

# State



STATE OF  
MINNESOTA

# Register

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## VOLUME 2, NUMBER 37

### MARCH 20, 1978

# State Register



## Notice of *State Register* Format Changes

Beginning with *State Register* Vol. 2, issue No. 37, dated March 20, 1978, the Office of the State Register is making the following enhancements in the *State Register* format:

- An "Executive Orders List" is added as a new finding aid. This list will appear following the MCAR Amendments and Additions, and will serve as a means of finding Executive Orders which have appeared in the current volume of the *State Register*.

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- (1) The rule or order was duly adopted, issued or promulgated;
- (2) The rule or order was duly filed with the Secretary of State and available for public inspection; and
- (3) The copy of the rule or order published in the *State Register* is a true copy of the original.

Judicial notice shall be taken of material published in the *State Register*.

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Pursuant to the provisions of Minn. Stat. § 15.0411 to § 15.052, all rules, amendments to rules, or suspensions or repeals of rules become effective after all requirements described in Minn. Stat. § 15.0412, subd. 4 have been met and five working days after publication in the *State Register*, unless a later date is required or specified.

If the rule as adopted does not differ from the proposed rule as previously published in the *State Register*, a notice of adoption as proposed and a citation to the previous publication is considered sufficient as publication of the adopted rule, suspension or repeal.

If the rule as adopted differs from the proposed rule, the adopted rules or subdivisions thereof which differ from the proposed rule are published along with a citation to the *State Register* publication of the proposed rule.

Pursuant to Minn. Stat. § 15.0412, subd. 5, temporary rules take effect upon approval of the Attorney General. As soon as practicable, notice of the Attorney General's decision and the adopted temporary rule are published in the *State Register*, as provided for adopted rules. Temporary rules are effective for only 90 days and may be reissued for 90 days.

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## Department of Health Commissioner of Health Adopted Rules Regarding Water Well Construction Code — Use of Plastic Well Casing

The rules published in the *State Register*, Vol. 2, p. 926, October 31, 1977, (2 S.R. 926) are adopted and are identical to their proposed form, except for the following changes:

### MHD 220 (a) Casing for Permanent Wells.

Casing for permanent wells shall be of ~~either~~ ferrous material or, where permitted by statute, plastic material. For ferrous pipe, the specifications and installation procedures are prescribed below. For plastic pipe, the specifications and installation procedures are prescribed in MHD 224.

### MHD 224 Plastic well casing.

Sections A through C are adopted exactly as proposed. Sections D through F are adopted as proposed, except for the following changes:

D. Storage, handling and ~~assembly~~ procedures for plastic well casing components.

The installer shall:

1. Not use pipe and couplings that have been stored in direct sunlight. Pipe must be stored in such a manner so as to prevent sagging or bending.

2. Inspect pipe and couplings carefully for cuts, gouges, deep scratches, damaged ends and other major imperfections and shall not use any plastic pipe or coupling which has such defects or imperfections.

3. Use solvent cement meeting the requirements of the specifications for the particular plastic used. The cement used shall provide sufficient open time for making good joints but the installer shall complete joints immediately upon applying the solvent cement.

4. Use only pipe and coupling combinations that give close and satisfactory interference fits which will readily mate when the solvent cement is applied and the pieces are joined. The pipe shall enter the socket to between  $\frac{1}{2}$  or  $\frac{2}{3}$  of the socket depth when inserted and turned by hand.

5. An installer may use plastic pipe couplings with molded or formed threads but he must use only the thread lubricant which is suitable for the particular type of plastic being used.

6. When the installer connects plastic pipe to a non-plastic well screen, he shall use a coupling appropriate for the specific transition intended.

Technique for joining plastic well casing.

1. Cutting. The installer shall use fine tooth blades with little or no set for cutting the pipe. Pipe ends shall be cut square using a miter box. A plastic pipe cutter equipped with extra-wide rollers and thin cutting wheels may be used. Standard steel pipe or tubing cutters shall not be used for cutting plastic pipe.

2. Cleaning. The installer shall clean all dirt, dust, moisture and burrs from pipe ends and couplings. The installer may use only chemical or mechanical cleaners which are suitable for the particular plastic material being used. All burrs shall be removed.

3. Primer. The installer shall use a primer:

a. when, because of the type of plastic material being used, the pipe and coupling surfaces must be softened and dissolved in order to form a continuous bond between the mating surfaces, and/or

# RULES

MHD 224

b. when the particular type of solvent cement being used requires one.

4. Cement application. The installer shall apply a moderate and even coat of cement<sup>2</sup> to the inside of the coupling to cover the distance of the joining surface only. The installer shall then quickly apply an even coat of cement to the outside of the pipe being joined to a distance which is equal to the depth of the pipe coupling socket.

5. Assembly. The installer shall:

a. make the joint as quickly as possible after application of the cement, and before it dries;

b. reapply cement before assembling if the cement dries partially;

c. insert the pipe into the coupling socket, turning the pipe to insure even distribution of cement;

d. make sure that the pipe is inserted to the full depth of the coupling socket, and assemble pipe by using pipe joiners;

e. remove excess solvent cement from the exterior of the joint with a clean, dry cloth;

f. tighten a threaded joint by no more than one full turn using a strap wrench;

f. g. not disturb the coupling joint until after the cement has set, in order to avoid damage to the joint and loss of fit;

g h. allow sufficient time for the joint to develop good handling strength based on the setting times given in Table 2.

Table 2. Initial Set Time

Temperature Range During Initial Set Time °C (°F)	Set Time for Pipe Sizes 2 to 3 in.	Set Time for Pipe Sizes 3½ to 12 in.
15 to 40 (60 to 100)	30 min.	1 hrs.
5 to 15 (40 to 60)	2 hrs.	4 hrs.
-20 to +5 (0 to 40)	6 hrs.	12 hrs.

h i. allow sufficient time for the joint to cure before the joined pipe can be dropped into the drilled hole. This additional cure time is specified in Table 3.

Table 3. Joint Cure Schedule

Ambient Temperature, °C	Nominal Pipe Sizes			
	2 to 3 in.		3½ to 12 in.	
	SDR 26 and above	SDR 21, 17, 13.5	SDR 26 and above	SDR 21, 17, 13.5
15 to 40	2 h*	12 h	6 h	24 h
5 to 15	4 h	24 h	12 h	48 h
-20 to +5	16 h	96 h	48 h	8 days

\*When the relative humidity is above 60%, increase all of the above times by 50%.

## F. Plastic well casing pipe couplings.

1. Threaded couplings. An installer may use plastic pipe couplings with molded or formed threads but he must

~~use only the thread lubricant which is suitable for the particular type of plastic being used. When a threaded joint is made, the installer shall tighten the joint by no more than one full turn with a strap wrench.~~

<sup>2</sup>Caution should be used when handling solvent cement to avoid skin contact or inhalation of ~~fumes.~~ vapors.

2. When the installer connects plastic pipe to a non-plastic well screen, he shall use a coupling appropriate for the specific transition intended.

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G. Installation of plastic well casing.

1. The installer shall drill an open hole which is 4 inches larger than the nominal casing size.

2. The installer shall wipe clean and prime, as prescribed in E.3., the pipe spigot and coupling socket. The installer shall then apply cement to the spigot end only, as prescribed in D.3. When drilling a rock well, the installer shall seal the casing pipe into the bedrock using neat cement grout (defined in MHD 220(e)(3)).

An installer may not insert the drill stem or drilling equipment inside the plastic well casing when drilling any kind of well.

### 3. Grouting:

a. The installer shall fill the annular space (defined in MHD 210(c)(3)) between the drill hole wall and the casing pipe with grout to assure equal loading around the casing in order to prevent collapse or deformation of the casing and to prevent any contamination from entering the well. Native sand may be used in non-artesian wells drilled in outwash material having no clay lense or lenses (a geological stratum composed of clay). The upper 30 feet in any type of well shall be grouted with neat cement grout (defined in MHD 220(c)(3)) using a tremie pipe. A tremie pipe is one which is small enough to fit in the annular space and which carries the grout to the bottom of a hole. The grout shall be fed under pressure from the bottom to the top in one continuous operation. ~~Because of its high heat of hydration, grout made of rapid setting cement is not permitted for use in wells which are cased with PVC pipe.<sup>3</sup>~~

b. When drilling a rock well, the installer shall seal the casing pipe into the bedrock using neat cement grout (defined in MHD 220(c)(3)).

c. Because of its high heat of hydration, grout made of rapid-setting cement is not permitted for use in wells which are cased with PVC pipe.<sup>3</sup>

4. An installer may not insert the drill stem or drilling equipment inside the plastic well casing when a drilling a rock well (defined in MHD 220(g)). "All plastic-cased wells must terminate above grade as prescribed in

<sup>3</sup>This table shows the strength of PVC at various temperatures based on 73.4°F being 100% of its tested strength.

50°F	60°F	70°F	80°F	90°F	100°F	110°F	120°F	130°F	140°F	150°F
114%	107%	101%	95%	88%	83%	77%	72%	65%	40%	10%

MHD 217 and MHD 220(a)(11). The installer may equip a plastic-cased well with a steel casing or steel pitless unit (adapter) which is satisfactory for use in plastic-cased wells, to the depth equal to or greater than the frost line. ~~The installer must use an adapter which is satisfactory for use in plastic-cased wells.~~ Where a steel casing or steel pitless unit is not used, the plastic casing shall be extended above grade to a distance prescribed in MHD 217 and MHD 220(a)(11), and must be protected with any one of the following.

a. an oversize steel casing which extends from the top of the plastic casing down to a depth below the frost line, or

b. at least 3 posts (schedule 40 steel pipe) of at least 4 inch diameter at equal distances from each other and which are placed 2 feet from the center of the plastic casing. Such posts shall be installed to a depth of 4 feet into solid ground, or to a depth of 2 feet if each post is surrounded with 1 foot of concrete to a depth of 2 feet, or

c. a well house which is constructed so as to provide a degree of protection which is equivalent to that provided in either a. or b. above."

5. The installer shall plug and abandon a bore hole as prescribed in Minn. Rule MHD 218(c)(2):

a. whenever the plastic casing cannot be installed without exerting pressure, or

b. whenever a screen or pump cannot be installed without force, or

c. whenever the casing fails during the construction or pumping stages.

6. ~~The installer shall equip a plastic-cased well with a steel casing or steel pitless unit to a depth equal to or greater than the frost line, in accordance with MHD 221. The installer must use an adapter which is satisfactory for use in plastic-cased wells.~~

7. The installer shall notify the well owner in writing of the fact that the well casing is plastic and therefore must be not used for electrical grounding.

**Department of Labor and Industry  
Occupational Safety and Health Division**

**Adoption by Reference of Federal OSHA Regulations**

Pursuant to Minn. Stat. § 182.655 (1974), notice was duly published on January 16, 1978, specifying the establishment and modifications of certain Occupational Safety and Health Standards. No written comments or requests for hearing on objections have been received concerning the adoption of said Standards.

Therefore, it is ordered that this rule be issued, effective immediately, changing and modifying Minnesota Occupational Safety and Health Codes and Rules by incorporating and adopting by reference, changes, additions, deletions, and corrections made to the Title 29 of the Code of Federal Regulations, as follows:

Minnesota Occupational Safety and Health Codes and Rules, MOSHC 1, is hereby changed and modified by incorporating and adopting by reference; changes, additions, deletions and corrections made prior to October 1, 1977 to the following parts of Title 29 of the Code of Federal Regulations:

Part 1910, Occupational Safety and Health Standards as published in Part II, Volume 39, No. 125 of the Federal Register on June 27, 1974; and

Part 1926, Construction Safety and Health Regulations as published in Part II, Volume 39, No. 122 of the Federal Register on June 24, 1974; and

Parts 1915, 1916, 1917 and 1918, Occupational Safety and Health Standards for Maritime Employment as published in Part II, Volume 39, No. 119 of the Federal Register on June 19, 1974; and

Part 1928, Occupational Safety and Health Standards for Agriculture as published in Part II, Volume 40, No. 81 of the Federal Register on April 25, 1975.

1. A new standard, 29 CFR Subpart T, Commercial Diving Operations, as published in the Federal Register,

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**MOSHC 1**

Volume 42, No. 141, July 22, 1977, pages 37668 through 37674 which establishes the following safety and health standards:

- (a) 1910.401 — Scope and application
- 1910.402 — Definitions
- 1910.410 — Qualifications of dive team
- 1910.411 — Medical requirements
- 1910.420 — Safe practices manual
- 1910.421 — Pre-dive procedures
- 1910.422 — Procedures during dive
- 1910.423 — Post-dive procedures
- 1910.424 — SCUBA diving
- 1910.425 — Surface-supplied air diving
- 1910.426 — Mixed-gas diving
- 1910.427 — Liveboating
- 1910.430 — Equipment
- 1910.440 — Recordkeeping requirements
- 1910.441 — Effective date

(b) Parts 1915, 1916, 1917, 1918 and 1926 of 29 CFR are amended by adding references to the new standard for commercial diving operations to clarify the applicability of this standard to diving operations conducted in the maritime and construction industries. An amendment is also made to 29 CFR 1928.21(b), to exclude Subpart T of Part 1910 from agricultural applicability. These amendments are as follows:

Part 1915 — Safety and Health Regulations for Ship Repairing is amended by adding § 1915.59 — Commercial diving operations shall be subject to Subpart T of Part 1910 §§ 1910.401-1910.441, of this Chapter.

Part 1916 — Safety and Health Regulations for Shipbuilding is amended by adding § 1916.59 — Commercial diving operations shall be subject to Subpart T of Part 1910 §§ 1910.401-1910.441, of this Chapter.

Part 1917 — Safety and Health Regulations for Shipbreaking is amended by adding § 1917.59 — Commercial diving operations shall be subject to Subpart T of Part 1910 §§ 1910.401-1910.441, of this Chapter.

Part 1918 — Safety and Health Regulations for Longshoring is amended by adding § 1918.99 — Commercial diving operations shall be

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### MOSHC 1

subject to Subpart T of Part 1910 §§ 1910.401-1910.441, of this Chapter.

Part 1926 — Safety and Health Regulations for Construction § 1926.605, Marine operations and equipment, paragraph (e) Diving operations is amended to read: (e) Commercial diving operations. Commercial diving operations shall be subject to Subpart T of Part 1910 §§ 1910.401-1910.441, of this Chapter.

Part 1928 — Safety and Health Standards for Agriculture § 1928.21(b) of 29 CFR Part 1928 is amended by substituting the letter T for S in the fourth line of the paragraph.

2. An amendment made in 29 CFR Part 1928 Occupational Safety and Health Standards for Agriculture as published in Federal Register, Volume 42, No. 146 on July 29, 1977, pages 38568 and 38569 corrects an error in 29 CFR § 1928.21(b) and excludes the OSHA air contaminant standards from agricultural operations.

3. Corrections made in 29 CFR Part 1910 as published in the Federal Register, Volume 42, No. 12 on January 18, 1977, pages 3304 through 3306 corrects a number of typographical errors and inadvertent omissions made in 29 CFR § 1910.1029, Coke Oven Emissions, as published in the Federal Register, Volume 41, No. 206 on October 22, 1976.

## Water and Wastewater Operators Certification Council

### Adopted Rules Regarding Increased Fees

The rules published in the *State Register* Vol. 2, p. 674, September 23, 1977 (2 S.R. 674) are adopted, effective on June 1, 1978 and are identical in every respect to their proposed form.



# PROPOSED RULES

MMC 20

Pursuant to the provisions of Minn. Stat. § 15.0411 to 15.052, the *State Register* publishes notices of hearing on proposed new or amended rules, including the full text of the new or amended rules, including the full text of the new or amended rule proposed for adoption, at least 30 days before the date set for the hearing.

Pursuant to Minn. Stat. § 15.0412, subd. 4, an agency may, with approval of the chief hearing examiner, incorporate by reference into the text of a rule, provisions of federal law, or rule, or other material which are 3000 words or more in length or would require five or more pages of print in the *State Register* and which are conveniently available to interested persons.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend, or repeal a rule does not allow for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

amending joint resolution, and effect of non-compliance. One free copy may be obtained by writing to the Minnesota Municipal Board, 165 Metro Square Building, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rules is contained in Minn. Stat. § 414.01, subd. 10. A "statement of need" explaining why the agency feels the proposed rules are necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiner's Office at least 25 days prior to the hearing and will be available there for public inspection.

In addition, please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250 a year or five (5) hours per month for lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone (612) 296-5615.

Anyone who wishes to be notified when the Hearing Examiner's report is issued or the finally adopted Rules are sent to the Attorney General by the Board may contact the Hearing Examiner or Board to be so notified.

Minnesota Municipal Board  
165 Metro Square Building  
St. Paul, Minnesota 55101  
William A. Neiman  
Executive Secretary

## Municipal Board Proposed Rules Governing Orderly Annexation

### Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the Municipal Board Office, 165 Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota, on May 3, 1978, commencing at 10:00 a.m. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally, and written materials may be submitted by mail to Peter C. Erickson, Office of Hearing Examiner's, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, either before the hearing or within five working days after the close of the hearing.

The proposed rules, if adopted, would regulate orderly annexation and concerns; acceptance by the Board, initiation; evidentiary requirements, reporting requirements,

### Rules as Proposed

Readers should note the following rule is totally new.

#### MMC 20 Orderly annexation:

A. Acceptance by the board: An orderly annexation joint agreement may be accepted and filed by the board if its terms are consistent with applicable state law.

B. Initiating an annexation within the orderly annexation

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## PROPOSED RULES

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### MMC 20

area: If any provision of the orderly annexation joint resolution resolves to annex an area designated for orderly annexation, the board shall, after accepting the joint resolution, treat this provision as a separate resolution initiating annexation.

C. Evidentiary requirements for annexation within the designated area: The party proposing an annexation within the designated area shall demonstrate that the proposed annexation is consistent with the joint agreement.

