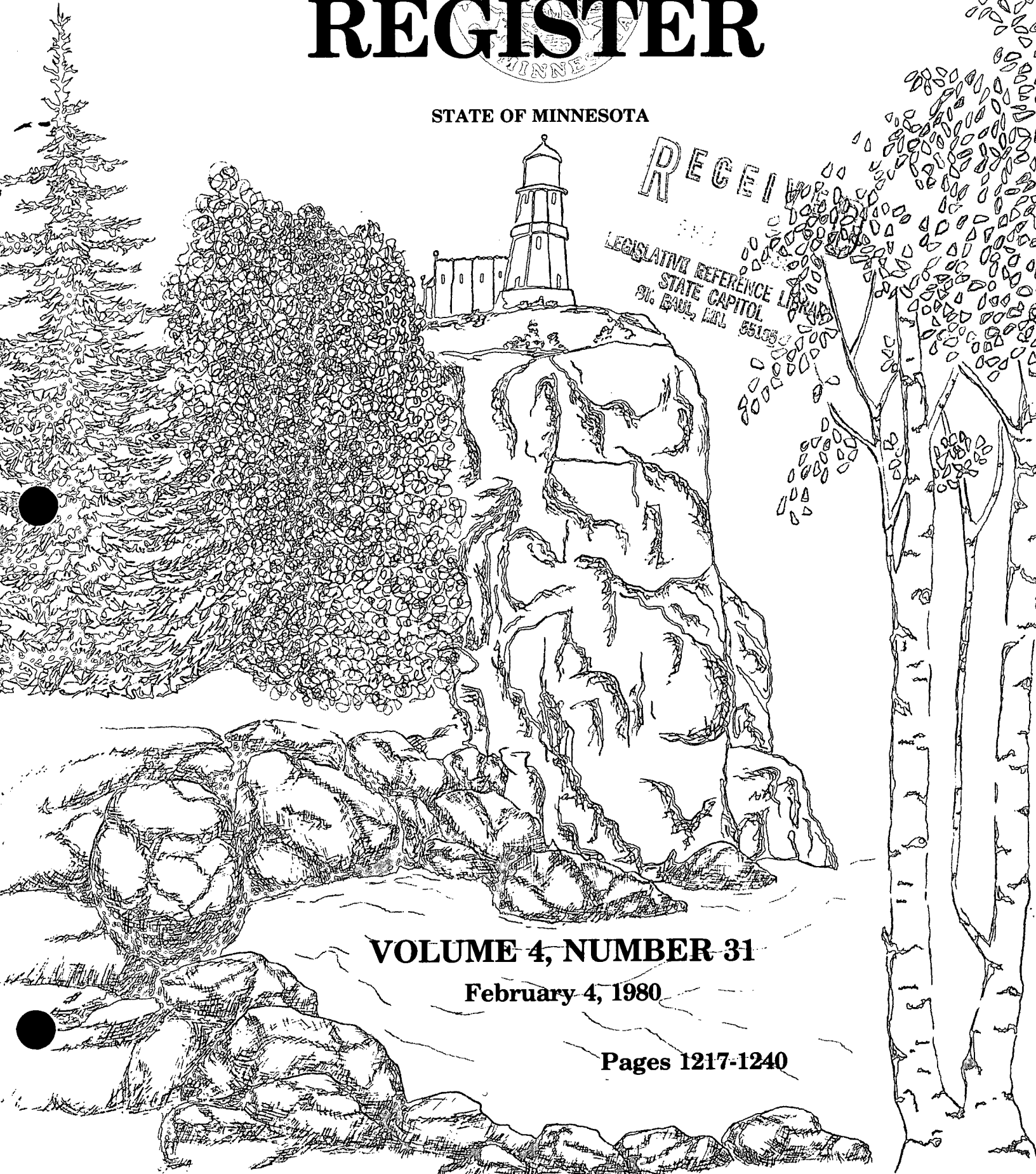


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# STATE REGISTER

STATE OF MINNESOTA



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**VOLUME 4, NUMBER 31**

**February 4, 1980**

**Pages 1217-1240**



Volume 4 Printing Schedule for Agencies

Table with 4 columns: Issue Number, \*Submission deadline for Executive Orders, Adopted Rules and \*\*Proposed Rules, \*Submission deadline for State Contract Notices and other \*\*Official Notices, Issue Date. Includes SCHEDULE FOR VOLUME 4 with rows for issues 32-35.

\*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.

\*\*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.

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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.

- Albert H. Quie, Governor; Carol Anderson Porter, Editor; James J. Hiniker, Jr., Commissioner, Department of Administration; Paul Hoffman, Robin PanLener, Jean M. Walburg, Editorial Staff; Stephen A. Ordahl, Manager, Office of the State Register; Roy Schmidtke, Circulation Manager; David Zunker, Information Officer; Cindy Riehm, Secretarial Staff.

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NOTICE

How to Follow State Agency Rulemaking Action in the State Register

State agencies must publish notice of their rulemaking action in the State Register. If an agency seeks outside opinion before promulgating new rules or rule amendments, it must publish a NOTICE OF INTENT TO SOLICIT OUTSIDE OPINION. Such notices are published in the OFFICIAL NOTICES section. Proposed rules and adopted rules are published in separate sections of the magazine.

The PROPOSED RULES section contains:

- Proposed new rules (including Notice of Hearing).
Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
Proposed temporary rules.

The ADOPTED RULES section contains:

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
Notice of adoption of temporary rules.
Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the State Register will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the State Register but are not published in the MCAR due to the short-term nature of their legal effectiveness.

The State Register publishes partial and cumulative listings of rule action in the MCAR AMENDMENTS AND ADDITIONS list on the following schedule:

Table with 2 columns: Issue range and Issue number. Includes rows for Issues 1-13, 14-25, 26, 27-38, 39, 40-51, and 52.

The listings are arranged in the same order as the table of contents of the MCAR.

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# 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 Hearing on Agency Rules February 11-15, 1980

Date	Agency and Rule Matter	Time & Place
Feb. 11	Public Welfare Dept. Merit System Rules Hearing Examiner: Howard Kaibel	9:30 a.m., Rm. A, Fourth Floor, Centennial Office Bldg., 658 Cedar St., St. Paul, MN
Feb. 12	Public Service Commission Telephone Inter-exchange Access (alternatives to present long distance calling) Hearing Examiner: Leonard Nelson	7:30 p.m., Winona State College on Huff St., Winona, MN, Kryzsko Commons, Purple Rms. 104 & 105
Feb. 13	Same as above	7:30 p.m., Multi-purpose Rm., YMCA, 704 1st Drive N.W.
Feb. 14	Same as above	7:30 p.m., Montevideo, MN, Chippewa Co. Courthouse, Chippewa, MN. Use south entrance.
Feb. 15	Same as above	1:30 p.m., Sr. Citizens Rm., City Hall, Annandale, MN
Feb. 15	Public Welfare Dept. Welfare Per Diem Rates for Intermediate Care/ Mentally Retarded Care Providers Hearing Examiner: Harry Seymour Crump	9:00 a.m., Weyerhaeuser Rm., MN Historical Society Bldg., 690 Cedar St., St. Paul, MN

# ADOPTED RULES =

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 Labor and Industry

### Adopted Rules for Implementation of Minn. Stat. § 176.102 for Rehabilitation of Work Related Injuries and Diseases, Including Rules Necessary to Be A Qualified Rehabilitation Consultant or Registered Rehabilitation Vendor

Pursuant to due notice a hearing was held on the prepared rules on December 19, 1979. The rules were not made in full compliance with Chapter 15 of Minnesota Laws since the Workers' Compensation Division of the Department of Labor and Industry is exempt from that chapter. The rules were finally adopted on January 11, 1980 and are effective on January 21, 1980. A copy of the rules was filed with the office of the Secretary of State on January 11, 1980. The rules were promulgated pursuant to Minn. Stat. § 176.102, subd. 12, Laws of 1979.

#### Rules as Adopted

##### RS 1 Definitions.

"Commissioner" means commissioner of the Department of Labor and Industry.

"Employer" means the employer of qualified employees and includes the insurer providing workers' compensation insurance required by Minn. Stat. ch. 176 to this employer.

**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."

## ADOPTED RULES

“Suitable gainful employment” means employment which is reasonably attainable and which offers an opportunity to restore the injured employee as soon as possible and as nearly as possible to employment consistent with the employee’s former employment and with the employee’s qualifications, including, but not limited to the employee’s age, education, previous work history, interests and skills. Consideration shall also be given to the economic status enjoyed by the employee at the time of the injury and to the present and future labor market.

