0.031)	(0.041)	(0.064)	(0.030)
1,2,3,4,7,8—HxCDF	FLY ASH	0.018	0.026	(0.040)	(0.076)	0.019	(0.081)
	BOTTOM ASH	(0.058)	(0.064)	0.017	0.051	0.045	(0.081)
1,2,3,6,7,8—HxCDF	FLY ASH	(0.042)	(0.046)	(0.030)	(0.074)	(0.028)	(0.068)
	BOTTOM ASH	(0.052)	(0.077)	(0.046)	0.071	(0.048)	(0.068)
1,2,3,7,8,9—HxCDF	FLY ASH	(0.025)	(0.029)	(0.018)	(0.058)	(0.020)	(0.068)
	BOTTOM ASH	(0.050)	(0.047)	(0.037)	(0.069)	(0.053)	(0.068)
2,3,4,6,7,8—HxCDF	FLY ASH	(0.0099)	(0.032)	(0.021)	(0.058)	(0.017)	(0.043)
	BOTTOM ASH	(0.033)	(0.049)	(0.026)	(0.098)	(0.049)	(0.043)
1,2,3,4,6,7,8—HpCDF	FLY ASH	(0.060)	(0.090)	(0.047)	(0.12)	(0.031)	0.10
	BOTTOM ASH	(0.093)	(0.076)	(0.055)	0.12	(0.11)	0.10
1,2,3,4,7,8,9—HpCDF	FLY ASH	(0.041)	(0.030)	(0.021)	(0.099)	(0.013)	(0.043)
	BOTTOM ASH	(0.037)	(0.047)	(0.042)	(0.13)	(0.092)	(0.043)

Parentheses indicate analyte not detected; value represents detection limit.

\*Ash Blank and Laboratory Method Blank are included for comparison.

**TABLE E: 2,3,7,8—PCDD Results for Ash Samples from Granite Falls (ng/g)**

		Composite A	Composite B	Composite C	Composite D	Ash Blank*	Laboratory Method Blank*
2,3,7,8—TCDD	FLY ASH	(0.11)	(0.13)	(0.11)	(0.11)	(0.11)	(0.073)
	BOTTOM ASH	(0.10)	(0.11)	(0.21)	(0.22)	(0.23)	(0.073)
1,2,3,7,8—PCDD	FLY ASH	(0.17)	(0.29)	(0.094)	(0.39)	(0.10)	(0.17)
	BOTTOM ASH	(0.19)	(0.30)	(0.19)	(0.22)	(0.35)	(0.17)
1,2,3,4,7,8—HxCDD	FLY ASH	0.070	(0.078)	(0.066)	(0.084)	(0.037)	(0.13)
	BOTTOM ASH	(0.13)	(0.12)	(0.063)	(0.22)	(0.13)	(0.13)
1,2,3,6,7,8—HxCDD	FLY ASH	(0.069)	(0.099)	(0.037)	(0.12)	(0.045)	(0.067)
	BOTTOM ASH	(0.075)	(0.14)	(0.045)	(0.13)	(0.12)	(0.067)
1,2,3,7,8,9—HxCDD	FLY ASH	(0.049)	(0.070)	(0.042)	(0.079)	(0.021)	(0.11)
	BOTTOM ASH	(0.070)	(0.098)	(0.068)	(0.13)	(0.074)	(0.11)
1,2,3,4,6,7,8—HpCDD	FLY ASH	0.074	(0.19)	0.053	(0.34)	(0.047)	0.26
	BOTTOM ASH	(0.22)	(0.15)	(0.084)	0.29	0.11	0.26

Parentheses indicate analyte not detected; value represents detection limit.

\*Ash Blank and Laboratory Method Blank are included for comparison.

## EXHIBIT A

### WASTE EVALUATION

Generator/Hauler Minnesota Valley Generating Plant, Granite Falls

Log # N/A

N/A

Date Received by MPCA

Waste Ash Generated from Incineration of PCB Contaminated Oil

Hazardous — Management of this material must conform to  
Minnesota Hazardous Waste Rules

Nonhazardous — Substantiation: \_\_\_\_\_

Minn. Rules pt. 7045.0131, subp. 2: Not Ignitable

Minn. Rules pt. 7045.0131, subp. 3: Not an Oxidizer



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Minn. Rules pt. 7045.0131, subp. 4: Not Corrosive

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Minn. Rules pt. 7045.0131, subp. 5: Not a Reactive Waste

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\*Minn. Rules pt. 7045.0131, subp. 6: Not Orally/Dermally Toxic

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\*\*Minn. Rules pt. 7045.0131, subp. 7: Not E.P. Toxic for Metals

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Minn. Rules pt. 7045.0135: A Listed Hazardous Waste

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\*See "Petition to Delist Ash Generated from Incineration of PCB  
Contaminated Oil," Attachment 10

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\*\*See "Petition to Delist Ash Generated from Incineration of PCB  
Contaminated Oil," Attachment F

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## **EXHIBIT B**

### **VERTICAL AND HORIZONTAL SPREAD MODEL**

The following is a brief description of the Vertical and Horizontal Spread model (VHS) which the Commissioner used to evaluate the data submitted in NSP's petition. As part of the petition, and with approval of the Commissioner, NSP conducted a test incineration of the PCB contaminated oil burned with coal. Samples of the resulting ash were taken and tested. None of the samples analyzed exceeded any of the U.S. EPA and MPCA regulatory levels or health-based standards. The model may also be used, where appropriate, to analyze any comments submitted to the MPCA.

The VHS model [see 50 *FR* 7882 (February 26, 1985), 50 *FR* 48886 (November 27, 1985)] is a worst-case scenario that is used to predict the concentration of a constituent in the ground water at a hypothetical compliance point. This model uses a qualitative and quantitative approach in evaluating the hazardousness of wastes. The model considers a number of factors including the toxicity, concentration, mobility and persistence of the specific constituents, the quantity of waste generated and plausible types of improper management of the waste. The model assumes disposal at an unlined municipal landfill followed by migration of the constituents to a nearby well. The model does not allow for the consideration of site-specific factors because a delisted waste is no longer subject to hazardous waste control.

In the VHS model, the toxicity of the waste is evaluated by comparing toxicant levels at a drinking water well with the recommended national drinking water standards, ambient water quality criteria, occupational safety and health limits or other health-based exposure values, as appropriate. If the value at the well that is predicted by the VHS model is less than the health-based standard, the waste may be considered non-hazardous and a candidate for delisting. If the value at the well is above the health-based standards, then the waste probably will still be considered hazardous.

This model is conservative and because it is based on assumptions, it has limitations. For instance, the model assumes that the drinking water well is located 500 feet directly downgradient of the landfill and that there is a fixed amount of ground water available for dilution. It does not consider site-specific factors because delisting decisions are generator site-specific, not disposal site-specific. Once a waste is delisted it is assumed that it will be managed at a non-regulated facility. Current regulations do not allow disposal site-specific factors to be considered when evaluating delisting petitions. The U.S. EPA feels that such site-specific conditions are necessary to ensure that the waste does not pose a hazard, then they should be specified in a hazardous waste permit. The objective of delisting is to identify wastes which are non-hazardous and to exempt them from the management requirements for RCRA hazardous wastes, not to stipulate conditions for the management of delisted wastes on a site-specific basis.

The VHS model is not a rule and cannot be used as such. Therefore, each time the VHS is used, comments are accepted on the appropriateness of using it in each specific situation. It is important to note that the VHS model results are just one factor of many used for delisting decisions.

Table A presents the NSP worst case Extraction Procedure (EP) Toxicity metal levels detected in fly and bottom ash test burn samples, their predicted levels as determined by the VHS model, and the corresponding U.S. EPA regulatory levels (1/11/88). None of the samples analyzed exceeded the U.S. EPA regulatory levels or health-based standards.

