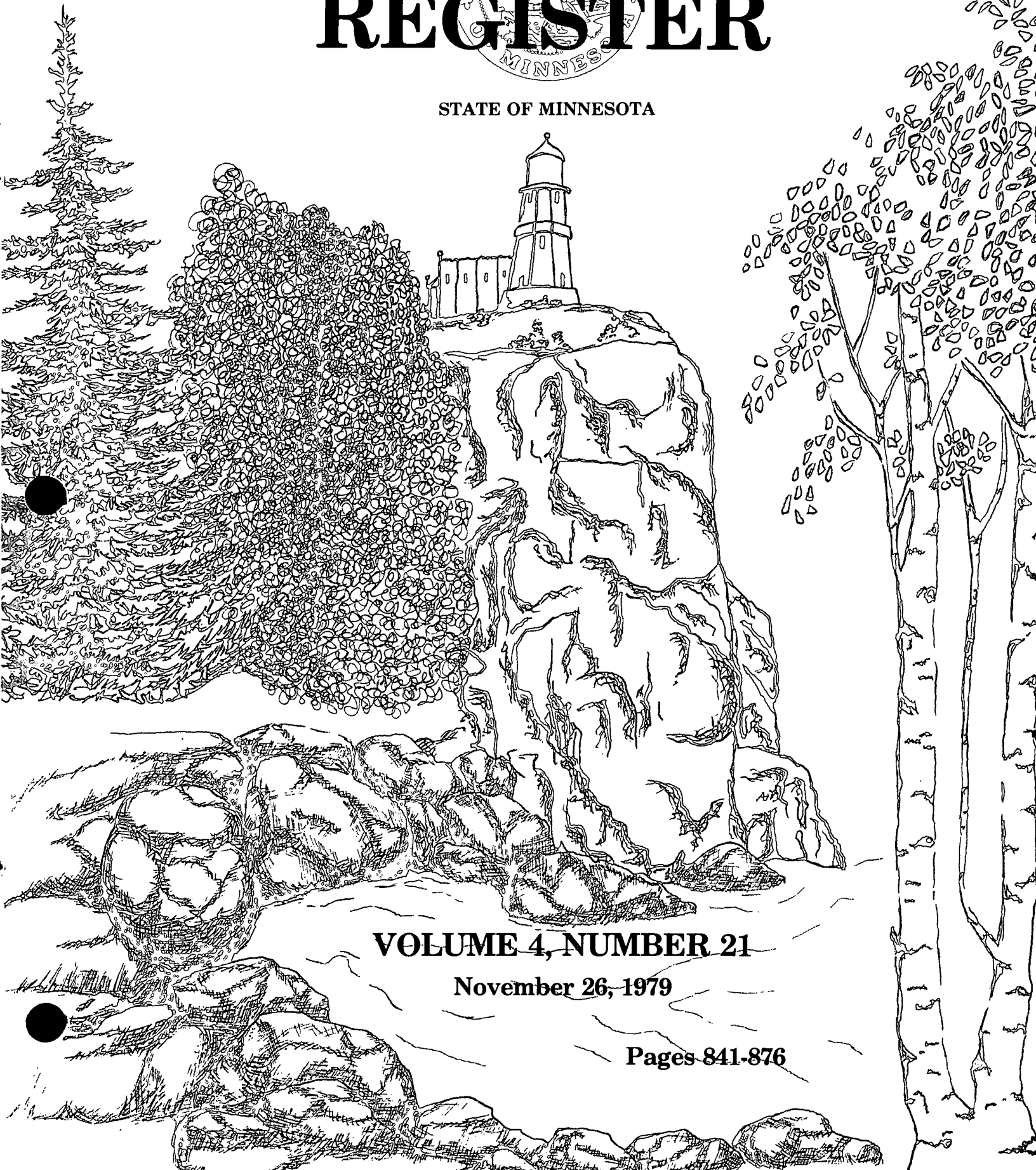


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STATE REGISTER

STATE OF MINNESOTA



VOLUME 4, NUMBER 21

November 26, 1979

Pages 841-876



Volume 4 Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 4			
22	Monday Nov 19	Monday Nov 26	Monday Dec 3
23	Monday Nov 26	Monday Dec 3	Monday Dec 10
24	Monday Dec 3	Monday Dec 10	Monday Dec 17
25	Monday Dec 10	Monday Dec 17	Monday Dec 24

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

**Notices of Public Hearings on proposed rules are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

The *State Register* is published by the State of Minnesota, Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102, pursuant to Minn. Stat. § 15.0411. Publication is weekly, on Mondays, with an index issue in August. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$110 per year, and \$85 per year for additional subscriptions, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota, Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$2.25 per copy.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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MCAR AMENDMENTS AND ADDITIONS

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The *State Register* publishes partial and cumulative listings of all proposed and adopted rules on the following schedule: issues 1-13, inclusive; issues 14-25, inclusive; issue 26, cumulative for 1-26; issues 27-38, inclusive; issue 39, cumulative for 1-39; issues 40-51, inclusive; and issue 52, cumulative for 1-52. The listings are arranged in the same order as the table of contents of the MCAR.

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The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

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

If an adopted rule differs from its proposed form, language which has

been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Agriculture Shade Tree Program

Order Extending Adopted Temporary Rules Governing Sanitation and Reforestation Grants, and Wood Utilization, and Disposal System Grants

The above-entitled adopted temporary rules were published, as required by Minn. Stat. § 15.0412, subd. 5, at *State Register* on July 9, 1979 (4 S.R. 6).

After affording all interested persons an opportunity for at least 20 days to submit written data and views on the proposed temporary rule, having considered all evidence and information, and having confirmed the need for the above captioned rules and the reasonableness thereof, and said temporary rule having been approved by the Attorney General as to form and legality, and said temporary rule having been adopted by the Department of Agriculture on August 31st, 1979, and filed with the Secretary of State soon thereafter,

Now, therefore, it is ordered that these rules identified as Adopted Temporary Rules Governing Sanitation and Reforestation Grants, and Wood Utilization and Disposal System Grants, be extended this 29th day of November, 1979, pursuant to the authority vested in me by Minnesota Laws of 1979, ch. 257, and Minn. Stat. § 15.0412, subd. 5.

Mark W. Seetin
Commissioner of Agriculture

Notice of Extension of Temporary Rules Governing Sanitation and Reforestation Grants, and Wood Utilization and Disposal System Grants

Notice is hereby given that the rules published as proposed temporary rules at *State Register*, Volume 4, Number 1, pp. 6-9, July 9, 1979 (4 S.R. 6), and adopted, without amendments, as of August 31, 1979, will be extended for an additional 90 days as allowed by Minn. Stat. § 15.0412, subd. 5.

Department of Public Welfare Chemical Dependency Program Division

Adopted Rule 43 (12 MCAR § 2.043) for Outpatient Treatment Programs for People With Alcohol and Other Drug Problems

The rule proposed and published at *State Register*, Volume 2, Number 37, pp. 1755-1761, March 20, 1978 (2 S.R. 1755) is adopted with the following amendments.

Amendments as Adopted

C. Definitions.

2. Client: an individual whose physical, social or psychological status allows ~~them~~ him/her 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 treatment program

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

RULES

covered by this rule. This may include the family of and/or others significant to that person.

5. License: the certificate issued by the Commissioner that validates compliance with this rule, and authorizes the applicant to operate an non-residential outpatient treatment program.

D. Licensure.

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 the option of voluntarily seeking ~~licensure~~ or approval if it is requested.

3. ~~Every~~ All existing outpatient treatment programs 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. New programs must obtain a license prior to accepting clients. 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 operator~~ to another or from one primary location to another.

6. If the Commissioner determines that the applicant or the ~~license holder operator~~ is not complying with the provisions of this rule, the license may be denied, revoked, suspended, made probationary or not renewed after notice to the applicant or ~~license holder operator~~. The denial, revocation, suspension, probation, or failure to renew shall proceed in accordance with the provisions of applicable Minnesota laws and regulations rules. The applicant or operator shall, in any appeal of the Commissioner's determination, use procedures authorized by Minn. Stat. § 15.041-.0426, the State Administrative Procedures Act.

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.~~

The Commissioner shall determine the need for the program based in part on a recommendation which shall be obtained from the Area Board/Human Service Board. The recommendation on need from the Board shall be accompanied by documentation explaining the basis for determination.

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. If a determination is made that all applicable~~

laws, rules, and regulations cannot be met immediately, consideration of a provisional license shall be in accordance with the provisions of Minn. Stat. § 245.783, subd. 3.

11. All facilities where ~~non-residential outpatient treatment~~ 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.

G. Minimum standards for issuance of a license to an Outpatient Treatment Non-Residential Program.

1. Governing and advisory boards.

a. Each outpatient treatment program must ~~have~~ be responsible to a governing body, or to an Area Board/Human Service Board which directly operates an outpatient treatment program. The governing body must have with written documentation of its source of authority and which the governing body, directly or through its legal representative:

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

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

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

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

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

b. Document three years of general work experience in administration and/or personnel supervision, and (1) at least one year experience in direct service to persons with alcohol and other drug problems or (2) one year of experience in the management or administration of direct services to people with alcohol or other drug problems; or document holding of Bachelor's Degree and (1) at least one year experience in direct service to persons with alcohol and other drug problems or (2) one year of experience in the management or administration of direct services to people with alcohol or other drug problems.

3. Staffing requirements.

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

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

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f. (6) Identifying the variety of chemical use problems that exist in the community to be served by the program:

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

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

g. Volunteers acting as direct counseling staff must meet the requirements of G.3.

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 roles 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 reviews of staff including the Director, shall be made at least annually.

5. Medical services.

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

8.c.(2) A procedure for determining the necessity of a medical evaluation, which is developed in conjunction with a physician, ~~or a nurse practitioner,~~ or registered nurse. Procedures for determining the necessity of the psychological evaluation shall be developed in conjunction with the consultant required under Section G.5b.

(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 physical and emotional state.

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

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

(7) Documentation, signed by the client, that he/she has received a copy of the program rules; and the client's rights; and responsibilities while participating in the program.

8.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. Documentation of efforts to locate clients for follow-up shall be made on a client by client basis. 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 which are consistent with the client's treatment and/or discharge plan; (4) whether the client needs or wants additional services. The follow-up collection procedure should permit quarterly summarization of data for all clients.

8.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. Such records shall be kept for a minimum period of five years for ongoing programs or for one year for defunct programs.

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

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

~~(1)~~ a. 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)~~ b. 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)~~ c. 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)~~ d. Provide inservice training of direct counseling staff in areas specific to the treatment of chemically

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RULES

dependent adolescents, including training on incest, sexual and physical abuse, family dynamics, independent living skills, habilitation vs. rehabilitation, experimentation, and decision making.

(5) e. 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 or if the client chooses not to permit their involvement, it is then the obligation of the program to involve the anticipated provider of aftercare services in discharge planning.

(6) f. 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~~ shall assist in identifying to responsible educational facilities the client's need for Special Learning and Behavior Problem teachers, tutors, class room teaching, vocational education, etc., as appropriate.

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

(8) h. 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) i. 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.

H. Severability. If any provisions of the rule as adopted by the Commissioner of Public Welfare are found to be unreasonable or not supported by the evidence, the remaining provisions shall remain valid.

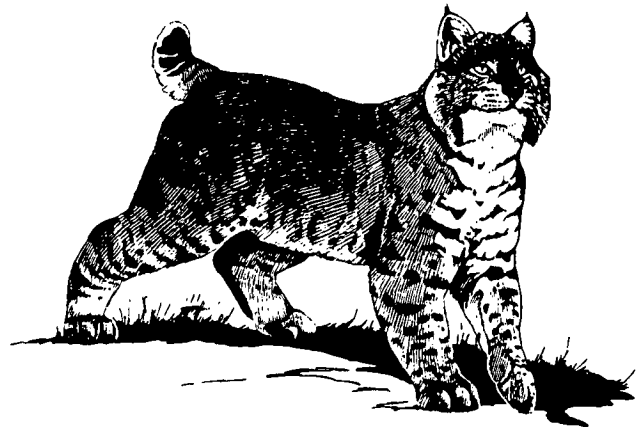
Department of Public Welfare Social Services Division Adopted Temporary Rule Governing Child Day Care Sliding Fee

The proposed temporary rule (12 MCAR § 2.163) published at *State Register*, Volume 4, Number 13, pp. 526-529, October 1, 1979 (4 S.R. 526) was adopted on October 26, 1979, approved by the Office of the Attorney General on November 5, 1979, and filed with the Office of the Secretary of State on November 7, 1979, with the following amendments:

G.3. The total fee payment for a family shall not to exceed 75 percent of the income determined available in G.2. ~~above e.~~

G.5. ~~Eligible families shall be responsible for reimbursing the county making payments for child day care costs. The monthly amount to be paid by the family shall be fixed by the following fee schedule. When the county makes payments to providers for child day care costs, eligible families shall be responsible for reimbursing the county in monthly payments the amount of which shall be determined in accordance with the fee schedule described in Section G.~~

BOBCAT populations are affected by the abundance of food—mostly rabbits and mice. Smaller and more slender than the lynx, the bobcat has shorter ear tufts, smaller feet, and the tip of its tail is black only on the top. What it lacks in speed and sense of smell, it makes up for with its sharp eyesight and stealth to locate and stalk prey. Bobcat dens are lined with moss and leaves before the female gives birth to two or four kittens, usually in May or June. Dens may be in a secluded thicket, hollow log, or under roots of an upturned tree. These small cats are seldom seen in southern Minnesota, but are common in woodlands of north-central and northeastern counties. The bobcat is a valuable furbearer and is both trapped and hunted with hounds for its fur. A designated game animal, it may be taken only during prescribed seasons. (Drawing by Dan Metz, courtesy of the Department of Natural Resources)



Bobcat

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

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 time 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.