“Qualified employee” means an employee who because of the effects of a work-related injury or disease, whether or not combined with the effects of a prior injury or disability, (1) is permanently precluded or is likely to be precluded from engaging in the usual and customary occupation or position in which the individual was engaged at the time of injury, and (2) can reasonably be expected to benefit from rehabilitation services which could significantly reduce or eliminate the decrease in employability.

“Qualified rehabilitation consultant” means a person who is professionally trained and experienced and who is approved by the commissioner to develop and monitor an appropriate plan for evaluation and provision of physical and vocational rehabilitation services for an employee entitled to rehabilitation benefits under Minn. Stat. § 176.102.

“Qualified rehabilitation consultant/independent” means a consultant neither affiliated with an employer, insurer, or adjusting company, nor with a facility or agency engaged in the provision of comprehensive rehabilitation services to qualified employees, and who is approved by the commissioner to develop and monitor rehabilitation plans.

“Qualified rehabilitation consultant/affiliated” means a consultant who is affiliated with an employer, insurer, or adjusting company, and who is approved by the commissioner to develop and monitor rehabilitation plans.

“Registered rehabilitation vendor” means a public or private entity existing wholly or in part for the provision of rehabilitation services to the qualified employee and which has been registered to provide specific rehabilitation services in accord with a rehabilitation plan authorized by the commissioner.

“Rehabilitation consultation” means an evaluation by a qualified rehabilitation consultant of the likelihood that rehabilitation services will significantly reduce or eliminate the decrease in employability.

“Rehabilitation plan” means a written document completed by a qualified rehabilitation consultant and which describes the manner and means by which it is proposed that a qualified worker may be returned to suitable, gainful employment through the use of rehabilitation services. The plan may include, but is not limited to, physical rehabilitation services preliminary to or in conjunction with vocational rehabilitation, modification of the employee’s job at the time of the injury, provision for alternative work with the same employer, on-the-job training, job placement assistance or some combination of the services.

“Rehabilitation service” means service required to deter-

mine an employee’s eligibility as a qualified employee, and service designed to return an individual to (1) a job related to the individual’s former employment, (2) a job in another work field which produces an economic status as close as possible to that enjoyed before the injury, or (3) a job with higher economic status than would have occurred without the disability if it can be demonstrated that this is necessary to increase the likelihood of reemployment. The service may include, but is not limited to, medical evaluation, physical rehabilitation, work evaluation, counseling, job analysis, job modification, job placement and implementation of on-the-job or short-term retraining.

“Review panel” means the panel created by Minn. Stat. § 176.102, subd. 3.

### **RS 2 Work status report.**

The employer shall report the work status of an employee to the commissioner on forms prescribed for that purpose (1) within 30 days of receiving knowledge that the employee is permanently precluded or likely to be permanently precluded from returning to his pre-injury occupation, or (2) within 90 days after the date of the injury if the employee has not yet returned to work and the likelihood of return to work cannot yet be ascertained.

A work status report shall specify what is being done to determine the employee’s eligibility as a qualified employee and the date when the commissioner will be notified of this determination. If the employee’s condition does not then permit determination of the employee’s qualification status, the report shall indicate this and the employer shall be required to submit a supplemental report every 60 days following submission of the initial report until such determination can be made.

If the employer believes that the employee is not a qualified employee, the work status report shall include documentation supporting the employer’s determination. In this instance, the report also shall include a copy of the employer’s advice to the employee that in the opinion of the employer, the provision of rehabilitation services is not necessary, the reasons therefor, and the following mandatory language:

“If you have any questions regarding this explanation, you may contact the Workers’ Compensation Division at \_\_\_\_\_ (address) \_\_\_\_\_. There is no charge for this service. If you have an attorney representing you in this matter, you should consult with that attorney.”

If the employee’s work status changes at any time subsequent to submission of a previous work status report, the employer shall file a supplemental report.

### **RS 3 Initiation of rehabilitation service.**

For the purpose of Minn. Stat. § 176.102, subd. 4, the employer shall, in consultation with the employee, refer the employee to a qualified rehabilitation consultant. This shall be done within 30 days after an employer has medical information that an employee is unable, due to personal injury or occupational disease, to return to his pre-injury occupation.

If the employer has made a selection, the employee may object to the employer's selection and shall make his own selection and notify the commissioner and the employer in writing. The employee has the final decision on which rehabilitation consultant is to be utilized.

When the commissioner receives information that the employee is qualified for rehabilitation benefits and the employer has not provided rehabilitation consultation within thirty (30) days after receipt of similar information, the commissioner shall notify the employer that rehabilitation consultation shall be provided by the employer within fifteen (15) days of the notice or a qualified rehabilitation consultant within the division of vocational rehabilitation shall be authorized to provide that consultation.

#### **RS 4 Plan submission.**

If the qualified rehabilitation consultant determines that rehabilitation would significantly reduce or eliminate the decrease in employability, the rehabilitation consultant shall develop and the employer shall submit a specific rehabilitation plan together with all related medical and vocational reports to the commissioner on forms prescribed for that purpose. The plan shall be signed by all interested parties. A labor market analysis is required in all plans which propose a change in the employee's occupation unless the requirement for such a plan is waived by the commissioner.

Within 30 days of submission of a properly documented plan, the commissioner shall approve or reject the plan. The commissioner may request additional information, confer with the parties, recommend modifications, and otherwise seek agreement concerning terms and conditions of the plan. If the vocational objective has not been determined, approval or rejection of the vocational objective may be deferred until 30 days following receipt by the commissioner of a plan progress report containing that objective and supporting rationale. Such a progress report shall be served on all interested parties and if no formal objection is received within 10 days from the date of service, it shall be assumed that all parties are in agreement with the vocational objective and rationale.

If the commissioner does not approve or reject the plan within 30 days following its submission, a properly documented plan shall be deemed approved; provided, however, that the commissioner may extend the review period for an additional 30 days for good cause.

Implementation of the plan shall begin as soon as the qualified employee is capable of participating. Implementation may begin upon approval by the commissioner or on the date specified in the plan, whichever date is earlier. A plan shall be submitted to the commissioner before the implementation date. Commencement of a plan without objection from the commissioner

shall not be deemed approval of the plan, nor shall it operate as a waiver or an estoppel of the commissioner's power over the plan.

#### **RS 5 Plan modification.**

Upon request of the employer or employee, the commissioner may suspend, terminate or alter a rehabilitation plan for good cause, including, but not limited to: (a) a new or continuing physical limitation that significantly interferes with the implementation of the plan; (b) the employee's performance indicates that he is unlikely to complete the plan successfully; (c) the employee is not cooperating with the plan, or (d) the employee believes that the occupation for which he is being trained is not suited to him, provided that a request by an employee for the reason indicated in (d) above shall be made within 90 days from the plan's implementation date and that no more than one change under (d) above shall be permitted. Any decision of the commissioner regarding a change in a plan may be appealed to the review panel within 15 days of the filing of and service of the decision on the interested parties.

#### **RS 6 Completion of plan.**

The employer and qualified rehabilitation consultant shall report to the commissioner immediately upon the employee's completion of the rehabilitation plan, indicating the results and other pertinent information which the commissioner may require.

#### **RS 7 Change of consultant/vendor.**

Any requests for change of a consultant or vendor shall be directed to the commissioner. The commissioner may schedule an administrative conference and may order a change of consultation/service if such is in the best interests of the parties. If the commissioner determines the consultant's work to be unsatisfactory or the consultant withdraws from the case, the commissioner shall make a referral to another consultant.

#### **RS 8 Disputes.**

Where questions exist concerning an employee's entitlement to rehabilitation services, or where a rehabilitation plan is not acceptable to the employee or to the employer, or in case of any other dispute involving rehabilitation, the commissioner, either on his own motion or upon request of the employer or employee, may schedule a conference to resolve the issues in dispute. The commissioner may require the parties to meet and confer informally prior to such a conference. The commissioner may order necessary and reasonable medical examinations and rehabilitation evaluations at the expense of the employer in preparation for such a conference. After allowing the parties an opportunity to be heard, the commissioner shall make a determination on the issues and serve copies on the parties. No determinations will be made with respect to rehabilitation entitlement until primary liability for the claim has been admitted or established.

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## ADOPTED RULES

### **RS 9 Appeal to rehabilitation review panel.**

Any person aggrieved by a decision of the commissioner may appeal the decision to the review panel within 30 days of the filing of and service of the decision on the interested parties. The appeal shall specify the grounds upon which the appeal is taken. The panel may approve or reject the commissioner's decision and may formulate its own rehabilitation plan.