**TABLE A — VERTICAL AND HORIZONTAL SPREAD MODEL (VHS)**

**Fly Ash — Test Burn\***

Constituent	EP Toxicity* Maximum level (mg/l)	Predicted Level (mg/l) (VHS)	USEPA Health Limit (mg/l)
Arsenic (As)	0.019	0.00059	0.05
Barium (Ba)	6.1	0.2	1.0
Cadmium (Cd)	< 0.05	< 0.002	0.01
Chromium (Cr)	0.58	0.018	0.05
Lead (Pb)	0.12	0.0037	0.05
Mercury (Hg)	< 0.001	< 0.00003	0.002
Selenium (Se)	0.07	0.002	0.01
Silver (Ag)	< 0.1	< 0.003	0.05

**Bottom Ash — Test Burn\***

Constituent	EP Toxicity* Maximum level (mg/l)	Predicted Level (mg/l) (VHS)	USEPA Health Limit (mg/l)
Arsenic (As)	< 0.05	< 0.002	0.05
Barium (Ba)	< 0.5	0.02	1.0
Cadmium (Cd)	< 0.05	< 0.002	0.01
Chromium (Cr)	0.52	0.016	0.05
Lead (Pb)	0.18	0.0056	0.05
Mercury (Hg)	< 0.001	< 0.00003	0.002
Selenium (Se)	< 0.05	< 0.002	0.01
Silver (Ag)	< 0.1	< 0.003	0.05

**EXHIBIT C**

**SAMPLING AND ANALYSIS**

**Background:**

NSP petitioned the MPCA to exclude its ash from hazardous waste regulation on June 17, 1988, and provided an amended petition on September 21, 1988. In support of its petition, NSP has submitted:

- 1) Results from water leachate and Extraction Procedure (EP) leachate analyses for EP toxic metals from representative samples of fly ash and bottom ash from coal ash (no PCB oil) and test burn ash (with PCB oil);
- 2) Results from the analyses of test burn ash (fly and bottom) for PCB content, polychlorinated dibenzofuran (PCDF) content and acute toxicity;
- 3) PCB content of the oil incinerated in the test burn;
- 4) Coal analyses for coal types to be burned during PCB oil incineration;
- 5) A detailed description of the incineration process (found in the air quality permit);
- 6) A report on the characterization of coal ash and slag from metropolitan power plants;
- 7) A report on sample collection and analysis of ash and oil samples at NSP — Minnesota Valley Generating Plant; and
- 8) A report on ash sampling and compositing at NSP — Minnesota Valley Generating Plant.

Fly and bottom ash are generated as combustion by-products from burning coal during the production of electricity. Fly ash is the fine fraction of combustion residue in the flue gas which is collected by emission control equipment. Bottom ash is coarse combustion residue formed at the bottom of the furnace. Fly ash and bottom ash generated from the combustion of fuel which is at least 51 percent coal or other fossil fuels where the balance of the fuel does not contain hazardous waste is exempt from the *Minnesota Rules* Chapters 7045 and 7046 regulation (*Minnesota Rules* Part 7045.0120, subp. F). Ash from the incineration of PCB contaminated oil

burned with coal is not exempt under *Minnesota Rules* Part 7045.0120, subp. F, since PCBs are Minnesota listed hazardous waste under *Minnesota Rules* Part 7045.0135, subp. 5. Further, any waste derived from a hazardous waste listed in *Minnesota Rules* Part 7045.0135 is automatically considered hazardous waste (*Minnesota Rules* Part 7045.0214, subp. 3, item A). Therefore, ash from the incineration of PCB contaminated oil burned with coal is a listed hazardous waste and is subject to regulation under *Minnesota Rules* Chapters 7045 and 7046.

**Agency Analysis:**

An independent consultant collected representative samples of both non-test burn and test burn fly ash and bottom ash.

NSP collected four PCB, four water leach, and four EP Toxicity leach tests on test burn composited fly and bottom ash samples at their Chestnut Avenue laboratory in Minneapolis, Minnesota. One sample of both fly and bottom ash was split and sent to Interpoll Laboratories, Circle Pines, Minnesota, for duplicate analysis. The methods used and the actual data are presented in Table A. None of composite levels exceed U.S. EPA regulatory standards.

Because water leach test results are not used as part of the hazardous waste evaluation process, they will not be presented below and are found only in the original delisting petition.

The MPCA is aware that incomplete incineration of PCB contaminated oil and coal could cause formation of polychlorinated dibenzo-p-dioxins (PCDD's) and polychlorinated-dibenzofurans (PCDF's). Testing specially for PCDD's and PCDF's is not required by the hazardous waste rules and no regulatory criteria is found in the hazardous waste rules, hence comparisons to regulatory standards cannot be made. Minnesota classification of an acutely hazardous waste is found in *Minnesota Rules* Part 7045.0131, subp. 6. This rule requires waste evaluation for acute toxicity. The above conditional testing requirement was added to verify that NSP can successfully treat the PCBs while operating inside the limits of their MPCA Air Emission Facility Permit as amended.

NSP had Interpoll Laboratories ship four composite samples of fly ash and four composite samples of bottom ash to Battelle, Columbus, Ohio. Gas Chromatography/Mass Spectrometer (GC/MS) analysis for PCDD/PCDF was conducted according to Method 8280 from EPA manual SW-846 (2) with the following modifications:

- Addition of penta- through hepta-CDD/CDF-<sup>13</sup>C<sub>12</sub> labeled internal standards in addition to the prescribed tetra- and octa-CDD-<sup>13</sup>C<sub>12</sub>. These additional internal standards provide significantly greater quantitative accuracy and precision for the penta- through hepta-congener classes.

- Use of high resolution mass spectrometry (HRMS) rather than low resolution mass spectrometry (LRMS). The desired detection limits were not achievable with LRMS. Quantification with the high resolution data included both molecular ions rather than the single ion for quantification and single confirmation ion prescribed by the method.

The actual data are presented in Tables B, C, D and E of this Exhibit. Those numbers surrounded by parentheses are the detection limits and the analyte was not detected.

Further, NSP used their test results and made comparisons with data used nationwide. The MPCA concurs with NSP's petition Attachment II data summary printed below.

4.0 Estimated Acute Toxicity of Ash Samples due to their PCDD/PCDF Content Application of *Minnesota Rule* 7045.0131, subpart 6 was used to assess the acute toxicity of these samples.

The LD<sub>50</sub> for TCDD<sub>1</sub> in the rat is reported to be 22 µg/kg (Schwetz *et al.*, 1973)<sup>1</sup>. Therefore, for a PCDD-containing ash sample to fail the *Minnesota Rule* [i.e., the acute oral toxicity (LD<sub>50</sub>) of the sample must be less than 500 mg/kg b.w.], the ash sample must contain at least 44.0 mg/kg of 2,3,7,8-TCDD (or 2,3,7,8-TCDD equivalents).

Calculation of the 2,3,7,8-TCDD equivalents under both worst case and best case conditions for both bottom ash and fly ash yield data five to seven orders of magnitude below this acutely toxic level. Thus, it must be concluded that these ash samples would *not* be acutely toxic under *Minnesota Rule* 7045.0131, subpart 6 from their content of PCDD/PCDF.

In addition to the above mathematical model for acute toxicity evaluation, the MPCA required (see *Minnesota Rules* Part 7045.0131, subp. 6) an Acute Oral Toxicity Test on the test burn fly ash as well as the bottom ash. The procedure used by Biosearch, Incorporated, Philadelphia was found in 40 CFR 158 subd. F and therefore is consistent with Minnesota hazardous waste rules. There were no rat fatalities.

1. Schwetz, B.A.; J.M. Norris; G.L. Sparschu; V.K. Rowe; P.J. Gehring; J.L. Emers and C.G. Gerbig, 1973. Toxicology of Chlorinated dibenzo-p-dioxins. *Environmental Health Perspective*. 5:87-99

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**TABLE A: EXTRACTION PROCEDURE (EP) TOXICITY LEACHATE/METHOD: EPA M-1310**