D. Reporting requirements: One year after the joint agreement has been accepted by the board, and every year thereafter, for as long as the joint resolution is in effect, the parties shall inform the board of any changed conditions within the area designated for orderly annexation. If there have been no changed conditions, the parties shall so inform the board.

E. Amending the joint agreement: The joint agreement can only be amended by joint resolution submitted to the board by the parties to the joint agreement. The board may accept the amendment if it is consistent with the applicable state law and the remainder of the joint agreement.

F. Effective of noncompliance: If a party to the joint agreement continually does not comply with its provisions, the board or an aggrieved party by resolution may initiate a hearing, conducted pursuant to Minn. Stat. § 414.09. If the evidence demonstrates that there has been continuing non-compliance, and, further, that, as a result of this non-compliance, the basis of the agreement has been substantially undermined, the board may rescind the agreement and any pending annexations being considered within the designated area.

## Department of Natural Resources

### Proposed Rules Providing Criteria for Regulating Agricultural Dike Construction Along the Red River of the North and Bois de Sioux River

#### Notice of Hearing

Public hearings on the above entitled rules at the following dates and places.

April 25, 1978, 9:30 a.m., Ballroom, Comstock Memorial Union Building, Moorhead State University, 6th Avenue and 14th Street South, Moorhead, Minnesota

April 26, 1978, 9:30 a.m., Grand Forks Armory, Room 36, 615 1st Avenue North, Grand Forks, North Dakota

The hearings will be conducted jointly with the North Dakota State Water Commission, for the purpose of the two states adopting identical rules for granting and denying permits to construct agricultural dikes along the subject rivers. Minnesota's statutory authority may be found in Minn. Stat. §§ 105.415, 105.42, 105.49 and 471.59. The rules govern building, rebuilding, relocating or altering agricultural dikes within the floodplains of the Bois de Sioux and Red River of the North Rivers in North Dakota and Minnesota. The rules contain criteria for deciding how close to the river a dike may be built, how high it may be and how it must be constructed. They regulate diking across tributaries, and around farmsteads. The rules establish procedures for applying for permits, for application review, and for revoking issued permits. The rules can require the relocation or removal of existing unauthorized dikes.

All interested persons will have an opportunity to participate in the hearings. Statements may be made orally and written materials may be submitted at the hearings. In addition, written materials may be submitted to hearing examiner Allan Klein at the Office of Hearing Examiners, 1745 University Avenue, Saint Paul, Minnesota 55104, either before the hearing or within five (5) days after the hearing. The hearing will be conducted as described in Minn. Stat. § 15.0412 and the Minnesota Rules HE 101-109.

A free copy of the proposed rules may be obtained by writing to the Department of Natural Resources, Division of Waters, Space Center, 444 Lafayette Road, Saint Paul, Minnesota 55101. Additional copies will be available at the hearings. A "statement of need and evidence" explaining why the agency feels the proposed rules are necessary and outlining the testimony they will be introducing will be filed with the Office of Hearing Examiners twenty-five (25) days before the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. ch. 10A, requires each lobbyist to register with the Ethical Practices Board within five (5) days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical

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Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, phone: (612) 296-5615.

William B. Nye  
Commissioner

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statewide context may have negative interstate and international impacts.

The criteria herein are being established at this time because there is a current need to provide a basis for the review of existing, unauthorized agricultural dikes and permit applications for the construction of additional agricultural dikes along the boundary waters. Local land owners view such dikes as interim solutions to local flood problems.

## Rules as Proposed

NOTE: The proposed rule is published in the form of an amendment to an existing agreement between Minnesota and North Dakota. Upon final adoption, each state will put the amendment into its rules format.

### FIRST AMENDMENT TO

#### JOINT AND COOPERATIVE AGREEMENT FOR THE ESTABLISHMENT OF CRITERIA FOR AUTHORIZING DIKES AND OTHER FLOOD CONTROL STRUCTURES AND MEASURES ON THE RED RIVER OF THE NORTH AND THE BOIS DE SIOUX RIVER

1. Article IV of the agreement is hereby amended by the deletion of the existing article and the insertion of the following new article:

#### IV. JOINT DIKE CRITERIA FOR AGRICULTURAL DIKE CONSTRUCTION

##### A. GENERAL PURPOSE

The purpose of these criteria is to provide for the orderly and consistent review of permit applications to construct, relocate, rebuild or alter agricultural dikes along the Red River of the North and Bois de Sioux in order to assure that the granting of such permits would be in the best interests of the people of Minnesota and North Dakota. These criteria would be mutually applicable in both states. The authority to establish these joint criteria is granted to the Commissioner of Natural Resources in Minnesota Statutes, Sections 105.42, 105.49 and 471.59 and to the North Dakota State Water Commission by Sections 61-02-24 and 61-16-15 of the North Dakota Century Code. The two states recognize that establishment of these criteria governing the issuance, review and denial of permits to construct, relocate, rebuild or alter agricultural dikes along the boundary rivers is but the first step in the exercise of joint control over those activities which could contribute to an increased flood potential of these rivers. The two states further recognize the need to exercise this joint control in that water management decisions which appear logical in a local or

##### B. JURISDICTION

These criteria governing the review, issuance and denial of permits to construct, relocate, rebuild or alter agricultural dikes along the boundary rivers pertain to all such dikes located within the flood plains of the Red River of the North and the Bois de Sioux Rivers. Floodplain areas of the Red River of the North are defined by Appendix O, Volume 8 of the Souris-Red-Rainy Basins Comprehensive Study as "Red River of the North Main Stem Regional Floodplain Area" and the floodplain of the Bois de Sioux River is defined by the U.S. Geological Survey one percent chance of recurrence area flood quadrangles. These criteria apply to dikes constructed on tributaries within the floodplains of these boundary rivers.

##### C. DEFINITIONS

For the purposes of these regulations certain terms or words used herein shall be interpreted as follows:

"Agricultural Dike" or "Dike" means an embankment constructed of earth and/or other suitable materials to protect agricultural lands from frequently recurring floods (10-year frequency or more often) which result from overflow of watercourses or from diffused surface waters.

"Boundary Rivers" means the Red River of the North and the Bois de Sioux River as they form a natural boundary between the States of Minnesota and North Dakota.

"Farmstead" means a farm dwelling, adjacent farm buildings and those nontillable acres adjacent to the buildings.

"Flood Frequency" means the average frequency, statistically determined, for which it is expected that a specific flood stage or discharge may be equalled or

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exceeded. This frequency is usually expressed as having a probability of occurring, on the average, once within a specified number of years.

“Flood Waters” means those waters which temporarily inundate normally dry areas adjoining a watercourse. This inundation results from an overflow of the watercourse caused by excessive amounts of rainfall and/or snowmelt which exceed its capacity.

“Ring Dike” means an embankment constructed of earth and/or other suitable materials which completely encloses a parcel of land.

“Watercourse” means a channel in which a flow of water occurs either continuously or intermittently in a definite direction. The term applies to either natural or artificially constructed channels.

“Watercourse, Class I” means, in Minnesota, those natural watercourses serving as major drainage outlets, or major tributaries to those outlets, which are capable of serving a number of beneficial public purposes; smaller natural watercourses serving specific values such as trout streams and scenic waterways.

“Watercourse, Class II” means, in Minnesota, those natural watercourses serving as tributaries of Class I watercourses which are often perennial streams serving more than one beneficial public purpose.

### D. SEVERABILITY

The provisions of these regulations shall be severable, and the invalidity of any paragraph, subparagraph, or subdivision thereof shall not make void any other paragraph, subparagraph, subdivision, or any other part.

### E. DESIGN CRITERIA

1. Dike Setbacks. Dikes are to be constructed a sufficient distance from the river so as not to cause an increase in the elevation of flood water of the 10-year frequency flood of more than one (1) foot at any point along the river. However, when the effect of the dike extends within the corporate limits of any city the permitted increase in flood water elevation shall not exceed 0.5 feet within the corporate limits of the city. Calculation of the effects of proposed dikes shall be based on the dikes being located on both sides of the boundary water an equal distance from the center of the channel. If mutual agreement has been reached between applicants on both sides of the river as to location of the dike, the “equal distance from the center” requirements may be waived providing the limit for increase in flood stage is met.

2. Dike Elevations. Dikes are to be designed and constructed so that they will be overtopped upon the occurrence of a flood that is one foot higher than the 10-year frequency flood at that point.

3. Dike Dimensions. Dike top width shall not be less than six (6) feet. Side slopes shall not be steeper than 3:1, except where slope stability analysis and slope erosion control can justify steeper slopes. No organic soil or material shall be allowed in the foundation of the fill of dikes.

4. Vegetative Cover and Riprap. A protective cover of grasses shall be established on all exposed surfaces of the dike. Riprap shall be used where required for control of erosion.

5. Interior Drainage. Dikes shall have provisions for interior drainage. The design shall include plans to handle the discharge from the drainage area based on drainage design requirements for the local area.

### F. HYDROLOGIC DATA FOR DESIGN

The North Dakota State Water Commission and the Minnesota Department of Natural Resources shall provide the discharges and corresponding elevations of the 10-year flood (and other available flood data), in relation to known historic floods, for use in dike design.

### G. DIKES ACROSS NATURAL WATERWAYS AND LEGAL DRAINS

Dikes shall not be constructed across Class I or Class II watercourses in Minnesota. Dikes shall not be constructed across the following rivers in North Dakota: Wild Rice, Sheyenne, Elm, Goose, Turtle, Forest, Park and Pembina. Dikes constructed across other natural waterways, streams or rivers in Minnesota and North Dakota shall have an opening capable of passing the summer storm having a four percent chance of recurrence and have an emergency spillway to prevent overtopping of the structure when the one percent (1%) summer storm occurs. Dike setbacks along tributary waterways, within the area defined in Section B of these criteria, to the boundary water shall meet the criteria as stated in Section E.

Dikes constructed across legal drains or public ditch systems shall require the approval of the appropriate watershed district, drain board, water management district or other local authority.

### H. FARMSTEAD DIKING

Within an existing dike system, ring dikes around individual farmsteads shall not require dike permits if they are not provided with tie-backs to existing roadways or dikes. Ring dikes provided with tie-backs shall be considered part

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of the overall dike system and will be required to secure diking permits. Outside the dike system there shall be no limitations on tie-backs of dikes around farmsteads.

## I. Administration

1. Application for Permit. All applications submitted by the owner to construct, to relocate, rebuild or alter dikes shall be made on forms provided by the Minnesota DNR or ND State Water Commission and shall be accompanied by two (2) complete sets of plans or specifications. Such plans and specifications shall include the following:

A) A general location map with a minimum scale of 1"=800' showing the following:

- 1) Location of the dike with respect to the water-course
- 2) Location of field inlets to provide for internal drainage
- 3) Location of legal drains, and natural channels tributary to the main river channel.

B) Detailed cross-sections of the dike showing elevations, in relation to mean sea level, and side slopes.

After review of the information required above and other available data, the state agency to which the application is made shall determine the location and number of required cross-sections of the river channel and overland areas. These locations shall be provided to the applicant who shall then provide the required cross-section data. The applicant shall undertake and agree to pay the expenses incurred in securing these cross-sections.

2. Joint Permit Applications. Joint permit applications involving two or more landowners or a permit application on behalf of two or more landowners will be accepted by the State agencies. These permit applications, taken together, must meet the above criteria.

3. Issuance of Permits. Dike permits will be issued only upon concurrent approval by the state and local government in which state the dikes are located. Approval of the permit will in no way relieve the owner from damages which may be caused or created by construction of the dikes.

4. Joint Administration. A copy of each application for a permit shall be forwarded by the state agency receiving

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the initial application to the other state for comment and recommendation before final approval is granted.

5. Permit Revocation. The applicant shall provide for certification by a registered land surveyor, engineer, or other qualified person or agency that the finished dike elevations are not higher than those approved by the state agency to which the application was submitted. The permit will be revoked for failure to provide this certification.

The permit may be revoked for failure to construct the dike in accordance with the plans and specifications submitted. Structural alteration of the dike without permission of the appropriate state agency will also result in having the permit revoked.

6. Dike Maintenance. All dikes must be adequately maintained to the required shape, height, and protective covering. All maintenance shall be the responsibility of the permit holder. The maintenance of dikes must include periodic removal of woody vegetation (for example, trees and shrubs) which may become established on the embankment. Design of the project shall include provisions of maintenance access.

## J. EXCEPTION TO THE CRITERIA

Under special circumstances, exceptions to the dike criteria may be authorized on an individual basis but they must have the concurrent approval of the N.D. State Engineer, local water management board in North Dakota, Minnesota Department of Natural Resources and local watershed district in Minnesota. Factors that will be considered shall be increased in flood stage, increase of stage at existing city dike, increase in stream velocity and environmental effects. Request for exceptions must be accompanied by a plan satisfactory to all agencies.

## K. APPLICATION TO EXISTING DIKES

These criteria shall apply to all unauthorized dikes constructed in the past for the protection of those agricultural lands located within the floodplains of the Red River of the North and the Bois de Sioux, as defined in Section B of these criteria. Exceptions are farmstead dikes if they meet the provision of Section H of these criteria.

2. The first paragraph of Article V of the agreement is hereby amended by the deletion of the words "adopted pursuant to" and the insertion in lieu thereof the words

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# PROPOSED RULES

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“contained in”. The first paragraph of Article V, as amended, therefore provides:

## V. REMOVAL OF UNAUTHORIZED DIKES

Parties to this agreement hereby agree that they shall immediately take whatever steps are necessary and available to remove unauthorized dikes adjacent to the boundary rivers not meeting the criteria contained in part IV above.

STATE OF MINNESOTA

\_\_\_\_\_  
Commissioner Department of Natural Resources

DATE: \_\_\_\_\_

STATE OF NORTH DAKOTA

\_\_\_\_\_  
State Engineer  
State Water Commission

DATE: \_\_\_\_\_

## **Pollution Control Agency Proposed Amendment to Minn. Reg. WPC 34 Regarding the Administration of the Construction Grants and Loans Program**

### **Notice of Hearing**

Notice is hereby given that public hearings in the above-entitled matter will be held in the Board Room of the Minnesota Pollution Control Agency, 1935 West County Board B2, Roseville, Minnesota, on April 21, 1978, commencing at 9:00 a.m.; in the North Half, Multi-Purpose Building, Area Vocational Technical Institute, Highway 34 East, Detroit Lakes, Minnesota, on April 24, 1978, commencing at 7:00 p.m.; in the City Council Chambers, City Hall, 420 Pokegama Avenue North, Grand Rapids, Minnesota, on April 25, 1978, commencing at 7:00 p.m.; and in Room 101, Armstrong Hall, Mankato State University, Mankato, Minnesota, on April 26, 1978, commencing at 7:00 p.m. These hearings shall continue until all persons have had an

opportunity to be heard. The Agency will present its witnesses and evidence establishing the need for and reasonableness of the amendment to the above-captioned rule at the hearing in Roseville, Minnesota.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Hearing Examiner Howard L. Kaibel, Jr., 1745 University Avenue, St. Paul, Minnesota 55104, phone — (612) 296-8107, either before the hearing or within five working days after the close of the hearing, unless the Hearing Examiner orders the record to remain open for a longer period not to exceed 20 days, in which case written comments may be submitted within that period. To save time and to avoid duplication, it is suggested that those persons, organizations, or associations having a common viewpoint or interest in these proceedings join together where possible and present a single statement in behalf of such interests.

The existing regulation, Minn. Reg. WPC 34, establishes procedures relating to the administration of the state and federal grants program and the state loans program for the construction of municipal sewage treatment works and disposal systems. The proposed amendments would, if adopted:

- (1) reflect changes in federal law pursuant to 1977 amendments to the Federal Water Pollution Control Act;
- (2) amend the criteria for determining the priority of municipalities and projects on the Municipal Needs List and the Municipal Project List;
- (3) provide for greater public participation prior to the adoption of the Municipal Needs List and the Municipal Project List;
- (4) provide for Agency recourse in regard to projects which are improperly designed, constructed, operated or maintained;
- (5) amend other provisions of the regulation for purposes of clarification and more efficient administration of the programs.

Copies of the proposed rule are now available and one free copy may be obtained by writing to Mr. Perry Beaton, Minnesota Pollution Control Agency, Division of Water Quality, 1935 West County Road B2, Roseville, Minnesota, 55113. Additional copies will be available at the door on the dates of the hearings. The Agency's authority to promulgate the proposed rule is contained in Minn. Stat. §§ ch. 115 and 116 and, more specifically, Minn. Stat. § 116.16, et seq. (1976). A "statement of need" explaining

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why the proposed amendments are necessary and a "statement of evidence" outlining the testimony which the Agency will be introducing will be filed with the Hearing Examiner's Office at least 25 days prior to the hearing and will be available for public inspection at the Hearing Examiner's Office at the address noted above.

Please be advised that Minn. Stat. ch. 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rulemaking by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association and who spends more than \$250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155, phone — (612) 296-5615.

Sandra S. Gardebring  
Executive Director

## Rule as Proposed

### WPC 34 Regulation for the administration of the Municipal Facilities Assistance Program and the Minnesota State Water Pollution Control Fund and federal grant funds allotted to Minnesota.

(a) A. Purpose. This regulation is herein adopted and promulgated by the Minnesota Pollution Control Agency to implement the provisions of Minnesota Statutes, Chapters Minn. Stat. chs. 115 and 116 (1976) (as amended by Laws of 1973, Chapter 423 and Chapter 774) and to comply with the Federal Water Pollution Control Act Amendments of 1972 (United States Public Law 92-500), 33 U.S.C. § 1251 et seq., and guidelines and regulations pursuant thereto or resulting therefrom, by the establishment of procedures relating to the federal Federal construction grants and state construction grant and loan programs.