### **RS 10 Compensation during rehabilitation.**

Payment of rehabilitation compensation pursuant to Minn. Stat. § 176.102, subd. 11, or, if the rehabilitation involves on-the-job training, pursuant to Minn. Stat. § 176.102, subd. 5, shall commence on the day the employee begins the vocational rehabilitation phase of the rehabilitation plan designed to prepare the employee for suitable, gainful employment.

### **RS 11 Representation.**

When an employee or employer is represented by an attorney in rehabilitation matters before the commissioner, the commissioner shall, at the earliest possible date, be notified in writing of the name, address and telephone number of said representative. Any representative who has so advised the commissioner will be notified of any meetings.

### **RS 12 Rehabilitation mandatory: restrictions on settlements.**

Rehabilitation services pursuant to an approved rehabilitation plan are mandatory for qualified employees. A qualified employee's right to rehabilitation services shall not be subject to compromise and shall not be convertible into cash or other benefits by settlement and release agreement or otherwise. When a good faith dispute exists as to qualified employee status, however, the possible right to rehabilitation services may be converted into cash by settlement agreement. Any settlement agreement purporting to limit or compromise access to rehabilitation services must be approved by the commissioner. The value of rehabilitation services shall not be used in calculation of attorneys' fees. The legal fees shall be calculated in the same manner as in other types of cases.

### **RS 13 Qualified rehabilitation consultant and registered rehabilitation vendor.**

Rehabilitation services shall be provided each injured employee to the extent appropriate and which in the judgement of the commissioner will return the employee to suitable, gainful employment.

Policies and procedures as developed by the commissioner are the basic references for the delivery of rehabilitation services under the law. Adherence thereto shall be criteria for continued registration as a qualified rehabilitation consultant or rehabilitation vendor.

An entity may be approved either to provide rehabilitation services as a vendor or to develop and monitor rehabilitation plans as a qualified rehabilitation consultant. These roles are distinct, therefore a single entity shall not qualify for both functions. There shall be no ownership or financial relationships

of any kind whatsoever between any vendor and consultant or organization approved for the employment of consultants. The rehabilitation vendor shall provide all physical rehabilitation and work evaluation and work adjustment services if they are included in a rehabilitation plan. Any number of vendors may provide services for a single rehabilitation plan.

With the written approval of the commissioner, an employer who would qualify as a vendor may hire a qualified rehabilitation consultant/affiliated to develop and monitor rehabilitation plans for their own employees. In such cases, the consultant shall certify that the employee has been advised of his right to object to the affiliated rehabilitation consultant. It is expected that the rehabilitation consultant/affiliated shall use outside vendor services if the employer cannot provide them.

If a dispute arises with respect to charges for services performed by rehabilitation consultants or vendors, the commissioner shall make determinations as to the reasonable value of charges and the necessity for the services. All qualified rehabilitation consultants and registered rehabilitation vendors shall be bound by any such determination or shall seek recourse through the appellate procedure provided by Chapter 176.

The qualified rehabilitation consultant shall file all required reports with the commissioner and employer as they are received or created by the consultant. Reports shall also be furnished to the employee's attorney, if any, if he so requests.

The services provided by the registered rehabilitation vendor shall be in accordance with the rehabilitation plan developed for the qualified employee by the qualified rehabilitation consultant. All services provided shall be in accord with the approved plan and no deviation shall be made from the plan without approval by the commissioner of an amendment to the plan. Time and cost estimates shall be adhered to.

Vendor performance shall be monitored by the qualified rehabilitation consultant.

The vendor shall make the required reports on a regular basis to the qualified rehabilitation consultant.

Minnesota qualified employees who move to another state shall be serviced by that state's workers' compensation rehabilitation mechanism in coordination with a Minnesota qualified rehabilitation consultant.

### **RS 14 Qualifying eligibility criteria for rehabilitation consultant.**

The following eligibility criteria and procedures shall be used by the commissioner in determining who is qualified for registration as a qualified rehabilitation consultant.

a. Qualified rehabilitation consultant/affiliated/independent.

i. Holder of a masters or doctorate degree in vocational rehabilitation or physical rehabilitation (occupational therapy, physical therapy, nursing) from an accredited institution, plus a current license as appropriate, plus one year of experience in



vocational rehabilitation or physical rehabilitation. At least one year shall have been spent in rehabilitation of work related injuries and diseases.

or

ii. Holder of a baccalaureate degree in vocational rehabilitation or physical rehabilitation (occupational therapy, physical therapy, nursing), from an accredited institution, plus a current license as appropriate, plus two years of experience in vocational rehabilitation or physical rehabilitation. At least one year shall have been spent in rehabilitation of work related injuries and diseases.

or

iii. Diploma in nursing from an accredited institution, plus a current Minnesota R.N. license, plus three years of experience in physical rehabilitation or vocational rehabilitation. At least one year shall have been spent in rehabilitation of work related injuries and diseases.

or

iv. Holder of any baccalaureate degree other than listed in ii above from an accredited institution, plus three years of experience in vocational rehabilitation. At least one year shall have been spent in rehabilitation of work related injuries and diseases.

or

v. High school diploma, plus continuing education in and five years experience in vocational rehabilitation, including counseling, evaluation and direct case services. Two of the five years shall have been spent in rehabilitation of work related injuries and diseases.

b. Rehabilitation consultant intern:

An individual who meets the minimum educational requirements but does not meet the minimum experience requirements may be registered as a consultant intern. When the intern is registered, the intern's employer shall provide the commissioner with the name of the qualified rehabilitation consultant under whose direct supervision the intern will work. The supervisor shall be considered to be directly responsible for the rehabilitation work on any case. The supervisor shall co-sign all work being done by the intern. So that all parties are aware of the intern's status, he shall be designated as an "intern." The intern may make application for "qualified" status when the minimum requirements have been met.

In cases where an intern has been supervised by a qualified rehabilitation consultant/affiliated who leaves the organization with which he has been affiliated and no other qualified rehabilitation consultant is available to supervise the intern, the intern may, with the approval of the commissioner, temporarily sign

all required documents in the capacity of a qualified rehabilitation consultant. Past performance and overall experience will be taken into consideration for this approval.

c. Experience criteria.

The burden of proof of experience shall be on the applicant. This shall include documentation of a history of employment in a position of physical rehabilitation or vocational rehabilitation of work related injuries and diseases. One year of experience in rehabilitation of work related injuries and diseases means one year of full time experience, two years of 50% of time experience, three years of 33⅓% of time experience, or four years of 25% of time experience or any combination equal to 100% of one year's experience. The experience shall have been attained in not more than four consecutive years.

Supporting documents shall consist of signed statements by present and previous employers and insurers specifying the services, caseload, and amount of time spent in rehabilitation of work related injuries and diseases.

d. General criteria.

All persons who are qualified rehabilitation consultants shall be exclusively self-employed or exclusively employed by a single organization that is approved for the employment of qualified rehabilitation consultants or an employer/insurer.

All persons who are qualified rehabilitation consultants shall be residents of the state of Minnesota. An organization authorized for the employment of qualified rehabilitation consultants may request an exception for a consultant who lives contiguous to a Minnesota catchment area if the organization and any such consultant agrees, as a condition to approval, to appear at any hearing when requested, in the same manner as if they had been subpoenaed. Failure to do so shall result in automatic revocation of the individual consultant's approval.

**RS 15 Procedure for qualifying as rehabilitation consultant.**

a. Application.

An individual desiring to receive approval and registration as a qualified rehabilitation consultant shall submit to the commissioner, a complete application consisting of the following:

- i. completed and signed application form (notarized); and
- ii. copy of current license or certification; and
- iii. supporting experience documentation; and
- iv. transcripts of all schools attended beyond high school; and
- v. list of pertinent continuing education by title, location and date; and

**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."

## ADOPTED RULES

vi. list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees.

The commissioner shall issue a notice of acceptance or rejection to the applicant within 45 days of receipt of the completed application.

b. Appeal process.

The appeal process provides a mechanism for applicants to request reconsideration of a rejected application for registration, renewal and reinstatement.

A written notice of appeal shall be filed with the commissioner within 15 days of mailing of notice of disapproval.

The decision shall be reviewed by the review panel. The applicant shall be advised of the date, time and place of the review at least ten (10) days prior to the hearing date, and is encouraged to be present.

c. Registration.

The commissioner shall assign a registration number to each qualified rehabilitation consultant. The registration number shall be on all reports submitted by the consultant.

To retain registration, the consultant must submit satisfactory evidence of approved continuing education pertinent to the workers' compensation rehabilitation field equivalent to 15 contact hours each year at the time registration is renewed.

d. Renewal.