CONSTITUENT/ US E.P.A. STD	ANALYSIS METHOD	COMPOSITE A	NON-TEST BURN	COMPOSITE B	COMPOSITE B-DUP	COMPOSITE C	COMPOSITE D	
Arsenic/5.0 mg/l	EPA M-206.2, AA Furnace*	FLY ASH	.015	.013	.019	<.05	.012	<.010
		BOTTOM ASH	<.010	<.010	<.010	<.05	.011	.012
Barium/100.0 mg/l	EPA M-200.7, ICP*	FLY ASH	.7	.9	1.3	.81	3.1	6.1
		BOTTOM ASH	<.5	1.4	<.5	.34	<.5	<.5
Cadmium/1.0 mg/l	EPA M-200.7, ICP*	FLY ASH	<.01	<.01	<.01	<.05	<.01	<.01
		BOTTOM ASH	<.01	<.01	<.01	.05	.01	<.01
Chromium/5.0 mg/l	EPA M-200.7, ICP*	FLY ASH	.44	.21	.40	.58	.58	.44
		BOTTOM ASH	.16	<.05	.16	.52	.34	.24
Lead/5.0 mg/l	EPA M-200.7, ICP*	FLY ASH	<.05	<.05	<.05	.12	<.05	<.05
		BOTTOM ASH	<.05	<.05	<.05	.18	<.05	<.05
Mercury/0.2 mg/l	EPA M-245.2, Cold Vapor*	FLY ASH	<.001	<.001	<.001	<.001	<.001	<.001
		BOTTOM ASH	<.001	<.001	<.001	<.001	<.001	<.001
Selenium/1.0 mg/l	EPA M-270.2, AA Furnace*	FLY ASH	.07	.015	.06	.06	.06	.06
		BOTTOM ASH	<.010	<.010	<.010	<.05	<.010	<.010
Silver/5.0 mg/l	EPA M-272.2, AA Furnace*	FLY ASH	<.05	<.05	<.05	<.1	<.05	<.05
		BOTTOM ASH	<.05	<.05	<.05	<.1	<.05	<.05
Total PCBs µ/g = mg/kg	EPA M-608*	FLY ASH	<1.0	<1.0	<1.0	<.01	<1.0	<1.0
		BOTTOM ASH	<1.0	<1.0	<1.0	.02	<1.0	<1.0

\*Digestion Method: EPA M-3020

## Department of Health

### Health Resources Division

#### Outside Information or Opinions Sought Regarding Proposed Rules Governing Fees.

NOTICE IS HEREBY GIVEN that the State Department of Health is seeking information or opinions from sources outside the agency in preparing to propose:

- 1) amendments to rules governing licensing fees for accredited and non-accredited hospitals, nursing homes, boarding care homes, supervised living facilities, and ambulatory surgery facilities; and
- 2) the adoption of rules governing registration fees for home care and hospice providers.

The amendments described under "1)" above are authorized by *Minnesota Statutes*, section 16A.128, which requires the Minnesota Department of Health to recover the cost of licensure activities through licensure fees. The adoption of rules governing registration fees for home care providers is authorized by *Minnesota Statutes*, section 144A.49 which requires home care providers to pay a fee for registration as a home care provider.

The State Department of Health requests information and opinions concerning the subject matter of the proposed rules. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to: Mike Dean, 393 North Dunlap, P.O. Box 64900, St. Paul, MN 55164-0900. Oral statements will be received during regular business hours over the telephone at (612) 643-2156 and in person at the above address.

All statements of information and opinion shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Health shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

Sister Mary Madonna Ashton  
Commissioner of Health

## Department of Human Services

### Notice of Hospital Cost Index

*Minnesota Statutes* 256.969, subdivision 1 and *Minnesota Rules*, parts 9500.1200 require the establishment of a Hospital Cost Index (HCI) for rate setting purposes for inpatient hospital services under the General Assistance Medical Plan and Medical Assistance Programs. The inflation forecasts provided below were obtained from the Data Resources, Inc., *Health Care Costs* as published in the fourth quarter of 1988 using the percent moving average. The cost category weights were provided by the Minnesota Hospital Association. The HCI will be used to adjust the rates of hospitals whose fiscal year begins during the second quarter of 1989.

Comments concerning the HCI may be forwarded to the following address:

Paul Olson, Supervisor  
 Hospital Reimbursement Section  
 Audit Division  
 444 Lafayette Road, Fifth Floor  
 St. Paul, Minnesota 55155-3836

Cost Category	Weight	Percent	Weighted Percent
Salaries	.538	5.7	3.07
Employee Benefits	.091	5.4	.49
Medical Fees (Medical Care Service)	.062	8.6	.53
Raw Food	.014	6.1	.09
Medical Supplies (Medical Commodities)	.110	5.3	.58
Pharmaceuticals	.045	5.3	.24
Utilities	.026	5.2	.14
Repairs/Maintenance	.017	5.3	.09
Insurance*	.015	5.3	.08
Other Operating	.082	5.3	.43
	1.000		5.74
		Technology =	1.00
		HCI =	6.7%

\*Excludes Malpractice

## Department of Human Services

### Long Term Care Division

### Outside Information or Opinions Sought Regarding Proposed Amendments to Rules Governing the Determination of Payment Rates for Intermediate Care Facilities for Persons with Mental Retardation

NOTICE IS HEREBY GIVEN that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose the adoption of amendments to the rule governing the determination of payment rates for intermediate care facilities for persons with mental retardation, *Minnesota Rules*, parts 9553.0010 to 9553.0080. The adoption of the rule is authorized by *Minnesota Statutes*, section 256B.501, subdivision 3, which requires the agency to establish procedures to determine rates for care of residents of intermediate care facilities for persons with mental retardation or related conditions.

The proposed amendments establish a new payment system which targets resources to clients based on their need for services. The rule amendments will include provisions for client assessments, client reimbursement classes and class weights, determination of the service unit rate, determination of the program payment rate, reconsideration of client reimbursement classification, initial adjustment of program operating cost payment rates, resident access to assessments and documentation, and payment rates for new facilities.

The State Department of Human Services requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

## Official Notices

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Anu Seam  
Rules Division  
Minnesota Department of Human Services  
444 Lafayette Road  
St. Paul, MN 55101-3816

Oral statements will be received during regular business hours over the telephone at (612) 297-4997 by Anu Seam and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

## Department of Human Services

### Health Care Division

#### **Outside Information or Opinions Sought Regarding Proposed Rules Governing Second Surgical Opinion Requirement as a Condition for Medical Assistance and General Assistance Medical Care Reimbursement for Outpatient Hospital Services**

NOTICE IS HEREBY GIVEN that the State Department of Human Services is seeking information or opinions from sources outside the agency in preparing to propose the adoption of the rule governing second surgical opinion requirements as a condition for medical assistance and general assistance medical care reimbursement for outpatient hospital services, *Minnesota Rules*, parts 9505.5130 to 9505.5105.

The adoption of the rule is authorized by *Minnesota Statutes*, Section 256.991, which requires the agency to establish standards and criteria for deciding whether a second surgical opinion is required for an elective surgery and by *Minnesota Statutes*, Section 256D.03, subdivision 7(b) which requires the agency to establish standards for utilization review in the general assistance medical care program which conform to the procedures established for the medical assistance program.

The proposed rule establishes procedures to govern outpatient second surgical opinion requirements.

The State Department of Human Services requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Anne Shotton  
Health Care Policy Division  
Minnesota Department of Human Services  
444 Lafayette Road  
St. Paul, MN 55101-3853

Oral statements will be received during regular business hours over the telephone at (612) 296-3386 by Anne Shotton and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

## Department of Human Services

### Long Term Care Division

#### **Outside Information or Opinions Sought Regarding Proposed Rules Governing Service Principles and Rate Setting Procedures for Day Training and Habilitation Services for Adults with Mental Retardation and Related Conditions**

NOTICE IS HEREBY GIVEN that the State Department of Human Services is seeking information or opinions from sources

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## State Contracts and Advertised Bids

outside the agency in preparing to propose the adoption of the rule governing service principles and rate setting procedures for day training and habilitation services for adults with mental retardation and related conditions, *Minnesota Rules*, parts 9525.3000 to 9525.3015. The adoption of the rule is authorized by *Minnesota Statutes*, section 252.47, which requires the agency to adopt permanent rules to implement *Minnesota Statutes*, sections 252.40 to 252.47.

The proposed rule establishes a formula which will be used by counties for setting payment rates for services provided by day training and habilitation service vendors.

The State Department of Human Services requests information and opinions concerning the subject matter of the rule. Interested persons or groups may submit data or views on the subject matter of concern in writing or orally. Written statements should be addressed to:

Anu Seam  
Rules Division  
Minnesota Department of Human Services  
444 Lafayette Road  
St. Paul, MN 55101-3816

Oral statements will be received during regular business hours over the telephone at (612) 297-4997 by Anu Seam and in person at the above address.

All statements of information and opinions shall be accepted until further notice is published in the *State Register* or the Notice of Hearing or Notice of Intent to Adopt Rules Without a Hearing is published in the *State Register*. Any written material received by the State Department of Human Services shall become part of the rulemaking record to be submitted to the attorney general or administrative law judge in the event that the rule is adopted.