Public Hearings on Agency Rules November 26-December 2, 1979

Date	Agency and Rule Matter	Time & Place
Nov. 28	Housing Finance Accessibility Improvement Assistance Program Hearing Examiner: Natalie L. Gaull	9:30 a.m., 500 Rice St. St. Paul, MN
Nov. 30	Dept. of Health Procedures for Determining Regulation of Human Service Occupations Hearing Examiner: George Beck	9:30 a.m., Health Bldg., Rm. 105, 717 S.E. Delaware St., Mpls., MN
Nov. 30	Dept. of Education Post-Secondary Vocational- Technical and Adult Vocational- Technical Education Hearing Examiner: Peter C. Erickson	9:00 a.m., Capitol Sq. Bldg., Rm. 716, 550 Cedar St., St. Paul, MN

materials may be submitted by mail to: George Beck, Office of Hearing Examiners, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, (612) 296-8108. Unless a longer period not to exceed twenty calendar days is ordered by the Hearing Examiner at the hearing, the hearing record will remain open for the inclusion of written material for five working days after the hearing ends. The hearing shall be conducted in accordance with the rules of the Office of Hearing Examiners, 9 MCAR § 2.101 *et. seq.*, Minn. Stat. §§ 15.0411-15.0417 and 15.052.

The proposed rules, if adopted, would guide the State Planning Agency, Office of Local and Urban Affairs, in administering grants to Regional Development Commissions. As part of grants administration, they would define the procedures for approving RDC work programs, the content of work programs and the Overall Program Designs, and they would define grant allocation and disbursement and the evaluation of each RDC's performance under its grant agreement.

These rules are being proposed in order to promote comprehensive planning and to facilitate intergovernmental cooperation.

Copies of the proposed rules are now available and one free copy may be obtained by writing to Jane Stevenson, State Planning Agency, Office of Local and Urban Affairs, 200 Capitol Square Building, St. Paul, Minnesota 55101.

The statutory authority to promulgate the proposed rules is contained in Minn. Stat. §§ 4.13, 4.17, 462.396 (1978) and Executive Order #79-33.

Notice: The proposed rules are subject to change as a result of the rules hearing process. The Agency therefore strongly urges those who are potentially affected in any manner by the substance of the proposed rules to participate in the hearing process.

Please be advised that pursuant to Minn. Stat. § 10A.03, subd. 1 (1978), as amended by Laws of 1979, § 3, lobbyists must register with the State Ethical Practices Board within five (5) days after becoming lobbyists.

"Lobbyist" means any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250,

State Planning Agency Office of Local and Urban Affairs

Proposed Rules Regarding Administration of State Assistance to Regional Development Commissions

Notice of Hearing

Notice is hereby given that a public hearing in the above-titled matter will be held in Conference Room A, Capitol Square Building, 550 Cedar St., St. Paul, Minnesota 55101 on January 7, 1980, commencing at 8:30 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 and written material may be submitted at the hearing. In addition, written

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PROPOSED RULES

not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than \$250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

“Lobbyist” does not include any:

(a) Public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity;

(b) Party or his representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action;

(c) Individual while engaged in selling goods or services to be paid for by public funds;

(d) News media or their employees or agents while engaged in the publishing or broadcasting of news items, editorial comments or paid advertisements which directly or indirectly urge official action;

(e) Paid expert witness whose testimony is requested by the body before which he is appearing, but only to the extent of preparing or delivering testimony;

(f) Stockholder of a family farm corporation as defined in § 500.24, subd. 1, who does not spend over \$250, excluding his own travel expenses, in any year in communicating with public officials; or

(g) Party or his representative appearing to present a claim to the legislature and communicating to legislators only by the filing of a claim form and supporting documents and by appearing at public hearings on the claim.

Questions concerning lobbyists or their required registration should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155, at telephone number (612) 296-5615.

Notice is hereby given that 25 days prior to a hearing, a Statement of Need and Reasonableness will be available for review at the Office of Local and Urban Affairs of the State Planning Agency and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the State Planning Agency at the hearing justifying the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge

Notice: Any person may request notification of the date on which the Hearing Examiner's Report will be available, after which date the State Planning Agency may not take any final action on the rules for a period of five (5) working days. Any

person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the State Planning Agency. If you desire to be notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Hearing Examiner (in the case of the Hearing Examiner's Report), or to the State Planning Agency, (in the case of the Agency's submission or resubmission to the Attorney General).

November 5, 1979

Arthur Sidner, Director
State Planning Agency

Rules as Proposed (all new material)

10 MCAR § 1.401 Authority and purpose.

A. Authority. The rules contained herein are prescribed by the State Planning Agency, Office of Local and Urban Affairs, pursuant to authority granted in Minn. Stat. §§ 4.13, 4.17, 462.396 (1978) and Exec. Order #79-33 (1979).

B. Purpose. It is the purpose of the RDC Act to promote comprehensive planning and to facilitate intergovernmental cooperation. In accordance with this policy, these rules are set forth to provide criteria and procedures for providing state assistance to regional development commissions.

10 MCAR § 1.402 Definitions. As used in these rules, the following terms have the meanings given them:

A. “Base grants” means a portion of the preliminary funding allocation to an RDC that is earmarked as an equal minimum level of financial assistance for each RDC.

B. “Comprehensive plan” means a regional comprehensive development plan which RDCs are required to prepare and adopt under Minn. Stat. § 462.39, subd. 3 (1978).

C. “Consultation process” means a meeting during which the State Planning Agency consults with the RDC for the purpose of obtaining input on the allocation of state financial assistance to RDCs.

D. “Final work program” means a work program that has been reviewed by OLU and submitted and adopted by the RDC under the provisions of these rules.

E. “Fiscal year” means the operational program year of the RDC.

F. “Grant agreement” means a signed written agreement between the state acting by and through the SPA, and the RDC which specifies the terms of SPA's allocation of state financial assistance to the RDC.

G. “OLUA” means the Office of Local and Urban Affairs established by Minn. Stat. § 4.11, subd. 7 (1978) within the State Planning Agency.

H. “Overall Program Design (OPD)” means a work program that also includes goals, issues, problems, and opportunities that will be addressed over a three year period. Every

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fourth year, beginning in fiscal year 1982, the OPD shall be substituted for the annual work program.

I. "Preliminary funding allocation" means a forecast of the potential amount of state financial assistance available to each RDC for the ensuing fiscal year.

J. "Preliminary work program" means a draft work program prepared and submitted by the RDCs to OLUa under the provisions of these rules.

K. "Program categories" means a work program classification for a general planning or management activity of an RDC.

L. "Planning subcategories" means a specific planning or management activity which subdivides the program's categories of an RDC's work program into specific objectives, work elements, and evaluation criteria.

M. "Progress report" means a written report that is submitted by the RDC to OLUa on a quarterly basis which indicates the progress which the RDC is making in completing its work program.

N. "Regional development commission (RDC)" means any commission organized under the Regional Development Act.

O. "Regional Development Act" means Minn. Stat. §§ 462.381 to 462.396 (1978).

P. "Review session" means a meeting between the RDC and OLUa for the purpose of identifying problems with the RDC's final work program if the work program is found to be inconsistent with the requirements set forth under these rules.

Q. "SPA" means the State Planning Agency.

R. "State financial assistance" means grants made to RDCs, under Minn. Stat. § 462.396, subd. 1 (1978), from appropriations made available by the legislature.

S. "Work program" means an annual written plan of all of an RDC's proposed work activities for the ensuing fiscal year, including but not limited to those activities supported by state financial assistance.

T. "Technical assistance" means any planning or management assistance which an RDC renders to a local government.

10 MCAR § 1.403 Procedures for approving RDC work programs.

A. Application process.

1. Consultation process.

a. No later than 120 days prior to the start of the fiscal year, RDCs shall be invited to consult with OLUa in determining the amount of preliminary funding allocations of state financial assistance to RDCs.

b. Based on this consultation with the RDCs, and in consideration of the amount of funds provided by the legislature for such purposes, OLUa shall announce to each RDC a preliminary funding allocation for the ensuing fiscal year.

c. Factors to be considered by OLUa in determining the preliminary funding allocations shall include, but need not be limited to such matter as:

(1) Base grants;

(2) The population of the region; and

(3) Consideration of an amount of funds to be reserved for future funding of RDC work programs which are amended under 10 MCAR § 1.403 A.

d. The preliminary funding allocation to each RDC shall not be considered to be the final amount of funds awarded to each RDC.

2. Submission of a preliminary work program.

a. No later than thirty days after the consultation process each RDC shall submit to OLUa a preliminary work program which shall be consistent with the content requirements prescribed under 10 MCAR § 1.403 B.

b. Every fourth year, the RDC shall submit an Overall Program Design in place of the preliminary work program. The OPD shall be consistent with the content requirements prescribed under 10 MCAR § 1.403. The procedures set forth below for approving RDC work programs shall apply equally to OPDs.

3. OLUa review of the preliminary work programs.

a. No later than thirty days after receipt of the RDC preliminary work programs, OLUa shall transmit written comments to each RDC based on its review of the RDC's preliminary work program.

b. OLUa review shall include:

(1) An examination of the RDC's compliance with the content requirements set forth under 10 MCAR § 1.403 B.; and

(2) An evaluation of the scope and content of the preliminary work program in respect to the proposed work program budget.

c. OLUa shall, as it deems necessary, invite other state, federal, regional, or local agencies that provide assistance to RDCs to participate in its review of the RDC work programs.

4. Submission of a final work program.

a. No later than forty-five days after OLUa transmits its preliminary work program review comments to the

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RDCs, each RDC shall submit to OLUa a final work program that has been adopted by the RDC under procedures set forth by the RDC.

b. The final work program shall contain the following:

(1) The content described under 10 MCAR § 1.403 B.;

(2) Responses to OLUa's comments on the RDC's preliminary work program; and

(3) Inclusion of the following attachments:

(a) A statement that no person will be discriminated against on the grounds of race, color, sex, religion, or national origin;

(b) A statement on how the RDC will meet the citizen participation requirements of the Regional Development Act; and

(c) A statement that describes how the RDC will coordinate its work elements with related activities performed by other agencies, other levels of government, or the private sector.

5. Acceptance of final work programs.

a. If the RDC's final work program is found to be consistent with the requirements set forth under these rules, OLUa shall notify the RDC that its final work program is acceptable and that a grant agreement between the RDC and SPA shall be entered into as described under 10 MCAR § 1.404 B.

b. If an RDC's final work program is found to be inconsistent with the requirements set forth under these rules, OLUa shall schedule a review session to resolve the problems identified. The review session shall be attended by RDC representatives, OLUa representatives, and representatives of any other organizations which the RDC and OLUa mutually determine should be present to insure complete input and understanding of the specific problem(s) identified. Following the review session, OLUa shall provide the RDC with a written statement of the findings of the review session and changes (if any) which the RDC must make in its final work program in order to have an acceptable work program. Upon receipt by OLUa of the required changes to the RDC's work program, OLUa shall notify the RDC that its work program is acceptable and a grant agreement shall be executed as described under 10 MCAR § 1.404 B. If the RDC fails to change its work program in accordance with OLUa's requirements, the work program shall not be accepted and a grant agreement shall not be executed.

6. Amendments to an acceptable work program.

a. A final work program may be amended any time by the RDC, after it has been accepted by OLUa, provided that the amendment is accepted by OLUa.

b. An amendment to the RDC work program shall be accepted by OLUa if:

(1) The RDC submits to OLUa a detailed description of the proposed amendment(s) in the manner prescribed under 10 MCAR § 1.403 B.;

(2) The proposed amendment(s) are determined by OLUa to be consistent with the requirements set forth under 10 MCAR § 1.403 A.5.

c. An amendment to an RDC work program shall be not accepted by OLUa if the proposed amendment is inconsistent with the requirements set forth under 10 MCAR § 1.403 A.5.

d. Within ten days of receipt of a proposed amendment, OLUa shall notify the RDC in writing whether the proposed amendment is accepted.

B. Content of a work program and OPD.

1. In order to be accepted a final work program shall include:

a. A title and reference number for program categories (for example, 100-Administration) and a title and reference number for program subcategories (for example, 110-Personnel Management);

b. A description of the objective of each program subcategory, that is, a specific statement of what is to be accomplished by the RDC in relation to its identified policies, needs, and/or problems. Whenever possible the objective shall be stated in terms of outcomes or results which are quantifiable and measurable over a one-year period of time;

c. A description of the work elements for each program subcategory which are specific statements of the work activity to be undertaken in order to achieve an objective. Whenever possible, the work elements shall contain an identification of the products that will result from the work element;

d. A description of the evaluation criteria for each program subcategory which shall consist of:

(1) A performance indicator that provides criteria to measure the degree of performance for each work element; and

(2) An impact statement which serves to measure the overall effectiveness or result of a program subcategory;

e. A program subcategory description of the process and timetable which the RDC is using to carry out its comprehensive planning responsibilities as enumerated under Minn. Stat. § 462.39, subd. 3 (1978);

f. A program subcategory description of the RDC's technical assistance program for its local governments;

g. A program subcategory description of the RDC's plans for implementing a self-evaluation program; and

h. A budget which indicates all proposed federal, state, and local revenue to be utilized by the RDC in carrying

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out the objectives of the work program. State financial assistance to RDCs, as authorized by Minn. Stat. § 462.396 (1978), shall be identified as to its specific use by the RDC.