The regulation applies in general to the following:

- (i) use of state and federal funds;
- (ii) establishment of a municipal discharge inventory, list of municipalities and project list;
- (iii) submission and evaluation of application;

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- (iv) administration of the grant and loan program;
- (v) criteria for determination of priorities for grants and loans; and
- (vi) the disbursement of funds.

The promulgation of this regulation, in association with the Agency's enabling legislation, as amended by Laws of 1973, Chapter 423 and 774, provides sufficient authority for the State of Minnesota, upon approval by the Regional Administrator of the United States Environmental Protection Agency, to certify applicants for Federal construction grants and subsequently, to the extent funds are available, provide state construction grants. The Minnesota Pollution Control Agency is the State agency designated by State law to administer this program. Except as specifically provided herein, this regulation shall apply with equal force to state financial assistance and Federal grant funds.

(b) B. Definitions. The terms "person", "sewage", "industrial wastes", "other wastes", "treatment works", "sewer system", "disposal systems system", "waters of the state", "pollution control fund", "municipality", "director", "Agency", "pollution of water", "eligible cost", "wastewater treatment facility", as well as any other pertinent terms for which definitions are given in Minnesota Statutes Chapters Minn. Stat. chs. 115 and 116, as amended, shall have the meanings ascribed to them therein.

The terms specified below shall have the meanings ascribed to them:

- (1) "ACT" means the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq.
- (2) "EPA" means the United States Environmental Protection Agency.
- (3) "ADMINISTRATOR" means the Administrator of the United States Environmental Protection Agency.
- (4) "REGIONAL ADMINISTRATOR" means the EPA Regional Administrator for the region in which Minnesota is located (now Region Five).
- (5) "ELIGIBLE COST" means, for state grant purposes, the cost as determined by the EPA.

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5. "NEED" means a determination that a new or up-graded disposal system is currently required, or will be required within a five-year period to comply with State Water Pollution Control Regulations; provided, the situation does not exist primarily due to inadequate operation and maintenance or primarily due to negligence on the part of any person.

6. "FORM OF PROJECT" means the form of disposal system a municipality intends to construct.

7. "TYPE OF PROJECT" means its "STEP".

a. "STEP 1" means all necessary preliminary engineering studies for the project.

b. "STEP 2" means the preparation of construction plans and specifications for the project.

c. "STEP 3" means the construction of the project.

8. "PROJECT" means the scope of work for which grant assistance is awarded.

9. "METROPOLITAN AREA" means Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties.

10. "OUTSTATE AREA" means all counties of the state not in the metropolitan area.

11. "SECONDARY TREATMENT" shall have the meaning ascribed to it in Minn. Reg. WPC 14 or 15 or amendments thereto.

12. "TERTIARY TREATMENT" means any level of treatment of higher quality than secondary treatment.

Other terms and abbreviations used herein which are not specifically defined by law shall be construed in conformance with the context and professional usage.

(c) Severability. If any provision of this regulation or the application thereof to any person or circumstances is held to be invalid, such invalidity shall not affect other provisions of the regulation or application of any other part of this regulation which can be given effect without application of the invalid provision. To this end, the provisions of all sections, subsections, or subdivisions herein and the various applications thereof are declared to be severable.

(d) Use of State Funds. The Agency in accordance with this regulation may provide financial assistance to municipalities as:

(1) A grant of nonrepayable funds for construction of disposal systems in an amount of not less than that required in applicable federal law and regulations for projects for which there becomes available, through use of these state funds, a grant of federal funds at a percentage of cost exceeding the percentage which would be available for the project if these state funds were not available.

(2) A grant of nonrepayable funds for construction of disposal systems in the amount of 15 per centum of the eligible cost of construction for projects tendered a grant of federal funds under Section 201(g), Section 202, Section 203, or Section 206(f) of the Act at 75 per centum of the eligible cost of construction. Except as provided by Minnesota Statutes, Section 116.18, not less than 40 percent of such cost shall be paid by the municipality.

(3) A grant of state funds not exceeding 25 per centum to a municipality that would qualify for a grant of federal funds but desires to initiate construction of a project without a federal grant where such project is necessary to abate an immediate health hazard.

(4) Loans for the acquisition and betterment of public land, buildings, and improvements of a capital nature needed for the prevention, control and abatement of water pollution.

The Agency shall disburse state funds in any fiscal year to the extent that money is available and requested in the following order of priority: Federal matching construction grants, construction grants, and planning and construction loans.

(e) Use of Federal Funds. The Agency, in accordance with this regulation and the Act, guidelines and regulations pursuant thereto or resulting therefrom may:

(1) certify applications which have been determined to be complete for a grant of federal funds from any allotments and re-allotments allocated to Minnesota by the Administrator pursuant to the Act; and

(2) utilize up to \$250,000 from its allotment or re-allotment or both for the construction of a treatment works for a facility to train and upgrade waste treatment works operation and maintenance personnel.

(f) Municipal Discharge Inventory, List of Municipalities and Project Lists.

(1) The Director shall develop and maintain a municipal discharge inventory and a list of municipalities including a breakdown as to type of project required, which have known needs to install, construct, upgrade, or expand a disposal system, or any portion thereof. The list shall be periodically revised by the addition of the name of any munie-



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ipality for which it is determined by the Director that such a need exists; or by the deletion of the name of any municipality or type of project which no longer has such a need. The municipal discharge inventory shall include all the municipalities with needs and all the municipalities which have adequate disposal systems.

(2) The names on the municipal discharge inventory shall be arranged in order of priority pursuant to the criteria established in Section (i) (2) except subsections (dd) and (ee). The names on the list of municipalities shall be arranged in order of priority pursuant to the criteria established in Section (i) (2) except subsection (ee).

(3) The Director shall prepare from the municipal discharge inventory and in turn from the list of municipalities for fiscal year 1974 (July 1, 1973 to June 30, 1974) and each succeeding fiscal year, for Agency and EPA approval a project list of those projects for which Federal assistance will be requested from current allotments. Such project list shall be prepared in accordance with the allocation of funds set forth in Section (i) (1) and shall set forth a tabulation of funding priorities and requirements. The Director shall define, pursuant to Section (g) (3), (g) (4), (g) (5), or any combination thereof, allowed by the EPA, the step of each disposal system project and the time when such system project is to receive Federal financial assistance.

(4) The Director, where he deems appropriate, may split or stage the construction of the type of project for a disposal system or portion thereof (See also Section (i) (2) (dd) of this regulation).

(5) Notwithstanding subsection (3) of this section, the Director, where he deems appropriate in preparation of the list of projects may, to the extent allowable by the EPA, recommend projects in a variety of steps as a means of assuming maximum utilization of available federal and state funds in future fiscal years.

(6) The Director, in preparation of the list of projects, may recommend a total number of projects which would utilize all or a portion of the current fiscal year federal allocation and all or a portion of any succeeding fiscal year federal allocation.

(g) Applications for State and Federal Construction Grants-

(1) [Moved to E.8.a.]

(2) [Moved to E.8.b.]

(3) [Moved to E.8.d.]

(4) [Moved to E.8.e.]

(5) [Moved to E.8.f.]

(6) Application for projects which do not receive a grant offer in the fiscal year for which the application is considered shall be retained, and if subsequently deemed necessary, shall be up-dated and revised within 30 days upon written notice from the Director.

(7) [Moved to E.8.g.]

(8) A municipality may file an application at any time for any type of project. If the type of project is not shown on the list of municipalities, it shall be added to such list; provided that any such application shall be submitted at least 30 days prior to the date of the public hearing to be held annually on the state program plan of the Agency which is submitted to the EPA before the beginning of a new fiscal year (July 1 through June 30.) The Director shall indicate in the public hearing notice for the program plan hearing that any person upon request shall be given a copy of the municipal discharge inventory, list of municipalities and project list developed in accordance with Section (f) and pursuant to Section (i) (2) (ee); the list of segments in order of priority. The provisions of this subsection shall take effect upon the effective date of this regulation.

(h) Administration of Construction Grants-

(1) The priority ratings of the application on the list of municipalities and the project list for fiscal year 1974 and succeeding years shall be established in accordance with Section (i) excluding subsection (ee). The priority ratings for project applications submitted in and certified for fiscal year 1973 and earlier years shall remain as determined by the Agency on the basis of the established criteria; and such prior actions of the Agency are also hereby affirmed insofar as they relate to federal grant increases and state grants for such projects as authorized by the statutes and the EPA.

(2) [Moved to E.9.a.]

(3) [Moved to E.4.b.(4)]

(4) [Moved to E.9.b.(1) and (2)]

(5) To the extent it determines reimbursement funds are available, the Agency shall authorize grants or

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grant increases for fiscal year 1972 and earlier eligible projects up to the required federal matching ratio; with such available funds being divided proportionally in accordance with Section (i) (1) between the seven county Twin Cities Metropolitan Area and the area of the state outside the seven county Twin Cities Metropolitan Area; and eligible projects being funded in order of established priority; such increases to be paid subject to conformance with EPA requirements and authorization thereof by the EPA.

(6) Notwithstanding subsection (4) or (5) of section; the Agency may, to the extent allowable by the EPA; limit grant increases to less than the eligible amount to provide a proportionate share to all eligible projects.

(7) [Moved to E.9.c.]

(8) [Moved to E.9.e.(3) (a)-(d)]

(i) Criteria for Determining Priority.

(1) Federal funds allocated to Minnesota under the program administered by the EPA for fiscal year 1972 and each succeeding fiscal year and state funds in like proportion shall be allocated initially by the Agency to the Twin Cities Metropolitan Area, consisting of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties; and the outstate areas consisting of the remainder of the counties of the state in approximately the same ratio which the population of the sewerage municipalities of the seven counties bears to the sewerage population of the outstate counties. Allocations made by the Agency for fiscal year 1973 and prior years are hereby re-affirmed.

(2) The determination of the order of priority of the municipalities for state and federal grants for fiscal year 1974 and succeeding years shall be in accordance with the following criteria; except that subsection (ee) shall not be considered in establishing the municipal discharge inventory (which also will not take into consideration subsection (dd); the list of municipalities or the project list for federal grant purposes. The determination of the order of priority for grants certified for funding in fiscal year 1973 and prior years shall be as set forth in actions of the Agency heretofore based on criteria duly established for such years; the same to apply also to grant increases for EPA eligible projects.

(aa) [Moved to E.2.d.(1)]

(bb) [Moved to E.2.d.(2)]

(ee) [Moved to E.2.d.(3)]

(dd) [Moved to E.3.c.(1)]

(ee) [Moved to E.3.c.(2)]

(ff) [Moved to E.3.c.(3)]

(3) [Moved to E.6.a.]

(4) [Moved to E.3.e.]

(5) [Moved to E.6.b.]

(j) [Moved to F.1.]

(k) [Moved to F.2.]

(l) [Moved to F.3.]

(m) Additional Purposes of State and Federal Funds.

(1) In accordance with Minnesota Statutes, Chapter 116; as amended; the Agency may where it determines that the prevention, control and abatement of water pollution and the public health of the state requires the construction of a project and the municipality is unable to provide 10 percent of the eligible cost of a disposal system project; expend funds for hardship cases to reduce or eliminate the municipal portion of the eligible cost. Each such hardship grant shall be made only to applicants who apply for consideration prior to initiation of construction and attain a minimal point rating of 40 under the criteria of section (i) (2) (ee) or such other numerical hardship levels as may be specified annually by the Agency for rating purposes under that section.

(2) After consideration of the amount of state funds required to match federal funds; the Agency may tender a grant of state funds not exceeding 25 per centum to a municipality that would qualify for a grant of federal funds; but desires to initiate construction of a project without a federal grant; where such project is necessary to abate an immediate health hazard. The Agency may limit the scope and eligible cost of such project. After it has been determined by the Agency that any project; or portion thereof; is necessary to abate an immediate health hazard; and available funds exist; the criteria for determining priority to be utilized for order of priority shall be section (i) (2); including but not limited to subsection (2) (ee). No municipality shall be eligible for consideration if construction of the project has been initiated prior to submission of the application and the items of section (g) (5). The Director for just cause may waive or defer the submission of any item required pursuant to section (g) (5).

(3) In accordance with section 109(b) of the Act and any guidelines or regulations thereto; the Agency may request; with or without giving consideration to section (i) (1); the Administrator to make a grant of up to \$250,000 from any allocation of federal funds to Minnesota for any additional cost of construction of a treatment works required for a facility to train and upgrade waste treatment works operation and maintenance personnel.

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D. Priority of programs. Minn. Stat. § 116.16 et seq. (1976) establishes a pollution control fund and authorizes grants and loans for the construction of municipal disposal systems. To the extent funds are available and requested, the Agency shall disburse funds from the pollution control fund in the following order:

1. Grants for projects tendered a 75% federal grant under the Act and, to the extent authorized by statute, grants for projects utilizing innovative or alternative wastewater treatment processes and techniques which have been tendered an 85% federal grant under the Act.

2. Grants to reduce or eliminate the local contribution of a municipality meeting the criteria set forth in section E.9.4.

3. Grants to municipalities which would qualify for a federal grant but which desire to initiate construction of the project without a federal grant.

4. Loans for the construction of municipal disposal systems.

### E. Construction grant program.

#### 1. Summary of construction grants program.

a. The construction grants program generally consists of three steps:

(1) Step 1: preparation of all necessary preliminary engineering studies;

(2) Step 2: preparation of construction plans and specifications; and

(3) Step 3: construction of the disposal system or part thereof.

b. Grants may be awarded for a Step 1, Step 2, or Step 3 project or, as authorized by statute, for a project which combines steps.

c. The scope of the project is initially defined by the applicant but may be revised by the Agency or by EPA.

d. Grants are awarded to municipalities on a priority basis. Priority is determined as follows:

(1) The Director shall develop a Municipal Discharge Inventory which lists in priority order, pursuant to

section E.2.c., all municipalities which maintain a discharge of effluent, including those municipalities which utilize land application or individual sewage treatment systems. This inventory includes municipalities which have adequate disposal systems as well as those which have a need for a new or upgraded disposal system.

(2) The Agency shall develop a Municipal Needs Lists from the Municipal Discharge Inventory. The Municipal Needs List shall rank in priority order, pursuant to section E.3.b.(2) all municipalities or projects for which a need exists.

(3) A Municipal Project List shall be developed by the Agency from the Municipal Needs List. The Municipal Project List shall list in priority order, pursuant to section E.4.b., all projects which will be funded during the current fiscal year. The Municipal Project List shall also list any nonproject uses of the state's allotment of federal construction grant funds.

e. Public participation shall be sought by the Agency prior to the adoption of the Municipal Needs List and the Municipal Project List, pursuant to section E.7.

f. Each applicant must apply to the Agency for each proposed grant in the manner set forth in section E.8.

g. The Agency shall certify applications which have been determined to be complete for a grant of federal funds from EPA.

h. Funds shall be disbursed to a municipality in the manner set forth in section E.9.e.

#### 2. Municipal discharge inventory.

a. The Director shall develop and maintain a Municipal Discharge Inventory listing all those municipalities which maintain a discharge of effluent, including those which utilize land application or individual sewage treatment systems.

b. The Municipal Discharge Inventory shall include those municipalities which have adequate disposal systems as well as those which have a need for a new or upgraded disposal system.

c. Each municipality shall be awarded points pursuant to the criteria set forth in section E.2.d below. The

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municipalities shall be listed on the Municipal Discharge Inventory in descending order according to the number of points awarded to each.

### d. Criteria.

~~(i) (2) (aa)~~ (1) Extent and nature of pollution. ~~Water pollution control priority~~ Priority points shall be established awarded as set forth below from a determination of the highest single beneficial water use seriously affected, or, if no pollution problem currently exists, from a determination of the highest single beneficial water use to be preserved.

Water Use	Point Rating
Class 1 Domestic Water Supply:	
A. Direct consumption (groundwater)	70
B. Consumption after only disinfection by chlorination	65
C. Consumption after moderate water treatment process	60
D. Consumption after very complete water treatment process	55
Class 2 Fisheries and Recreation Waters:	
A. Propagation and maintenance of cold water fishery and all recreation uses	60
B. Propagation and maintenance of mixed fishery and all recreational uses	50
C. Propagation and maintenance of rough fishery and non-contact recreational uses	40
Class 3 Industrial Consumption, Except Food Processing and Related Uses:	
A. Direct use without chemical treatment	40
B. Use with moderate treatment	30
C. Use for cooling and material transport	20
Class 4 Agriculture and Wildlife:	
A. Irrigation and agricultural crops of all kinds	35
B. Watering of livestock and wildlife	30
Class 5 Commercial navigation and waste disposal	10

~~(i) (2) (bb)~~ (2) Population affected. ~~Water pollution control priority~~ Priority points shall be assigned for each type of project based on the population of the municipality, or population of the municipalities served by such project as determined by the most recent Federal census, as follows:

	Point Rating
<del>(i) (a)</del> (a) Municipal population under 250	2
<del>(i) (b)</del> (b) Municipal population from 251-500	4
<del>(i) (c)</del> (c) Municipal population from 501-750	6
<del>(i) (d)</del> (d) Municipal population from 751-1000	8
<del>(i) (e)</del> (e) Municipal population from 1001-1500	10
<del>(i) (f)</del> (f) Municipal population from 1501-3000	12
<del>(i) (g)</del> (g) Municipal population from 3001-5000	14
<del>(i) (h)</del> (h) Municipal population from 5001-10,000	16
<del>(i) (i)</del> (i) Municipal population from 10,001-20,000	20
<del>(i) (j)</del> (j) Municipal population from 20,001-50,000	25
<del>(i) (k)</del> (k) Municipal population from 50,001-450,000	35
<del>(i) (l)</del> (l) Municipal population in excess of 450,000	50

~~(i) (2) (cc)~~ (3) List of segments. Pursuant to Sect. 303(e) of the Act and guidelines and regulations thereto relating to the state continuing planning process, all waters of the state shall be divided into segments and each segment

classified as either water quality or effluent limited. The Director shall annually develop a list of segments, and after giving consideration to:

- ~~(i)~~ (a) severity of pollution problems ;
- ~~(ii)~~ (b) population ;
- ~~(iii)~~ (c) need for preservation of high quality waters; and

~~(iv)~~ (d) national priorities as determined by the Administrator; priority points will be established in accordance with criteria approved by the Agency and the EPA.