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## State Contracts and Advertised Bids

Pursuant to the provisions of Minn. Stat. § 14.10, an agency must make reasonable effort to publicize the availability of any services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contact person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal. Certain quasi-state agencies are exempted from some of the provisions of this statute.

Commodities contracts with an estimated value of \$15,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers whose initials appear in parentheses next to the commodity for bid, by calling (612) 296-6152.

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## Department of Administration: Materials Management Division

### Contracts and Requisitions Open for Bid

Call 296-2600 for information on a specific bid, or to request a specific bid.

**Commodity:** Liquid chromatographic system  
**Contact:** Joe Gibbs 612-296-3750  
**Agency:** Agriculture  
**Deliver to:** St. Paul  
**Requisition #:** 04111 92116

**Commodity:** Printing papers  
**Contact:** Bernie Vogel 612-296-2546  
**Agency:** State Print Shops  
**Deliver to:** Various  
**Requisition #:** Price Contract

**Commodity:** Hydraulic hose and fittings  
**Contact:** Pat Anderson 612-296-3770  
**Agency:** Transportation  
**Deliver to:** Various  
**Requisition #:** Price Contract

**Commodity:** Snowmobile mid size track type all-terrain vehicle  
**Contact:** Mary Jo Bruski 612-296-3772  
**Agency:** Natural Resources  
**Deliver to:** Rochester  
**Requisition #:** 29000 51496

**Commodity:** Fence material—freeway  
**Contact:** Pat Anderson 612-296-3770  
**Agency:** Transportation  
**Deliver to:** Various  
**Requisition #:** Price Contract

**Commodity:** High speed electronic inserter  
**Contact:** Joyce Dehn 612-296-2621  
**Bid due date at 2pm:** Postpone opening date—Adden. #1  
**Agency:** Jobs & Training  
**Deliver to:** St. Paul  
**Requisition #:** 21200 20214 1

## State Contracts and Advertised Bids

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**Commodity:** Advance Trac 280  
convertamatic scrubber  
**Contact:** Mary Jo Bruski 612-296-3772  
**Bid due date at 2pm:** March 7, 1989  
**Agency:** Mankato University  
**Deliver to:** Mankato University  
**Requisition #:** 26071 18497

**Commodity:** Portable computer  
**Contact:** Joan Breisler 612-296-9071  
**Bid due date at 2pm:** March 6, 1989  
**Agency:** Human Services  
**Deliver to:** St. Paul  
**Requisition #:** 55000 95900

**Commodity:** Skidmore boiler feed water  
pump  
**Contact:** Mary Jo Bruski 612-296-3772  
**Bid due date at 2pm:** March 6, 1989  
**Agency:** Ah-Gwah-Ching-Nursing  
Home  
**Deliver to:** Ah-Gwah-Ching, MN  
**Requisition #:** 55 51 03359

**Commodity:** Trailer—low boy, 15 ton  
capacity  
**Contact:** Mary Jo Bruski 612-296-3772  
**Bid due date at 2pm:** March 6, 1989  
**Agency:** Natural Resources  
**Deliver to:** Bemidji  
**Requisition #:** Natural Resources

**Commodity:** Computers and supplies  
**Contact:** Joan Breisler 612-296-9071  
**Bid due date at 2pm:** March 7, 1989  
**Agency:** St. Cloud State University  
**Deliver to:** St. Cloud, Minnesota  
**Requisition #:** 26 073

**Commodity:** Paints & related materials  
for furniture finishing program—  
REBID  
**Contact:** J.R. Johnson 612-296-3779  
**Bid due date at 2pm:** March 8  
**Agency:** MN Correctional Facility—  
Lino Lakes  
**Deliver to:** Lino Lakes  
**Requisition #:** Price Contract

**Commodity:** Sign posts  
**Contact:** Doug Thompson 612-296-  
3775  
**Bid due date at 2pm:** March 8  
**Agency:** Transportation Department  
**Deliver to:** Various  
**Requisition #:** 79 100

**Commodity:** Test machine—  
compression  
**Contact:** Joe Gibbs 612-296-3750  
**Bid due date at 2pm:** March 8  
**Agency:** Transportation  
**Deliver to:** St. Paul  
**Requisition #:** 79000 94078

## Contracts Awards—Materials Management Division

**Item:** Training educational aids and  
devices  
**Req. #:** 27158 91007 01  
**Awarded to:** Frasca International,  
Champaign, IL  
**Awarded amount:** \$76,530.00  
**Awarded date:** February 16, 1989  
**Expir/deliv date:** April 28, 1989  
**Shipped to:** Vermilion Community  
College

**Item:** Furniture, office  
**Req. #:** 36000 14115 01  
**Awarded to:** Facility Systems Inc.,  
Minneapolis, MN  
**Awarded amount:** \$30,395.30  
**Awarded date:** February 16, 1989  
**Expir/deliv date:** April 28, 1989  
**Shipped to:** Board of Voc-Tech  
Education

**Item:** Telephone & telegraph equipment  
**Req. #:** 07300 55234 01  
**Awarded to:** JSI Telecom, Rockville,  
MD  
**Awarded amount:** \$28,145.00  
**Awarded date:** February 21, 1989  
**Expir/deliv date:** February 27, 1989  
**Shipped to:** Department of Public Safety

**Item:** Furniture, office  
**Req. #:** 27138 50872 01  
**Awarded to:** Metro Office Systems,  
Eden Prairie, MN  
**Awarded amount:** \$28,995.36  
**Awarded date:** February 15, 1989  
**Expir/deliv date:** March 31, 1989  
**Shipped to:** Community College Board  
Office

**Item:** Truck, 1/2 or 3/4 ton with  
extended cab  
**Req. #:** 29000 51487 01  
**Awarded to:** Polar Chevrolet, White  
Bear Lake, MN  
**Awarded amount:** \$89,425.00  
**Awarded date:** February 15, 1989  
**Expir/deliv date:** May 31, 1989  
**Shipped to:** DNR Regional  
Headquarters

**Item:** Truck, 1/2 or 3/4 ton with  
extended cab  
**Req. #:** 29000 51488 01  
**Awarded to:** Polar Chevrolet, White  
Bear Lake, MN  
**Awarded amount:** \$38,343.00  
**Awarded date:** February 15, 1989  
**Expir/deliv date:** May 31, 1989  
**Shipped to:** DNR Regional  
Headquarters



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## State Contracts and Advertised Bids

**Item:** Truck, 1/2 or 3/4 ton with extended cab  
**Req.#:** 29000 51489 01  
**Awarded to:** Polar Chevrolet, White Bear Lake, MN  
**Awarded amount:** \$25,562.00  
**Awarded date:** February 15, 1989  
**Expir/deliv date:** May 31, 1989  
**Shipped to:** DNR Regional Headquarters

**Item:** Truck, 1/2 or 3/4 ton with extended cab  
**Req.#:** 29000 51490 01  
**Awarded to:** Polar Chevrolet, White Bear Lake, MN  
**Awarded amount:** \$25,550.00  
**Awarded date:** February 15, 1989  
**Expir/deliv date:** May 31, 1989  
**Shipped to:** DNR—Southern Service Center

**Item:** Furniture, reception household  
**Req.#:** 55000 95791 01  
**Awarded to:** Interior Resources Group, Eagan, MN  
**Awarded amount:** \$23,000.00  
**Awarded date:** February 15, 1989  
**Expir/deliv date:** February 28, 1989  
**Shipped to:** Department Human Services

**Item:** Spectrophotometers, infrared  
**Req.#:** 27156 10448 01  
**Awarded to:** Perkin Elmer Corporation, Eden Prairie, MN  
**Awarded amount:** \$18,570.00  
**Awarded date:** February 22, 1989  
**Expir/deliv date:** March 28, 1989  
**Shipped to:** Normandale Community College

**Item:** Furniture office  
**Req.#:** 32200 19179 01  
**Awarded to:** Mid America Business System, Minneapolis, MN  
**Awarded amount:** \$16,446.00  
**Awarded date:** February 22, 1989  
**Expir/deliv date:** March 17, 1989  
**Shipped to:** MN Pollution Control Agency

**Item:** Truck material handling self propelled  
**Req.#:** 79382 01580 01  
**Awarded to:** Case Power & Equipment, Shakopee, MN  
**Awarded amount:** \$30,150.00  
**Awarded date:** February 22, 1989  
**Expir/deliv date:** April 10, 1989  
**Shipped to:** MnDOT, Central Shop

**Item:** Computer software purchase (non-pc)  
**Req.#:** 79000 93985 01  
**Awarded to:** Digital Equipment Corporation, Minneapolis, MN  
**Awarded amount:** \$15,594.90  
**Awarded date:** February 22, 1989  
**Expir/deliv date:** March 22, 1989  
**Shipped to:** MN Department of Transportation

## Department of Administration: Print Communications Division

Printing vendors for the following printing contracts must review contract specifications in printing buyers office at 117 University Avenue, Room 134-B, St. Paul, MN.