2. In order to be accepted an OPD shall include:

a. A description of a work program for the ensuing fiscal year which is consistent with the work program requirements set forth in these rules;

b. A description of three-year goals for each program category of the work program;

c. A description of the issues, problems, and opportunities related to achieving each of the program category goals;

d. A schedule for completing a self-evaluation process. The schedule for the self-evaluation process shall include activities 1-7 listed below unless OLUa and the RDC mutually agree on an alternative self-evaluation process which would achieve these same objectives.

(1) the establishment of an internal evaluation committee;

(2) the formulation of self-evaluation objectives;

(3) the determination of RDC constituency;

(4) the development of self-evaluation methodology;

(5) the formulation of an implementation schedule;

(6) the implementation of the self-evaluation methodology; and

(7) the utilization of self-evaluation findings; and

e. A schedule for addressing the comprehensive planning requirements enumerated under Minn. Stat. § 462.39, subd. 3 (1978).

3. The content of the work program or OPD as specified above shall be modified by OLUa as may be necessary to accommodate the requirements of other state and federal agencies that provide assistance to RDCs.

10 MCAR § 1.404 Procedures for administering state financial assistance to RDCs.

A. Grant allocations.

1. Grant awards to RDCs shall be based on the following criteria:

a. OLUa's acceptance of the RDC's final work program;

b. OLUa's review of RDC performance relative to past RDC work programs;

c. RDC use of local financial assistance to help support program activities; and

d. OLUa's approval of an amended RDC work program or OPD as authorized under 10 MCAR § 1.403 A.6, provided that such funds were reserved for that purpose under 10 MCAR § 1.403 A.1.c.

2. Each year during the consultation process, each RDC may advise OLUa on the relative importance of the funding criteria that OLUa will use to determine the amount of grants to RDCs.

B. Grant disbursements. OLUa shall make grant allocations and disburse such grant allocations to RDCs according to the following procedures:

1. A grant agreement shall be entered into between the RDC and the SPA once a final work program has been determined to be acceptable by SPA, provided that funds have been appropriated for such purposes.

2. The grant agreement shall specify:

a. The amount of financial assistance to be awarded to the RDC in anticipation of the RDC's completion of the work program activities.

b. The consideration due to SPA if the RDC does not complete the work program in an acceptable manner;

c. The manner and process of making grant allocation payments to the RDC; and

d. All RDC financial reporting, accounting and auditing requirements necessary for the administration of state financial assistance to RDCs.

3. Nothing contained in these rules shall prohibit other state or federal agencies from providing grants to RDCs, nor shall these rules prevent other state or federal agencies from entering into an agreement with SPA for the purpose of integrating grant agreements to RDCs.

C. Evaluation. OLUa shall monitor each RDC's performance under its grant agreement according to the following procedures:

1. RDCs shall submit a quarterly progress report to OLUa indicating the performance of work elements scheduled for undertaking during that quarterly period. OLUa shall review the quarterly progress reports in respect to the final work program.

2. If problems are identified as a result of OLUa's review of quarterly progress reports, OLUa shall, as staff resources allow, conduct an on-site program evaluation with each RDC during the third or fourth quarter of each fiscal year.

3. Each RDC shall submit to OLUa a completion

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report at the end of the fiscal year. This report shall indicate which work elements were not completed and which objectives were and were not achieved. For each work element and objective not successfully completed, the RDC shall provide an explanation of such as well as an indication of the amount of time needed to complete the remaining activity.

4. No sooner than thirty days after the completion of the fiscal year, OLU shall determine, based on its review of the RDC completion report, whether or not the work program has been completed in an acceptable manner and whether or not the grant agreement between SPA and the RDC has been fulfilled.

Arthur Sidner, Director
State Planning Agency

Department of Natural Resources

Proposed Rules for Appropriation of Waters of the State

Notice of Hearing

A public hearing will be held:

Tuesday, January 8, Detroit Lakes, Vocational-Technical Institute Multi-Purpose room,

Thursday, January 10, St. Paul, 123 State Capitol Building,

Tuesday, January 15, Marshall, Southwest State University, Student Center (which is near the dome), rooms 158 and 159.

Each day of hearing will begin at 9:00 a.m. The hearing will be conducted as provided by the rule-making provisions of Minn. Stat. §§ 15.041-15.052 and the rules of the Office of Hearing Examiners.

All representatives of associations or other interested groups and interested or affected persons will have an opportunity to be heard concerning the adoption of the proposed rules. Statements may be made orally and written materials may be submitted at the hearing. Statements or briefs may be submitted without personally appearing at the hearing. In addition, written materials may be submitted by mail to:

Howard Kaibel
1745 University Avenue
St. Paul, Minnesota 55105
Telephone: (612) 296-8107

either before the hearing or within 5 days after the close of the hearing, or for a longer period not to exceed 20 days if ordered by the hearing examiner.

The proposed rules are required by Minn. Stat. § 105.415 and are related primarily to Minn. Stat. §§ 105.41-105.418 and

105.44, subd. 8. They establish standards for granting and denying permits to take water from waterbasins, watercourses, and underground in quantities exceeding 10,000 gallons per day or 1 million gallons per year. Subjects covered include: applying for a permit; basic decision criteria for granting and denying; establishing lake levels and stream flows below which appropriation must stop; irrigation; resolving conflicts between appropriators; using water in the mining and processing of metallic minerals and peat; water for air conditioning; public water supplies; delegating DNR authority over water appropriation to cities and counties; wild rice paddies; water management planning.

Copies of the proposed rules are now available and one free copy may be obtained by writing to the Minnesota Department of Natural Resources, Division of Waters, 444 Lafayette Road, St. Paul, Minnesota 55101. Additional copies will be available at the door on the date of the hearing.

Twenty-five days prior to the hearing a Statement of Need and Reasonableness will be available for review at the department and at the Office of Hearing Examiners. This Statement of Need and Reasonableness will include a summary of all of the evidence which will be presented by the department at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be obtained from the Office of Hearing Examiners at a minimal charge.

Notice: Any person may request notification of the date on which the hearing examiner's report will be available after which date the department may not take any final action on the rules for a period of five working days. Any person may request notification of the date on which the hearing record has been submitted (or resubmitted) to the Attorney General by the department. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the hearing examiner (in the case of the hearing examiner's report) or to the department (in the case of the department's submission or resubmission to the Attorney General).

Under Minn. Stat. § 10A.01, subd. 11 (1978), a lobbyist must register with the State Ethical Practices Board within five (5) days after he commences lobbying. According to the statute "lobbyist" means any individual engaged for pay or other consideration or authorized by another individual or association to spend money who spends more than five (5) hours of any month or more than \$250 not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or who spends more than \$250, not including travel expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials. "Lobbyist" does not include any: (a) public official or employee of the state or any of its political subdivisions or public bodies acting in his official capacity; (b) party or his

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representative appearing in a proceeding before a state board, commission or agency of the executive branch unless the board, commission or agency is taking administrative action: (c) individual in the course of selling goods or services to be paid for by public funds; (d) news media or their employees or agents acting in the ordinary course of business of publishing or broadcasting news items, editorials or other comments or paid advertisements which directly or indirectly urge official action; (e) paid expert witness whose testimony is requested either by the body before which he is appearing or one of the parties to a proceeding, but only to the extent of preparing or delivering testimony; or (f) stockholder of a family farm corporation as defined in § 500.24, subd. 1, who does not spend over \$250, excluding travel expenses, in any year in communicating with public officials.

Questions regarding lobbying should be directed to the State Ethical Practices Board, Room 41, State Office Building, Wabasha Street, St. Paul, Minnesota 55155; telephone (612) 296-1720.

Joseph N. Alexander
Commissioner of Natural Resources

Rules as Proposed (all new material)

6 MCAR § 1.5050 General provisions.

A. Statement of policy. The purpose of these rules is to provide for the orderly and consistent review of permit applications for appropriation and use of waters of the state in order to conserve and utilize the water resources of the state in the public interest. In the application of these rules, the Department of Natural Resources shall be guided by the policies and requirements declared in Minn. Stat. chs. 105 and 116.

Any appropriation must be consistent with laws and rules of federal, state and local governments.

B. Scope.

These rules set forth minimum standards and criteria pertaining to the regulation, conservation and allocation of the water resources of the state, including the review, issuance and denial of water appropriation applications.

Further provisions for the administration of these rules are found in Minn. Stat. ch. 105.

C. Jurisdiction.

Permits shall be required for, and these rules shall apply to, any appropriation of waters of the state, except for the following:

1. Appropriation of water for domestic uses serving less than 25 persons for general residential purposes.
2. Test pumping of a ground water source.

3. Withdrawal for any use at a rate not to exceed 10,000 gallons per day and totaling no more than 1 million gallons per year.

4. Agricultural field tile or open ditch drainage systems, including pumping, to remove water from crop lands. This shall not preclude the need for compliance with Minn. Stat. ch. 106 and for permits for changes in course, current or cross-section of public waters in the event that the agricultural drainage system adversely affects public waters. Adverse effects on public waters may include partial or complete drainage of public waters, high water or flooding conditions on surrounding lands and accelerated erosion and sedimentation.

5. Reuse of waste waters resulting from an appropriation of waters of the state for which a permit has been granted. The reuse of waste waters shall be subject to applicable laws, and rules of other governmental agencies.

D. Definitions. For the purpose of these regulations, the terms or words defined in this section have the meanings given therein, except where the context clearly indicates otherwise. The word "shall" is mandatory, not permissive.

1. "Aquifer" means any water bearing bed or stratum of earth or rock capable of yielding ground water in sufficient quantities that can be extracted.

2. "Appropriation" shall have the meaning prescribed in Minn. Stat. § 105.37, subd. 5, "Appropriation includes but is not limited to taking, regardless of the use to which the water is put."

3. "Artesian aquifer" or "confined aquifer" means a water body or aquifer overlain by a layer of material of less permeability than the aquifer. The water is under sufficient pressure so that when it is penetrated by a well, the water will rise above the top of the aquifer. A flowing artesian condition exists when the water flow is at or above the land surface.

4. "Basin" means a depression capable of containing water which may be filled or partly filled with waters of the state. It may be a natural, altered or artificial depression.

5. "Commissioner" refers to the Commissioner of the Department of Natural Resources or the Commissioner's authorized representative.

6. "Consumptive use" or "consumption" refers to water withdrawn and not directly returned to the same waters as the source for immediate further use in the area.

7. "Division" means the Division of Waters, Department of Natural Resources.

8. "Dug pit" means an artificial excavation such as sump, trench, pond, water hole or other basin constructed for the purpose of intercepting and capturing surface and ground

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water, and often involving ground water under water table or unconfined conditions.

9. "Ground water" means subsurface water in the saturated zone. The saturated zone may contain water under atmospheric pressure (water table condition), or greater than atmospheric pressure (artesian condition).

10. "Protected flow" is defined as the amount of water required in the watercourse to accommodate instream needs such as water-based recreation, navigation, aesthetics, fish and wildlife habitat, water quality and needs by downstream higher priority users located in reasonable proximity to the site of appropriation.

11. "Protection elevation" is defined as the water level of the basin necessary to maintain fish and wildlife habitat, existing uses of the surface of the basin by the public and riparian landowners, and other values which must be preserved in the public interest.

12. "Public water supply" refers to the various supplies of water used primarily for domestic supply purposes and obtained from a source or sources by a municipality, a water district, a person or corporation where water is delivered through a common distribution system, as further defined in Minn. Stat. § 144.382, subd. 4.

13. "Water table aquifer" or "unconfined aquifer" means an aquifer where ground water is under atmospheric pressure.

14. "Waters of the state" means any waters, surface or underground, except those surface waters which are not confined but are spread and diffused over the land (Minn. Stat. § 105.37, subd. 7).

15. "Watercourse" means any natural, altered or artificial channel having definable beds and banks capable of conducting confined runoff from adjacent lands (Minn. Stat. § 105.37, subs. 10, 11 and 12).

16. "Well" means any excavation that is drilled, cored, bored, washed, driven, dug, jetted or otherwise constructed where the intended use is for the location, diversion, or acquisition of ground waters (Minn. Stat. § 156A.02, subd. 1).

E. 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.

6 MCAR § 1.5051 General requirements for applying for permits.

A. Application forms required.

1. Applications shall be submitted for each surface or ground water source from which water is proposed to be appropriated. A separate application shall be required for the following:

a. For each distribution system if the water is used in more than one common distribution system.

b. For each well(s) completed in different aquifers if ground water is to be appropriated from separate wells completed in more than one aquifer.

c. For each basin or watercourse involved if surface water is to be appropriated from several different basins or watercourses.

2. The applicant must provide written evidence of ownership, or control of, or a license to use the land overlying the ground water source or abutting the surface water source from which water will be appropriated.