The segment ranked number one shall be awarded priority rating equal to the total number (N) of segments with any subsequent segment receiving a priority rating of N + 1 minus the numerical ranking of the segment. Priority points shall be accordingly awarded to a municipality for the type of project located in a segment.

### 3. Municipal needs list.

a. The Agency shall develop, and update whenever necessary, a Municipal Needs List listing all municipalities for which a need exists.

b. Each municipality shall be awarded points in the following manner:

(1) Points awarded pursuant to section E.2.d in the development of the Municipal Discharge Inventory; and,

(2) Points awarded pursuant to the criteria set forth in section E.3.c below. The municipalities shall be ranked on the Municipal Needs Lists according to the number of points awarded to each.

### c. Criteria.

~~(i) (2) (dd)~~ (1) Type of project. Priority points shall be allocated on the basis of the single highest disposal system or part thereof, improvement to prevent, control, and abate the source of pollution as follows:

	Point Rating
<del>(i) (a)</del> (a) Provision of tertiary treatment. <del>(secondary treatment or its equivalent plus additional treatment works to remove additional 5-day biochemical oxygen demand, suspended solids, or dissolved solids) for a discharge of sewage and industrial waste.</del> For the purpose of this regulation, treatment works which provide for regulated discharge of effluents in lieu of tertiary treatment shall be construed to provide tertiary treatment.	

~~(i) (b)~~ (b) Provision of secondary treatment. ~~for a municipality which does not have a disposal system, other than individual on lot septic tank systems, or has inadequate secondary treatment,~~

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or provides no treatment or only primary treatment for its sewage and industrial wastes-

59 150  
 (3) Provision of a disposal system or part thereof by a municipality for adequate disposal of wastes from its water treatment plant, or power plant or similar pollutants.

20  
 (4) (c) Provision of a new sewer system or portion thereof for a municipality, in existence on October 18, 1972 with sufficient existing or planned capacity to adequately treat such collected sewage or industrial waste.

10  
 (5) (d) Provision by a municipality of storm water disposal system, including sewer systems to separate existing combined sanitary and storm sewers or treatment works.

(e) A municipality having only primary treatment.

20  
 (f) A municipality or an area part of an areawide study having a sewer system with no treatment including septic tanks overflowing to a sewer system.

30  
 (6) (g) Subsections (4) (a), or (2) (b), whichever is applicable, may also include treatment works and/or any portion of sewer system improvements deemed necessary by the Director to insure the integrity and performance of a disposal system.

(7) (h) An interceptor sewer which eliminates any existing treatment works or which, in accordance with an approved basin plan, eliminates the need for construction of new treatment works shall be considered equivalent to tertiary or secondary treatment and allocated the appropriate priority points pursuant to subsections (4) (a) or (2) (b), whichever is applicable.

(8) (i) In the case of a sewer system being tributary to sewerage facilities which are on the project list for funding but which the EPA will not fund until an infiltration/inflow analysis, and where required, a sewer system evaluation has been performed, this sewer system project may be awarded by the Director an equal number of priority points as the project on the project list.

(9) A proposed sewer system project, or portion thereof for a municipality with adequate treatment works which abates an immediate public health hazard relating to an area that does not have municipal sewer and water service may be considered equivalent to tertiary or secondary treatment and allocated the appropriate priority points pursuant to subsections (4) or (2), whichever is applicable.

(4) (2) (ee) (2) Financial aspects. Priority points shall be awarded by summing up the applicable rating points for the project from Tables 1, 2, and 3 relative to per capita project cost, the ratio of bonded debt to assessed evaluation and per capita buying income.

TABLE I  
Per Capita Cost of Project

Per Capita Cost (\$)	Point Rating
0-40	1
41-80	3
81-120	5
121-160	7
161-200	9
201-240	11
241-280	13
over 280	15

TABLE II  
Ratio of Bonded Debt to Assessed Evaluation\*\*

Ratio x 100	Point Rating
0-3	3
4-9	5
10-15	7
16-21	9
22-27	11
28-33	13
over 33	15

\*\*Based on bonded debt and assessed evaluation data obtained from the Department of Public Examiner and Research and Planning Unit of the Minnesota Department of Taxation, respectively.

TABLE III  
Per Capita Buying Income\*\*\*

Percent of Average	Point Rating
0-50	15
51-60	13
61-70	11
71-80	9
81-90	7
91-100	5
101-110	3
over 110	1

\*\*\*Based on the report "Survey of Buying Power," by Sales Management, Inc.

(i) (2) (ff) (3) Other: Ten Additional additional points may be granted in the discretion of the Agency will be awarded to an application which:

(i) relates to a point source or disposal system which is located within an area designated by the Administrator in writing to have national priority, and/or

Point-Rating  
40

(ii) includes planned participation in a sanitary district and/or other multi-municipal disposal system.

40

d. If a municipality is not included on the Municipal Needs List, it may petition the Agency for inclusion on the list. The municipality must document its need in the following manner:

(1) Sewered communities: submission of data re-

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garding: concentration of pollutants in existing discharge; volume of discharge; and waters of the state presently or potentially impacted by the discharge ;

(2) Unsewered communities: submission of data regarding: type of soil in unsewered area; depth to seasonally high water table; size of all lots in the area; and age and type of existing system.

Following submission of this data, the Director will review the material and determine if a need has been shown. If so, the municipality will be added up to the Municipal Needs list, in the manner set forth above. If not, the municipality will be notified of the reasons for the decision of the Director.

(4) e. If in the determination of the order of priority on the list of municipalities, Municipal Needs List, two or more municipalities have the same total number of priority points, the municipality in accordance with subsection (e) ~~(a)~~ section E.2.d.(1) that has the highest single beneficial water use seriously affected or to be preserved shall be ranked higher. If two or more municipalities have the same total number or priority points and the same highest single beneficial water use seriously affected or to be preserved the municipalities shall be ranked based on population as determined by the most recent federal census in descending order below the municipality with the largest population.

### 4. Municipal project list.

a. The Agency shall prepare a Municipal Project List each fiscal year which shall list in order of priority those projects for which federal grant funds will be requested from current allotments. The Municipal Project List shall also list any nonproject uses of the state's allotment of federal construction grant funds, including but not limited to training grants and costs of administration.

b. Projects with the highest priority on the Municipal Needs List will be placed on the Municipal Project List in the following manner:

(1) Funds shall be allocated between the Metropolitan Area and the Outstate Area in approximately the same ratio which the population of sewerer municipalities of the Metropolitan Area bears to the sewerer population of the Outstate Area.

(2) Funds will be set aside for such classifications of projects and in such amounts as is required by the Act. Such classification presently include:

(a) Treatment works utilizing innovative or alternative wastewater treatment processes and techniques for which an 85% federal grant has been tendered;

(b) Alternatives to conventional sewage treatment works for municipalities having a population of three thousand five hundred or less or for the highly dispersed sections of larger municipalities, as defined by the Administrator; and

(c) Construction of publicly owned treatment works for major sewer system rehabilitation, new collector sewers and appurtenances, new interceptors and appurtenances, and, correction of combined sewer overflows, if such projects are on the state's priority list for that year and are otherwise eligible for funding in that fiscal year.

These classifications are presently required by Sections 205 and 216 of the Act.

(3) The Agency may provide for an adequate mixture of Step 1, 2, and 3 projects so as to permit funding to proceed in an orderly fashion and to fully utilize all allocated funds.

(4) Federal grants allocated under Section (i) (1) to ~~outstate~~ Outstate Area projects and for which there are not ~~any~~ sufficient certifiable outstate projects by ~~December 31~~ the end of the fiscal year for which those funds were allotted may be re-allocated by the Agency to the ~~seven~~ seven county Twin Cities Metropolitan Area. Any such federal grant funds which in ~~fiscal year 1972 or succeeding fiscal years~~ are reallocated to the ~~seven~~ seven county Twin Cities Metropolitan Area shall be recoverable in total for allocation of outstate projects in later fiscal years ~~only to the extent of \$2,000,000 in any one fiscal year; in annual amounts deemed reasonable by the Director.~~ Grant funds allocated to the ~~seven~~ seven county Twin Cities Metropolitan Area which are unused are subject to similar provisions for reallocation to and recovery from outstate projects.

c. A reserve project list may be developed by the Agency for the purpose of utilizing grant monies forfeited by any municipality pursuant to section E.8.c.

d. The project list may be modified, in accordance with EPA regulations, to give higher priority to Step 2 or combined Step 2 and 3 projects utilizing innovative or alternative wastewater treatment processes and techniques.

### 5. Project eligibility.

a. Projects which are not eligible for federal grants shall not be eligible for state grant funds except as provided in section E.9.b.

b. A project is not eligible for a grant if the construction has been initiated prior to the award of the grant, except as provided in section E.9.d.

c. Items are not grant eligible unless the Director

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determines that they are essential to the efficient and effective operation of an otherwise grant eligible disposal system.

### 6. Adjustments.

(i) (3) a. The numerical rating points established in Section (i) (2) sections E.2.d. and E.3.c. shall be subject to readjustment in value for any category or class prior to the mailing of the public hearing notice established in Section (g) (8) section E.7.c. if it is determined to be in the best interests of the state by resolution of the Agency. At least 30 days notice of such proposed readjustments shall be furnished by United States mail to all persons registered on the appropriate list maintained by the Secretary of State, and all persons wishing to do so shall be given an opportunity to present their views on the proposals to the Agency prior to final Agency action.

(i) (5) b. Notwithstanding any other provision in this regulation including, but not limited to, Sections (i) (2) and (i) (3); sections E.2.d., E.3.c. and E.6.a., to the contrary, the Director may, as necessary to establish criteria for determining priority for applications for federal and state sewage construction grants under the Federal Water Pollution Control Act, as amended and regulations and guidelines of the United States Environmental Protection Agency EPA promulgated pursuant thereto, and Minnesota Statutes, Chapters Minn. Stat. chs. 115 and 116, as amended, establish such criteria for determining priority upon a basis other than that provided herein, to the extent required to comply with said federal act, the Act, and guidelines and regulations thereto or resulting therefrom.

7. Public participation. Prior to the adoption of the Municipal Needs List and the Municipal Project List by the Agency, public participation shall be sought in the following manner:

a. Notice of the Agency Board meeting at which the Municipal Needs List and the Municipal Project List will be adopted shall be given to all affected municipalities at least 30 days prior to such meeting.

b. A copy of the proposed Municipal Needs List and the proposed Municipal Project List will be mailed to any interested person upon request.

c. Prior to the Agency Board meeting, public informational meetings will be conducted at such locations as the

Director deems appropriate. Notice of such meetings shall be given to all affected municipalities.

d. All interested persons shall have the opportunity to present oral or written statements to the Board in regard to the proposed Municipal Needs List or the proposed Municipal Project List if a request is submitted to the Board. Such request should be submitted fourteen days prior to the meeting to facilitate agenda preparation and must be submitted at least three days prior to the meeting. If such request is made during the Board meeting, interested persons may be afforded the opportunity to participate within such limits of time and manner as the Board may establish under the circumstances.

### 8. Applications.

(g) (4) a. To expedite the program, unless Unless otherwise specified by the Director, the state construction grant application form shall be the federal construction grant application form (Budget Bureau No. 42 R1495 or revisions thereof) of the EPA. Projects which are not eligible under EPA rules, guidelines, or regulations shall not be eligible for state grant funds under this section, except as provided pursuant to Section (m) (2).

(g) (2) b. Any municipality shall within 30 days Within 90 days for a Step 1, 150 days for a Step 2, and 150 days for a Step 3 after notification in writing from the Director by first class mail, a municipality shall file a completed construction grant application or submit such information as the Director determines to be necessary to complete a previously submitted application. The Director may extend the date of filing or submission of any information subject to the municipality providing adequate justification therefor. Should the municipality fail to provide such adequate justification, the initial filing or information requirement shall remain unchanged. Failure to comply with this schedule may cause forfeiture of grant monies for the step grant involved and the municipality may be required to complete the work for that step without grant monies.

c. A specific schedule for completing the particular step of the project will be contained in each grant offer tendered. The municipality's National Pollutant Discharge Elimination System (NPDES) permit may be modified, pursuant to Agency regulation, to include such schedule. Failure to comply with this schedule may cause forfeiture of grant monies for the step grant involved and the municipality may be required to complete the work for that step without grant monies.

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(g) (3) d. The construction grant application form for a Step 1 project to undertake preliminary plans and studies (Step 1) shall be supported by include the following attachments: and such other attachments as EPA may require:

(aa) (1) Resolution of governing body of the municipality authorizing the filing of the application and designating the official municipal representative; official authorized to sign the application;

(bb) A brief description of the nature and scope of the proposed project;

(cc) Assurance of compliance with all applicable requirements of the Minnesota Department of Human Rights;

(dd) An estimate of the proposed project cost;

(ee) Statements on planning requirements from the following:

(i) State, Metropolitan or Regional Planning Agency; and

(ii) State Clearinghouse (Minnesota State Planning Agency); and

(2) If more than one municipality is involved, resolutions from the governing body of all municipalities agreeing to cost sharing and agreeing to proceed to Steps 2 and 3 if cost-effective;

(ff) (3) Proposed sub-agreements, or an explanation of the intended method of awarding sub-agreements for substantial portions of the project work;

(4) Statement by the consulting engineer indicating the effluent limitations for which the disposal system is being designed;

(5) A resolution by the governing body of the municipality to the effect that the sewage collection system will, at the appropriate time, be constructed concurrently with the sewage treatment works; and

(6) A resolution by the governing body of the municipality as to the methods for financing the construction of the collection system.

(7) Documentation by the engineer(s) that they carry adequate errors and omissions insurance.

(g) (4) e. The construction grant application form for a project to prepare construction drawings and specifications (Step 2) shall include but not be limited to: Step 2 project

shall include the following attachments and such other attachments as EPA may require:

(aa) Sewer system evaluation which demonstrates to the satisfaction of the Director and Regional Administrator that each sewer system discharging into such treatment works is not subject to excessive infiltration/inflow; through an infiltration/inflow analyses and, where appropriate and authorized by the Regional Administrator, a sewer system evaluation survey;

(bb) Acceptable engineering report describing the design concepts of the proposed project and its technological and economic feasibility including, but not limited to:

(i) Disposal system design data incorporating:

(a) Results of sewer system evaluation;

(b) Estimated effluent quality, with respect to all parameters required by applicable effluent limitations and water quality standards; and

(c) Proposed method for ultimate disposal of sludge;

(ii) Cost estimates for design and construction; and

(iii) Schedule for completion of design and construction.

(cc) A review of measures practiced or proposed to control excess flow resulting from ground water infiltration and/or extraneous flows of surface water into the sewer system.

(dd) A detailed analysis of the operation and maintenance requirements of the proposed project, including but not limited to staffing, operator qualifications, laboratory works, chemicals, annual budget and financing of the annual budget to insure adequate operation and maintenance of the disposal system.

(ee) For any project to be constructed with funds authorized for any fiscal year beginning after June 30, 1974, the grant applicant shall satisfactorily demonstrate that:

(i) alternative waste management techniques have been studied and evaluated and the works proposed for grant assistance will provide for the application of the best practicable waste treatment technology over the life of the works; and

(ii) As appropriate, the works proposed for grant assistance will take into account and allow to the ex-



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tent practicable the application of technology at a later date which will provide for the reclaiming or recycling of water or otherwise eliminate the discharge of pollutants.

(ff) Statements on planning requirements from the following:

(i) State, Metropolitan or Regional Planning Agency; and

(ii) State Clearinghouse (Minnesota State Planning Agency).

(gg) Environmental assessment in accordance with the requirements of the EPA unless the Regional Administrator determines, at the request of the applicant, that there is insufficient data available to prepare such assessment; provided that the environmental assessment must then be submitted to the Regional Administrator at or prior to the time of submission of plans and specifications for the building and erection of a disposal system or portion thereof (Step 3);

(hh) Statement regarding availability of proposed site; if relevant;

(ii) Statement regarding ability of applicant to obtain discharge permit for proposed disposal system;

(jj) Statement regarding compliance with Title VI of Civil Rights Act of 1964;

(kk) Statement regarding applicant's proposed operation and maintenance program;

(ll) Proposed sub-agreements, or an explanation of the intended method of awarding sub-agreements for performance of any substantial portion of the project work;

(mm) User charge system in accordance with EPA rules and regulations; and

(nn) Assurance of compliance with all applicable requirements of the Minnesota Department of Human Rights.

(1) Any of the items listed in Section E.8.d. which were not previously submitted or which require updating.

(2) Resolution of the governing body of the municipality authorizing the application and designating the municipal official authorized to sign the application.

(3) If more than one municipality is involved, resolutions from the governing body of all municipalities agreeing to cost sharing and agreeing to proceed to Step 3 when so instructed by the Agency.

(4) A design summary based on the plans and specifications to be submitted when the plans and specifications are complete.

(5) Documentation by the engineer(s) that they carry adequate errors and omissions insurance.

(g) (5) f. The construction grant application form for a Step 3 project to build and erect a disposal system or portion thereof (Step 3) shall include the items in subsection (4) of this section; and in addition shall include three complete sets of the construction drawings and specifications, suitable for bidding purposes; provided, that if any such information has been furnished with an earlier application, the applicant need only incorporate by reference and update or revise such information. shall be supported by the following attachments and such other attachments as EPA may require:

(1) Any of the items listed in sections E.8.d. or E.8.e. which were not submitted or which require updating;

(2) Resolution of the governing body of the municipality authorizing the application and designating the municipal official authorized to sign the application.