Registration shall be renewed every two years.

Services and fee schedules shall be submitted to the commissioner whenever there is a change or no less than once each calendar year. This filing shall not constitute an approval or disapproval of the services or fees.

No later than 60 days prior to expiration of registration, the consultant shall request registration renewal on a form prescribed by the commissioner.

e. Revocation.

Qualified rehabilitation consultant approval and registration may be revoked by the commissioner for failure to comply with the rules or policies or for good cause. Notice of and reason for revocation shall be mailed to the consultant by the commissioner.

The consultant may appeal the revocation as provided in Section 15, b.

A consultant whose registration has been revoked shall wait at least 180 days from the date of mailing of revocation to re-apply for approval.

### **RS 16 Procedure for approval as an organization registered for the employment of qualified rehabilitation consultants/independent.**

a. Criteria.

The organization shall be licensed to do business in the State of Minnesota and shall maintain an administrative office within the state.

The management staff shall consist of at least one member who meets the qualifications of a rehabilitation consultant.

Eighty percent of the non-clerical staff shall be eligible, qualified rehabilitation consultants or consultant interns.

Management shall provide ongoing continuing education opportunities in workers' compensation rehabilitation for approval by the commissioner and to meet the criteria for registration renewal of rehabilitation consultants.

The organization shall not provide the services designated only as rehabilitation vendor services.

b. Application.

A private or public entity desiring to be approved as an organization registered for the employment of qualified rehabilitation consultants shall submit to the commissioner a complete application consisting of the following:

i. a completed and signed application (notarized); and

ii. any data or information attached to support application; and

iii. documentation of intent to provide opportunities for continuing education to meet requirements for registration renewal of rehabilitation consultants; and

iv. list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees.

c. Appeal process.

The appeal process herein shall be conducted the same as that provided in Section 15, b.

d. Renewal.

The renewal process herein shall be conducted the same as that provided in Section 15, d.

e. Revocation.

The revocation process herein shall be conducted the same as that provided in Section 15, e.

### **RS 17 Procedure for approval as a registered rehabilitation vendor.**

a. Application.

A private or public entity desiring to be approved as a registered rehabilitation vendor shall submit to the commissioner a complete application consisting of the following:

i. a completed and signed application; and

ii. any data or information attached to support application; and

iii. list of services and fees. This filing shall not constitute an approval or disapproval of the services or fees.

b. Appeal process.

The appeal process herein shall be conducted the same as that provided in Section 15, b.

c. Renewal.

The renewal process herein shall be conducted the same as that provided in Section 15, d.

d. Revocation.

The revocation process herein shall be conducted the same as that provided in Section 15, e.

## Department of Natural Resources

### Adopted Amendment to the Management Plan for the Mississippi Wild and Scenic River Regarding the Monticello Orderly Annexation Area in Wright County

The proposed amendment published at *State Register* on April 23, 1979 (3 S.R. 1946) is adopted, with the following changes:

**6 MCAR § 1.2420 C.10.** The portion of the land use district which is within the Orderly Annexation Area established by the Minnesota Municipal Board adjacent to the City of Monticello in ~~1975~~ 1972, legally described in the land use district as Government Lots 1, 2, 3 and 4 of Section 18 and Government Lots 1, 2 and 3 of Section 8, Township 121 N. Range 24 W. of Wright County, shall be governed by the Recreational Development Standards of NR 82-84 (6 MCAR § 1.0078, 1.0079 G.-J., 1.0080 and 1.0081); 6 MCAR §§ 1.0082-1.0084 (NR 82-84). The zoning authority shall also conform to the provisions of NR 78, 79 (g) (j), 80, and 81 (6 MCAR § 1.0078, 1.0079 G.-J., 1.0080 and 1.0081); 6 MCAR §§ 1.0078, 1.0079 G.-J., 1.0080 and 1.0081 (NR 78, 79 (g)-(j), 80, and 81).

## Department of Public Service Public Service Commission

### Adopted Rules Governing Disconnection of Service to Gas and Electric Utility Customers during Periods of Cold Weather, and Repeal of Cold Weather Rule

The rules published and proposed at *State Register*, Volume 4, Number 11, pp. 414-417, September 17, 1979 (4 S.R. 414) are now adopted, with the following amendments:

#### **4 MCAR § 3.0299 PSC-299- Disconnection of service during periods of cold weather.**

A. Purpose and authority. ~~The rule contained herein is prescribed by the commission pursuant to Minn. Stat. § 216B.05, subd. 1, to prohibit disconnection to an occupied residential unit if the temperature is reported to be at 32 degrees fahrenheit or lower or the payment agreement procedure applies. This rule is prescribed by the commission pursuant to Minn. Stat. ch. 216B in its entirety and in particular §§ 216B.01, 216B.08, 216B.09 and 216B.23, and the Public Utilities Regulatory Policies Act of 1978, 15 U.S.C. §§ 3201 et seq. and 16 U.S.C. §§ et seq. to prohibit disconnection of a residential utility customer who is unable to pay for utility service during cold weather months.~~

B. Definitions. For the purpose of this rule, the following definitions shall apply:

1. "Alternative payment agreement" means a plan providing for deferred payment of bills for usage which does not meet the definition of "deferred payment agreement."

1. "Cold weather months" means the period beginning October 15 and continuing through April 15 of the following year.

2. "Cold weather months" means the period of time beginning on October 15 and terminating on April 15 following. ~~The commission shall vary the period for a given year if the National Weather Service reports temperature variation of extreme amounts.~~

2. "Residential unit" means a primary dwelling which receives gas and/or electric service and is occupied by its owner or tenant, whether or not the occupant is the residential customer of the utility, during cold weather months.

3. "Deferred payment agreement" means a plan pro-

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## ADOPTED RULES

~~viding installment payment of amounts which the customer owes the utility at the beginning of the deferred payment period and for estimated usage during the deferred payment period, wherein payment shall be made by:~~

~~a. Payment of a reasonable amount of the outstanding bill at the time the agreement is entered into; and~~

~~b. Payment of the following amount in equal monthly installments:~~

~~1. the balance of the outstanding bill; and~~

~~2. bills for estimated usage during the remaining months of the deferred payment period; and~~

~~3. a true-up to reconcile actual and estimated usage in the final months.~~

3. "Third party notice" means a commission approved notice containing, at a minimum, the following information:

a. A statement that the notice is not a disconnect notice (stated in block letters at the top of the first page);

b. A statement that the utility will send a copy of any future Notice of Proposed Disconnection of utility service to a third party designated by the residential customer;

c. Instructions on how to request this service;

d. A statement that the residential customer should contact the person he or she intends to designate as the third party contact before providing the utility with the party's name, and

e. A list of public agencies and community organizations which may be able to provide the residential customer with financial assistance.

4. "Deferred payment period" means the 12 month period commencing with the first day of the period covered by an outstanding bill. "Notice of Residential Customer Rights and Possible Assistance" means a commission-approved easy-to-understand explanation of the residential customer's rights and responsibilities under this rule. It shall also include a list of organizations (with addresses and phone numbers) which may provide financial aid to the residential customer. At a minimum this list shall include the local welfare agency, and the local community action program which dispenses emergency fuel assistance.

5. "Payment agreement" means a "deferred payment agreement" proposed by the utility or an "alternative payment agreement" agreed upon by the utility and the customer.

5. "Payment schedule" means any mutually acceptable agreement between the residential customer and utility that provides for the payment of the balance of any outstanding bills and future bills for estimated usage during the period covered by the payment schedule. The following guidelines shall apply to payment schedules:

a. The payment schedule may extend from the date of the schedule to the following October 15, or any other period agreed upon by the residential customer and utility;

b. The residential customer may make payments to the utility in installments which need not be equal but may be based on factors such as lump sum payments or additional income reasonably expected to be received by the residential customer during the payment period;

c. At the termination of the payment schedule, there shall be a true-up to reconcile actual and estimated usage during the schedule period.

6. "Residential" means pertaining to a dwelling unit receiving gas and/or electric service which is occupied by its owner or tenant whether or not the occupant is the customer of the utility.

6. "Working days" means Mondays through Fridays excluding legal holidays. The day of receipt of any notice shall not be counted in calculating a period of time under this rule.

C. Disconnection restriction for occupied residential units. Notwithstanding the provisions of any other customer service rule, no utility shall disconnect service to any occupied residential unit for any reason, except the safety of the occupants or the public as provided in PSC Rule 298B.2., if the disconnection affects the primary heat source of the residential unit and if the minimum temperature restriction or the payment agreement restriction set forth below applies.