B. Applicant responsibilities. All applicants shall submit the following information when it is reasonably available. Additional submittals may be required as prescribed in 6 MCAR § 1.5053 and where deemed necessary by the commissioner in order to adequately evaluate the applications:

1. A completed application on forms supplied by the commissioner.

2. The required application fee (Minn. Stat. § 105.44, subd. 10).

3. Aerial photographs, maps, sketches, detailed plat, topographic maps or other descriptive data sufficient to show:

a. The location of the area of use.

b. The outline of the property owned, or controlled by the applicant in proximity to the area of use.

c. The location of the proposed point of appropriation such as well(s) location, stream bank pump(s) or the location of other facilities for appropriation of water.

d. If ground water is involved, the location of test hole borings which have been drilled on the property from which the appropriation will be made.

4. Signed statement that copies of the application have been sent to governmental units as required by Minn. Stat. § 105.44, subd. 1.

5. Statement of justification supporting the reasonableness and practicality of use in respect to adequacy of the water source, amounts of use and purposes, including available facts on:

a. Hydrology and hydraulics of the water resources involved to the extent that such facts are not already available to the commissioner.

b. Proposed pumping schedule including rates, times and duration.

c. Amounts of water to be appropriated on a maximum daily, monthly and annual basis.

d. Means, methods and techniques of appropriation.

e. Alternative sources of water or methods which were considered, to attain the appropriation objective and why the particular alternative proposed in the application was selected.

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6. Information on any water storage facilities and capacities and any proposed reuse and conservation practices.

7. Application for use of surface water shall include the following additional data:

a. A contingency plan which describes the alternatives the applicant will utilize if at any time appropriation is restricted to meet instream flow needs or to protect the level of a basin. The contingency plan shall be feasible, reasonable and practical. otherwise the applicant shall submit a notarized written statement agreeing in such case to withstand the results of no appropriation (Minn. Stat. § 105.417, subd. 5).

b. For appropriation from natural basins or natural watercourses, facts to show that reasonable alternatives for appropriating water have been considered including use of water appropriated during high flows and levels and stored for later use and the use of ground water.

c. For basins less than 500 acres in surface area the applicant shall:

(1) Notify all riparian landowners and provide the commissioner with a list of all landowners notified.

(2) Attempt to obtain a signed statement from as many riparian landowners as the applicant is able to obtain stating their support to the proposed appropriation; and

(3) Provide an accounting of number of signatures of riparian owners the applicant is unable to obtain (Minn. Stat. § 105.417, subd. 3(c)).

8. Application for use of ground water, except for agricultural irrigation (6 MCAR § 1.5053 A.) shall include the following data:

a. Test hole logs (if any) and water well record(s).

b. Hydrologic test data and, or, hydrologic study(ies).

C. Waiver of requirements. Whenever information required by 6 MCAR §§ 1.5051 and 1.5053 are unnecessary or inapplicable the commissioner shall waive those requirements.

6 MCAR § 1.5052 Commissioner's actions on permit applications. Upon receipt of the information required from the applicant under 6 MCAR §§ 1.5051 and 1.5053, where applicable, the commissioner shall take action on the application as follows:

A. Review and analysis of data.

1. The commissioner shall consider the following factors, as applicable:

a. The location and nature of the area involved and

the type of appropriation and its impact on the availability, distribution and condition of water and related land resources in the area involved.

b. The hydrology and hydraulics of the water resources involved and the capability of the resources to sustain the proposed appropriation based on existing and probable future use.

c. The probable effects on the environment including anticipated changes in the resources, unavoidable detrimental effects and alternatives to the proposed appropriation.

d. The relationship, consistency and compliance with existing federal, state and local laws, rules and legal requirements.

e. The public health, safety and welfare served or impacted by the proposed appropriation.

f. The quantity, quality and timing of any waters returned after use and the impact on the receiving waters involved.

g. The efficiency of use and intended application of water conservation practices.

h. The comments of local units of government, federal and state agencies, private persons and other affected or interested parties.

i. The adequacy of state water resources availability when diversions of any waters of the state to any place outside of the state are proposed.

2. The commissioner shall further consider the following factors for appropriation from watercourses:

a. Historic streamflow records, and where streamflow records are not available, estimates based on available information on the watershed, climatic factors, runoff and other pertinent data.

b. Physical characteristics such as discharge, depth and temperature and an analysis of the hydrologic characteristics of the watershed.

c. Aquatic system of the watercourse, riparian vegetation and existing fish and wildlife management within the watercourse.

d. Frequency of occurrence of high and low flows.

e. Feasibility and practicability of off-stream storage of high flows for use in providing water supply during periods of normal low flows, when supply is limited by existing and anticipated use.

f. Existing federal, state, regional and local water management plans.

g. Impact of the appropriation on the public interest.

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3. The commissioner shall further consider the following factors for appropriation from basins:

- a. Total volume of water within the basin.
- b. Slope of the littoral zone.
- c. Available facts on historic water levels of the basin and other relevant hydrologic factors.
- d. Cumulative long-range ecological effects of the proposed appropriation.
- e. Impact of the appropriation on the public interest.
- f. Natural and artificial controls which affect the water levels of the basin.

4. The commissioner shall further consider the following factors for appropriation of ground water:

- a. Type and thickness of the aquifer.
- b. Limit of the aquifer.
- c. Area of influence of the proposed well(s).
- d. Existing water levels in the aquifer and projected water levels due to the proposed appropriation.
- e. Other hydrologic and hydraulic characteristics of the aquifer involved.
- f. Probable interference with neighboring wells.

B. Decision on applications. The commissioner is authorized to grant permits, with or without conditions, or deny them. In all cases, the applicant, the managers of the watershed district, the board of supervisors of the soil and water conservation district, or the mayor of the city may demand a hearing in the manner specified in Minn. Stat. § 105.44, subd. 3, within 30 days after receiving mailed notice outlining the reasons for denying or modifying an application.

Decision by the commissioner are further subject to the administrative provisions of Minn. Stat. §§ 105.44-105.463 and 105.64. These sections include information and requirements on procedure, authority, timing of actions, fees, notice, investigations, violations and penalties and special provisions regarding mining operations.

Based on these statutory requirements and other applicable provisions of Minn. Stat. ch. 105 the commissioner shall make decisions as follows:

1. No permit shall be granted if:
 - a. For application involving diversion of any waters of the state, surface or ground water, to a place outside the state, the remaining waters in the state will not be adequate to meet the state water resources needs during the specified life of the diversion (Minn. Stat. § 105.405, subd. 2).
 - b. There are inadequate supplies of waters of the state for the purpose intended, in the area involved.
 - c. The appropriation is not reasonable, practical, and does not adequately protect public safety and promote the public welfare (Minn. Stat. § 105.45).

d. The appropriation is not consistent with approved state, regional and local water and related land resources management plans, provided that regional and local plans are consistent with statewide plans (Minn. Stat. § 105.41, subd. 1a.).

e. There is an unresolved conflict between competing users for the waters involved.

2. Approval of any surface water appropriation application shall be further subject to the following:

a. For all watercourses, proposals for appropriation during periods of flood flows and high water levels shall be given first consideration unless this is not practical, reasonable or feasible (Minn. Stat. § 105.41, subd. 1a).

b. For natural and altered watercourses, except for drainage ditches established under Minn. Stat. ch. 106, appropriation may be limited consistent with Minn. Stat. § 105.417, subd. 2, provided that adequate data are available to set such limits for watercourses. Where protected flow is designated by the commissioner, no appropriation shall be allowed when the flow is below that protected flow.

c. Permits to appropriate water for any purpose from streams designated trout streams by commissioner's orders, pursuant to Minn. Stat. § 101.42, shall be limited to temporary appropriations when not in conflict with the special designation, such as during periods of high flows or high water levels (Minn. Stat. § 105.417, subd. 4).

d. For natural and altered basins the commissioner shall:

(1) Establish a protection elevation below which no appropriation shall be allowed (Minn. Stat. § 105.417, subd. 3(b)).

(2) Limit the collective maximum annual withdrawals to not exceed a total volume of water amounting to one-half acre-foot per acre of surface water basin based on Minnesota Department of Natural Resources Bulletin No. 25, "An Inventory of Minnesota Lakes." The actual collective annual allocation may be considerably less than the maximum (Minn. Stat. § 105.417, subd. 3(a)).

(3) For natural and altered basins less than 500 acres, an application shall not be approved if the commissioner determines that the proposed appropriation would lower the water levels in the basin to an extent which would deprive the public and riparian property owners of reasonable use of and access to the water.

e. The establishment of protected elevation and limitation on maximum withdrawals contained in sections d.(1) and d.(2) above shall not apply to artificial and altered basins constructed primarily for the purpose of storing high waters and flood flows as water conservation or contingency flow alternatives when such alternatives are approved by the commissioner.

f. Protected flows of watercourses and protection elevations of basins shall be established for the purposes as

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defined in 6 MCAR § 1.5050 D. and shall be based on available information considered in 6 MCAR § 1.5052 A.2. and A.3.

3. Approval of appropriation from ground water shall be further subject to the following:

a. The amounts and timing of water appropriated shall be limited to the safe yield of the aquifer to the maximum extent feasible and practical. Safe yield means the amount of ground water that can be withdrawn from an aquifer system without degrading the quality of water in the aquifer and without allowing the long-term average withdrawal to exceed the available long-term average recharge to the aquifer system based on representative climatic conditions.

b. If the commissioner determines that the proposed appropriation of ground water would result in reduction of flows in a watercourse below a protected flow or levels in a basin below a protected elevation, the amount and timing of the water appropriation shall be limited so it does not affect the protected flow or elevation.

c. Appropriation of ground water shall not be approved or shall be issued on a conditional basis in those instances where sufficient hydrologic data are not available to allow the commissioner to adequately determine the effects of the proposed appropriation. If a conditional appropriation is allowed, the commissioner shall make further approval, modification or denial when sufficient hydrologic data are available.

d. The commissioner shall limit the use of dug pits for appropriating water when such pits are so located that they may reasonably be expected to affect protected flows of watercourses or protected elevations of basins.

C. Waiver of requirements. The commissioner may waive any of the provisions of 6 MCAR § 1.5052 B. if it is determined that conditions are such that implementation of a provision would be unnecessary or inapplicable or if an applicant provides sufficient evidence to show just cause why such provision would not be reasonable, practical or in the public interest. In the event the commissioner does not grant an applicant's request for waiver the applicant may demand a hearing.

D. Specific types of appropriation and use. Additional requirements and decisions governing specific types of uses such as agricultural irrigation, public water supplies, dewatering, water level maintenance and mining are also contained in 6 MCAR § 1.5053.

6 MCAR § 1.5053 Special additional requirements and conditions for certain specific types of appropriation.

A. Agricultural irrigation including use of water for wild rice paddies.

1. For ground water appropriation, the applicant must submit to the commissioner the following data in addition to the requirements of 6 MCAR § 1.5051:

a. If the application is for use of ground water from an aquifer system for which adequate ground water availability data are available and therefore is designated by the commissioner as a Class A application, (Minn. Stat. § 105.416, subd. 1):

(1) Copies of test hole log(s) to identify the aquifer the proposed well will penetrate.

(2) Copies of the water well record(s) and production test data.

(3) Additional aquifer test data as may be required by the commissioner if the test holes, water well records and production test data are insufficient to allow the commissioner to properly assess the capability of the aquifer system in the area of withdrawal, or are inadequate to allow assessment of the effects of the proposed appropriation on other nearby wells.

b. If the application is for use of ground water from an aquifer system for which inadequate ground water availability data are available and therefore is designated by the commissioner as a Class B application, (Minn. Stat. § 105.416, subd. 1) the applicant shall supply the following additional information as required by Minn. Stat. § 105.416, subd. 2 including:

(1) Copies of test hole log(s) to identify the aquifer the proposed well will penetrate.

(2) Copies of water well record(s) and production test data.

(3) The anticipated ground water quality in terms of the measures of quality commonly specified for the proposed water use.

(4) The location of each domestic well, for which information is readily available, located within the area of influence or within a 1½ mile radius of the proposed irrigation well, whichever is less.

(5) Readily available information from water well records, reports, studies and field measurements regarding the domestic wells within the area of influence or a 1½ mile radius of the proposed irrigation well whichever is less, such as:

(a) owner's name, address and phone number.

(b) depth of well (in feet).

(c) diameter of well and casing type (concrete curb, steel, wooden, clay tile, etc.).

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(d) non-pumping water level (in feet) below land surface.

(e) age of well (when constructed).

(f) type of pump (shallow-jet, deep well jet, submersible reciprocating, etc.) and rate of discharge.

(g) length of drop pipe in well.

(6) Results of a pumping test of the aquifer system as required in Minn. Stat. § 105.416, subd. 2.(e).

(7) The commissioner may in any specific application, waive any of the requirements of 6 MCAR § 1.5053 A.1.b. (1)-(6), when the necessary data are already available.