(3) If any items are deleted from project eligibility after initial submittal of the plans and specifications, the cost of such items must be set out;

(4) Signature and registration number of the consulting engineer accompanying the following certification statement:

The treatment works described in this grant application have been designed with full knowledge of the effluent limitations required by the Minnesota Pollution Control Agency as set forth in NPDES Permit No. \_\_\_\_\_ dated \_\_\_\_\_. It is my judgment and carefully considered opinion that these treatment works are capable of consistently producing the re-

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quired effluent quality, provided that the facility is operated in conformance with the approved operation and maintenance manual and that the volume and characteristics of raw wastewater are within the limits of the "Design Data" stated on page of the plans or as follows.

(5) Executed engineering contract, including, unless otherwise approved by the Director, full-time qualified resident inspection by the consulting engineer or his agent during construction. After project initiation, reports are to be submitted outlining type of construction inspected and time.

(6) Documentation by the engineer(s) that they carry adequate errors and omissions insurance.

(g) (7) g. The All construction grant application form and attachments shall be submitted in triplicate to the Agency at the address specified by the Director. Unless adequately justified in writing, failure to submit all the necessary documents by the date specified may constitute grounds for rejection of the application. Substantial deficiencies in the application and/or supporting documents or failure to conform with applicable requirements such as those set forth in the current Agency water pollution control program plan or the applicable basin, regional, or area water quality management plan or agency policy requirements also may be grounds for rejection. Any application may be rejected at the discretion of the Agency if it does not include an engineering report acceptable to the chief water pollution control engineer, Director, or does not include an adequate commitment for support of operation and maintenance of the project or is not consistent with applicable statutes, or does not contribute to the overall objective of effective water quality management, or is not considered to be in the best interest of the state.

### 9. Administration.

(h) (2) a. Certification. Municipalities on the list of municipalities which receive a priority rating sufficiently high in relation to available funds and are placed Applications of municipalities on the municipal project list may be certified to the EPA for a grant, but such Such certification may in any fiscal year be withheld or withdrawn by the Director if the project is not or cannot be implemented according to an acceptable schedule or otherwise poses a substantial likelihood of causing a loss of federal funds to the State.

#### b. Tender of grant.

(h) (4) (1) After the EPA has determined the eligibility of the application and tendered a federal grant,

the state Agency shall make a similar grant offer to the municipality in an amount not less than that required by federal law and regulation as a condition for the increased grant of federal funds or in an amount not less than that allowed by state statutes where not required by federal law.

(2) In the case of a project for which the applicant has solicited and received bids on construction contracts which exceed the costs estimated in the application, the Director may, after consideration of available federal funds and in accordance with EPA regulations, recommend a grant increase. A reasonable amount shall be reserved by the Agency from each allotment of funds for such increases.

(3) The Agency may tender a grant of state funds to a municipality that would otherwise qualify for a federal grant but desires to initiate construction of a project without a federal grant.

(4) The Agency may tender a grant of state funds to a municipality for what would otherwise be the local share of the cost if:

(a) The municipality is unable to finance the local share and attain a minimal point rating of 40 under the criteria of section E.3.c. (2)and,

(b) Application is made prior to the initiation of construction; and,

(c) The prevention, control, and abatement of water pollution and the public health of the state require the construction of the project.

(h) (7) c. Change orders. Any proposed changes in the contract which result in cost increases greater than that of the base contract plus contingencies as stated in the project summary or other proposed changes regardless of cost which substantially alter the type of treatment process, or its efficiency, versatility or reliability, shall be submitted to the Director for prior approval, except where the work is agreed by the chief water pollution control engineer Director to be of an emergency nature. Change orders not requiring prior approval of the Director shall be submitted for review and approval within one month after the date on which the change is ordered by the applicant, its engineer or other authorized agent- for review and approval.

d. Reimbursement grants. If a project is eligible for a federal reimbursement grant, the Agency may provide a state grant or grant increase for such project.

#### e. Payment of grant funds.

(1) Step 1 grants. The Agency shall pay 50% of the grant when an adequate facilities plan has been received

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by the Director. The balance shall be paid upon Agency and EPA approval of the facilities plan.

(2) Step 2 grants. The Agency shall pay 50% of the grant when adequate plans and specifications have been received by the Director. The balance shall be paid upon Agency and EPA approval of the plans and specifications.

(3) Step 3 grants.

(H) (8) (a) Installment payments may be requested from the EPA and the Agency when twenty-five (25) percent, fifty (50) percent and seventy-five (75) percent of the eligible construction, as measured by its cost, has been completed, or in accordance with a schedule and conditions agreed upon between the grantee, EPA and the Director. The Director shall authorize such proportional installment payment upon notification from the EPA that a federal installment payment has been authorized in a given amount.

(b) Installment payments at the fifty (50) percent level shall not be made until the applicant has in its employ for the operation of the project treatment works, a waste-water treatment works operator having a valid state certificate or one who is capable of obtaining such a certificate for operation of the designated class of treatment works within a reasonable period of time. State installment payments at the seventy-five (75) percent level, and beyond the seventy-five (75) percent level, shall be based on an assessment of, including but not limited to, the applicant's development of and progress towards completion of an acceptable manual for operation and maintenance of the disposal system- and the establishment of adequate pretreatment requirements and facilities. Final payment shall not be made until final inspection of the project by the Agency.

(c) The ~~proportional~~ proportional installment payment to be made by the Agency shall not be in excess of the overall federal-state project cost ratio as authorized by the Agency and Director.

(d) Installment payments shall not be made on the cost of eligible parts of sewer systems unless adequate treatment works exist or are under construction, nor shall such payments be made for projects which upon completion of construction will not be reasonably ~~usable~~ useable or effective without construction of additional works.

f. Retained payment. The Agency may withhold Step 3 grant payments in the following circumstances:

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(1) If the Director determines that a project does not substantially conform to approved plans and specifications and/or there has been a major breach of a condition in the grant agreement, the Agency may withhold all unpaid funds and may request EPA to do likewise.

(2) If the Director determines that a project does not conform to approved plans and specifications, but such nonconformity is not substantial, and/or there has been a minor breach of a condition in the grant agreement, the Agency may withhold up to 10% of unpaid funds and may request EPA to do likewise.

(3) If the Director determines that a project has any other deficiency, the Agency may withhold up to 10% of the unpaid funds.

(4) If funds are withheld pursuant to (1), (2) or (3) above and the condition causing such action has been corrected to the satisfaction of the Director, then all retained funds shall be released to the municipality, unless otherwise agreed to by the Director and the municipality.

g. Funds recovery. The Agency may recover any or all funds tendered or disbursed for a project as determined by the Director to be improperly designed, improperly constructed, or improperly operated and maintained. In any of the above situations, the Agency, where deemed practical, may take whatever actions deemed appropriate by the Director.

h. Contract assignment. The grantee shall retain the right to assign its contract with a contractor or engineer, and any or all rights, duties and obligations pursuant thereto, to the Agency.

i. Contract beneficiary. The contract between the engineer or contractor and the grantee shall provide that the Agency is a third-party beneficiary to their contract.

j. Cost of administration. The Agency may use federal funds from the state's allotment, in such amount as authorized by the Act, for administration of the construction grants program.

(j) ~~F. Applications for Disposal System Planning and Construction Loans.~~ Construction loan program.

## 1. Application.

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(+) a. The application form shall be of the type set forth below:

MINNESOTA POLLUTION CONTROL AGENCY Division of Water Quality		
Application for Disposal System Planning and/or Construction Loan	To be filled in by the State	
	Date Received	
	Project Number	
	Loan Request	
Legal Name of Applicant		
Address, Zip Code		
Hereby Makes Application to the Pollution Control Agency of the State of Minnesota for a Loan of Funds for the Planning and/or Construction of:		
Financial Aspects:		
Estimated Project Cost	\$ _____	
State Loan Funds	_____	
Local Funds	_____	
Other Funds	_____	
Project Schedule:		
Project Starting Date	_____	
Time to Complete Project	_____	
Name and Title of Representative	Signature of Representative	Date

(2) b. The planning loan application form shall be supported by the following attachments:

~~(aa)~~ (1) Resolution of the governing body authorizing the filing of the application and designating the ~~official municipal representative~~ official authorized to sign the application.

~~(bb)~~ (2) Resolution of the governing body of the municipality obligating the municipality to repay the loan to the state treasurer in annual installments including both principal and interest, each in an amount sufficient to pay the amount due, within five (5) years from user charges, taxes, special assessments, or other funds available to it.

~~(ee)~~ (3) Resolution of the governing body of the municipality obligating the municipality to establish rates and charges or the execution of contracts sufficient to produce the revenues pledged if required by the Agency.

~~(dd)~~ (4) Proposed method of loan repayment.

~~(ee)~~ (5) Proposed contracts for engineering, legal, planning and other consulting services.

~~(3)~~ c. The construction loan application form shall be supported by:

~~(aa)~~ (1) The attachments of ~~subsection (2)~~ ~~(aa)~~ ~~(ee)~~ and ~~(dd)~~ sections F.1.b. (1), (3) and (4) of this section and the items of section ~~(g)~~ ~~(5)~~ E.8.f. The Director for just cause may waive or defer the submission of any items required pursuant to section ~~(g)~~ ~~(5)~~ E.8.f.

~~(bb)~~ (2) Resolution of the governing body of the municipality obligating the municipality to repay the loan to the state treasurer in annual installments including both principal and interest, each in an amount sufficient to pay the principal amount within twenty (20) years or lesser time interval if found to be in the best interest of the state, from user charges, taxes, special assessments, or other funds available to it.

(4) d. The loan application form and attachments shall be submitted in duplicate to the Agency at the address specified by the Director. Substantial deficiencies in the application and supporting documents or failure to conform with applicable requirements such as those set forth in the current Agency water pollution control program plan or the applicable basin, regional or area water quality management plan ~~or Agency policy requirements~~ may be grounds for rejection. Any construction loan application may be rejected at the discretion of the Agency if it does not include an engineering report acceptable to the ~~chief water pollution control engineer~~ Director, or does not include an adequate commitment for support of operation and maintenance of the project, or does not conform to the intent of the applicable statutes, or does not contribute to the overall objectives of effective water quality management, or is not considered to be in the best interests of the state.

(5) e. Applications must be restricted to those projects or portions thereof for which service contracts or construction contracts can be awarded by June 1, or other date as may be specified by the Director, of the fiscal year in which the loan is applied for.

(6) f. Applications may be submitted at any time, unless otherwise specified by the Director.

~~(k)~~ 2. Administration of State Disposal System Planning and Construction Loans.

(+) a. The allocation of state funds shall be established in accordance with section ~~(+)~~ ~~(+)~~ E.4.b.(1) and priority rating points assignable to loan applications shall be established in accordance with section ~~(+)~~ F.3. Funds allocable to loans shall be determined each fiscal year by the Agency on the basis of total availability and demand for federal matching construction grants and construction grants and there shall not be set aside for loans more than five (5) percent of the total funds available in any fiscal year, unless

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the Agency by resolution determines that another percent level would be in the best interests of the state.

(2) b. Those planning applications which receive a priority rating sufficiently high in relation to available funds shall be tendered a state planning loan. Within sixty (60) days after the acceptance of the offer and award of contracts, for engineering, legal and other consulting services the state payment shall be made.

(3) c. Those construction loan applications which receive a priority rating sufficiently high in relation to available funds shall be tendered a state construction loan. Within thirty (30) days after acceptance of the offer and award of the construction contract for the project, the state payment shall be made.

(4) d. Principal and interest, each in an amount sufficient to pay the principal amount within the loan period, shall be paid in annual installments to the state treasurer. Interest shall be calculated on the declining balance at a rate not less than the average annual interest rate on state bonds of issue from the proceeds of which the loan was made.

(5) e. Priority ratings shall be established each fiscal year for those loan applications filed on or before a date to be set annually by the Director. Applications postmarked or delivered after that date may be rejected at the discretion of the Director.

(6) f. Funds loaned to a municipality shall not be useable for the purpose of matching an offered federal grant where the same is ineligible under federal statutes or regulations.

### (+) 3. Criteria for determining loan priority.

(+) a. The loan funds set aside in any fiscal year shall be allocated in the ratio of twenty-five (25) ~~per cent~~ percent for planning and seventy-five (75) ~~per cent~~ percent for construction, unless the Agency by resolution determines that another ratio would be in the best interests of the state.

(2) b. The determination of the order of priority for planning loan applications shall be in accordance with:

(aa) (1) The criteria set forth in ~~section~~ sections (+) (2) E.2.d., E.3.c. and F.3.b. (2). ~~including subsection 2(ee); and bb of this subsection.~~

(bb) (2) Technological Feasibility. Priority points shall be assigned based on the planning needs as set forth below:

(+) (a) Sewer system evaluation which shall demonstrate to the satisfaction of the Director and Regional Administrator that each sewer system discharging into such treatment works is not subject to excessive infiltration/inflow, through an infiltration/inflow analyses and, where appropriate and authorized by the Regional Administrator, a sewer system evaluation survey. 50

(+) (b) Report on wastewater disposal concepts. 40

(+) (c) Regionalization evaluations. 30

(+) (d) Other planning activities including as-simulation studies. 20

(3) c. The determination of the order of priority for construction loan applications shall be in accordance with section (1) (2), ~~including subsection (2) (ee);~~ E.2.d. and E.3.c.

(4) d. The numerical rating ~~point~~ points established in subsection (2) b. and (3) c. of this section shall be subject to readjustment in value for any category or class prior to the deadline date for acceptance of applications established in section (4) (5) F.2.e. if it is determined to be in the best interests of the state by resolution of the Agency. At least thirty (30) days notice of such proposed readjustments shall be furnished to all persons registered on the appropriate list maintained by the Secretary of State, and all persons wishing to do so shall be given an opportunity to present their views on the proposals to the Agency prior to final Agency action.

## Department of Public Welfare

### Proposed Rule Governing the Allocation of Title XX Funds to County Welfare and Human Service Boards

#### Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the State Office Building,

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Room 83, Wabasha Street (between Aurora and Fuller), St. Paul, Minnesota, 55101, on Thursday, April 20th, 1978, commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Natalie Gaull, Hearing Examiner, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55104, (612) 296-8111, either before the hearing or within five working days after the close of the hearing or for a longer period not to exceed 20 days if ordered by the Hearing Examiner.

Proposed Rule DPW 162, if adopted, would govern the method by which the Minnesota Department of Public Welfare determines the amount of funds under Title XX of the Social Security Act that county welfare and human service boards may be reimbursed for social services expenditures made during each program year. In the present program year in Minnesota, approximately \$46 million of these funds are being expended for such social services as homemaking, day care, adult and child protection and foster care, adoption, money management, counseling, developmental achievement, and employability. This proposed rule seeks to determine the maximum amount of funds that would be available to each county for the 1978-1979 program year and future program years, the formula used to determine that amount, the indices used in the formula and their weighting, and reallocation of any unused Title XX funds.

Copies of the proposed rule are now available and one free copy may be obtained by writing to Margaret Holt, Department of Public Welfare, Division of Social Services, Centennial Office Building, Fourth Floor, St. Paul, Minnesota, 55155, telephone number (612) 296-2338. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rule is contained in Minn. Stat. § 393.07, subd. 1, 2, and 3 (1976). A "statement of need" explaining why the agency feels the proposed rule is necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. ch. 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or

association and who spends more than \$250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office building, St. Paul, Minnesota, 55155, telephone (612) 296-5615.

### Rule as Proposed

Readers should note that the following rule is totally new.

#### DPW 162 Allocation of title XX funds to county welfare and human services boards.

##### A. Introduction.

1. This Rule governs the method by which the Department of Public Welfare determines the amount of funds under Title XX of the Social Security Act that county welfare and human services boards may receive in reimbursement for social services expenditures made during each program year. The Department of Public Welfare's authority to promulgate this Rule is contained in Minn. Stat. § 393.07, Subd. 1, 2, and 3 (1976).

2. The federal financial participation governed by the Rule is limited to Minnesota's share of the amount authorized and appropriated by Congress each year to carry out the programs of Title XX less an amount determined necessary by the Commissioner of Public Welfare for state administrative expenses, special projects, and state administered purchase of service contracts.

3. In the event the Congress authorizes and appropriates any additional funds to carry out the general purposes or specialized purposes of Title XX of the Social Security Act, the Department of Public Welfare shall use this method to determine the amount of such additional federal financial participation for which each local social services agency may claim reimbursement during the program year or years for which such funds are intended.

4. This Rule does not govern Title XX funds authorized and appropriated by the Federal Congress for staff development and Southeast Asian Refugee Programs.

##### 5. Definitions.

a. Allocation: The amount of Title XX funds, determined by the formula in Part C of this Rule, that a local social services agency may receive in reimbursement for social services expenditures in a program year.

b. Commissioner: Minnesota Commissioner of Public Welfare.

c. Comprehensive Annual Services Program (CASP) Plan: The State Social Services Plan, which is a compilation of all the local social services plans, and which

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meets the state plan requirements of Title XX of the Social Security Act.

d. County Welfare Board: Board established under the provisions of Minn. Stat. § 393.01.

e. Federal Financial Participation: Federal monies available through Title XX of the Social Security Act to be used in payment for social services.

f. Formula: The method by which Title XX funds are allocated to local social services agencies.

g. General Allocation: The general purpose Congressional appropriation for Title XX of the Social Security Act.

h. Human Services Board: Board established under the provisions of Minn. Stat. § 402, Human Services Act.

i. Joint County Welfare Board: A single welfare board established by agreement between two or more county boards of commissioners pursuant to Minn. Stat. § 393.01, subd. 7, County Welfare Board — Joint Exercise of Powers.

j. Local Social Services Agency: Local agency under the authority of the county welfare or human services board which is responsible for social services.

k. Program Year: The period from October 1 of a given calendar year through September 30 of the following calendar year.

l. Social Services: Those services which are included in the Minnesota Comprehensive Annual Services Program (CASP) Plan.

m. State Agency: Minnesota Department of Public Welfare.

n. Supplemental Allocation: Any specific purpose Congressional appropriation for Title XX of the Social Security Act.

o. Title XX: The Title of the Social Security Act known as "Grants to States for Services" that was established by Public Law 93-647, as amended.

p. Title XX Earnings: The federal share of Title XX expenditures reported to the Department of Public Welfare by a local social services agency for reimbursement of direct

delivery costs, purchased services, and allocated administrative costs.