1. Minimum temperature restriction.

Disconnection shall not take place if the predicted 24 hour (12 a.m. to 12 p.m.) temperature as reported by the National Weather Service at its first order station nearest the dwelling unit is to be 32 degrees Fahrenheit (0 degrees Celsius) or lower.

2. Payment agreement restriction.

No utility shall terminate residential service during cold weather months unless:

a. The utility has made a written offer, or an oral offer confirmed in writing within 72 hours, for a deferred payment agreement; and

b. The customer has failed to enter into or comply with such an agreement or an alternative payment agreement. The customer shall have five days after receipt of the utility's written offer.

1. to deposit in the mail, or otherwise deliver to the utility or its agent, written acceptance of the offer; or

2. to enter into an alternative payment agreement.

e. For purposes of determining the reasonableness of the amount of the initial payment under a payment agreement, the parties shall consider:

1. The size of the delinquent account;

2. The customer's ability to pay (if the customer is a landlord and the service is to a tenant, the landlord shall be presumed to be able to pay the bill);

3. The customer's payment history;

~~4. The length of time that the debt has been outstanding;~~

~~5. The reasons why the debt is outstanding;~~

~~6. Any other relevant factors concerning the circumstances of the customer.~~

~~d. Billing statements to customers receiving service under payment agreements shall contain, in addition to the information required by PSC Rule 313, the following information:~~

~~1. The actual charges incurred for usage during the billing periods; and~~

~~2. The billing amount due and payable for the billing period pursuant to the terms of the payment agreement.~~

C. Early notification of rights and third party notice option. All utilities shall include a "third party notice" and a commission-approved easy-to-understand general statement of the protections of this rule annually in the monthly billing mailed to residential customers immediately prior to the commencement of the billing cycle which includes October 15. These notices shall also be provided to all new residential customers when they are first provided service by the utility.

D. Disconnection restriction for unoccupied residential units.

~~1. No utility shall disconnect service to the primary heat source of a residential dwelling unit during cold weather months, which it believes to be unoccupied, prior to conducting an on-site inspection of such residential unit and attempting to make direct personal contact with any occupants therein. Such inspection shall include at least one visit to the residential unit by field personnel during normal working hours; and in the event that personal contact is not achieved, another on-site visit during non-business hours.~~

~~2. If the field personnel are unable to make direct personal contact with any occupants, and if it reasonably appears from the on-site inspection the residential unit is unoccupied, then service may be disconnected pursuant to the procedures and requirements of PSC Rule 298, 300 and 301.~~

~~3. The utility shall follow up termination of service to an unoccupied residential unit by conducting an additional on-site inspection of the premises and attempting to make direct personal contact with any occupants therein on the day immediately following termination of service, including Sundays and holidays. If such residential unit is then found to be occupied, service must be reconnected:~~

~~a. If the minimum temperature restriction applies; or~~

~~b. If the utility has not satisfied the requirements and procedures of the payment agreement restriction.~~

~~The utility shall not charge the customer for reconnection of service pursuant to this subsection.~~

No utility shall disconnect the service of any residential unit during "cold weather months," notwithstanding any other customer service rule, except 4 MCAR § 3.0298 B., if the disconnection would affect in any way the primary heat source of the residential unit and:

1. The residential customer, or any designated third party, has declared his or her inability to pay, as provided in 4 MCAR § 3.299 E.; or if appealed, the commission has determined the residential customer is unable to pay. To declare his or her inability, the residential customer must meet the following requirements:

a. The residential customer expresses willingness to enter into a mutually acceptable payment schedule for the current cold weather months, pursuant to 4 MCAR § 3.0299 G.2.; and

b. The residential customer was fully paid up or was reasonably on time with his or her payments under a payment schedule as of the billing cycle immediately preceding the start of the current cold weather months. (This provision becomes effective as of October 15, 1980).

~~or;~~

2. Where the residential customer has not declared his or her inability to pay or where the commission has determined that the residential customer is able to pay and, in either case, the residential customer has entered into a payment schedule and is reasonably on time with his or her payments under the schedule.

E. Payment agreements Declaration of inability to pay.

~~1. A deferred payment agreement or an alternative payment agreement shall state immediately preceding the space provided for the customer's signature and in bold face print at least two sizes larger than any other used thereon: "IF YOU ARE NOT SATISFIED WITH THIS AGREEMENT, DO NOT SIGN. IF YOU DO SIGN THIS AGREEMENT, YOU AGREE THAT YOU OWE THE AMOUNT STATED TO BE YOUR OUTSTANDING BILL AND YOU AGREE TO MAKE PAYMENTS IN ACCORDANCE WITH THIS PLAN".~~

~~2. If during the term of a payment agreement consumption or rates are substantially greater than estimated, the difference shall be amortized over subsequent months for a reasonable time, and the required payments shall be adjusted accordingly. At least 30 days prior to billing the customer such an adjusted amount, the utility shall send written notice of the reasons for the adjustment and the amount of the adjusted monthly installment.~~

~~3. If during the term of a payment agreement the consumption or rates are substantially less than estimated, the utility shall refund any excess payments as soon as possible and shall~~

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## ADOPTED RULES

~~adjust future billings under the agreement accordingly. The utility may, with express consent of the customer, credit excess payments to future bills. Such consent must be given in writing, and signed after the amount of any excess payments has been determined and reported to the customer.~~

~~4. The terms of a payment agreement may be modified because of a change in a customer's circumstances if it would be reasonable to do so. Reasonableness shall be determined under the criteria set forth in this rule for determination of the initial payment.~~

~~5. Any payments made by a customer in compliance with a payment agreement or otherwise, shall first be considered made in payment of the previous account balance with any remainder credited to the current bill.~~

1. Prior to disconnecting the service affecting the primary heat source of any residential unit for failure to make payment for such service, the utility shall serve, personally or by first class mail, the following upon the residential customer and any designated third party:

a. A commission-approved Notice of Proposed Disconnection;

b. A Notice of Residential Customer Rights and Possible Assistance; and

c. A commission-approved, addressed, postage pre-paid form on which a residential customer, or any designated third party, may declare his or her inability to pay.

2. The utility shall not disconnect the service for seven working days after the residential customer's receipt of personally served notice, or for ten working days after the utility has deposited first class mail notice in the United States mail. If the utility has not received a response from the residential customer or any designated third party within the appropriate period, the service may be disconnected, pursuant to 4 MCAR §§ 3.0298, 3.0299 H., 3.0300 and 3.0301.

3. The utility may accept the residential customer's declaration of inability to pay or appeal the residential customer's declaration of inability to pay to the commission in writing, on forms prescribed by the commission, within seven working days after receipt. The utility shall not prevent any residential customer or designated third party from making a declaration.

4. If it appeals, a copy of the appeal, and a commission-approved letter explaining that the residential customer may have his service terminated, shall be mailed by the utility to the local welfare agency and any local community organization responsible for dispersing fuel emergency assistance on the same day as the utility files its appeal.

F. Termination for Failure to enter into or comply with payment agreement. Commission determination of inability to pay. If a customer has failed to enter into or comply with the terms of a payment agreement, the utility shall have the right to disconnect pursuant to the procedures and requirements of PSC 298, 300, and 301, but subject to the restrictions contained in the minimum temperature restriction. If the utility has offered a

~~deferred payment agreement and the customer has failed to enter into such agreement within the time provided herein, or if the customer has failed to comply with a payment agreement, then the utility shall notify the local welfare agency orally, followed by a written notice within five days, of their intent to discontinue service; the name and address of the customer, and telephone number if known; the name and address of any tenant occupying the residential unit if such tenant is not the customer of the utility, and telephone number of the tenant if known; and a statement of the amount then due and payable. The utility shall not terminate service until 10 days after the written notice is given to the local welfare agency.~~

1. All appeals of declarations of inability to pay shall be determined on an informal basis by the commission within thirty days after receipt of the utility's written appeal.

2. The commission shall determine the residential customer's inability to pay based upon the following:

a. A finding that the residential customer is in compliance with 4 MCAR § 3.0299 D.1.; and

b. A finding of "lower budget," as defined in the Bureau of Labor Statistics Guidelines, which are those applicable on the effective date of this rule.

3. In making its determination, the commission shall consider one or more of the following:

a. The most recent income tax return(s) filed by members of the residential customer's household; or

b. For each employed member of the residential customer's household, either paycheck stubs for the last two months or a written statement from the employer of wages earned during the preceding two months; or

c. A medicaid card or food stamps eligibility document; or

d. Documentation that the residential customer is on a pension from the Department of Public Welfare, the Social Security Administration or other pension providers; or

e. A letter showing the residential customer's dismissal from a job or other documentation of unemployment; or

f. Other documentation which supports the residential customer's declaration of inability to pay.