2. The commissioner's actions.

a. The commissioner shall analyze, and evaluate applications based on facts supplied by the applicant pursuant to 6 MCAR §§ 1.5051 and 1.5053 A.1. Decisions shall be subject to the applicable procedures outlined in 6 MCAR § 1.5052 and based on recommendations of the soil and water conservation district, soil surveys and other available data on soil characteristics relating to soil suitability for agricultural irrigation and adequacy of existing or proposed soil and water conservation measures in order to protect water quality and prevent erosion and sedimentation.

b. The commissioner shall determine the amount of water allowed to be used under 6 MCAR § 1.5053 A.2.a. based on:

(1) Acreage of lands involved.

(2) Climatic characteristics of the area involved.

(3) Dominant soil types of the acreage to be irrigated and major crops to be irrigated.

(4) Best available technology, methodology and crop-water use requirement information including, but not limited to, "Irrigation Guide for Minnesota," Soil Conservation Service, U.S. Department of Agriculture, St. Paul, Minnesota, 1976.

(5) When adequate data on soil moisture and local climatic conditions are available for the area, the commissioner may prescribe a limitation on the amounts and timing of appropriation during each growing season.

(6) For irrigation from surface water the amount of appropriation shall be limited to no more than one-half acre-foot per acre of riparian land owned or controlled by the applicant except for appropriation for wild rice paddies as is provided in (7). Riparian lands for the purpose of these rules shall be those 40 acre tracts or government lots, or portions thereof, that directly abut a basin or watercourse.

(7) The amount of appropriation for wild rice paddies shall be based on consideration of climatic characteristics of the area and the best available technology relating to amounts of water needed to raise wild rice.

3. Well interference problems involving appropriation for irrigation.

a. For new applications. If the commissioner determines that an adequate supply of water is available and that the proposed project is reasonable and practical as determined based on 6 MCAR §§ 1.5052 and 1.5053 A.2., but that there is a probable interference with public water supply well(s) and private domestic well(s) which may result in reducing the water levels beyond the reach of those wells, the following procedures shall apply:

(1) The applicant shall be responsible for obtaining and providing to the commissioner, available information including depth, diameter, non-pumping and pumping levels, quality and well construction details for all domestic and public water supply wells located within the area of influence of the proposed appropriation well.

(2) The commissioner may require aquifer tests or other field tests to be conducted pursuant to Minn. Stat. § 105.416, subd. 2.

(3) The commissioner shall determine the probable interference with the domestic and public water supply wells based on theoretical computations using available information regarding the aquifer characteristics obtained from the aquifer tests and/or from hydrologic studies, and the probable effects of lowering the water levels in the domestic and public water supply wells due to the proposed irrigation use in the area. For public water supply wells only the probable interference with that portion which is used for domestic water supply is considered.

(4) The commissioner shall provide the prospective appropriator with an evaluation of the nature and degree of effect of the appropriation on the water levels of the domestic well(s) and public water supply well(s).

(5) The commissioner shall not issue the permit until the applicant submits a written agreement signed by himself and all parties identified under 6 MCAR § 1.5053 A.3.a. (3) as having probable interference, outlining the measures that will be taken to insure maintenance of water supplies to such identified parties to the extent that would have existed absent the proposed appropriation. In cases where no agreement can be reached, the commissioner shall implement the settlement procedure identified in 6 MCAR § 1.5053 A.3.c.

b. For existing permits. If complaints are made to the commissioner by private domestic well owner(s) or public water supply authority regarding the effects of water appropriation for agricultural irrigation on the domestic water supplies, the following procedures shall be followed:

(1) The commissioner shall provide compliant forms to the parties making the complaint, thereafter referred to as "complainant."

(2) Upon receipt of the completed complaint forms the commissioner shall notify the permittee, the applicable watershed district, and the soil and water conservation

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district and any other governmental agency or person who may be affected or has expressed interest in the complaint.

(3) The commissioner shall investigate and assess the complaint by:

(a) Analyzing and evaluating the submitted complaint forms, hydrologic facts and characteristics of the water supply systems involved.

(b) Requesting additional facts from the complainant(s) and the permittee when necessary. In order to assure that available data on domestic well(s) are provided, the complainant shall cooperate with the permittee in providing such facts as may be available and allowing the commissioner access to obtain necessary available facts. If the complainant does not cooperate in providing available facts or allowing the commissioner access to the domestic well(s), the commissioner shall dismiss the complaint.

(c) Conducting, if necessary, a field investigation.

(d) Additional hydrologic tests and evaluation may be required if hydrologic information is unavailable or inadequate to make a determination of necessary facts in the matter. The timing and conduct of such tests shall be in accordance with the provision of Minn. Stat. § 105.41, subd. 1a. relating to modifying or restricting appropriation for irrigation.

(e) In evaluating the probable influence of the irrigation water appropriation on the domestic well(s) and public water supply well(s) the commissioner shall consider whether the domestic well(s) provides a dependable water supply while meeting the appropriate health requirements for the existing use of the affected well. For public water supply wells only the probable interference with that portion which is used for domestic water supply is considered.

(4) Where adverse effects on the domestic well(s) are substantiated, the commissioner shall notify the permittee of the facts and findings of the complaint evaluation. In the event that the commissioner determines that the domestic water supply is endangered the commissioner may, pursuant to 6 MCAR § 1.5055 E. restrict, or cancel the appropriation until such time as a decision has been made by either negotiation, settlement or hearing.

The permittee shall within 30 days after written notification by the commissioner take appropriate action by:

(a) Negotiating a reasonable agreement with the affected well owner(s). If no agreement is reached the settlement procedure outlined in 6 MCAR § 1.5053 A.3.c. shall apply; or

(b) Requesting a public hearing.

c. Settlement. If the applicant or permittee and the complainant(s) have been unable to negotiate a reasonable agreement pursuant to 6 MCAR § 1.5053 A.3.a. (5) and A.3.b. (4) the following procedure shall be implemented:

(1) The applicant or permittee shall submit a notarized written offer to the complainant, with a copy to the commissioner, within 40 days after the receipt of the written notification provided in 6 MCAR § 1.5053 A.3.b. (4), based on the following:

(a) If an existing domestic well provides an adequate domestic water supply which meets state health standards and such well no longer serves as an adequate supply because of a proposed or permitted irrigation well in the vicinity the applicant or permittee shall be responsible for all costs necessary to provide an adequate supply with the same quality and quantity as prior to the applicant's or permittee's interference.

(b) If an existing well provides an adequate domestic water supply but does not meet state health standards and such well would no longer serve as an adequate supply because of the irrigation well in the vicinity, the applicant or permittee shall be responsible for that portion of costs of providing an adequate water supply, but shall not be responsible for those costs necessary to bring the domestic well(s) to state health standards.

(2) The complainant shall submit written argument to the commissioner as to why the offer is not reasonable, within 10 days from the receipt of the notarized written offer. If no response is received from the complainant, within the time limit, the commissioner shall dismiss the complaint.

(3) The commissioner shall make a decision based on the written offer and arguments and available facts, within 10 days, as follows:

(a) That the applicant or permittee has submitted a reasonable offer, the commissioner shall issue or continue the permit involved;

(b) That the applicant or permittee has not submitted a reasonable offer, the commissioner, after notice and opportunity for hearing, shall deny, modify or terminate the permit involved.

(c) That there is a need for a public hearing in which case it is ordered.

B. Public water supplies.

1. The applicant may be required to submit to the commissioner all or portions of the following data in addition to the requirements of 6 MCAR § 1.5051;

a. The number of domestic users.

b. Reasonable projection of population growth.

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c. The number and type of industrial and commercial users of the public water supply system.

d. The amount of water to be supplied to domestic, industrial and commercial users respectively.

e. Other users by type of use and amount to be used from the public water supply system such as:

- (1) golf courses.
- (2) recreational lake level maintenance.
- (3) water transferred to other supply systems.

f. Information regarding the quantity of the appropriated water to be used in distribution and waste water treatment facilities, not including volume of actual waste water.

g. Details on emergency plans for water shortage periods outlining public information programs, priorities for limitations of discretionary water use, and alternate sources of public water supplies.

2. The commissioner's actions. The commissioner shall allow the appropriation of water for public water supply systems based on evaluation and analysis of the data submitted by the applicant under provisions of 6 MCAR §§ 1.5051 and 1.5053 B.1., and the procedures outlined in 6 MCAR § 1.5052 and subject to 6 MCAR § 1.5053 B.3.

3. Appropriation permits issued to public water supply authorities shall be subject to requirements of Minn. Stat. § 105.418 relating to critical water deficiency periods and restriction of non-essential uses.

C. Water level maintenance for basins.

1. For water appropriation applications for the purpose of establishing and maintaining water levels for basins the applicant shall submit the following data in addition to the requirements of 6 MCAR § 1.5051:

a. Information on the basin and proposed source of supply or source of discharge, including facts indicating how the water will be appropriated and discharged and the proximity of the basin to the proposed source of supply or source of discharge.

b. Information on the design of any discharge facility into or out of the basin.

2. The commissioner shall evaluate and make decisions on applications based on facts supplied by the applicant and subject to the applicable procedures outlined in 6 MCAR § 1.5052 and the following determinations:

a. Effects on public welfare of the proposed appropriation.

b. The proposed appropriation is reasonable, practical, technically feasible and effectively accomplishes its purpose.

c. The proposed appropriation will have minimal or no detrimental effect on the basin, the proposed source of supply or the receiving water and property of riparian owners.

d. The quality of the water of the basin or the receiving water source will not be detrimentally impaired by the appropriation.

e. The proposed appropriation is consistent with 6 MCAR § 1.5024 B.1.b., public waters permits rules.

D. Dewatering. Dewatering, which involves appropriation of water from ground or surface water sources for purpose of removing excess water shall be subject to water appropriation permit requirements, unless otherwise exempted by these rules. The commissioner shall evaluate and make decisions on such application based on applicable provisions of 6 MCAR §§ 1.5051 and 1.5052 and the following additional requirements:

1. The applicant must show there is a reasonable necessity for such dewatering and the proposal is practical.

2. The applicant must show that the excess water can be discharged without adversely affecting the public interest in the receiving waters, and that the carrying capacity of the outlet to which waters are discharged is adequate.

3. The proposed dewatering is not prohibited by any existing laws.

E. Mining and processing of metallic minerals and peat.

1. All applicants for permits for mining and processing of metallic minerals and peat must provide the following information in addition to the requirements of Minn. Stat. § 105.64 and 6 MCAR § 1.5051:

a. All plans, specifications and necessary information regarding water withdrawal, use and reuse practices.

b. Details of the rate, volumes and source of water to be appropriated and consumed in processing, including all losses such as uncontrolled seepage, evaporation, plant losses and discharge volumes.

c. Criteria used in estimating the proposed appropriation, distribution and discharge based on climatic averages and extremes.

d. Details of sources, rates, and volumes of water released from the mining operations involved.

e. Details of the hydrologic and hydraulic impacts and effects of the operation on the watershed(s) including changes in basins, watercourses and ground water systems.

2. The commissioner shall analyze, evaluate, and make decisions on appropriations for mining and processing of metallic minerals based on facts submitted by the applicant pursuant to 6 MCAR §§ 1.5051 and 1.5053 E.1., subject to the conditions outlined in 6 MCAR § 1.5052 and the following considerations:

a. The commissioner may direct the applicant to utilize available surplus water from preexisting mining operations or facilities, whether owned or controlled by the applicant or others, whenever feasible and practical unless justification is provided on why such practice should not be allowed. If the commissioner finds that an existing appropria-

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tion has available unused water, for which there is inadequate justification, the commissioner, after notice and opportunity for hearing, may amend the existing permit to promote better utilization of the water.

b. The commissioner shall base the allocation of water on consideration of the legal requirements for water quality, the impact of the appropriation on those requirements and the following order of priorities of water supply sources located within reasonable distance to the mining or processing site:

- (1) Runoff from the mining areas;
- (2) Water from active mine pits and tailing basins when such water is not utilized for other purposes or operations;
- (3) Water from existing mining operation reservoirs where such water is not utilized for other purposes or operations;
- (4) Water from other mining and processing operations;
- (5) Water from inactive mine pits;
- (6) Water from streams appropriated during periods of high flows;
- (7) Water from ground water sources;
- (8) Water collected and stored behind off-stream impoundments;
- (9) Water collected and stored behind impoundments on streams; and
- (10) Water from natural basins greater than 500 acres in size.

c. If the disposal of excess water is necessary and if any mining operation in the area has caused or will cause a substantial reduction in watercourse flow, the commissioner may require the permittee to discharge excess water in a manner that would restore the flow. Such action shall consider the existing and anticipated use of excess water by higher priority users and must be in compliance with appropriate rules of the Minnesota Pollution Control Agency.

6 MCAR § 1.5054 Water use conflicts.

A. Conflict defined. For the purpose of these rules a conflict occurs where the available supply or waters of the state in a given area is limited to the extent that there are competing demands among existing and proposed users which exceed the reasonably available waters. Existing and proposed appropriations could in this situation endanger the supply of waters of the state so that the public health, safety and welfare would be impaired.