**Commodity:** Undergraduate 1989-91  
**Contact:** Printing Buyer's Office  
**Bids are due:** March 1, 1989  
**Agency:** St. Cloud State University  
**Deliver to:** St. Cloud, MN  
**Requisition #:** 4744

**Commodity:** Report of vulnerable adult maltreatment, 5,000, negs furnished, two-sided  
**Contact:** Printing Buyer's Office  
**Bids are due:** March 1, 1989  
**Agency:** Human Services  
**Deliver to:** St. Paul  
**Requisition #:** 4746

**Commodity:** Drinking drivers lose (brochure), 50,000, negs available, two-sided  
**Contact:** Printing Buyer's Office  
**Bids are due:** March 1, 1989  
**Agency:** Public Safety  
**Requisition #:** 4768

## State Contracts and Advertised Bids

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### Contract Awards—Print Communications Division

**Item:** Container labels: flouride testing  
**Req.#:** 4818  
**Awarded to:** Applied Power Products  
**Amount:** \$322.00  
**Date:** February 15, 1989  
**Deliver to:** Health Department,  
Minneapolis, MN  
**Delivery date:** 21 days

### Department of Agriculture

#### Deadline Extension for Request for Proposal to Establish a Pilot Plant for a Protein Xanthophyll Alfalfa Extraction Process

The deadline for submission of proposals to establish a pilot plant for a protein xanthophyll alfalfa extraction process as published in the *State Register*, February 6, Number 32, Page 1934 has been extended. Proposals must be received no later than 4:30 p.m., March 10, 1989. Evaluation and selection will be completed by March 24, 1989.

All proposals must be sent to and received by:

Ralph Groschen, Director of Marketing  
Minnesota Department of Agriculture  
90 West Plato Blvd., St. Paul, MN 55107  
(612) 297-2223

### Attorney General

#### State Sale of Surplus Property

The Commissioner of Administration is offering for sale, by sealed bid, a surplus building and underlying land located at 449 East Seventh Street, St. Paul, Minnesota. This parcel will be sold on the basis of highest offer received which meets all state bid requirements.

All bids must be submitted by 2:00 p.m. on March 17, 1989, to the Department of Administration, Real Estate Management Division, 50 Sherburne Avenue, Room 309, St. Paul, Minnesota 55155. For bid requirements, information and forms, contact Steve Mackenthun at the above address or at (612) 296-2278.

## MAILING LISTS GALORE

### Successful business means successful sales

The Print Communications Division has a variety of mailing lists of licensed professionals and permit holders that will enable you to focus your marketing efforts on a targeted audience.

Types of lists available are: registered nurses, real estate agents, physicians, insurance agents, boatowners, hunters, cosmetologists, teachers, and many more! And you can get them on printouts, cheshire/pressure sensitive labels, 9-track magnetic tapes, and now diskettes for minimum orders.

What's more, you can choose from several selection capabilities. You will find our selections most helpful and beneficial to your business when you learn that you can acquire names and addresses of individuals in the areas you need to target most.

Find out more about our mailing lists by writing for our free mailing list service packet. In a hurry? Call (612) 297-2552 for more information. Requests can be sent to: Print Communications Division, Mailing List Service, 117 University Avenue, St. Paul, MN 55155.

Publication editors: As a public service, please reprint this ad in your publication as is, reduced, enlarged, or redesigned to suit your format. Thank you.

## **Higher Education Coordinating Board**

### **Request for Proposals for Contractual Services**

The Minnesota Higher Education Coordinating Board (HECB) is requesting proposals from qualified consultants for design and implementation of a system to link or integrate the Agency's computerized student record data files that are used for research and analysis.

#### **Scope of the Project**

The HECB contemplates having for research nine data sources with annual files containing records for individual students.

#### **Project Start and Completion Dates**

The Contract will become effective upon execution of the contract and it's anticipated the contract should be completed within three months.

#### **Project Costs**

It is anticipated that the cost of this project will not exceed \$100,000.00 for professional services and expenses.

Those interested in receiving requests for proposals should contact:

Arlon J. Haupt  
Director of Administrative Services  
400 Capitol Square Building  
550 Cedar Street  
St. Paul, Minnesota 55101  
(612) 296-9685

Proposals will be accepted until 4:00 p.m. March 24, 1989.

## **Minnesota Historical Society**

### **Advertisement for Bids for Restoration and Reupholstering**

#### **Bids**

Sealed bids for the custom restoration and reupholstering of four styles of 1905 furniture original to the governor's suite of offices in the Minnesota State Capitol in accordance with specifications prepared by the Minnesota Historical Society, will be received in the office of the Contract Officer, Minnesota Historical Society, 1500 Mississippi Street, St. Paul, MN 55101 until 2:00 p.m., on March 14, 1989, at which time the bids will be publicly opened and read aloud. Bids received after 2:00 p.m., March 14, 1989, will be returned unopened.

#### **Bid Security**

Each proposal must be accompanied by a cash deposit, cashier's check, certified check, or corporate surety bond of a surety company duly authorized to do business in Minnesota, in the sum of not less than 5% of the total bid, payable without condition to the Minnesota Historical Society, which is submitted as bid security.

#### **Specifications**

Copies of bidding documents for preparation of bids may be obtained by contacting Mark Schwartz, Contract Officer, Minnesota Historical Society, 1500 Mississippi St., St. Paul, MN 55101, (612) 296-2155.

#### **Conditions of Bids**

The Minnesota Historical Society reserves the right to accept or reject any or all bids and to waive any irregularities therein. No bid may be withdrawn within thirty (30) days after the scheduled closing time for the receipt of bids.

# State Grants

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In addition to requests by state agencies for technical/professional services (published in the State Contracts section), the *State Register* also publishes notices about grant funds available through any agency or branch of state government. Although some grant programs specifically require printing in a statewide publication such as the *State Register*, there is no requirement for publication in the *State Register* itself.

Agencies are encouraged to publish grant notices, and to provide financial estimates as well as sufficient time for interested parties to respond.

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## Department of Corrections

### Applications Accepted for Funding under the Justice Assistance Act

The Minnesota Department of Corrections (DOC) will begin accepting applications immediately to develop a victim/witness program(s) in an unserved geographic area of Minnesota. Expansion/enhancement of existing victim/witness programs will not be considered.

A total of \$14,901 is available for the period from July 1, 1989-June 30, 1990. No future funding is available after this grant period. Local units of government in Minnesota interested in applying may secure an application form and guidelines from:

Gail Wik  
Minnesota Department of Corrections  
300 Bigelow Building  
450 North Syndicate Street  
St. Paul, Minnesota 55104  
(612) 642-0352

Applications for funding will be accepted until 4:30 p.m., April 21, 1989.

## Department of Corrections

### Applications Accepted for Funding under the Victims of Crime Act

The Minnesota Department of Corrections (DOC) will begin accepting applications immediately to expand or enhance provision of direct services to victims of child abuse in Minnesota. A total of \$142,250 is available for the period from July 1, 1989-June 30, 1990. Priority will be given to current grantees who are providing effective services.

Public or private non-profit agencies interested in applying may secure an application form and guidelines from:

Gail Wik  
Minnesota Department of Corrections  
300 Bigelow Building  
450 North Syndicate Street  
St. Paul, MN 55104  
(612) 642-0352

Applications for funding will be accepted until 4:30 p.m., April 7, 1989.