4. The utility shall not disconnect the service until expiration of the 30 day appeal period. If the commission determines that the residential customer is able to pay, the utility may disconnect the service, pursuant to 4 MCAR §§ 3.0298, 3.0299 G., 3.0300 and 3.0301.

G. Disputes. Payment schedule. If a dispute arises concerning the reasonableness, application or performance of any payment agreement or modification of a payment agreement under this rule, the utility shall provide the customer with a copy of the commission's customer service rules and the telephone number of the Department of Public Service together with a statement that the customer may call the Department for information and assistance. The commission may resolve any such dispute

~~which cannot be resolved by the department on an informal basis.~~

~~Disputes not involving a payment agreement shall be governed by PSC 303.~~

1. Every residential customer, without regard to his or her ability to pay, who receives a notice of proposed disconnection during cold weather months, shall have the right to a payment schedule. A designated third party may request and negotiate a payment schedule on behalf of a residential customer.

2. It shall not be necessary to establish a payment schedule until the utility has accepted the residential customer's declaration of inability to pay, or the residential customer has refused to sign the declaration of inability to pay, or the commission has determined an appeal of a residential customer declaration of inability to pay.

3. The utility and residential customer or any designated third party shall attempt in good faith to arrange a payment schedule, which shall take into consideration the residential customer's economic situation and any extenuating circumstances.

4. The residential customer or third party should notify the utility immediately of any circumstances making it impossible for the residential customer to comply with the payment schedule and should propose specific modifications to the payment schedule. Upon receipt of a request for modification of a payment schedule, the utility shall consider changes in the residential customer's consumption pattern, utility rate increases effective since the date of the original schedule and changes in the residential customer's financial circumstances.

5. No residential customer who has declared his or her inability to pay, or if appealed, has been determined to be unable to pay, shall be disconnected during cold weather months for failure to make payments under a payment schedule which applies to that period of time.

6. The utility shall provide the residential customer and any designated third party with a commission-approved written notice of the right to appeal to the commission when the utility and residential customer are unable to agree on the establishment, reasonableness or modification of a payment schedule, or on the reasonable timeliness of the payments under a payment schedule. Any appeal must be made within seven working days after the residential customer's receipt of personally served notice, or for ten working days after the utility has deposited first class mail notice in the United States Mail.

7. In determining an appeal, the procedures set forth in 4 MCAR § 3.0299 F. shall apply. The determination shall be based upon the criteria set forth in the Bureau of Labor Statistics Guidelines.

8. The utility shall not disconnect service while a payment schedule is pending appeal, or until any appeal involving payment schedules has been determined by the commission. If no appeal is made by the residential customer or designated third party and the residential customer has been determined to have the ability to pay his or her utility bill pursuant to 4 MCAR § 3.0299 F., the utility may disconnect service pursuant to the procedures and requirements of 4 MCAR §§ 3.0298, 3.0300, and 3.0301.

~~H. Exemptions. Disconnection of potentially unoccupied units. The commission may grant variances from this rule upon a showing of good cause, and may suspend part or all of this rule in order to comply with federal regulations.~~

1. Prior to disconnecting any service affecting the primary heat source of any residential unit, when the utility has received no response to the Notice of Proposed Disconnection within ten working days after the utility has deposited first class mail notice in the United States mail, the utility shall investigate whether the unit is occupied or unoccupied, which at a minimum shall include:

a. One visit by the utility to the unit during normal working hours;

b. If personal contact is not made, and there is reason to believe that the unit is occupied, the utility shall make another on-site visit during non-business hours.

2. If contact is made with the residential customer, the utility shall provide the residential customer with the Notice of Residential Customer Rights and Possible Assistance and an addressed, postage prepaid form with which the residential customer may make a statement of inability to pay for the service, in which case sections 4 MCAR § 3.0299 E. and F. shall apply. At least seven working days before disconnecting the residential customer, the utility shall notify by telephone and a commission approved letter the local welfare office and any local community organization responsible for dispersing fuel emergency assistance of the proposed disconnection.

3. If the utility is unable to contact the residential customer, and it reasonably appears from the on-site inspections that the unit is unoccupied, the utility shall provide notice by first class mail to the recorded billing address of the residential customer. Such notice shall include an easy-to-understand explanation of the protections of this rule, Notice of Residential Customer Rights and Possible Assistance, and an addressed, postage prepaid form with which the residential customer may make a declaration of inability to pay. If no response has been received by the utility after ten working days after the utility has deposited first class mail notice in the United States mail, the service may be disconnected.

4. If, following disconnection, the residential unit is

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# ADOPTED RULES

found to be occupied, the utility must reconnect service if the residential customer or designated third party:

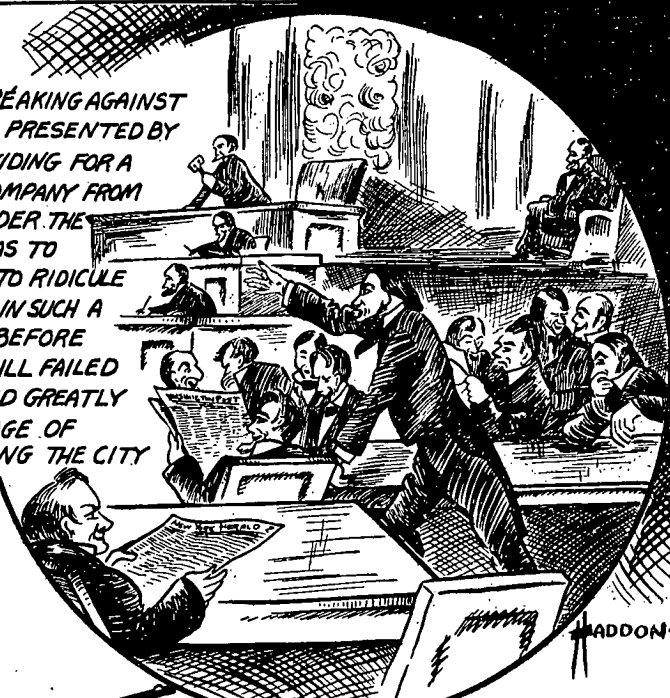
- a. Agrees to pay the outstanding balance owed the utility, or
- b. Agrees to enter a payment schedule with the utility, or
- c. Asserts his or her rights under 4 MCAR §§ 3.0299 E. and 3.


1. Reconnection at beginning of cold weather months. The utility shall reinstate service which in any way affects the primary heat source of a residential unit if such service remains disconnected as of October 15 if the residential customer makes application for reinstatement and is reasonably on time with his or her payments under a payment schedule. Any residential customer disconnected as of October 15 shall have the same rights as provided in 4 MCAR § 3.0299 G.

## GOPHER TALES

By  
**BLAKE HADDON**  
Copyright, 1936.

**J. PROCTOR  
KNOTT** IN SPEAKING AGAINST  
A BILL PRESENTED BY  
A MINNESOTA CONGRESSMAN PROVIDING FOR A  
GRANT OF LAND FOR A RAILROAD COMPANY FROM  
HUDSON TO SUPERIOR, LABORED UNDER THE  
MISTAKEN IDEA THAT THE ROAD WAS TO  
END IN DULUTH, AND PROCEEDED TO RIDICULE  
THE THEN LITTLE UNHEARD OF TOWN IN SUCH A  
HUMOROUS SPEECH AS HAD NEVER BEFORE  
BEEN HEARD IN CONGRESS. THE BILL FAILED  
TO PASS, BUT DULUTH PROFITED GREATLY  
BY THE ADVERTISING. THE VILLAGE OF  
PROCTOR, ADJOINING THE CITY  
COMMEMORATES  
HIS NAME.







**XAVIER DE MAIR, A PIONEER  
MAIL CARRIER SHOT  
32 DEER  
IN THE FALL OF 1842, ALL WITHIN  
THE PRESENT LIMITS OF ST. PAUL.**

**FRESH OYSTERS WERE FIRST  
INTRODUCED INTO MINNESOTA BY  
GOVERNOR RAMSEY  
IN 1850!**

PRIOR TO THAT DATE COVE  
OYSTERS HAD BEEN IMPORTED.

**T**HE FIRST VESTIBULE TRAIN IN  
MINNESOTA MADE ITS APPEARANCE  
IN 1888, AND THE FIRST STEAM HEATED  
TRAIN IN 1889!





(159)



# SUPREME COURT

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## Decisions Filed Friday, January 25, 1980

### **48288/498 State of Minnesota vs. Donald Rossbach, Jr., Appellant. Clearwater County.**

State had jurisdiction to prosecute a defendant for aggravated assault where the facts revealed that defendant, standing on an Indian Reservation, fired a high-powered rifle at a deputy sheriff standing across the border on Minnesota land.