B. Procedure. Whenever the total withdrawals and uses of ground or surface waters would exceed the available supply based on established resource protection limits, including protection elevations and protected flows for surface water and safe yields for ground water, resulting in a conflict among proposed users and existing legal users the following shall apply:

1. In no case shall a permittee be considered to have established a priority of use or appropriation by obtaining a permit.
2. The commissioner shall analyze and evaluate the following:
 - a. The reasonableness for use of water by the proposed and existing users.
 - b. The water use practices by the proposed and existing users to determine if the proposed and existing users are or would be using water in the most efficient manner in order to reduce the amount of water required.
 - c. The possible alternative sources of water supply available to determine if there are feasible and practical means to provide water to satisfy the reasonable needs of proposed and existing users.
3. If conflicts can be resolved by modifying the appropriation of the proposed and existing users, the commissioner shall do so.
4. If conflicts cannot be resolved through modification of proposed and existing permits the commissioner shall base the decision regarding issuance or denial of new applications and retention, modification or termination of existing permits on the basis of existing priorities of use established by the legislature as follows:
 - a. If the unresolved conflict involves users who are or would be in the same priority class, the commissioner may require the proposed users and existing permitted users to develop and submit a plan which will provide for proportionate distribution of the limited water available among all users in the same priority class.
 - (1) The plan must include proposals for allocating the water which address the following:
 - (a) possible reduction in the amounts of appropriation so that each user would receive a proportionate amount of water for use.
 - (b) possible restrictions in the timing of withdrawals so that each user would be allowed to withdraw a proportionate share of water for use over certain periods of time.
 - (2) The commissioner may withhold consideration of new applications and suspend appropriations under

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existing permits until a plan is submitted and approved by the commissioner.

(3) If the commissioner approves the proposed plan, new permits will be issued and existing permits will be amended in accordance with that plan.

(4) If the commissioner determines that the proposed plan is not practical or reasonable the commissioner may develop a new plan or modify the proposed plan to provide proportionate share of water among the users involved. The commissioner shall issue new permits and amend existing permits based on that plan.

b. If the unresolved conflict involves users who are or would be in a different priority class the available water supply shall be allocated to existing and proposed users based on the relative priority of use. Highest priority users shall be satisfied first. Any remaining available water supply shall be allocated to the next succeeding priority users, until no further water is available. Users in the same priority class shall be offered the same options as provided in section B.4.a. above.

c. All actions by the commissioner shall be made after notice and opportunity for public hearing.

6 MCAR § 1.5055 Provisions and conditions of permits.

Water appropriation permits shall include the following provisions and conditions, unless otherwise required by law:

A. Term of permits.

Permits shall be issued for temporary or for long-term appropriation.

1. Temporary permits involve a one-time, limited life, not more than 12 months, non-recurring appropriation of waters of the state, such as for highway construction, exploratory drilling for minerals, hydrostatic testing of pipelines and other short-term projects. Reasonable time extensions may be permitted, but in no case shall the total length of time the permit remains in force exceed two years.

2. Long-term permits will remain in effect subject to applicable permit provisions and conditions of the permit, the law and these rules, provided that in cases where the permittee is not the landowner of record, the term of the permit shall be the same as that of the property rights or license held.

B. Monitoring. All permittees shall measure and keep monthly and yearly records of the quantity of water used or appropriated at the point of taking from each source under permit.

1. Measuring water appropriated. Each installation for appropriating or using water shall be equipped with a device or employ a method to measure the quantity of water appropriated to not less than ten percent of actual withdrawal.

a. The commissioner shall determine the method to be used for measuring water appropriated based on:

(1) the quantity of water appropriated or used;

(2) the source and location of the appropriation;

(3) the method of appropriating or using water;

(4) other facts supplied by the permittee.

b. The commissioner shall require flow meters to be used whenever the rate of appropriation is at or greater than 1000 gallons per minute, unless the permittee can show justification why flow meters cannot practically be used. Such justification must be supported by facts which indicate the technical difficulties which would be encountered if flow meters were required.

2. Measuring water levels.

a. For surface water appropriations, where applicable, the permittee shall measure flows or levels in the watercourse or basin at a specific gage designated by the commissioner and located within the area of appropriation. The commissioner may require permittees to pay necessary costs of establishing and maintaining such gages as provided in 6 MCAR § 1.5000, rules for permit fees.

b. For ground water appropriation, the commissioner, based on the need for ground water data in specific areas, shall require the permittee to measure and keep records of the water levels in each production well at reasonable times prescribed in the permit. Observation wells may be required as a condition of the permit to better evaluate hydrologic conditions and effects in areas where hydrologic data are unavailable, where probable conflict or well interference problems may occur and where such wells are required by law.

C. Reporting. Annual calendar year monthly records of the amount of water appropriated or used and the water level measurements shall be recorded for each installation. Such readings and the total amount of water appropriated and used shall be reported annually to the commissioner, on or before February 15 of the following year upon forms to be supplied by the commissioner unless otherwise specified in the permit.

1. Such records shall be submitted with an annual water appropriation processing fee as required by Minn. Stat. § 105.37, subd. 5, for each permit whether or not any water was appropriated during the year.

2. Additional information may be required such as acreage irrigated, identification of water disposal sites and amount of water discharged.

3. Failure to report and pay the fee shall be sufficient cause for terminating a permit 30 days following written notice by the commissioner of the violation of the permit.

4. No fee is required from any state agency as defined in Minn. Stat. § 16.011 or any federal agency.

D. Changes to permits.

1. Amendments.

a. Request for amendments by permittees.

(1) Major modification of any water appropria-

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tion permit shall not be made before obtaining the written permission from the commissioner. Major modification may include substantial increase or decrease in the rate and quantity of water withdrawn, any change in source of appropriation or substantial change in the amount of land irrigated, when applicable.

(2) Request for amendment may be made by letter or on forms supplied by the commissioner. New applications may be required when there are changes in the source of supply, the purpose of appropriation, or when the proposed increases in rates and amounts of water would probably create conflict or well interference.

(3) Requests for amendments shall be reviewed as if they were for a new application, subject to provisions of 6 MCAR §§ 1.5050-1.5056.

b. Amendments initiated by the commissioner.

Pursuant to authority in Minn. Stat. § 105.44, subd. 9, the commissioner may modify or amend any existing permits based on the following procedures and the criteria in 6 MCAR §§ 1.5052 and 1.5053, where applicable:

(1) The commissioner shall notify the permittee of the intent to amend the permit. The notice will include details on modifications to be implemented by the permittee and the timing to complete the modifications.

(2) The permittee shall respond within 30 days from receipt of the notice. Such response period may be thereafter extended by the commissioner for good cause shown.

(3) If no response is received in 30 days and no extension of response time is authorized by the commissioner, the proposed amendments shall be made.

(4) The commissioner based on the permittee's response and the criteria established in these rules shall either modify the proposed amendment or adopt the original proposed amendment.

c. All amendments and modifications are made after notice and opportunity for hearing.

2. Transfers or assignments.

If the property involving a water appropriation permit is sold, transferred or assigned to another person, the permit may be transferred to the transferee, subject to the following:

a. The permittee shall notify the commissioner of any sale, transfer or assignment of property involved within 30 days thereafter.

b. The permittee shall notify the transferee of the existence of a permit on the subject property and the necessity for transfer notification.

c. The transferee shall submit written notification to the commissioner stating the intention to continue the appropriation as stated in the permit. If the transferee intends to modify the existing permit, new application may be required subject to the provisions of 6 MCAR § 1.5055 D.1.

d. No permit is assigned except with the written consent of the commissioner.

E. Limitations on permits. All permits issued by the commissioner since 1949 are subject to the provisions of Minn. Stat. § 105.44, subd. 9 relating to cancellation and conditions of permits and Minn. Stat. § 105.45 relating to terms and reservations with respect to the amount and manner of such use or appropriation or method of construction or operation of controls as appears reasonably necessary for the safety and welfare of the people of the state.

The commissioner subject to the terms and conditions of such existing permits, may modify, restrict or cancel an existing appropriation or use until such time as a decision has been reached by either negotiation, settlement or after a public hearing. If a permit does not contain a provision which restricts appropriation or use for the protection of safety or welfare of the people of the state the commissioner cannot modify or restrict an existing appropriation until opportunity is provided for a public hearing and where ordered a public hearing has been completed.

F. Terminations. Permits may be terminated under the following:

1. Request by the permittee.

2. When any of its provisions are violated.

3. When the permittee sells, transfers or assigns the property rights described in the permit and no transfer is requested by the transferee within 90 days of transfer of title.

4. Upon finding that the permittee has violated the provisions of any applicable laws and rules.

5. Where the permittee has ceased for 5 consecutive years to use the water and no reasonable justification is shown.

6. When the lease or contract for deed is forfeited or cancelled.

7. Permits for agricultural irrigation may be subject to termination by the commissioner upon justifiable recommendation of the supervisors of the soil and water conservation district, wherein the land irrigated is located, regarding the inadequacy of the soil and water conservation measures.

8. When the commissioner deems it necessary for the conservation of the water resources of the state or in the interest of public health, safety and welfare.

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

PROPOSED RULES

9. When the commissioner deems it necessary pursuant to 6 MCAR § 1.5054 and 1.5053A.

10. Any action pursuant to 2,4,5,7,8 and 9 above shall be subject to appropriate notice and opportunity for hearing, except as provided in 6 MCAR § 1.5055 E.

11. In the case of permits for mining issued in conjunction with Minn. Stat. § 105.64 procedures for termination shall be subject to provisions of Minn. Stat. § 105.64, subd. 6.

6 MCAR § 1.5056 Miscellaneous provisions.

A. Local permits. The commissioner, pursuant to Minn. Stat. § 105.41, subd. 1b, may delegate to municipal, county, or regional level of government, the authority to process and approve permits for the appropriation and use of waters of the state in amounts of more than 10,000 gallons per day and more than 1 million gallons per year, but less than 3.6 million gallons per year subject to all of the following requirements:

1. The local unit of government has established an administrative process which includes provisions for establishing a water appropriation management planning process consistent with 6 MCAR § 1.5057.

2. The review and approval of applications are consistent with the applicable provisions of these rules.

3. A formalized agreement is made and signed by the commissioner and the appropriate municipal, county or regional level authority involved.

4. Copies of all applications and records of local actions on applications are provided to the commissioner upon receipt and action.

5. Records of water appropriation amounts and the processing fee shall be submitted by the permittee to the commissioner as required by 6 MCAR § 1.5055 B. and C.

B. Water conservation. In order to maintain water conservation practices in the water appropriation and use regulatory program it is necessary that existing and proposed appropriators and users of waters of the state employ the best available means and practices based on economic considerations for assuring wise use and development of the waters of the state in the most practical and feasible manner possible to promote the efficient use of waters.

Based on data submitted by applicants and permittees and current information on best available water conservation technology and practice the commissioner, in cooperation with the owners of water supply systems, may analyze the water use practices and procedures and may require a more efficient use of water to be employed by the permittee or applicant, subject to notice and opportunity for hearing.

C. Abandonment of wells. The permittee shall notify the commissioner prior to abandoning, removing, covering, plugging or filling the well or wells by means of which a water appropriation was made. The commissioner shall require abandonment procedures and methods consistent with the Minn. Health Department rules, MHD 218.

D. Field investigations. In order to fully evaluate water appropriations, the commissioner may conduct field investigations to determine the nature and scope of the appropriation and the impact it has or will have on water and related land resources. Such field inspection may be made in a timely fashion and may be coordinated with one or more of the following divisions of the Department: enforcement, fish and wildlife, forestry, minerals, lands and parks and recreation. A fee may be charged for field inspections subject to 6 MCAR § 1.5000, subd. G.1.-G.5, rules for permit fees.

E. Information on appropriation permit laws. The applicants or existing permittees shall, upon request to the commissioner, be furnished copies of applicable portions of the law or synopsis, where they exist, relating to their proposed or existing appropriation.

6 MCAR § 1.5057 Water appropriation and use management plans.

In order to address the provisions of Minn. Stat. § 105.403 and § 105.41, subd. 1a, the commissioner, in cooperation with other state and federal agencies, regional commissions and authorities, local governments and citizens, establishes the following process for the preparation and implementation of the elements of any state, regional and local plan relating to water appropriation and use.

B. Criteria and procedures. Since the availability, distribution and utilization of waters of the state and the character and use of related land resources vary considerably throughout the state, a comprehensive water appropriation management planning process must be based on these considerations and according to the following principles and procedures:

1. Water appropriation management plans should be prepared for specific definable areas of the state on consideration of:

a. The hydrologic and physical characteristics of the water and related land resources for which a management plan is necessary. The area must be of sufficient size and areal extent so that the interrelationship of geohydrologic and climatic factors can be adequately defined and managed.

b. The determination by the commissioner of the need for establishment of a water appropriation management plan for the waters of the state within a specific definable area based on:

(1) Areas where development of the waters of the state is, or is likely to, increase considerably within the next 5-10 years.

(2) Areas where severe water problems exist or are soon likely to exist.

(3) Areas where there are adequate facts and available geohydrologic data relating to the availability, distribution and use of the waters of the state and where there is local interest in establishing water appropriation management plans.

2. Upon establishment of the need for a water appro-

PROPOSED RULES

priation management plan pursuant to B.1. above, the commissioner shall establish a management planning process including procedures, a public participation process and development of a planning team consisting of representatives of the Department and any other interested, concerned and involved government or citizen group listed in section A above, to review and cooperate in preparation of the plan.

C. General requirements and contents. Every water appropriation plan should, at a minimum, include:

1. An evaluation of the amount and dependability of information on the hydrologic systems of the area and the adequacy of the information to provide necessary facts on the amounts of water which can be reasonably withdrawn from the waters of the state in the area without creating major environmental problems or diminishing the long-term seasonal supply of water for various purposes.