### B. Allocation procedures.

1. To determine the amount of Title XX funds available to the counties, the Commissioner of Public Welfare shall first determine the amount of general or supplemental Title XX funds that are necessary for state administrative expenses, special projects, and state administered purchase of service contracts. The formula in Part C of this Rule is then applied to the balance to determine each local social services agency's allocation.

2. By April 1 of each year, the State Agency shall advise each local social services agency of the amount of federal financial participation it may claim reimbursement for during the program year beginning the following October 1.

3. Counties administratively organized under a multi-county human services board or joint county welfare board may receive an allocation equal to the sum of the allocations each separate county is entitled to under this formula, if separate data is routinely reported to the state agency, or an allocation based on combined data, if such is routinely reported to the State Agency.

4. The formula in Part C of this Rule becomes effective as of January 1, 1979. The first year computation shall be for the period of January 1, 1979 through September 30, 1979. For every program year thereafter, the full program year applies.

5. For the period of January 1, 1979 through September 30, 1979, no county shall receive a reduction greater than 7.5% of the previous year's allocation. For the period of October 1, 1979 through September 30, 1980, no county shall receive a reduction greater than 10% of the previous year's allocation. For the period of October 1, 1980 through September 30, 1981, no county shall receive a reduction greater than 10% of the previous year's allocation. Thereafter, no reduction percentages apply.

### C. Formula.

1. The method by which the State Agency determines each county's Title XX allocation shall be a formula comprised of the following factors:

a. County Public Assistance Factor: A mathemati-

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cal value which represents an unduplicated count of the county's total population receiving Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Minnesota Supplemental Assistance (MSA), and Medical Assistance (MA), in proportion to the state's total population receiving public assistance through these programs, as determined by the latest available data from the Department of Public Welfare.

b. County Population Factor: A mathematical value which represents the county's total population in proportion to the state's total population, as determined by the latest available data from the State Demographer's Office.

c. Expenditure Factor: A mathematical value which represents the county's total reported Title XX earnings (purchase of service, direct delivery costs and allocated administrative costs) in proportion to the total of all counties' reported Title XX earnings, as determined by the latest available data from the State Department of Public Welfare.

d. Equalization Aid Factor: A mathematical value based upon the index for each county derived from the Equalization Aid Formula which is a mathematical formula comprised of the following factors: welfare recipient rate per 1,000, per capita income, per capita taxable value, and per capita expenditures for welfare less salary expenditures. This factor is computed as follows:

(1) Counties are ranked in inverse order on each of the four factors from 87 to 1.

(2) The rankings for each county are totaled to determine the total combined points for each county.

(3) The index (total combined points) for each county is divided by the sum of the indices for all counties in the state to establish a relative rank ratio for each county.

(4) The net county welfare costs, less salary expenditure, is divided by the sum of the net county welfare costs, less salary expenditures, for all counties in the state to establish a relative size ratio for each county.

(5) The relative rank ratio (#3) is multiplied by the relative size ratio (#4) for each county to establish an adjusted rank ratio.

(6) The adjusted rank ratio (#5) for each county is divided by the sum of the adjusted rank for all counties to establish an index which is used in the allocation formula (Item B).

2. The relative weight given to each factor shall be as follows:

a. 40% to County Public Assistance Factor.

b. 20% to County Population Factor.

c. 20% to Expenditure Factor.

d. 20% to Equalization Aid Factor.

3. The allocation formula shall be computed as follows:

a. An index shall be derived for each county consisting of the four factors with the relative weights assigned in C-2.

b. The index for each county shall be divided by the sum of the indices for all counties in the state to establish a ratio for each county.

c. The Title XX funds allocated to the counties shall be multiplied by the ratio for each county to establish the allocation for each county.

#### D. Reallocation procedures.

1. To fully utilize Title XX funds, including supplemental funds available to the State of Minnesota, the Department of Public Welfare shall reallocate all surplus funds initially allocated to local social services agencies.

2. Each county welfare or human services board shall certify to the Commissioner of Public Welfare within 30 days of the close of the quarter ending December 31.

a. The portion of the initial allocation they expect to earn during the program year.

b. The amount of federal financial participation they could earn above their initial allocation.

3. If board certification is not received by the Commissioner by January 31, Title XX reimbursement shall be withheld from delinquent counties until such time as certification is received.

4. Based on these certifications, the Commissioner of Public Welfare shall determine the surplus and reallocate all projected surplus funds to counties which certify that they can earn more federal financial participation than provided for in the initial allocation.

5. Funds shall be reallocated in the same proportion as the formula provided for in Part C of this Rule up to the amount each local social services agency certifies it can earn above its allocation, and excluding those local social services agencies unable to earn their allocation.



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6. At the close of the program year, the Commissioner of Public Welfare shall make a final reallocation of surplus funds based on the formula in Part C of this Rule.

7. No county with reimburseable earnings less than its allocation shall be considered for reallocation funds.

### Department of Public Welfare Proposed Rules Governing the Standards for Outpatient Treatment Programs for People with Alcohol and Other Drug Problems

#### Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in the State Office Building, Room 83, Wabasha Street (between Aurora and Fuller), St. Paul, Minnesota, 55155 on April 24, 1978, commencing at 9:00 A.M. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally and written materials may be submitted at the hearing. In addition, written materials may be submitted by mail to Steve Mihalchick, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota, 55104, (612) 296-8112, either before the hearing or within five working days after the public hearing ends, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

Proposed Rule DPW 43 sets minimum standards for outpatient treatment programs for people with alcohol and other drug problems. The rule contains an extensive definition section. It contains licensing guidelines relating to which programs must be licensed; how and when programs may apply; terms of denial, revocation, suspension and non-renewal of licenses; establishment of need; and licensing fees. The rule mandates that an authorized representative of the Commissioner be allowed to inspect the program and that programs comply with State and Federal Regulations pertaining to confidentiality. The rule also contains standards for the outpatient treatment program. These standards cover the following areas: (1) Governing and ad-

visory boards (2) Qualifications of director and direct counseling staff (3) Staffing requirements (4) Personnel policies (5) Medical Services (6) Staff development (7) Program evaluation. The rule also contains provisions for administration and management of the outpatient treatment program mandating policies and procedures in the following areas: (1) Admissions (2) Discharge (3) Program design and methodology (4) Appropriate service hours and equivalent counselor time (5) Referrals (6) Individual client record (7) Follow-up (8) Financial records (9) Statistical records (10) Insurance (11) Clients rights. Additional requirements pertaining to programs which serve adolescents are also included.

Copies of the proposed rule are now available and one free copy may be obtained by writing to Doris Hennagir, CD Program Division, 4th Floor Centennial Building, St. Paul, Minnesota, 55155, (612) 296-4617. Additional copies will be available at the door on the date of the hearing. The agency's authority to promulgate the proposed rule is contained in Minn. Stat. §§ 62A.149, 245.781-.813, 254A.02, subd. 2, 254A.03, subd. 1 and 254A.10. A "statement of need" explaining why the agency feels the proposed rule is necessary and a "statement of evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

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Edward J. Dirkswager, Jr.  
Commissioner

#### Rule as Proposed

Readers should note that the following rule is totally new.

**DPW 43: Standards for outpatient treatment programs for people with alcohol & other drug problems.**

A. Statutory citation. This rule is promulgated pursuant

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to Minn. Stat. §§ 62A.149, 245.781.-813, 254A.02, subd. 2, 254A.03, subd. 1 and 254A.10.

B. Statement of purpose. The purpose of this rule is to establish a basis for approving or licensing outpatient treatment programs for people with alcohol and other drug problems.

#### C. Definitions.

1. "Applicant" — any person, agency or organization applying for a license or renewal license under this rule.

2. "Client" — an individual whose physical, social or psychological status allows them to function in their usual community environment, but whose alcohol and/or drug related behavior causes problems to himself/herself and/or others in the home, employment or community setting and who is receiving services in an outpatient program covered by this rule. This may include the family of and/or others significant to that person.

3. "Commissioner" — the Commissioner of the Department of Public Welfare or a designated representative of the Commissioner.

4. "Department" — the Department of Public Welfare.

5. "License" — the certificate issued by the Commissioner that validates compliance with this rule, and authorizes the applicant to operate a non-residential program.

6. "Program Director" — the applicant staff member responsible for planning, implementing and directing the operation of all aspects of the program.

7. "Direct Counseling Staff" — all staff employed by the facility and who provide treatment and/or related services to clients.

8. "Outpatient Treatment Program" — a treatment program with a defined regimen serving at one time 5 or more persons experiencing problems related to alcohol or other drugs for the main purpose of providing primary or post-primary treatment care. The regimen must provide a minimum of 10 hours of total service time scheduled at a minimum of 1 hour per week and must provide time-limited therapeutic services on a non-residential basis employing individual treatment plans to clients.

Programs not covered by this rule are those whose primary functions are: Information and Referral, Diagnosis, Education, Support Group Services, Self-Help Groups.

#### D. Licensure.

1. No outpatient treatment program shall operate without a current and valid license or provisional license to operate in the State of Minnesota. The license shall prescribe the person or organization operating the program and the location of the program.

2. Outpatient treatment programs which are housed within a hospital, licensed by the Department of Health are excluded from these regulations under Minn. Stat. § 245.791 (1977 supp), but the program has option of voluntarily seeking licensure or approval if it is requested.

3. Every outpatient treatment program must apply to the Commissioner within 60 days of the effective date of this rule and comply with the provisions of the rule to obtain and maintain a license. Application for renewal of license shall be made 45 days prior to the date of expiration. Application and re-application shall be made on forms furnished by the Commissioner.

4. An initial license shall be valid for up to one year after the date of issuance. A renewal license may be issued for up to two (2) years at the discretion of the Commissioner. A license may not be transferred from one program to another.

5. Every applicant shall be furnished with a copy of this rule.

6. If the Commissioner determines that the applicant or the license-holder is not complying with the provisions of this rule, the license may be denied, revoked, suspended or not renewed after notice to the applicant or license-holder. The denial, revocation, or failure to renew shall proceed in accordance with the provisions of applicable Minnesota laws and regulations.

7. Prior to the issuance of a license or provisional license, the following steps shall be completed:

a. The need for the program shall be the determination of the Area Board/Human Service Board. Documentation explaining the basis for the determination must be submitted to the Commissioner.

b. A completed application shall be submitted to the Commissioner prior to issuance of a license from the Department of Public Welfare.

c. The fee for license shall be paid to the Commissioner.

8. Licensing policies and procedures shall be available to the public.

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9. A specific regulation may be waived for not more than one year at one time with the approval of the Commissioner, provided that the health and safety of the clients is assured. The granting of a waiver will be considered individually on its merits.

10. Each applicant must provide assurance that no person shall be discriminated against in relation to admission, discharge or treatment on the basis of sex, race, creed, color, national origin, religion, disability, or sexual preference.

11. All facilities where non-residential programs are conducted must meet all applicable local and state codes relative to fire, safety, building zoning and health standards, and documentation of that must be provided prior to granting a license.

## E. Right to entry.

1. Authorized representatives of the Commissioner may visit the program at any time during the hours of operation for purposes of licensing study and inspection. Inspections may be made without prior notice to the applicant and program director.

## F. Confidentiality.

1. No information regarding a client shall be released to any person or agency, except pursuant to applicable state and federal regulations.

a. There shall be a written plan describing methods and procedures used to ensure confidentiality of case records.

b. This written plan shall include but not be limited to methods and procedures for release of information to and obtaining information from outside agencies and resources, as governed by appropriate state or federal statute regulations.

G. Minimum standards for issuance of a license to a non-residential program.

## 1. Governing and advisory boards.

a. Each outpatient program must have a governing body with written documentation of its source of authority and which:

(1) Is legally and financially responsible for the operation of the program or agency.

(2) Operates the program in compliance with all appropriate state and federal laws.

(3) The addition or deletion of services provided by the program which affects the implementation of the individualized treatment plans must be submitted for approval to the Commissioner within 60 days after implementation.

(4) Documents the adoption of a schedule of meetings and attendance requirements, and shall keep minutes of all meetings.

(5) Provides accessibility of all policies and procedures mandated in this rule to all staff.

(6) Reviews and approves fiscal plan on an annual basis to include review and approval of annual operating budget, fee schedule, and annual audit.

(7) Reviews and approves all revisions to the fiscal plan.

b. Each outpatient program must have an advisory board which consists of at least 5 members and:

(1) Provides a system for client input regarding the program.

(2) Provides a system for community input regarding the program.

(3) Has at least one community representative as a member who has no other affiliation with the program.

(4) Includes a former participant of the program or some other outpatient program as defined by this rule.

(5) Provides input to governing board and direction to program director regarding all additions or deletions of services provided by the program which affects the implementation of the individualized treatment plans.

c. The program director must as a minimum make written quarterly reports to the governing and advisory board and shall not be an official member of either board.

d. Any governing body which elects not to have an advisory board must itself meet the requirements for a governing board and an advisory board as specified in G.1 a & b.

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2. Director — every outpatient program shall have a director who shall:

a. Be at least 18 years of age.

b. Document 3 years of general work experience in administration and/or personnel supervision, or Bachelors degree and at least 1 year experience in direct services to persons with alcohol and other drug problems.

c. Have no current problems related to alcohol or other drugs which negatively affects his/her job or program performance.

3. Staffing requirements.

a. Programs must demonstrate staffing capability to provide services at the levels identified within the program plan. To this end the following minimal requirements must be satisfied:

(1) For each 1 hour of individual, group or family unit counseling and each admission and discharge interview, a minimum of 1.25 hours of counselor time must be allocated.

b. Direct counseling staff must be at least 18 years of age.

c. Staff must not have current problems related to alcohol or other drugs which negatively affects his/her job or performance.

d. Direct counseling staff must have at least one year experience/or education in behavioral health or human services.

e. Direct counseling staff must have at least 1 year supervised clinical experience in an outpatient or aftercare setting.

f. Personnel files of all direct counseling staff must include documentation of individual competencies in the following areas:

(1) Designing individualized treatment plans based on the needs of each client.

(2) Conducting an assessment interview and listing the client's specific strengths and problems related to chemical use, physical and emotional functioning, family and other cultural issues.

(3) Implementing individualized treatment plans utilizing internal and/or external program services includ-

ing: vocational, education, spiritual, family, financial, recreational, health, legal, chemical.

(4) Maintaining client recordkeeping systems.

(5) Developing evaluative outcome criteria for each problem area identified in the individualized treatment plan.

(6) Identifying the variety of chemical use problems that exist in the community:

(a) Pharmacological and behavioral effects of various chemicals.

(b) Age and cultural aspects.

(c) Short and long treatment implications of a & b above.

(7) All documentation must be included in each staff personnel file. Staff may be subject to an interview by the licensing authority.

4. Personnel policies — the original application and all renewal applications shall describe the nature and extent of the training and qualifications of the staff and shall include a description of the staff organization, which defines the role and responsibilities of all personnel and lines of authority.

a. The applicant shall maintain personnel policies including: job descriptions, qualifications, performance and evaluation standards, remuneration and fringe benefits for each staff position. These policies shall include procedures governing hiring, suspension, dismissal, assignment promotion, grievance procedures, and other appropriate policies. Performance review shall be made at least annually.

b. These written policies shall be maintained and communicated to the staff, prospective staff, and volunteers of the program. Policies shall be reviewed and updated annually.

c. These policies shall be implemented without prejudice regarding sex, race, creed, color, national origin, religion, disability, or sexual preference and include an affirmative action plan.

5. Medical services.

a. Documentation of availability of licensed physician and/or nurse practitioner for necessary medical care, emergency medical services, and medical reporting for all clients of the program.

b. Documentation of availability of Board-certified or Board-eligible Psychiatrist and/or Licensed Consulting

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Psychologist who shall provide at the discretion of the director, when needed, psychiatric and psychological evaluation services for clients admitted to the program.

c. Prescription medication when administered on the premises of the program shall be administered by qualified personnel as specified by the Minnesota Department of Health.

6. Staff development — each program shall provide documentation, a written staff development program for direct service and supervisory personnel. There shall be a minimum of 12 hours/year for each full time equivalent staff. The program shall include orientation and training of all staff, continuing development of staff skills and abilities through a defined in-service program and/or participation in other training programs. If volunteers are utilized, they shall be included in staff development programs. The person responsible for the staff development program shall be identified. This plan shall be reviewed annually.

7. Evaluation — all programs shall develop procedures to monitor how well their program's administration and service goals (See G 8.b.) are being met.

a. For each objective specified in the application, there shall be a separate procedure for monitoring progress towards reaching that objective. These procedures shall be specified to the Department at time of application.

b. For each objective specified in the application, there shall be a separate statement of actual progress made towards reaching the objective, determined by using the procedure specified above. These statements of actual progress shall be submitted to the Department with the application for renewal of license.

c. Program shall submit information to the Commissioner for evaluative purposes upon request.

d. Program shall provide documentation verifying integration of evaluation outcomes into the program operation.