## Department of Public Service

### Energy Division

### Notice of Availability of Community Energy Council Grant Funds

Pursuant to *Minnesota Rules* 4160.5100-4160.5900 the Department of Public Service announces that it is accepting applications for community energy council grants from cities and counties, individually, collectively, or through the exercise of joint powers agreements. The maximum amount of a grant to an individual applicant is \$30,000 for the first year and \$15,000 for the second year. The maximum amount of a grant to a joint application for the first year is \$30,000 for the first applicant and \$24,000 for each additional applicant to a maximum of \$80,000. The maximum amount of a grant to a joint application for the second year is \$15,000 for the first applicant and \$12,000 for each additional applicant up to a maximum of \$48,000. All grants require at least a ten percent local match, and prospective applicants are advised that higher levels of local match have been necessary to score competitively in previous grant cycles.

The total amount of funds available is \$952,816, from the following sources:

Previously announced Exxon oil overcharge funds of \$791,183

Previously announced Amoco oil overcharge funds of \$37,612

New Exxon oil overcharge interest of \$124,041

Pursuant to *Minnesota Rules* part 4160.5300, subpart 4, a portion of the new interest is reserved to fund applications submitted by cities of the first class. This portion equals the percent of the state population constituted by cities of the first class. Therefore:

\$10,419 is reserved for the City of Minneapolis

\$7,728 is reserved for the City of St. Paul

\$2,431 is reserved for the City of Duluth

The balance of \$932,238 is available to fund applications submitted by all other eligible communities. Funds are available from these sources to support a variety of local energy programs in different energy use sectors.

Applications must be received no later than 4:30 p.m. on Wednesday, May 24, 1989, at the address given below.

Applications forms, program rules and other information can be obtained by contacting:

Mark Schoenbaum  
Department of Public Service  
900 American Center Bldg.  
150 E. Kellogg Blvd.  
St. Paul, MN 55101  
(612) 297-3602

## Supreme Court

### Lawyers Trust Account Board

#### **Request for Proposals for Programs on Legal Services for the Poor, Law-Related Education for the Public and Enhancement of the Administration of Justice**

The Lawyer Trust Account Board invites proposals for programs in the areas of legal services for the poor, law-related education for the public and the enhancement of the administration of justice which will be funded by interest on lawyers' trust accounts.

The Board has characterized these programs as follows:

(1) **Legal Services for the Poor** establish an attorney client relationship, provide legal advice or representation and accept clients based on financial eligibility criteria.

(2) **Law-related Education Programs** deliver timely, accurate information in various areas of law to members of the public relating to individual situations, legal policy questions or questions about how the legal system functions.

(3) **Programs to Enhance the Administration of Justice** provide administrative, programmatic, and/or training support to multiple legal service, advocacy or alternative dispute resolution programs or are pilot programs in innovative areas to reduce or help solve court related problems and/or improve access to justice.

Inquiries regarding proposal requests should be directed to:

Executive Director  
Lawyer Trust Account Board  
318A State Capitol  
St. Paul, MN 55155  
(612) 296-6822

Application Deadline: March 15, 1989

## Supreme Court—Legal Services Advisory Committee

### Request for Proposals for Grant Funding for Legal Services and Alternative Dispute Resolution Programs for Low Income People

The Legal Services Advisory Committee is requesting proposals for grant funding for legal services and alternative dispute resolution programs for low income people.

To request information on the grant application process, please contact:

J.L. Rehak  
230 State Capitol  
St. Paul, MN 55155  
Phone: (612) 296-6822

Application Deadline: April 14, 1989

Dated: 15 February 1989

## Supreme Court Calendar

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Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning dates, locations, cases, etc., should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155 612-296-2581.

### March, 1989

Compiled by Dale A. Hansen, (612) 297-4050.

Listed below are the cases scheduled to be heard by the Minnesota Supreme Court in the next few weeks. This listing has been compiled by the Minnesota State Law Library for informational purposes only. Cases may be rescheduled by the Court subsequent to publication in the *State Register*. Questions concerning the time and location of hearings should be directed to: Clerk of the Appellate Courts, Room 230 State Capitol, St. Paul, MN 55155 (612) 296-2581.

#### Monday, March 6, 1989 9:00 A.M.

**C0-88-11232 MICHAEL F. NICCUM, Appellant** (Attorney: Sharon L. Van Dyck of Schwebel, Goetz & Sieben, P.A.) vs. **HYDRA TOOL CORPORATION, Respondent** (Attorney: Richard A. Koehler of Stich, Angell, Kreidler & Muth, P.A.). Judgment Hennepin County.

Does Minnesota recognize, as an exception to traditional principles of corporate successor liability, the "product line" exception which states that a successor corporation which continues to manufacture the products of the acquired business assumes strict liability for all products manufactured and sold before the acquisition?

Does Minnesota recognize the mere continuation exception which finds liability in the purchasing corporation if there was a basic continuity of the enterprise of the seller corporation; the seller corporation ceased ordinary business operations; the purchasing corporation assumed those liabilities and obligations of the seller ordinarily necessary for the continuation of normal business operations; and the purchasing corporation held itself out as the effective continuation of the seller?

Does Minnesota recognize a cause of action against a successor corporation for failure to warn of a defective condition in a product manufactured by a predecessor corporation?

**C2-88-1796 and C4-88-1878 L & H AIRCO, Inc.** (formerly L & H ENTERPRISES, INC.), **Respondent** (Attorneys: James J. Thomson, Jr., Corrine A. Heine and David C. Roland of LeFevre, Lefler, Kennedy, O'Brien & Drawz) vs. **RAPISTAN CORP., successor by merger to LEAR SIEGLER, INC., MAMMOTH DIVISION, et al., Respondents** (Attorneys: Eric J. Magnuson and Sheryl Ramstad Hvass of Rider, Bennett, Egan & Arundel), **ALAN C. EIDSNESS, et al., petitioners, Respondent (C2-88-1796), Appellant (C4-88-1878)** (Attorneys: Eric J. Magnuson and Sheryl Ramstad Hvass of Rider, Bennett, Egan & Arundel), **ROBERT L. MICHAUD, petitioner, Appellant (C2-88-1796), Respondent (C4-88-1878)** (Attorneys: B.C. Hart and Gregory T. Spalj of Hart, Bruner & O'Brien, P.A.). Orders Hennepin County.

Is an attorney who allegedly obtains information from a client in the course of his professional duties in contested legal proceedings subject to tort liability to his client's adversary for failure to divulge that information to the adversary?

**C5-88-948 STATE OF MINNESOTA, Respondent** (Attorney: Linda K. Jenny, Assistant Hennepin County Attorney) vs. **JAMES A. RAYMOND, JR., Appellant** (Attorney: D. Richard Hellweg, Assistant State Public Defender). Judgment Hennepin County.

Was the evidence sufficient to rebut Appellant's claim that he killed unintentionally, in an attempt to escape after being surprised by the victim while in the act of burglarizing the victim's home?

**C8-87-2327 In Re Petition for Disciplinary Action against ELI C. LEVENSTEIN, an Attorney at Law of the State of Minnesota** (Attorney for Respondent: Eli C. Levenstein). Petition for Disciplinary Action.

What discipline is appropriate to impose upon a lawyer who abandons his clients, ignores their requests to communicate, refuses to return their files, fails to cooperate with the professional responsibility investigations, and practices law while under suspension for non-payment of his attorney registration fee?

**C5-89-149 In Re Petition for Disciplinary Action against LOREN N. BARTA, an Attorney at Law of the State of Minnesota** (Attorney for Respondent: Lawrence H. Crosby of Clem & Crosby). Order to Show Cause.

**C6-88-490 MINNEAPOLIS AUTO AUCTION, LTD., et al., Respondents** (Attorney: Stephan A. Pezalla of Russell, McLeod, Mosher & Pezalla) vs. **SPICER AUTO SALES, INC., et al., Respondents** (Attorney: Mark E. Fuller of Fuller & Finney), **TRI-STATE INSURANCE COMPANY, Defendant, TRI-STATE INSURANCE COMPANY OF MINNESOTA, interpleading cross-claimant, petitioner, Appellant** (Attorneys: Richard D. Egan and Robert I. Lang of Lang, Pauly & Gregerson, Ltd.) vs. **THE STATE OF MINNESOTA, Interpleading Defendant, GREEN LAKE STATE BANK, interpleading defendant, Respondent** (Attorney: Daniel J. Sheran of Lindquist & Vennum), **MID-STATE AUTO AUCTION, interpleading defendant, Respondent** (Attorney: Daniel J. Roth), **ROBERT D. WALKER, interpleading defendant, Respondent** (Attorney: Richard L. Ronning), **THOMAS GORIS, interpleading defendant, Respondent** (Attorney: Thomas Goris), **DON BURRIS, interpleading defendant, Respondent** (Attorney: Don Burris), **JOHN DOE, Interpleading Defendant**. Opinion Court of Appeals.