2. An evaluation of data on stream quality and flows,

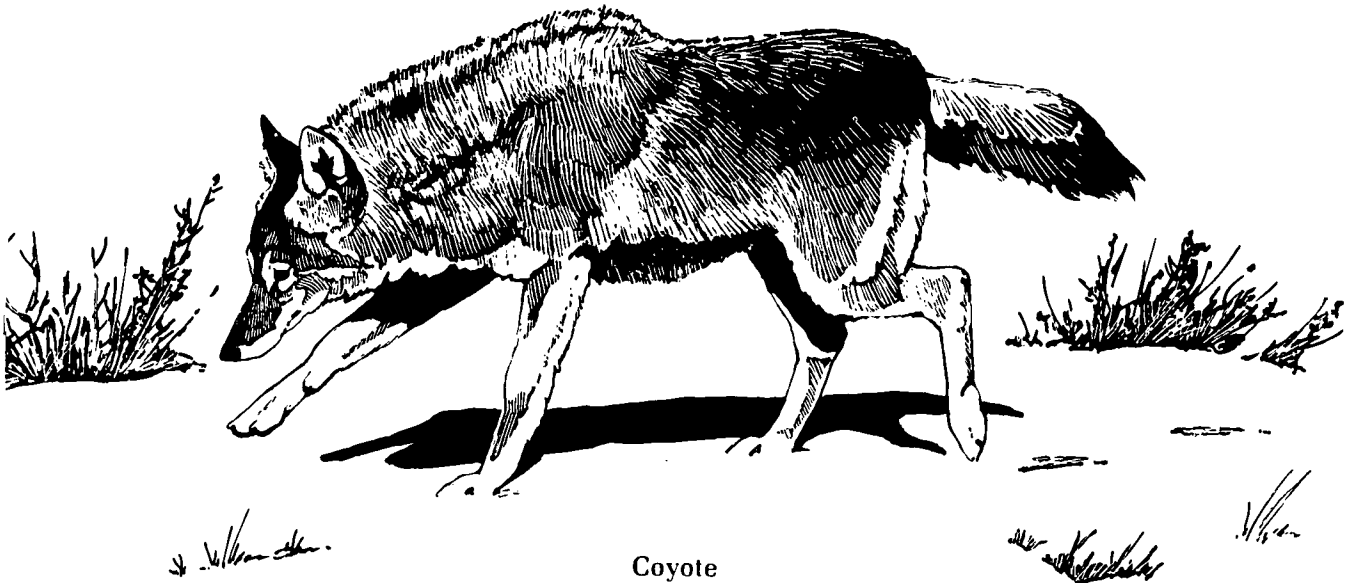
lake water quality and levels, ground water quality and levels, and climatic factors.

3. An evaluation of present and anticipated future use of waters and lands and the amounts and distribution of use within the area.

4. An evaluation of the problems and concerns relating to use of the waters within the area.

5. Water conservation alternatives and methods and procedures for dealing with water shortages or excesses during periods of deficient or excess water.

6. Considerations of the relationship of the water appropriation and use management plan to other water resources programs of the state, such as floodplain management, shoreland management, water surface use management, water quality management, soil and water conservation management and agricultural land management.



Coyote

A NOMAD, the male coyote may roam over territories as large as 36 square miles in search of carrion. It feeds on mice, snowshoe hares, porcupines, and occasionally livestock such as sheep and small calves. The coyote resembles a small German shepherd with a bottle-shaped tail. Its shaggy, grayish coat turns white at the throat and belly. Although subjected to widespread poisoning and trapping programs, the coyote survives because of its high birth rate and its ability to adapt. Like the timber wolf, coyotes mate for life, usually in February, producing five or six pups in April. Most coyotes live less than two years in the wild, although one animal is known to have reached 13 years of age. (Drawing by Dan Metz, courtesy of the Department of Natural Resources)

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

SUPREME COURT

Decisions Filed Friday, November 16, 1979

Compiled by John McCarthy, Clerk

48942/374 **State of Minnesota vs. Willie Mack Spann, Appellant.**
Ramsey County.

Identification procedures used by the police were not so impermissibly suggestive as to create a "very substantial likelihood of irreparable misidentification" and therefore trial court did not err in admitting identification testimony at trial.

Trial court, which gave standard to cautionary instruction concerning eye witness identification testimony, did not err in refusing defense request to instruct jury additionally that such testimony is "dangerous."

Evidence of defendant's identity was not, as defendant contends, legally insufficient.

Defendant was properly convicted to two assaults in addition to robbery but the sentences for the assaults are vacated.

Affirmed with two of the three sentences vacated. Sheran, C. J.

49339/379 **State of Minnesota vs. Gilbert Marvin Matteson, Appellant.**
Hennepin County.

Admission of other-crime evidence pursuant to R. 404(b), R. Evid., requires determination by the trial court whether the evidence is clear and convincing, whether it is relevant, and whether the potential of the evidence for unfair prejudice outweighs its relevance; the trial court in this case did not abuse its discretion in determining that the evidence satisfied these tests of admissibility.

Affirmed. Sheran, C. J.

48972/395 **State of Minnesota vs. Douglas Ray Ochalla, Appellant.**
Wilkin County.

Petitioner seeking postconviction relief on the ground of ineffective assistance of trial counsel and newly discovered evidence failed to meet his burden of proof, and postconviction court did not err in refusing to admit testimony of operator of so-called Psychological Stress Evaluation (PSE) machine which analyzed separate tape recordings of voices of petitioner and the victim to determine truth of statements they made.

Affirmed. Sheran, C. J.

50516/508 **State of Minnesota, Plaintiff-Respondent, vs. Lloyd D. Bickness, Defendant-Appellant.**
Olmsted County.

Held, reaffirming *State v. Tibbets*, 281 N.W.2d 499 (Minn. 1979), Minn. Stat. § 609.341, subd. 11 (1978), if read to the jury in its entirety, denies a defendant charged with criminal sexual conduct the constitutional right to require that every element of the offense be proved beyond a reasonable doubt; however, the remedy is not to declare the statute void, as defendant argues, but to give an instruction which informs the jury of the substance of the statute without using the confusing language.

Remanded for trial. Sheran, C. J.

49522/380 **John Ross Burnell, Jr., petitioner, Appellant, vs. State of Minnesota.**
Koochiching County.

Court did not err in accepting guilty plea without requiring petitioner to express in his own words what happened, where defendant freely admitted his guilt and a factual basis was established in other acceptable ways, and postconviction court did not err in refusing to permit petitioner to withdraw his plea notwithstanding claim of recantation of charges by victims.

Affirmed. Rogosheske, J.

48543 **Douglas O. Wulff, et al, Petitioners, vs. Tax Court of**
366 (1978) **Appeals, et al. Writ of Prohibition.**

The operation of the Minnesota Tax Court, pursuant to chapter 271 of the Minnesota Statutes, as to the case before this court, does not violate the separation of powers doctrine of Minn. Const. art. 3, § 1.

Because a tax suit may be initiated in district court, and because transfer of that suit to the tax court is discretionary with the district court, the exercise of jurisdiction of the tax court on transfer does not violate Minn. Const. art. 6, § 3, which provides that the district court has original jurisdiction in all civil and criminal cases.

The tax court provides a sufficient forum for the remedy of a tax dispute to satisfy Minn. Const. art. 1, § 8, which assures every person of a remedy for wrongs inflicted.

The writ of prohibition is accordingly denied. Kelly, J.

48515/360 **State of Minnesota vs. Robert A. Scheerle, Appellant.**
Todd County.

Since the record does not show any request by defendant for submission of the lesser offense of second-degree manslaughter, and since defendant did not object to the court's failure to submit this offense, we conclude that defendant impliedly waived any right to have this offense submitted.

Although the post-trial *Schwartz* hearing for the purpose of deciding claims of juror misconduct should be liberally granted if the defendant relies upon one of the exceptions to the general rule against allowing juror affidavits or testimony, the trial court has fairly broad discretion whether to grant such a hearing, and here it did not abuse this discretion in denying a request for such a hearing.

Affirmed. Todd, J.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on

the subject, either orally or in writing.

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

Department of Administration Cable Communications Board

Invitation to Comment on Proposed Saint Paul Suburban Cable Service Territory before December 14, 1979

On September 14, 1979, Capitol City Cablevision, Inc., a Minnesota corporation planning to seek cable franchises in this area, proposed a cable service territory (CST) consisting of the corporate limits of 15 suburban municipalities surrounding Saint Paul: Falcon Heights, Lauderdale, Lilydale, Little Canada, Maplewood, Mendota, Mendota Heights, Mounds View, New Brighton, Newport, North St. Paul, Roseville, St. Paul Park, South St. Paul, West St. Paul. A number of those municipalities have already responded to the Board's offer to counsel and advice during this period of the Board's consideration of the CST proposal, and a number of nearby municipalities have indicated a wish to be included in the CST.

On December 14, 1979 the Board must make its decision to approve, reject or delay consideration of the proposed CST. Prior to that date, the Cable Board continues to seek written comments from parties interested in the proposed CST — not only from municipalities included in the original proposal and those who may wish to be, but also from other interested municipalities, organizations, agencies, school districts, units of government and individuals. Comments may be addressed to the Board at 500 Rice Street, Saint Paul, Minnesota 55103.

Energy Agency Conservation Division

Notice of Intent to Solicit Outside Opinion for Rules Governing the State Residential Conservation Service Plan

Notice is hereby given that the Minnesota Energy Agency, Conservation Division, is seeking information or

opinions from sources outside the agency in preparing the State Residential Conservation Service Plan for submission to the U.S. Department of Energy and the state rule-making process. The objective of the program is to facilitate and encourage the installation of energy conservation and renewable resource measures in existing homes of customers of large gas and electric utilities and home heating suppliers. The program requires 13 Minnesota utilities to provide services to their residential customers, such as energy audits on request, and arrangement for installation and financing of energy conservation measures.

Any interested persons may submit data or views on this subject in writing or orally by December 21st to:

Al Lessik or Karen Martin
Minnesota Energy Agency
980 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Any written material received by the agency shall become part of the hearing record in the event rules governing this subject are promulgated.

Ethical Practices Board

Request for Advisory Opinion Regarding Propriety of A Political Party Committee Donating Campaign Funds to the Willmar Bank Employees Association Strike Fund

The Minnesota State Ethical Practices Board solicits opinions and comments to the following request for an advisory opinion which will be discussed at its Board meeting on December 12, 1979, Room 14, State Office Building, St. Paul, MN. No formal action will be taken at that meeting. Written comments concerning the opinion request should be forwarded to arrive at the Board's office prior to December 10, 1979.

OFFICIAL NOTICES

November 12, 1979

Chairman
State of Minnesota Ethical Practices Board
41 State Office Building
St. Paul, MN 55155

Dear Sir:

I am enclosing herewith a photocopy of a letter which I have recently addressed to the County Attorney of Kandiyohi County, Minnesota. It raises questions as to the legality of proposed expenditures by the Executive Committee of the Kandiyohi County DFL. Since some of the questions relate to the Ethics in Government Law, I would appreciate receiving an advisory opinion from the Ethical Practices Board as to the propriety of the proposed expenditure as described in my letter to Mr. Schneider.

Respectfully yours,

KANDIYOHI COUNTY DFL
Arthur J. Boylan, Treasurer

November 12, 1979

Mr. Ronald H. Schneider
706 South First Street, Box 876
Willmar, MN 56201

Dear Mr. Schneider:

At the September meeting of the Kandiyohi County DFL — Executive Committee, a motion was made and approved to donate \$100.00 from the political funds held by the County DFL to the Willmar Bank Employees Association Strike Fund. The Kandiyohi County DFL is a registered political committee with the Minnesota Ethical Practices Board and would also be a "party committee" as defined in Minnesota Statutes 210A.01 subdivisions (7) and (8).

A question has arisen as to whether the proposed expenditure would be in violation of Minnesota law. Specifically, whether it would be in violation of MSA § 210A.16 and whether the solicitation of contributions by the WEBA Strike Fund and donations given in response thereto are prohibited under MSA § 210A.08.

The Minnesota Ethics in Government Act under MSA § 10A.01 (Subd. 10c) and regulations of the Ethical Practices Board (9 MCAR § 1.0030) define and allow political committees to make "noncampaign disbursements." Although all of the examples of non-campaign disbursements that are contained in the statute and regulations would seem to have some political purpose, neither the statute nor the regulation purport to be an all inclusive list of noncampaign disbursements. Accordingly, it could be argued that political committees are not prohibited from giving money or other property to whom ever the committee chooses as long as the committee considers the expenditures as being made for nonpolitical purposes.

On the other hand, however, is the fact that the Kandiyohi County DFL Committee is a registered political committee, which has as part of its purpose the furtherance of a political philosophy and political party. In addition, contributions are solicited from individuals with the implied or express representation that their contributions will be used for a political purpose. Accordingly, there is a question as to whether or not said solicitations for money would be fraudulent if in fact the contributions are not used for political purposes.

Lastly, the individuals who do choose to contribute money to the Kandiyohi County DFL have available to them, because of their contributions, income tax benefits that would not be available to them had they directly contributed to the WBEA Strike Fund or other similar organizations or groups. The issue here being whether or not it is the intent of the government to allow tax benefits to those persons who take an interest in the political process if indeed the money contributed need not be limited to being used for political purposes.