8. Administration and management — every outpatient treatment program shall have written administrative and management policies governing the administration and supervision of the operations, the program and the duration of the program. Such documentation shall include:

a. A written plan describing the program's philosophy, organization and role of supervisory personnel.

b. Administration and service goals and objectives for the operation of the program.

c. Policies and criteria for admission and discharge, including a definition of when a client is considered active in the program. The admission procedure shall include:

(1) A description of the process by which a client is accepted or rejected by the program and disposition of client if not accepted.

(2) A procedure for determining the necessity of a medical evaluation, which is developed in conjunction with a physician or a nurse practitioner.

(3) Assessment that includes the chemical use history, a psycho-social history including utilization of relevant human services, cultural background, vocational and educational history, family relationships, socio-economic status and determination of current emotional state.

d. A written description of program design and methodology.

e. A written delineation of the inter-relationship of the program and other appropriate public and private service providers.

f. The program must develop an annualized projection of individual and/or family counseling hours, group counseling hours, admission and discharge interviews and discharge and/or aftercare planning to be provided by the program. Program must also develop annualized projection of counseling hours available to provide these services based on number of staff positions and equivalent counselor time (See G.3.a (1)). Annual projections of service hours and equivalent counselor time must be reviewed, updated and submitted to the Commissioner with each application for renewal.

g. A written procedure for the provision of services required by individual clients which are unavailable in the program.

h. The program shall have a written referral policy and procedure for client referral between the program's components and/or between the program and other community service providers which includes:

(1) Conditions under which referrals are made.

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(2) Means by which the program will assist in the referral of those individuals who are seeking services that the program does not provide.

(3) Documentation of at least one contact with the referral agency within a designated time period.

(4) Current and confidential log of all referrals that the program initiates and receives.

i. An individual record for each client of the program which includes:

(1) Demographic characteristics of the client, including age, sex, ethnic/cultural group, and source of referral into the program.

(2) Documentation of determination of the necessity of a physical assessment and the resulting referral when appropriate.

(3) Documentation of a psycho-social assessment, which shall include the nature and history of the client's chemical use, the nature and history of the problems associated with the client's chemical use, and the nature and history of the client's previous contacts with chemical dependency services, mental health services, the criminal justice system, or other social, vocational, educational or financial services.

(4) A written individual treatment plan which identifies client need and problems, based on the psycho-social assessment, and if deemed necessary, the medical evaluation which:

(a) Specifies services planned for meeting the client's needs.

(b) Includes referrals for services not available within the program.

(c) Describes the client's participation in development of the treatment plan, and is signed by the client and a staff member.

(d) Documents progress and changes at least weekly.

(5) All entries must be legible, dated and signed.

(6) Written consent of the client or guardian for any release of information to persons not otherwise authorized to receive it pursuant with state and federal regulations.

(7) Documentation, signed by the client, that

he/she has received a copy of the program rules, the client's rights, and responsibilities while participating in the program.

(8) A discharge summary which evaluates the client's progress toward goals and objectives set forth in the treatment plan and describes the joint program/client's plans for future activities to maintain effective functioning and the program's plans for follow-up of the aftercare plan.

(9) Each program shall provide a written individualized aftercare/discharge plan for each client which is designed to establish continuing contact, ensure utilization of other appropriate resources in the community, and record progress against pre-stated goals.

j. Follow-up data, obtained within 3-6 months after the client discontinues the program (those who are either discharged at completion of the program, and those who leave the program before completion), shall be collected from no less than 50 clients drawn randomly, or 100% of the discontinued clients, whichever number is less, served in the 12 months since issuance or last renewal of the license. Follow-up contacts should ascertain, for each client, (1) the client's present chemical use patterns; (2) whether problems originally associated with the client's chemical use are improved or have become worse; (3) whether the client is engaged in appropriate post-treatment activities or lifestyles; (4) whether the client needs or wants additional services. The follow-up collection procedure should permit quarterly summarization of data for all clients.

k. At the time of application for licensure renewal, the applicant shall submit a report to include a summary of data collected pursuant to section G.8j.

l. Financial records including an annual budget, records of income and expenditures, fee policies, and record of an annual audit. New programs must document in writing assurances of funding sufficient to meet total projected program costs and start-up costs if any, for a period of at least one year.

m. Records shall be kept on a continuing basis that accurately reflect the number and dates of clients accepted and rejected, number and dates of clients discharged, length of service and what happens to clients upon leaving the program. Such records shall be furnished to the Commissioner upon request.

n. Written documentation of general liability insurance coverage in an amount sufficient to protect the interests of the clients and staff.

o. A description of the methods by which clients' legal, civil, and human rights will be protected. This shall

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include the procedures for handling complaints and grievances by clients, their relatives, and/or guardians. A written copy of such rights and procedures shall be given to each client entering the program and posted in a prominent place.

(1) The program shall have a written statement of its policies and practices for handling cases of neglect and abuse of its clients.

(2) The risks associated with the use of any therapeutic procedures shall be fully explained to the patient in terms he/she can understand.

9. Outpatient treatment programs serving adolescents must meet the above requirements and in addition each program must:

(1) Provide a written rationale for its approach to the treatment of adolescents, demonstrating that within the context of its adult/adolescent population, the program can provide appropriate services to adolescent clients.

(2) Provide counselor(s) with knowledge in adolescent chemical dependency behavior, adolescent behavior, and direct counseling experience with adolescents. Personnel files of these counselors must document that the qualifications and expertise of identified staff is sufficient to meet the needs of the clients.

(3) Provide for each 1 hour of individual, group, or family unit counseling and each admission and discharge interview, a minimum of 1.5 hours of counselor time must be allocated. This section supersedes section G. 3 (1) above.

(4) Provide inservice training of direct counseling staff in areas specific to the treatment of chemically dependent adolescents, including training on incest, sexual and physical abuse, family dynamics, independent living skills, habilitation vs. rehabilitation, experimentation, and decision making.

(5) Document attempts to obtain the active participation of the adolescent's family or family surrogate in the treatment process. If, despite reasonable effort, participation of a functioning family or family surrogate unit cannot be obtained, it is then the obligation of the program to involve the anticipated provider of aftercare services in discharge planning.

(6) Document appropriate educational opportunities. Treatment and discharge planning must occur in

coordination with the client's ongoing educational setting. The program must provide or contract with Special Learning and Behavior Problem teachers, tutors, class room teaching, vocational education, etc., as appropriate.

(7) Provide treatment, literature, lectures, etc. which are easily comprehensible to, and appropriate for the age level of adolescent serviced.

(8) Provide a recreational rehabilitation program to clients. Activities should be planned to develop constructive leisure time activity skills and should be documented in each individualized treatment plan.

(9) Develop a discharge plan which reflects consideration of aftercare provisions unique to adolescents to include leisure time, education, specialized adolescent services, role of family or family surrogate. The plan should be developed cooperatively by the client, program staff, referring agency, family (or surrogate) and the anticipated provider of aftercare services (when appropriate), and signed by the client.

## Department of Transportation Proposed Rules Governing the Implementation of Public Transit Subsidy and Demonstration Grant Programs

### Notice of Hearing

Notice is hereby given that a public hearing in the above-entitled matter will be held in Room 81, State Office Building, Aurora and Fuller Streets, St. Paul, Minnesota on April 19, 1978 commencing at 9:30 A.M. and continuing until all persons have had an opportunity to be heard.

All interested or affected persons will have an opportunity to participate. Statements may be made orally or written materials may be submitted at the hearing. In addition, written materials may be submitted to Natalie Gaull, Office of Hearing Examiners, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8111, either before the hearing or within five working days after the public hearing ends or

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for a longer period not to exceed 20 days if ordered by the hearing examiner.

The proposed rules, if adopted, provide procedures and standards for the submission, review and approval of applications for financial assistance under the Public Transit Subsidy and Demonstration Grant Programs pursuant to Minn. Stat. ch. 174 (1977 supp.).

Copies of the proposed rules are now available and one free copy may be obtained by writing to Richard L. Brown, Minnesota Department of Transportation, Room 419, Transportation Building, St. Paul, Minnesota 55155, (612) 296-2533. Additional copies will be available at the door on the day of the hearing. The agency's authority to promulgate the proposed rules is contained in Minn. Stat. ch. 174 (1977 supp.). A "Statement of Need" explaining why the agency feels the proposed rules are necessary and a "Statement of Evidence" outlining the testimony they will be introducing will be filed with the Hearing Examiners Office at least 25 days prior to the hearing and will be available there for public inspection.

Please be advised that Minn. Stat. ch. 10A, requires each lobbyist to register with the Ethical Practices Board within five days after he commences lobbying. Lobbying includes attempting to influence rule making by communicating or urging others to communicate with public officials. A lobbyist is generally any individual who spends more than \$250 per year for lobbying or any individual who is engaged for pay or authorized to spend money by another individual or association who spends more than \$250 per year or five hours per month at lobbying. The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, phone (612) 296-5615.

The proposed rules are published herewith in their entirety without indication of changes from those previously published.

Jim Harrington  
Commissioner

### Rules as Proposed

The existing rules dated August 23, 1974 under Laws of 1974, ch. 534 are rescinded.

Readers should note that the following rule is totally new.

#### 14 MCAR § 1.4025 General provisions.

A. Authority. The Minnesota Department of Transportation is authorized to adopt rules necessary to carry out the Public Transit Subsidy Program, Paratransit Demonstration Program and the Regular Route Demonstration Program

pursuant to Minn. Stat. ch. 174 (1977 Supp.) and Minn. Stat. § 15.0412 (1976) as amended.

B. Definitions. The following terms as used in these Rules shall have the following meanings:

1. "Department" means the Department of Transportation.

2. "Demonstration assistance" means state financial assistance granted to an eligible recipient in accordance with the Paratransit Service Demonstration Grant Program or Regular Route Demonstration Program established pursuant to Minn. Stat. ch. 174, §§ 22 and 23 (1977 supp.).

3. "Public Transit" or "transit" means general or specific transportation service provided to the public on a regular and continuing basis. "Public transit" or "transit" includes paratransit and regular route transit. For the purposes of these rules, this term does not include air or rail transit.

4. "Subsidy assistance" means state financial assistance granted to an eligible recipient in accordance with the Public Transit Subsidy Program established pursuant to Minn. Stat. ch. 174, § 21 (1977 supp.).

5. "Operating deficit" means the amount by which the total operating expenses incurred in the operation of the public transit system exceeds the amount of operating revenue derived therefrom and the amount of any social fare reimbursement pursuant to Laws of 1977, ch. 174, § 21, subd. 4 (1977 supp.). Financial assistance received from the federal government for the operation of a public transit system shall be treated as revenue for the purpose of determining the operating deficit.

6. "Commuter van" has the meaning given it in Minn. Stat. § 221.011 (1976).

7. "Metropolitan council" means the council established by Minn. Stat. § 473.123 (1976).

8. "Metropolitan transit commission" means the commission established by Minn. Stat. § 473.404 (1976).

9. "Paratransit" means the transportation of passengers by motor vehicle or other means of conveyance by persons operating on a regular and continuing basis and the transportation of passengers as its primary and predominant purpose and activity, but excluding regular route transit. "Paratransit" includes transportation by car pool and commuter van, point deviation and route deviation services, shared-ride taxi service, dial-a-ride service, and other similar services.

10. "Regular route transit" means transportation of



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passengers for hire by a motor vehicle or other means of conveyance by any person operating on a regular and continuing basis as a common carrier on fixed routes and schedules. "Regular route transit" does not include transportation of children to or from school or of passengers between a common carrier terminal station and a hotel or motel, transportation by common carrier railroad or common carrier railroads or by taxi, transportation furnished by a person solely for his or its employees or customers, or paratransit.

C. Program applications. The Program application procedure shall consist of a preliminary and final application.

The preliminary application must be submitted to the appropriate Regional Development Commission for review and approval for consistency with regional transportation plans and development guides prior to the department approving the application. The RDC as part of their review will insure that existing public or private transit service in the proposed service area has the opportunity to comment on the proposed project. The RDC in their review will indicate this has been accomplished. Any Regional Development Commission that has not adopted a transportation plan may review but may not approve or disapprove an application. The Regional Development Commission must transmit its comments to the department within thirty days of the receipt of the application. The preliminary application must also be submitted to the local transit authority, commission or system for review and comment as to consistency with its approved transportation development program. That review must be submitted to the department within thirty days of receipt. No comment from the RDC, local transit authority, commission or system will constitute a positive comment from such commission, authority or system. After considering those comments and within sixty days of receipt of preliminary application, the department shall determine and notify the applicant of its eligibility to submit a final application.

The final application must also be submitted to the RDC and transit authority, commission or system for comment. The department will allow any Regional Development Commission or Transit System to withdraw their approval or comment for any final application that deviates significantly from the preliminary application. Those comments must be submitted to the department within 10 days of receipt. The Department will act upon the final application within 20 days of receipt.

D. Regulation of use of subsidy and demonstration assistance.

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1. State audits. The financial records of the eligible recipient will be audited by the Department. A benchmark audit of the recipient's books shall be required at the beginning of the first contract period and prior to contract execution and fund encumbrance. Another audit shall be required at the end of the contract period to establish an approved total operating deficit. The Department shall conduct an interim audit of an approved total operating system that is sold during the contract period as of the effective date of the ownership transfer. Other audits may be made by the Department. The eligible recipient will be required to conduct an audit of the participating public transit system financial records.

2. Record keeping. The eligible recipient and participating public transit system shall maintain accounting and other records as required by the Department. These records will permit audit verification of all transit cost allocations claimed during the contract period.

3. Project evaluation. The Department shall use the management plan required pursuant to 14 MCAR § 1.4028 as a basis for monitoring and evaluating the performance of the participating public transit system during the contract period. Public transit policy management decisions made and actions taken during the contract period shall conform with the management plan. Any proposed deviation from the management plan shall be reported to the Department for approval prior to implementation. Failure to secure approval will jeopardize continued subsidy or demonstration assistance.

4. Third-Party contracts. Private and public organizations may participate in projects by contract with the eligible recipient. Mn/DOT concurrence is required for the third party contract.

5. Penalties. When the eligible recipient fails to faithfully comply with the terms and conditions of the contract, the Department may terminate all or part of the subsidy or demonstration assistance awarded to the eligible recipient.

## § 1.4026 Public transit subsidy program.

A. Purpose. The purpose of the Public Transit Subsidy Program is to supplement local effort in financing public transit systems in order to preserve and develop public transit and a balanced transportation system in the state.

B. Eligibility.

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1. Eligible recipients. Any legislatively established public transit commission or authority any county or statutory or home rule charter city providing financial assistance to public transit, any private operator of regular route transit, or any combination thereof is eligible to receive financial assistance through the public transit subsidy program.

2. Eligibility factors. A public transit system with a total operating deficit projected for the contract period shall be eligible for subsidy assistance. Deficits incurred prior to this period shall not be eligible for subsidy assistance. When a legislatively established public transit commission or authority is in existence, any application for the area commission or authority is in existence, any application for the area under the jurisdiction of the commission or authority must be submitted by that commission or authority, except any private operator of regular route transit in the metropolitan transit taxing district as defined in Minn. Stat. § 473.446 (2) may apply directly to the department.

#### C. Application for subsidy assistance.

1. General. The application for subsidy assistance shall be submitted in two stages: preliminary and final applications. The Department shall assist the applicant in the preparation of the final application upon request. Subsidy assistance may not be used to pay any costs incurred by the applicant in the preparation, submission or processing of applications.

2. Preliminary application. The preliminary application shall be submitted to ascertain the probable eligibility of the applicant, including projected total operating deficit and projected availability of state and local financial assistance. For a particular public transit system, only one preliminary application shall be submitted on behalf of all units participating in the system. The preliminary application shall be in the form and manner prescribed by the Department and shall contain the information required by the Department, including the following:

- a. The applicant's legal name;
- b. The official name of the public transit system for which the subsidy assistance would be used;
- c. The common carrier certificate number of public transit system prescribed by the Minnesota Public Service Commission;
- d. The amount of subsidy assistance requested;
- e. A narrative describing the transit service; and

f. A description of the transit costs allocation method.

3. Final application. The final application shall be submitted to determine the subsidy assistance to be granted and basic elements in the agreement. It shall be submitted by an applicant who has received notice that, based on its preliminary application, it is an eligible recipient. It shall be submitted to the Department and include the elements specified in 14 MCAR § 1.4028. When the eligible recipient has submitted or anticipates submitting an application for assistance under the demonstration program 14 MCAR § 1.4027, during the contract period, that project must be identified in the application.

#### D. Determination of subsidy assistance.

1. Total operating deficit. To determine the total operating deficit of a public transit system, the following shall apply:

a. Transit costs as described in the Urban Mass Transit Administration's external operating manual;

b. Generally accepted accounting principles and practices;

c. Depreciation on capital equipment that was purchased with state or federal financial assistance shall be excluded in the computation of total operating expenses to the extent of the federal or state assistance;

d. Subsidy assistance shall be considered on the basis of the total project deficit for the proposed contract period;

e. A deficit incurred as the result of authorized increased services shall be considered in determining eligibility;

f. An eligible recipient shall treat financial assistance received from any agency of the federal government for the operation of a public transit system as revenue for the purposes of determining its total operating deficit.

2. Factors in subsidy assistance. The Department shall review the application and determine the amount of subsidy assistance, if any, that shall be given to the eligible recipient. The Department shall use the management plan required pursuant to 14 MCAR § 1.4028 as a basis for allocation of subsidy assistance to an eligible recipient. In the allocation of subsidy assistance, the Department shall consider population, transit ridership, relative need for public transit, new developments, prior local assistance, and other factors. Subsidy assistance shall not exceed two-thirds of the total operating deficit of the public transit system, as approved by the Department. The eligible recipient shall establish to the

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satisfaction of the Department that at least one-third of the total operating deficit will be available from local sources during the contract period. When more than one unit contributes assistance to the operation of the public transit system, the share contributed by each shall be specified. In the Minneapolis-St. Paul Metropolitan transit taxing district as defined in Minn. Stat. § 473.446, subd. 2 private operators of transit service that are eligible recipients may receive a grant for up to 100% of their operating deficit.