Postaccusation delay of seven months did not constitute a denial of criminal defendant's right to a speedy trial.

Petitioner in postconviction proceedings failed to meet his burden of proving that his counsel did not represent him adequately or that trial court committed prejudicial error in denying motion for pretrial continuance.

Affirmed. Sheran, C. J.

### **49955/444 Paul E. Kasch, et al, petitioners, Appellants, vs. Clearwater County, et al. Clearwater County.**

The purpose of Minn. Stat. § 97.481 (1978) is to ensure, through state ownership, that wetlands and wildlife lands are preserved and properly developed.

The requirement in § 97.481 that land sales to the state be approved by the county board was included to give county boards an opportunity to consider local concerns affected by sales to the state that may outweigh the state policies advanced by the statute, not to give the board an unlimited veto power over such sales.

The county board's failure to act upon plaintiffs' request to sell their land pursuant to § 97.481 was arbitrary; since the matter is still pending, the board must approve or disapprove the proposed sale and contemporaneously state reasons for its decision.

Reversed and remanded. Rogosheske, J.

### **49924/Sp. Vernco, Inc., et al, Appellants, vs. Township of Manyaska, Martin County, Minnesota. Martin County.**

Although substitute service on a municipality is an impermissible method of statutory service of notice of an appeal from a proposed assessment; where the township receives actual notice of the appeal within the statutory time limit such actual notice is sufficient to confer jurisdiction upon the district court.

Reversed. Kelly, J.

### **48495/80 Minnesota Arrowhead District Council 96 of American Federation of State, County and Municipal Employees, Appellant, vs. St. Louis County, et al. St. Louis County.**

The Public Employee Labor Relations Act which requires public employers to negotiate "terms and conditions of employment" allows for, but does not make mandatory, negotiation on matters of inherent managerial policy. Minn. Stat. §§ 179.66, subd. 2; 179.60, subd. 1.

Terms and conditions of employment and matters of inherent managerial policy may and do overlap where a county creates new job classifications and sets the pay scale for these positions.

Where a valid labor contract requires negotiation on new job classifications and wages for those positions a county is required to negotiate on even matters of inherent managerial policy because the county voluntarily made the matter subject to negotiation in the labor contract.

The Public Employee Labor Relations Act does not supersede the St. Louis County Civil Service law where the county voluntarily made mandatory a subject of negotiation which the Civil Service law did not require the county negotiate.

Affirmed in part; reversed in part; and remanded for further action in accordance with this opinion. Kelly, J.

### **49560, 49573, 49586/331 In the Matter of the Welfare of Shannon Noel Solomon, Child. McLeod County.**

Minn. Stat. § 257.025 (1978) has no application in a proceeding to terminate parental rights.

Parental rights may not be terminated solely on the ground that it is in the best interests of the child to do so; a specific statutory ground must be established before such an action can be taken.

The evidence is insufficient to support termination of parental rights under Minn. Stat. § 260.221 (b) (4) & (5) (1978).

Under the circumstances of this case, dependency status will be continued with instructions to the trial court to commence a supervised program of increased parental control by the natural mother with the goal of returning custody of the child to the natural mother if and when it may be done with minimal negative effects on the child.

Affirmed in part; remanded in part. Kelly, J.

**49562, 49582/410 Ruth Ann Flom vs. Robert P. Flom, Appellant (49562), City of Owatonna, Appellant (49582). Steele County.**

The jury verdict of causal negligence on the part of each defendant was supported by sufficient evidence.

The jury apportionment of causal negligence was not manifestly and palpably contrary to the weight of the evidence.

Affirmed. Kelly, J. Took no part. Todd, J.

**49575/430 In the Matter of the Welfare of David R. Clausen, Jr. Freeborn County.**

The findings of the trial court are legally sufficient to support a termination of appellant's parental rights pursuant to Minn. Stat. § 260.221 (b) (5) (1978).

The foreseeable permanency of a parent's inability to care for his or her child is a relevant factor in determining whether reasonable efforts have failed to correct the conditions leading to the neglect adjudication. This factor was adequately considered by the trial court.

There is substantial evidence in the record to support the trial court's findings and order terminating appellant's parental rights.

Appellant was given a sufficient amount of time to correct the condition leading to the neglect of his child under the facts of this case.

The trial court properly took judicial notice of files and records from the juvenile division and the criminal division of its own jurisdiction.

Affirmed. Todd, J.

**49930/448 Property Research and Development Company vs. City of Eagan, et al, Appellants. Dakota County.**

There is no vested right in a zoning classification.

Mandamus does not lie as a landowner's remedy for the city's failure to approve a preliminary plat where a subsequent change in zoning precludes using the land as contemplated in the preliminary plat.

Reversed. Todd, J.

**49691/461 State of Minnesota vs. Stephen T. Abe, Appellant. Hennepin County.**

Minn. Stat. § 169.127 (1976) did not require a driver to be advised that a 90-day license revocation may be imposed if the driver submits to a blood alcohol test which reveals his blood alcohol content to be .10 percent or more.

Minn. Stat. § 169.127 (1976) did not violate due process when it did not require that the 90-day warning be given.

Affirmed. Todd, J.

**50636, 50685/120 Urban Council on Mobility, petitioner, vs. Minnesota Department of Natural Resources and Associated Families, intervenor, Appellant. Dakota County.**

It is this court's function to make an independent examination of an administrative agency's record and determine whether there is substantial evidence supporting an administrative decision on appeal. After a careful and thorough examination of that record in this case, we are satisfied that this test has been met. There is abundant evidence establishing that the highway route selected by the Commissioner of Natural Resources in his order of December 15, 1978, is the superior alternative because it will have less of an impact on water quality, wildlife habitat, aesthetics, and area quietude.

The Commissioner of Natural Resources is expressly granted statutory authority to require such modification of a proposed plan as he deems proper to protect the public interest. The commissioner acted properly in ordering one route over another where the record discloses extensive analysis of both routes, even though the commissioner's choice was not the specific route for which a permit was requested.

It is not a denial of due process for an agency staff to act as an advocate at a hearing wherein the ultimate decision is made by the agency head.

Reversed with instructions. Scott, J.

**49103/261 Florence Kahn vs. State of Minnesota, University of Minnesota, (self-insured), Relator, Travelers Insurance Company, intervenor, Blue Cross and Blue Shield of Minnesota-Minnesota Indemnity, Inc., intervenor. Workers' Compensation Court of Appeals.**

The record adequately supports the finding that respondent was a casual employee of the University.

Under the facts unique to the situation of the employee in this case, her injury arose out of and in the course of her employment.

The period in which notice of claim must be given under Minn. Stat. § 176.141 (1971) in case of physical or mental incapacity is extended for 90 days beyond the date when the incapacity ceased.

An employer is estopped from raising delay in filing formal notice to bar an employee's claim where that delay was induced by the employer's agent.

Affirmed. Wahl, J. Dissenting, Otis, J., Rogosheske, J., and Peterson, J. Dissenting in part, Todd, J.

**49230/354 (1978) Kathryn Jonson, et al, Petitioners, vs. Joan Anderson Growe, Secretary of State, et al. Supreme Court.**

In anticipation of a special primary election to nominate a United States Senator, to be held at the same time as a regular primary election and to be conducted pursuant to Minn. Stat. § 202A.721 (1978), the secretary of state was correct in applying Minn. Stat. § 203A.23, subd. 7 (1978), and in directing county auditors to use consolidated ballots authorized by Minn. Stat. § 203A.41, subd. 3 (1978), rather than separate ballots provided for in Minn. Stat. § 202A.62, subd. 4 (1978).

Petition denied. Per Curiam. Took no part, Sheran, C. J.

**49979/479 Steven Thurik vs. Department of Economic Security vs. John Marcus Dental Supply Company, Relator. Department of Economic Security.**

The decision of the commissioner of Department of Economic Security granting unemployment compensation benefits must be reversed where the record establishes that the employee engaged in misconduct which interfered with and adversely affected his work and the work of others.

Remanded with instructions. Per Curiam.

## **Decision Filed Tuesday, January 22, 1980**

**50639/189 State of Minnesota, Appellant, vs. Jeffrey Michael Potter. Cass County.**

District court erred in ruling that defendant's arrest for an assault which defendant allegedly committed while being taken to an alcohol detoxification center was illegal because the assault would not have occurred if the officer had restrained defendant more effectively; since court erred in concluding that other charges, including charges based on evidence seized from custodial search of defendant during booking process, were fruit of an unlawful arrest.