As a matter of law, does *Minnesota Statutes* § 168.27, subd. 24 (1986), which requires car dealers to keep a bond for the benefit of "any transferor, seller, or purchaser of a motor vehicle for any monetary loss caused by failure of the licensee to meet the obligations enumerated" in the statute, cover claims based on checks returned by the bank for insufficient funds?

Does the coverage of the bond extend, not only to dishonored checks as defined in a criminal statute, *Minnesota Statutes*, § 609.535, but also to checks supported by insufficient funds?

**C6-88-2062 NATIONAL CAN CORPORATION, Relator** (Attorneys: John C. Johanneson and Philip T. Colton of Maun, Green, Hayes, Simon, Johanneson & Brehl) vs. **COMMISSIONER OF REVENUE, Respondent** (Attorney: Thomas K. Overton, Special Assistant Attorney General). Orders Minnesota Tax Court.

Does *Minnesota Statutes* § 290.095 require Appellant to apportion a net operating loss deduction when the loss to be deducted was generated by business solely within the State of Minnesota?

Is *Minnesota Statutes* § 290.095, subd. 3(c), which, as interpreted by the Tax Commissioner, states that the net operating losses in corporate combinations are deductible in full by Minnesota corporations, but are restricted for unitary corporations, unconstitutional as violative of the equal protection and commerce clauses?

#### **Thursday, March 9, 1989 9:00 A.M.**

**CX-88-1027 and C0-88-1764 STATE OF MINNESOTA, Respondent** (Attorney: Paul R. Kempainen, Assistant Attorney General) vs. **ROBERT EDWARD THIEMAN, Appellant** (Attorney: Scott G. Swanson, Assistant State Public Defender). Judgment and Order Pine County.

Was the evidence of Appellant's confession to a cellmate sufficient to prove premeditation despite possible inconsistencies in the cellmate's statements?

Was the interrogating officer's explanation to Appellant of Appellant's Miranda rights sufficient to allow Appellant to knowingly and intelligently revoke his asserted right to remain silent?

Was evidence of Appellant's threat to the victim's son properly admitted by the trial court in order to show the strained relationship between Appellant and the victim?

Was the trial court's amendment to its departure report proper where the court realized its error and had fully intended to impose the original sentence?

**C6-88-2126 PETER R. STEPHENSON, Relator** (Attorney: William J. Krueger of Horvei & Krueger, P.A.) vs. **DOMINOS PIZZA AND ST. PAUL FIRE AND MARINE INSURANCE COMPANY, Respondents** (Attorney: Michael J. Patera). Order Workers' Compensation Court of Appeals.

Is the evidence sufficient to show that Appellant suffered a back injury and is thereby permanently partially disabled?

## Supreme Court Calendar

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Was the denial of permanency benefits for Appellant's alleged knee injury an equal protection violation?

Do the Permanent Partial Disability Schedule and Rules promulgated by the Commissioner of Labor and Industry comply with the statutory mandate of *Minnesota Statutes* § 176.105, subd. 4?

Were the equal protection and compliance with statute issues timely raised?

Has Appellant suffered any uncompensated wage loss related to his work injury?

### Monday, March 13, 1989 9:00 A.M.

**C7-88-2023, C9-88-2038, C3-88-2049, CX-88-2050, C3-88-2052, C6-88-2093** STATE OF MINNESOTA, Plaintiff (C7-88-2023) (Attorneys: Vernon E. Bergstrom, Chief and Michael Richardson, Assistant Hennepin County Attorney) vs. **VIOLET JOHNSON, et al., Defendants, LEROY VARNEY, et al., Appellants (C9-88-2038), Petitioner (C3-88-2052)** (Attorney: Warren R. Sagstuen, Assistant Hennepin County Public Defender), **ROBERT JOSEPH OLSON, Appellant (C3-88-2049), Petitioner (CX-88-2050)** (Attorney: Robert J. Sorenson), **ANGELA MARIE DOYLE, Appellant (C6-88-2093)** (Attorney: Olkon & Olkon). Order Hennepin County.

Does the harmless error doctrine or a per se rule of dismissal apply with respect to indictments in which there has been contact between the foreperson of the grand jury and the foreperson of a previous grand jury?

**C5-88-545** STATE OF MINNESOTA, Respondent (Attorney: Steven C. DeCoster, Assistant Ramsey County Attorney) vs. **RUSSELL DUANE CONKLIN, Appellant** (Attorneys: Bradford Colbert and Cathryn Middlebrook, Assistant State Public Defenders). Judgment Ramsey County.

Were the Appellant's Sixth Amendment rights violated when he was excluded from the room where the testimony of the alleged sexual assault victim, his four-year-old daughter, was being videotaped, when his presence made her unavailable as a witness?

Should the out-of-court statements of the victim to her foster mother, her doctor, and the County Sheriff's Investigator have been received in evidence?

Is the record sufficient to allow the court to review the allegations of error where a videotape transcript of an interview between the alleged victim and a doctor has been lost but the doctor's notes are available?

### Tuesday, March 14, 1989 9:00 A.M.

**C6-88-330** RANDY KAMPSEN, Respondent (Attorney: Robert D. Stoneburner) vs. **COUNTY OF KANDIYOHI, Respondent** (Attorney: Robert M. Frisbee of Frisbee & Holahan), **STEVEN STROM, et al., etc., petitioner, Appellants** (Attorney: George E. Hulstrand of Hulstrand, Anderson & Larson). Opinion Court of Appeals.

Is there any evidence that a conversion took place where Respondent's truck was impounded following the arrest of the non-owner driver and taken to Appellant's lot where it sat unclaimed for three months before being sold and a letter informing Respondent of the impending sale was returned because Respondent had moved and not left a forwarding address?

Is Respondent estopped from claiming any damages for conversion because of his own inaction?

Is Respondent a bailor entitling him to rely on the law of bailments to permit him to maintain his action?

Did the trial court abuse its discretion in awarding attorney's fees to Appellants based on the finding that there was no justification for Respondent's bringing this action?

**CX-88-2002** MIRIAM C. OLSON, Respondent (Attorney: Patrick T. Tierney of Collins, Buckley, Sauntry & Haugh) vs. **EXECUTIVE TRAVEL, MSP, INC. and ST. PAUL FIRE & MARINE INSURANCE CO., Relators** (Attorney: Mary Marvin Hager of Gilmore, Aafedt, Forde, Anderson & Gray, P.A.), and **NEW ENGLAND MUTUAL INSURANCE CO., intervenor, Respondent** (Attorney: Linda S. Svitak of Faegre & Benson), **BLUE CROSS/BLUE SHIELD OF MINNESOTA, intervenor, Respondent** (Attorney: Indru S. Advani). Order Workers' Compensation Court of Appeals.

Did the Respondent establish a sufficient nexus between a job-related trip to the orient and her contraction of influenza sufficient to constitute a compensable occupational disease within the meaning of *Minnesota Statutes* § 176.011, subd. 15?

### Wednesday, March 15, 1989 11:00 A.M. at University of Minnesota Law School

**C9-87-2434** STATE OF MINNESOTA, by **STEPHEN W. COOPER, COMMISSIONER, DEPARTMENT OF HUMAN RIGHTS, Relator** (Attorney: Audrey A. Zibelman, Special Assistant State Attorney General) vs. **HENNEPIN COUNTY, Respondent** (Attorney: Janeen E. Rosas, Assistant Hennepin County Attorney). Opinion Court of Appeals.

Was the evidence that Respondent refused to hire an applicant for the position of Detention Deputy because of a failure to meet



minimum eyesight and hearing standards sufficient to establish a prima facie case of employment discrimination on the basis of disability?

Did the evidence of the applicant's visual and auditory impairments establish as a matter of law that the applicant was not minimally qualified for the position of Detention Deputy?

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## Supreme Court Decisions

### Decisions Filed 24 February 1989

**C3-88-687 State of Minnesota v. Robert Darren Olson, Appellant. Hennepin County.**

Warrantless entry of defendant's dwelling, in absence of exigent circumstances, requires suppression of defendant's statement and, hence, a new trial.