### E. Contract.

1. Content. The subsidy assistance contract shall be based upon the final application. It shall specify the amount of subsidy assistance that shall be awarded to the eligible recipient and shall be effective for a period of no more than one (1) year. It shall include the assurance of the eligible recipient that it will provide the required local share. For a particular public transit system, only one contract shall be executed on behalf of all units participating in the system.

2. Disbursement schedule. The contract shall specify a monthly or quarterly disbursement schedule at the pleasure of the recipient. Disbursements will reimburse the recipient based on the claimed operating deficit for the monthly or quarterly reporting period, but will not be allowed to exceed the estimate in the final application. At the end of seven months if it appears that the existing contract limit shall be insufficient the department will, upon application, amend the contract.

As agreed to in the contract, a portion of the final payment of the transit subsidy shall be withheld pending a final audit of the public transit system's books by the Department at the termination of the contract. The final audit shall be used by the Department to verify the transit costs claimed during the contract period. When the supplemental assistance is more than two-thirds of the total operating deficit, the final payment shall be reduced accordingly. Any overpayment by the State shall be returned to the State Treasury at the request of the Department.

### § 1.4027 Paratransit service and regular route demonstration grant program.

A. Paratransit purpose. The purpose of the Paratransit Service Demonstration Grant Program is to plan, promote, demonstrate, and evaluate the effectiveness, cost, and efficiency of paratransit as a means of accomplishing program objectives.

B. Paratransit objectives. The primary objectives of the Paratransit Service Demonstration Grant Program are:

1. To provide transportation services which improve the accessibility and productivity of regular route transit;

2. To provide transportation services in those areas inefficiently or inadequately served by regular route transit;

3. To provide transportation services for persons who because of age or incapacity are unable to drive a private automobile or use existing modes of public transit;

4. To show how existing single occupant auto drivers can be diverted to paratransit or other public transportation modes; and

5. To determine the most effective manner of providing paratransit services. A potential demonstration project shall be designed to meet directly one or more of these program objectives.

C. Eligible recipients. Any public or private agency, entity, or person is eligible to receive financial assistance through the Paratransit Service Demonstration Program.

D. Regular route program objective. The primary objective of the Regular Route Transit Demonstration Grant Program is to demonstrate improvements in the accessibility, quality, economic performance, or patronage of regular route transit service by the following means:

1. Expansion of existing routes and addition of new routes in areas that previously have not been served or have been served inadequately by regular route transit;

2. Management and operations improvements without expanding existing routes or adding new routes.

A potential demonstration project shall be designed to meet program objectives by one of these two methods. Not less than 40 percent nor more than 60 percent of the total financial assistance available shall be granted to projects to demonstrate each method.

E. Eligible recipients. Any organization that qualifies under 14 MCAR § 1.4026 B.1. who operates, intends to operate, or assists in the operation of regular route transit services is eligible to receive financial assistance through the regular route transit demonstration program.

F. Eligible projects. An eligible project for Paratransit Service and Regular Route Demonstration Grant programs shall meet the following requirements:

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1. It shall be designed to have potential for general applicability in other areas of the State;
2. It shall demonstrate the effect of improved public transit service; and
3. It shall meet one or more of the program objectives in 14 MCAR § 1.4027 B. and D.

An application should include a request for funding an ongoing evaluation of the project.

#### G. Determination of demonstration assistance.

1. General. The application for demonstration assistance shall be submitted in two stages: preliminary and final applications. The Department shall assist the applicant in the preparation of application upon request. Demonstration assistance may not be used to pay any costs incurred by the applicant in the preparation, submission or processing of the applications.

2. Preliminary application. The preliminary application shall be submitted to ascertain the probable eligibility of the applicant, including projected availability of state and local financial assistance. For a particular public transit system, only one preliminary application shall be submitted on behalf of all units participating in the system. It shall be in narrative form and shall contain the following:

a. Project objectives. A narrative describing the purpose of the proposed project shall include the manner in which it will meet one or more of the program objectives.

b. Project description. The following must be discussed:

- (1) The content of the project;
- (2) The time schedule proposed for completion of the project;
- (3) The public transit service including identifying proposed service levels and daily hours of operation;
- (4) The compatibility of the project with any existing transit service;
- (5) The potential for continuation of the project beyond the demonstration phase;
- (6) A project budget, by categories of expenditures, including sources and amounts of non-state funding;
- (7) A description of the applicant's organization including the key personnel and their experience;

(8) Identification of the market to be served, including the proposed daily and weekly patronage;

(9) Transit cost allocation procedures.

The preliminary application shall be submitted to the Department and appropriate Regional Development Commission and transit systems as required in 14 MCAR § 1.4025 C. The Department will assist in the planning of a system or the preparation of the applications if requested.

3. Final application. The final application shall be submitted to determine the demonstration assistance to be granted and the basic elements of the agreement. It may be submitted only by an applicant who has received notice that, based on its preliminary application, it is an eligible recipient. It shall be submitted to the Department in the form and manner prescribed by the Department and shall include the elements specified in 14 MCAR § 1.4028. When the eligible recipient has submitted or anticipates submitting an application for assistance under the Public Transit Subsidy Program, 14 MCAR § 1.4026, during the contract period, this shall be briefly discussed in the application.

4. Application evaluation. The primary criteria that shall be used by the Department to evaluate proposed demonstration projects are:

- a. Potential for meeting one or more of the program objectives;
- b. Potential in demonstrating specific concepts that are applicable in other areas of the State;
- c. Degree of innovation incorporated;
- d. Compatibility and coordination with existing regular route and paratransit systems;
- e. Potential for integration with existing transit service;
- f. Evidence of local government and public support;
- g. Ability to continue a successful project beyond the demonstration phase;
- h. Efficiency in the use of energy resources to accomplish objectives; and
- i. Cost effectiveness of the project.

5. Project funding. The applicant is expected to share in the cost of a demonstration project. Demonstration assistance normally will not exceed 90 percent of the cost of approved demonstration projects. The Department reserves the authority to fund up to 100% of a project that it feels is

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unique and needs to be demonstrated but lacks the necessary local financial support. When in the Department's judgment, a proposed demonstration project has potential national significance, the Department may require the eligible recipient to submit an application to the Federal Government, in addition to the State application.

## H. Contract.

1. Content. The demonstration contract shall be based upon the final application. It shall specify the amount of the demonstration assistance that shall be awarded to the eligible recipient and shall not exceed one year. It shall include the assurance of the eligible recipient that it will provide the required local share and carry out the management plan. For a particular public transit system, one contract shall be executed on behalf of all units participating in the system.

2. Disbursement schedule. The contract shall specify a disbursement schedule either monthly or quarterly at the pleasure of the recipient. Disbursements will reimburse the recipient based on the claimed deficit for the monthly or quarterly reporting period, but will not be allowed to exceed the estimate.

As agreed to in the contract a portion of the final payment of the demonstration assistance shall be withheld pending an audit of the transit system's books by the department at the termination of the contract. This final audit shall be used by the department to verify the transit costs claimed during the contract period. When the demonstration assistance is more than the approved limit of the total cost, the final payment shall be reduced accordingly. Any overpayment by the State shall be returned to the State Treasury at the request of the department.

## § 1.4028 Final application for subsidy and demonstration assistance.

A. Final application. The final application for the subsidy program or for the demonstration program shall be a form as prescribed by the department and shall contain the following:

1. Management plan. The basic component of the final application shall be a management plan that details all of the planned and anticipated events that will affect the public transit system's operating revenue and expenses during the contract period.

a. Purposes. The essential purposes of a management plan are:

(1) To document the maintenance or improvement of public transit services;

(2) To identify and implement policies and practices to increase the efficiency of public transit operations; and

(3) To insure that state assistance will be spent wisely.

b. Content. The final application shall include the following elements which may vary in detail with the size of the public transit system:

(1) Ownership. The ownership of the participating transit system during the contract period shall be described.

(2) Levels of service. The levels of service provided by the participating public transit system during the contract period shall be described.

(3) Fares. The fare structures anticipated during the contract period shall be described.

(4) Marketing. A proposed marketing program shall be described in general terms, including the costs benefits of the major elements. Elements of a marketing program may include:

(a) Market research;

(b) Public information;

(c) Promotion;

(d) Advertising;

(e) Community relations; and

(f) Employee relations.

(5) Capital improvements. Any actual or anticipated capital improvements in the participating public transit system during the contract period shall be described. Capital improvements include, but are not limited to: buses, fare-boxes, communications equipment, storage and maintenance facilities and equipment, passenger shelters, and bus-stop signs.

(6) Non-capital improvements. Any anticipated non-capital improvements proposed in the participating public

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transit service area during the contract period shall be described. Non-capital improvements include, but are not limited to:

- (a) Staggering work hours;
- (b) Regulating supply and prices of off-street parking; and
- (c) Increasing daytime parking rates on work-days.

(7) Revenue contracts. Revenue producing contracts relating to the public transit services provided by or for the eligible recipient shall be described. A copy of the contract will be required as part of the final application.

The following types of contracts shall be discussed:

- (a) Contracts with private and public schools, colleges and universities;
- (b) Contracts with private and public organizations that guarantee a minimum revenue on regular or special route(s);
- (c) Contracts with private and public organizations that purchase rides for employees or patrons; and
- (d) Advertising contracts.

(8) Traffic improvements. Any traffic improvements made in the public transit service area during the contract period that will affect directly the speed and reliability of transit services shall be described. Examples of traffic improvements include:

- (a) Use of exclusive or preferential streets, bus lanes, or expressway ramps;
- (b) Control of traffic lights by buses;
- (c) Provision of fringe parking spaces with express or improved bus service;
- (d) Provision of bus turnouts; and
- (e) Priority snow-plowing of transit routes.

The discussion of each type of traffic improvement shall include the following:

- (a) The date the traffic improvement is expected to be made; and
- (b) The expected impact of the traffic improve-

ment upon estimated public operating revenues and expenses.

(9) Expenses contracts. Any contracts for services and goods relating to the public transit services provided by or for the eligible recipient and others shall be described.

The types of contracts to be discussed include:

- (a) Contracts for management and consulting services;
- (b) Contracts for storage and maintenance of buses;
- (c) Contracts for the lease or purchase of tires and tubes;
- (d) Contracts for fuel and lubricants;
- (e) Contracts for liability and property insurance;
- (f) Contracts, union and non-union, with transit system employees.

A copy of each contract will be required as part of the final application.

(10) Preventive maintenance. The participating public transit system's planned preventive maintenance program for the contract period shall be described. Elements of a preventive maintenance program typically include:

- (a) Defect reporting by drivers;
- (b) Daily fueling inspection;
- (c) Mileage inspection; and
- (d) Inventory controls.

2. Organization. The local institutional or organizational structures established to carry out the management plan shall be described, including a description of the technical policy and decision-making organizations responsible for directing, controlling, reviewing, and implementing the management plan. The relationships between these various organizations shall be illustrated in a simple diagram following the narrative. In addition, the following questions shall be answered:

- a. Who is directly responsible for the day-to-day management and operation of the transit system?
- b. Who is directly responsible for negotiating wage contracts with the employees of the transit system?
- c. Where more than one local unit of government

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participates in the program, who represents the applicant public body in negotiations with surrounding communities? Who represents the surrounding communities?

d. Who will represent the applicant public body in negotiating an assistance contract with the State, and how shall a contract be ratified by the applicant public today?

e. Who is responsible for filing reports for the transit system with the Minnesota Public Service Commission?

3. Financial conditions. Financial data shall be reported in the form and manner prescribed by the Department. The cash accounting method shall be used to report financial data unless otherwise authorized by the department.

a. For the transit subsidy program, this financial data shall contain the audited figures for a twelve (12) month period preceding the contract period and estimated figures for the contract period.

b. For the demonstration program, the financial data shall contain estimated figures. When the demonstration project is associated with an existing public transit system, the financial data shall include the audited figures for a twelve (12) month period preceding the contract period.

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4. Financial statement. A detailed breakdown of operating expenses shall be required. The projection of revenues and expenses should reflect the policies and practices outlined in the management plan.

5. Operating statistics. The actual and anticipated operational characteristics of the public transit system in a twelve (12) month period preceding the contract period and/or the contract period shall be described. This discussion shall include revenue passengers, monthly ridership, total operating miles, revenue hours, and other information required by the Department.

6. Sources of local funds. The sources and type of revenue that the eligible recipient and each participating unit will use to match the supplemental or demonstration assistance shall be identified.

7. Fuel supplies. Existing and potential problems that the public transit system faces in obtaining adequate fuel supplies during the contract period shall be identified, including the status of contracts with fuel suppliers, the prospects for securing contracts for the contract period, the time between deliveries under normal and anticipated conditions, and any other pertinent facts.

**KEY: PROPOSED RULES SECTION:** Underlining indicates additions to pre-existing rule language. ~~Strike outs~~ indicate deletions from pre-existing rule language. If all proposed rules in a set are totally new (i.e. non-amendatory) the entire set is printed in standard type face. **RULES SECTION:** Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

# OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, when, in preparing to propose rules, an agency seeks to obtain information or opinion from sources outside of the agency, a notice of intent to solicit such information or opinion is published in the *State Register* and interested persons are afforded an opportunity to submit data and views on the subject.

The *State Register* also contains any other official notice requested to be published by an agency, pursuant to Laws of 1977, ch. 305 § 3.

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## Ethical Practices Board 1978 Campaign Expenditure Limit\*

CANDIDATE FOR:	1978
1. <u>Governor — Lt. Governor</u>	<u>\$600,000</u>
2. <u>Attorney General</u>	<u>\$100,000</u>
3. <u>Secretary of State — State Auditor — State Treasurer</u>	<u>\$ 50,000</u>
4. <u>State Representative</u>	<u>\$ 7,500</u>
5. <u>State Senator</u>	<u>\$ 3,000</u>

### Notice of Meeting

March 24, 1978 1:30 p.m.

Room 22  
State Office Building

#### PRELIMINARY AGENDA

1. Minutes (February 16, 1978) (March 3, 1978)
2. Chairman's Report
3. Legal Counsel Report
4. Advisory Opinion Request — Ulric Scott, DFL State Chair

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\*THE CAMPAIGN EXPENDITURE LIMITS ARE APPLICABLE TO CANDIDATES OR OFFICEHOLDERS WHO ACCEPT PUBLIC MONEY FROM THE STATE ELECTION CAMPAIGN FUND OR AGREE TO ABIDE BY EXPENDITURE LIMITS SO THAT CONTRIBUTORS MAY TAKE A TAX CREDIT.

5. Proposed Campaign Finance Rules/Lobbyist Rules
6. Executive Director Report
  - a) Financial Statement
7. Other Business
8. Executive Session Pursuant to Minn. Stat. ch. 10A.02, Subd. 11

### Finding of Fact

In the Matter of a Complaint Concerning Northwest Bancorporation and Maynard Speece

Approved: March 3, 1978

#### SUMMARY

Maynard Speece is not required to register as a lobbyist since Mr. Speece was merely advertising Northwest Bancorporation's position on the proposed banking bill, however, Northwest Bancorporation will report the cost of the radio advertisement advocating listeners to write their legislators to support a branch banking bill.

The full text of the opinion is available upon request from the office of the

State Ethical Practices Board  
41 State Office Building  
St. Paul, Minnesota 55155  
612-296-5148

## Department of Personnel

### Notice of Intent to Solicit Outside Opinions on Rules Governing the Taking of Official Action by State Employees in Matters Involving Businesses in Which They Have an Interest

Notice is hereby given that the Department of Personnel is drafting rules amending the code of ethics for employees in the executive branch of the State of Minnesota. The rules governing a code of ethics are authorized by Minn. Stat. 43.05, subd. 2 (13) 1976. It is the intent of these new rules to define significant financial interest in outside businesses, and to specify the conditions when employees should not be involved in official actions involving businesses in which they have a significant financial interest.



## OFFICIAL NOTICES

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The department invites all interested persons or groups to provide information or comment on the above subject in writing to:

Richard R. Cottrell  
Department of Personnel  
Third Floor Space Center  
444 Lafayette Road  
St. Paul, MN 55101

All statements of information or comment must be received by March 31, 1978. Any written material received by the department on or before this date will become part of the hearing record.

## Minnesota Teachers Retirement Association

### Notice of Board Meeting

The Board of Trustees, Minnesota Teachers Retirement Association, will hold a meeting on Friday, April 21, 1978, at 9 A.M. in the office of the Association, 302 Capitol Square Building, 550 Cedar Street, St. Paul,

Minnesota, to consider matters which may properly come before the Board.

### Errata

1. 2 S.R. 1661: Underline "Regulatory" at MHD 538.

2. 2 S.R. 1663: Add "Council for further study in accordance with ~~Board~~" after "back to the" and before "Commissioner's" instructions." at MHD 538 B.6.f.

3. 2 S.R. 1664: Add "NR 2710 Classification." after NR 2700, paragraph C. and before paragraph A. which follows C.

4. 2 S.R. 1665: Add a closing parenthesis after "(Minnesota Regulations NR 79 (h))" at NR 2720 A.3.

5. 2 S.R. 1665: Underline "(e)" after "and NR 83" and before "(Subdivision Regulations)" at NR 2720 A.4.c.

6. 2 S.R. 1666: Underline "4" at the last line of NR 2720 A.4.e.

7. 2 S.R. 1666: Add "5" after "N½ of Section" and before "T33N-R24W." at NR 2720 A.4.6.

8. 2 S.R. 1670: Reverse quotation following "O.D." at OPT 3 A.

9. 2 S.R. 1670: Underline "Or "Optometrist(s)"" at OPT 6 B.

10. 2 S.R. 1670: Underline "2" at OPT 8 B.2.

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