Since the County Attorney's Office is empowered to investigate and prosecute any violations of Chapter 16A of Minnesota Statutes, the Executive Committee of the Kandiyohi County DFL has directed me to inquire of you as to what your opinion is as to the legality of the proposed expenditure. If you don't feel it would be proper for your office to offer an opinion, I would appreciate your considering obtaining an Attorney General's opinion, if possible. Again, at the direction of the Executive Committee, I am forwarding a copy of this letter to the Treasurer of the State DFL Committee in case his office would be interested in communicating to you their views on this question.

Very truly yours,

KANDIYOHI COUNTY DFL
Arthur J. Boylan, Treasurer

Minnesota Teachers Retirement Association Notice of Meeting

The Board of Trustees, Minnesota Teachers Retirement Association will hold a meeting on Wednesday, December 5, 1979, 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.

Pollution Control Agency

Notice of Intent to Solicit Outside Opinion Concerning Review of Existing Rules NPC 1 Definitions, Severability and Variances for Noise Pollution Control Regulations, and NPC 2 Noise Standards

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) will be reviewing its existing rules NPC 1 "Definitions, Severability, and Variances for Noise Pollution Control Regulations" and NPC 2 "Noise Standards" which set forth limiting levels of sound established for the preservation of public health and welfare. These standards were developed to protect speech, sleep, annoyance and hearing conservation requirements for receivers within areas grouped according to land activities.

A public information meeting will be held December 5, 1979, at 4 p.m. in the Board Room of the Pollution Control Agency at 1935 West County Road B2, Roseville, Minnesota 55113. Agency staff will explain existing rules NPC 1 and NPC 2 at this meeting.

Relevant documents which interested persons may wish to review include the following:

1. *Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety*, U.S. Environmental Protection Agency, Washington, D.C., March 1974.

2. *Public Health and Welfare Criteria for Noise*, U.S. Environmental Protection Agency, Washington, D.C. July 27, 1973.

3. *Noise Pollution Standards and Regulations for the Minnesota Pollution Control Agency*, Noise Control Systems, Inc., December 1972.

4. Transcript: *In the Matter of the Adoption of Proposed Minnesota Regulations NPC 1, NPC 2, and NPC 3, including a Permit Requirement for New Noise Sources, Non-Impulsive Noise Standards, and Definitions*, June 27-28 and July 1, 1974.

5. *Noise Pollution the Unquiet Crisis*, Clifford R. Bragdon, University of Pennsylvania Press, 1971.

6. *Report to the President and Congress on Noise*, U.S. Environmental Protection Agency, Washington, D.C., February 1972.

7. *Noise-Sound Without Value*, Committee on Environmental Quality, Federal Council for Science and Technology, September 1968.

8. *Noise as a Public Health Hazard*, proceedings of the conference of the American Speech and Hearing Association, Washington, D.C., June 13-14, 1968.

9. *The Noise Around Us*, U.S. Department of Commerce, Washington, D.C., September 1970.

10. *Noise from Construction Equipment and Operations, Building Equipment, and Home Appliances*, U.S. Environmental Protection Agency, Washington, D.C.

11. *A Program for the Reduction of the Impact of Aircraft Noise Around Minneapolis-St. Paul International Airport*, a report to the Metropolitan Council and the Metropolitan Aircraft Sound Abatement Council, Urban Facts, Chicago, Illinois, October 1971.

12. *A Noise Exposure Study-Interstate Freeways-Twin Cities Metropolitan Area*, Minnesota Department of Highways, April 1973.

13. *Impact Characterization of Noise, Including Implications of Identifying and Achieving Levels of Accumulative Noise Exposure*, U.S. Environmental Protection Agency, Washington, D.C., July 1973.

14. *Effects of Noise on People*, U.S. Environmental Protection Agency, Washington, D.C., December 1971.

15. *Proceedings of the International Congress on Noise as a Public Health Problem*, Dubrovnik, Yugoslavia, May 1973.

16. *State of Illinois Noise Pollution Control Regulations*, July 26, 1973.

17. *Federal Noise Legislation and Noise Control Act of 1972*, Public Law 92-574.

18. *Standard Land Use Coding Manual*, Urban Renewal Administration, Department of Congress, First Edition, January 1965.

These documents are available for review at the Agency's Noise Pollution Control Section.

All interested or affected persons or groups may submit information on this subject. Written technical statements and comments should be submitted for consideration by December 31, 1979, and should be addressed to:

Mr. Alfonso E. Perez
Division of Air Quality
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, MN 55113

Oral statements of technical information and comments will be accepted during regular business hours over the telephone at (612) 296-7370.

Inquiries which are of a non-technical nature or which relate to the public hearing process should be addressed to:

Ms. Gail Gendler
Public Information Office
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, MN 55113

The Agency staff will review these comments, develop additional information, and make its recommendation(s) to the Minnesota Pollution Control Agency Board. All written statements received as a result of this "Notice of Intent to Solicit Outside Opinion" will become part of the record.

Terry Hoffman
Executive Director

Department of Transportation Public Transportation Division

Notice of intent to Solicit Outside Opinion Regarding Amendments to Rules on Public Transit Subsidy and Demonstration Grant Programs and Proposed New Rules Regarding Performance Standards and Capital Grant Assistance Programs

Notice is hereby given that the Department of Transportation is considering amendments to the rules regarding Public Transit Subsidy and Demonstration Grant Programs which will change titles to be in conformance with Minn. Stat. ch. 174 and adopting proposed rules regarding Uniform Performance Standards for Private Operators in the Metropolitan Transit Taxing District which will determine payments to the operators and adopting rules for the Public Transit Capital Assistance Grant Program which will determine priorities for awarding funds for matching federal Capital Grants. The proposed new rules are authorized by Minn. Stat. ch. 174.

All interested or affected persons or groups may submit information on this subject. Written or oral information and comment should be addressed to:

Mr. Robert M. Works
Director, Transit Administration
Room 419 Transportation Building
St. Paul, MN 55155

All statements of information and comment must be received by December 21, 1979. Any written material received by this date will become part of the record of any rules hearing held on this subject.

Nov. 14, 1979

Richard P. Braum
Commissioner

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

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

Department of Agriculture

Shade Tree Program Notice of Request for Proposals for Public Information and Media Relations Services

The Shade Tree Program, Department of Agriculture, is seeking one, two or three contractors to provide the following services:

1. Production of at least 4 radio and 4 television public service announcements: Price cannot exceed \$23,000.
2. Provision of media relations services to be provided until the contract expiration date, September 30, 1980: Price cannot exceed \$12,000.
3. Development of local public information programs including information kits in camera ready form: Price cannot exceed \$10,000.

The Department will accept proposals for any or all the above services. Contract(s), if awarded, will be awarded for any or all the above services to one, two or three contractors.

The deadline for the submission of proposals will be 4:30 p.m., December 17, 1979.

Energy Agency Alternative Energy Division District Heating Activity

Notice of Request for Proposals for Steam District Heating System Evaluation

Proposals are requested from engineering firms to evaluate existing steam district heating systems in three Minnesota

STATE CONTRACTS

communities to recommend short and long term development options. Typical items to be considered are:

- system rehabilitation and expansion
- conversion of system to hot water
- system economics
- alternate fuels

Contractor will work with the Minnesota Energy Agency and community utility to prioritize options and develop a detailed project proposal. Separate contracts for each community will be considered. The formal RFP may be requested and inquiries should be directed to:

Ronald E. Sundberg, P.E.
District Heating Projects Manager
Minnesota Energy Agency
980 American Center Building
150 East Kellogg Boulevard
Saint Paul, Minnesota 55101
(612) 296-9096

It is anticipated that the total cost to the state for this effort will not exceed \$30,000. The deadline for submission of completed proposals will be the close of the working day of December 20, 1979.

Iron Range Resources and Rehabilitation Board

Notices of Request for Proposals for Design of Mineland Reclamation Projects

The Iron Range Resources and Rehabilitation Board is seeking proposals from Minnesota engineering firms and reclamation experts familiar with Mineland Reclamation in Northern Minnesota to assist in designing a series of reclamation projects to be administered by the Board.

Individuals or firms will provide expertise in methods and techniques that should be used in: reshaping mine pit walls; reshaping overburden stockpiles; veneering rock stockpiles; advise in species and techniques to revegetate these areas once they are reshaped. This information will then be used in calling for bids to accomplish the reclamation project.

Prospective responders who have any questions regarding this Request For Proposal may write or call:

Orlyn Olson, Projects Manager
Mineland Reclamation
Iron Range Resources & Rehabilitation Board
P.O. Box 376
Calumet, MN 55716
Telephone Number: (218) 247-7215

Submission of proposals should be received no later than 4:30 p.m., December 21, 1979.

The Iron Range Resources and Rehabilitation Board is seeking proposals from Minnesota engineering firms and reclamation experts familiar with Mineland Reclamation in Northern Minnesota to assist in designing a reclamation project to be administered by the Board.

Individuals or firms will develop a design and provide cost estimates for stabilizing the pit walls at the St. James pit. The project should be designed in such a way that it can be completed over a period of three to four years with cost figures for Phase I, Phase II and Phase III (and Phase IV if approved). Phase I should be for the critical south wall of the pit. Phase II and III would consider the remaining portions of the pit. Phase IV would look at recreational development on a portion of the pit lake. If cost estimates are approved then this design will be used in calling for bids to accomplish the reclamation project.

Prospective responders who have any questions regarding this Request For Proposal may call or write:

Orlyn Olson, Projects Manager
Mineland Reclamation
Iron Range Resources & Rehabilitation
P.O. Box 376
Calumet, MN 55716
Telephone Number: (218) 247-7215

Submission of Proposals should be received no later than 4:30 p.m. December 21, 1979.

Department of Natural Resources Minerals Division

Notice of Extension of Due Date for Submission of Proposals Concerning Vegetation Mapping on a Portion of the Mesabi Iron Range

The Department of Natural Resources has decided to extend the due date for the submission of proposals pertaining to the mapping of vegetation on the Mesabi Iron Range (see 1st notification, *State Register*, 10/15/79). New proposals and modifications to proposals already submitted will be accepted until November 30, 1979.

Please direct inquiries to:

William C. Brice
Manager; Environmental Services
Minnesota Department of Natural Resources
Box 345, Centennial Office Building
St. Paul, MN 55155
(612) 296-4807

Department of Natural Resources

Notice of Request for Proposals for Technical Services Contract to Coordinate and Conduct the Department's Environmental/Outdoor Recreation Programs

The Education Section of the Bureau of Information and Education, Department of Natural Resources, has been directed by the legislature to conduct a voluntary statewide Environmental Conservation Education Program for the public schools, grades kindergarten through twelfth, and the adult community. The DNR is therefore requesting proposals to carry out this legislative mandate.

The contractor will be required to coordinate and conduct two one-day regional environmental education workshops for teachers and lay people, four one-day and one overnight regional orienteering/education events, five hunter education classes and five hunter clinics. Workshop leaders and hunter education instructors have been trained by the DNR and will be available in most areas of the state. The contractor will need special skills in detailed map making for orienteering purposes, be well versed in the administration and operation of the Minnesota public school systems, colleges and universities and have special teaching and communication skills in the area of adult education.

We will honor requests for "Request for Proposals" until December 17, 1979.

The cost of the project will not exceed \$12,800.00. Completion date for the contract is June 30, 1980.

For further information, inquiries should be directed to:

Roger Grosslein, Director
Education Section, Bureau of Information and Education
Department of Natural Resources
Box 46, Centennial Office Bldg.
St. Paul, MN 55155
Phone: (612) 296-3336 — Ask for Jan Koonce

Department of Transportation Technical Services Division

Notice to Minnesota Consulting Engineers — Registered Civil and Structural

The Minnesota Department of Transportation (Mn/DOT) intends to retain qualified consultants to design and prepare construction plans for a number of bridges of average complexity during 1980.

Recent experience in bridge design for local, state or federal agencies is required.

Design firms desiring to be considered as design contractors are asked to submit a brochure or resume giving qualifications and experience to K. V. Benthin, Bridge Engineer, 610D Transportation Building, Mn/DOT St. Paul, Minnesota 55155. Identify personnel to conduct the project and detail their training and experience. Brochures and resumes will be received until 4:30 p.m., December 17, 1979. Qualified applicants will be contacted, and may be requested to appear at Mn/DOT Building in St. Paul for interviews.

Design of bridges of average complexity will be solicited by specific proposal.

Names of selected firms will be retained on file with Mn/DOT for consideration during 1980.

Notice of Availability of Contract for Design of a Storm Sewer Pumping Station

The Minnesota Department of Transportation (Mn/DOT) requires the services of a qualified consultant to design a pumping station for storm water for the interchange located at I494 and Penn Avenue between Bloomington and Richfield, Minnesota.

The estimated cost range for this project is \$10,000 to \$15,000.

Firms desiring consideration should submit their brochure and/or experience resume such as the federal forms 254 and 255 before December 10, 1979. This is not a request for proposals.

The report "Minnesota Department of Transportation Drainage Study for I-494 and Penn Avenue Interchange" can be made available for your review. Please direct your response to:

B. E. McCarthy
Consultant Services Engineer
Room 612-B
Transportation Building
St. Paul, Minnesota 55155
Telephone (612) 296-3051

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