Reversed and remanded for a new trial. Simonett, J.

Took no part, Keith, J.

**C5-87-2401 In Re the Marriage of Janet Schmidt and Donald Schmidt, Appellant. Court of Appeals.**

Appropriate jurisdiction fact findings are a prerequisite to assertion of jurisdiction under the Uniform Child Custody Jurisdiction Act, *Minnesota Statutes* § 518A.01-25 (1988).

A family court's *ex parte* orders purporting to award temporary custody of a minor child to one parent, absent a finding that the affected child was in danger, must be set aside when the other parent was not given notice of hearing or afforded opportunity to be heard as required by *Minnesota Statutes* §§ 518A.04, 518.131, subd. 3(b) (1988) and Rule 7.05 of the Minnesota Rules of Family Court Procedure.

Reversed and remanded. Kelly, J.

**C2-88-762 NCR Corporation, Relator v. Commissioner of Revenue. Tax Court.**

Minnesota's corporate income apportionment statute (*Minnesota Statutes* § 290.10 (1980)), based on a separate entity reporting concept, does not require inclusion of factors of property used, sales made, and payroll paid of foreign solely owned subsidiaries of a corporate taxpayer in the apportionment formula.

Although a nonresident corporate taxpayer, which must file a corporate income tax return in this state, is required to include as income in the denominator of an apportionment statutory formula dividends, interest, and royalties received by it from subsidiaries and licensees, exclusion from the denominator of the formula property owned, sales made, and payroll paid factors of the subsidiaries does not offend the Due Process Clause of the United States Constitution.

Excluding foreign subsidiaries' factors of property used, sales made, and payroll paid does not result in violation of the Commerce Clause of the United States Constitution.

Affirmed, Kelley, J.

Took no part, Keith, J.

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## Announcements

**Elections Campaign Fund "Check Offs":** Minnesota residents may assign money to the State Elections Campaign Fund when they file their 1988 Minnesota Income Tax Returns by April 17, 1989, says the Ethical Practices Board. Tax filers may use the check off boxes in the upper right hand corner of either the "short form" or the "long form." The Legislature established this fund in 1974 to support public financing of state election campaigns. Each filer of a Minnesota state income tax return may have \$5 go to the fund, and on a joint return \$10. Checking one of the boxes *does not change the tax or refund shown on the filer's return.* The money assigned to the fund comes from taxes which have been collected already, goes to candidates who are running for election to state executive and legislative offices and who agree to limit their campaign spending. A new law provides that 10 percent of the money checked off to a political party will go to the party's "state committee" for deposit in a separate account. The public money must be spent for legitimate political party operations, including voter education, the sample ballot, operations of precinct caucuses, county and state conventions, and the maintenance and programming of computers used to provide lists of voters, party workers, party officers, patterns of voting and other data for use in political party activities.

## Announcements

**School Residency Grants Available:** Elementary and secondary schools still have time to apply to the Minnesota State Arts Board for artist residency funding during the 1989-90 school year. Application forms are available now for the April 17, 1989 deadline. The Artists in Education School Support program provides funds for artist residencies in Minnesota public and private non-parochial schools and educational organizations. Schools design residencies, based on a required model, which fit the specific needs of their students and communities. To obtain a grant application, resource guide, and roster of artists, contact the Arts Board. For assistance with any part of application planning, contact Program Associate Elizabeth M. Childs, Minnesota State Arts Board, 432 Summit Avenue, Saint Paul, MN 55102, (612) 297-2603 or call toll-free in Minnesota at (800) 652-9747 and ask for the Arts Board offices.

**The Minnesota Department of Revenue Has Moved:** Taxpayers planning to visit the Minnesota Department of Revenue in St. Paul are reminded by the department that it has moved. Formerly in the Centennial Office Building near the Capitol, Revenue's new main office and all other major St. Paul offices of the department have consolidated operations at 10 River Park Plaza at the corner of Robert Street and Fillmore Avenue on the south bank of the Mississippi.

**MN Revenue Department Offers New 24-Hour Helpline:** The Minnesota Department of Revenue now offers a 24-hour helpline to answer individual income tax questions. Taxpayers can talk with the department's taxpayer service representatives during the day. Prerecorded messages are provided on common tax topics at night for persons with touch-tone phones. For assistance, call 296-3781 or 1-800-652-9094.

**Public Comment Requested on Environmental Issues for Proposed Runway Extension:** State Transportation Commissioner Leonard Levine is requesting comments from the public on environmental issues for the proposed runway extension at the Minneapolis/St. Paul International Airport. The purpose of this proposed project is to relieve those neighborhoods most affected by aircraft noise by diverting air traffic away from those areas. A description of the proposed project to extend Runway 4/22 to the southwest of the airport, the reason for the extension, and information on environmental issues, is contained in the Environmental Assessment Worksheet (EAW) and Draft Scoping Decision Document. These documents are available at the offices of the Metropolitan Airports Commission (MAC), 6040 28th Avenue South, Minneapolis, and the Minnesota Department of Transportation (MnDOT) Office of Aeronautics, 417 Transportation Building, St. Paul. Those who wish to have a summary of the issues can call Richard Theisen at 296-2552. A meeting to solicit public comment on issues to be addressed in the Environmental Impact Statement (EIS) will be held March 14 at 7:30 p.m., at the Richfield Community Center, 7000 Nicollet Avenue South, Richfield. Representatives from the MAC, Federal Aviation Administration (FAA), and MnDOT will be at an informational open house starting at 5:00 p.m. at the same location. The public may comment on the EAW/Draft Scoping Decision Document in person at the March 14 meeting or in writing to MnDOT no later than March 24, 1989. Written comments and requests for additional information should be directed to Richard L. Theisen, Project Manager, MnDOT, 417 Transportation Building, St. Paul, MN 55155, (612) 296-2552. MnDOT is responsible for the environmental review process.

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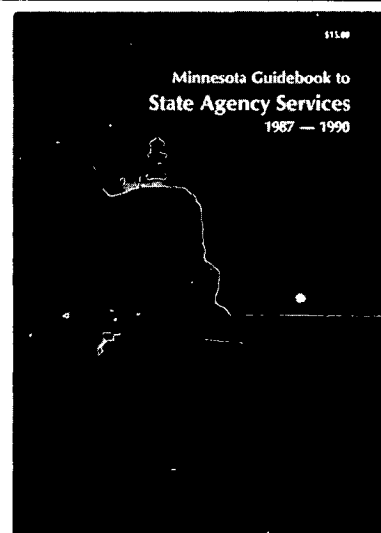
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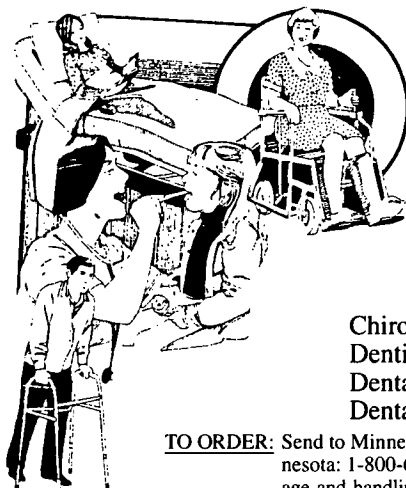
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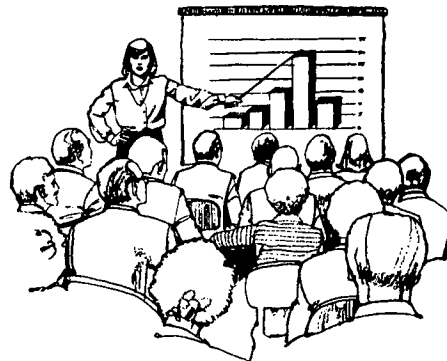
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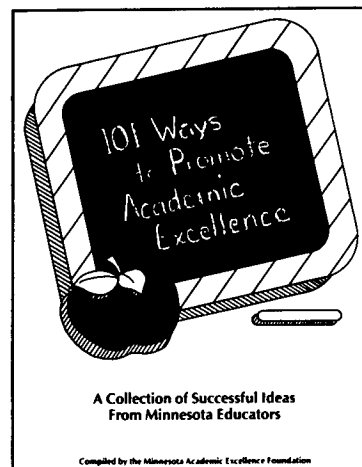
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