Reversed and remanded for trial. Sheran, C. J.

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## **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 Economic Security Program and Management Support**

#### **Notice of Request for Proposals for Television Spot Announcements**

##### **Agency Name and Address**

Minnesota Department of Economic Security, 390 North Robert Street, St. Paul, Minnesota 55101.

##### **Contact Person**

Richard Williams, Director, Public Information and Education, Minnesota Department of Economic Security, 390 North Robert Street, St. Paul, Minnesota 55101. Telephone 612/296-1082.

##### **Complete Description of Project and Tasks**

The vendor will be expected to prepare television spot announcements using its own resources and those supplied by the Department. The vendor must have the capability to: conceive and produce a script from supplied narratives and information; select a narrator, actors and actresses, sets and sound effects; direct talent; conduct studio and location recording and filming (or taping); complete the final production; and provide a master copy and cassette of finished work.

## STATE CONTRACTS

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This Request for Proposals does not obligate the state to complete the project, and the state reserves the right to cancel the solicitation if it is considered to be in its best interest.

**Cost Estimate:** \$20,000

### **Length of Contract**

Until funds are expended, or for the duration of one year, beginning February 22, 1980, whichever comes first.

### **Final Submission Date for Proposals**

Detailed requests for proposal are available from the contact person. All proposals must be received by 4:30 p.m., February 15, 1980.

## **Department of Transportation Technical Services Division Notice of Availability of Contract for Rewrite of Mn/DOT Road Design Manual**

The Minnesota Department of Transportation (Mn/DOT) advertised in the *State Register*, Monday, December 3, 1979, for a consultant to rewrite its Road Design Manual. The availability of the contract is being readvertised due to an increase in estimated cost. The work program will remain the same and would include:

(1) Discussions with department chapter specialists on needs.

(2) A review of currently published department design information.

(3) Review of currently published federal design standards, i.e.; FHWA, AASHTO, etc.

(4) Incorporate all collected information into preparation of chapter drafts and submit to the department for review.

(5) Revise drafts as necessary and submit final manual to department for approval.

The new estimated cost for the project would range from \$125,000 to \$160,000.

Firms desiring consideration should submit their brochure and/or experience resume such as the federal forms 254 and 255 before February 12, 1980. Firms that have already expressed an interest in this project are not required to reply to this advertisement. They will be contacted by separate letter. This is not a request for proposal. Requests for proposal will be sent to respondents. Submittal of proposal deadline will be March 14, 1980.

Please send your response to:

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

## OFFICIAL NOTICES

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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 Commerce Banking Division**

### **Bulletin No. 2171: Maximum Lawful Rate of Interest for Mortgages for February 1980.**

Notice is hereby given that the Banking Division, Department of Commerce, State of Minnesota, pursuant to House File

No. 564, Chapter 279, 1979 Session Laws, as it amended Minn. Stat. § 47.20, subd. 4, effective May 31, 1979, hereby determines that the maximum lawful rate of interest for home mortgages for the month of February 1980 is thirteen and one-half (13.50) percent.

January 23, 1980

Michael J. Pint  
Commissioner of Banks

**Department of Education  
Vocational-Technical  
Education Division**

**Notice of Public Hearing on  
Revision of 1980 Area Vo-Tech  
Institute Aid**

This is to announce that a public hearing will be held on Monday, February 11, at 10:30 a.m. in Room 716 of the Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101, on the recommended revisions of the Fiscal Year 1980 area vocational-technical institute aid distribution levels.

**Department of Health**

**Notice of Application for Licensure  
to Operate a Life Support  
Transportation Service Based at  
Hill City, MN**

On November 28, 1979, a complete application for a license to operate a proposed life support transportation service with base of operation at Hill City Fire Hall, Hill City, Minnesota 55148, submitted by Bruce Christensen, was received by the Department of Health. This notice is given pursuant to Minn. Stat. § 144.802 (1979), which requires that the Commissioner shall publish the notice, at the applicant's expense, in the *State Register* (February 4, 1980) and in a newspaper in the municipality in which the service would be provided; or, if no newspaper is published in the municipality or if the service would be provided in more than one municipality, in a newspaper published at the county-seat of the county or counties in which the service would be provided. Each municipality, county, community health service agency and any other person wishing to comment on this application to the Health Systems Agency (Health Systems Agency of Western Lake Superior), shall do so before the close of business on March 5, 1980.

After a public hearing has been held in one of the municipalities in which the service is to be provided, the Health Systems Agency (Western Lake Superior) shall recommend that the commissioner either grant or deny a license or recommend that a modified license be granted. The Health Systems Agency shall make the recommendations and reasons available to any individual requesting them.

Within 30 days after receiving the recommendation, the commissioner shall grant or deny the license to the applicant.

Any objections to or statements of support for this application pursuant to Minn. Stat. § 144.802 may be made in writing to Mark Farber, HSA of Western Lake Superior, 202 Ordean Building, 424 West Superior St., Duluth, Minnesota 55802.

**Metropolitan Council and  
Metropolitan Health Board**

**Public Hearing**

Joint Consideration Of:

**I. Proposed 1980-81 Health Systems Plan for the Metropolitan Area and Health Guide Chapter of the Metropolitan Development Guide**

**II. 1980-81 Annual Implementation Plan**

**III. Application for Renewal of HSA Designation**

The Metropolitan Council and Metropolitan Health Board will jointly hold a public hearing on Thursday, February 28, 1980, at 7:00 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, St. Paul, Minnesota 55101 for the purpose of receiving written and oral comments on the proposed 1980-81 Health Systems Plan and Health Guide Chapter of the Metropolitan Development Guide, 1980-81 Annual Implementation Plan and 1980-81 Application for Renewal of the Metropolitan Council/Metropolitan Health Board's HSA Designation. Copies of the Health Systems Plan and Health Guide Chapter, Annual Implementation Plan, and the 1980-81 HSA Application are available for public inspection beginning January 29, 1980, at the following locations:

Metropolitan Council Library  
300 Metro Square Building  
St. Paul, MN 55101

Minneapolis Public Library  
Government Documents Room  
300 Nicollet Mall  
Minneapolis, MN 55401

St. Paul Public Library  
Science and Industry Room  
90 West Fourth Street  
St. Paul, MN 55102

Anoka County Library—Blaine Branch  
707 Highway 10  
Blaine, MN 55434

Carver County Library—Chaska Branch  
314 Walnut Street  
Chaska, MN 55318

Dakota County Library—Burnsville Branch  
1101 W. County Rd. 42  
Burnsville, MN 55337

Hennepin County Library—Southdale Branch  
7001 York Avenue  
Edina, MN 55435

Ramsey County Library—Roseville Branch  
2180 N. Hamline Avenue  
Roseville, MN 55113

## OFFICIAL NOTICES

Scott County Library—Shakopee Branch  
235 S. Lewis Street  
Shakopee, MN 55379

Washington County Library—Park Grove Branch  
7520 - 80th Street S.  
Cottage Grove, MN 55106

Copies of those components affected by this revision of the Health Systems Plan, the Annual Implementation Plan, and Work Program and Budget for the agency are available free of charge from the Metropolitan Council Public Information Office, 300 Metro Square Building, St. Paul, Minnesota 55101, telephone 291-6464.

Persons wishing to speak at this public hearing may register in advance by contacting Eleanor Suneson at 291-6352. Those who register first will be scheduled to speak first. Comments will be received at the hearing, however, in the following order: 1) the Health Systems Plan; 2) the Annual Implementation Plan; and 3) the application as a Health System Agency. If you cannot attend you are encouraged to send written comments to the Metropolitan Health Board, up to seven days following this hearing. For further information contact the Metropolitan Health Board at 291-6352.

Coral Houle, Chairperson  
Metropolitan Health Board

Charles Weaver, Chairperson  
Metropolitan Council

## State Planning Agency Statewide Health Coordinating Council

### Notice of Public Hearing on Preliminary State Health Plan

Notice is hereby given that the Minnesota Statewide Health Coordinating Council will conduct a public hearing March 5, 1980 on the Preliminary State Health Plan prepared under Public Law 96-79, the National Health Planning and Resources Development Act, as amended. This plan integrates (1) regional priorities in the plans of the state's seven Health Systems Agencies and (2) key health policy reflected in state law and programs administered by state governmental agencies. As a result, goals and priorities of statewide significance are proposed along with recommendations for health service delivery and modification directed toward greater improvement in the health of Minnesota residents and more efficient and effective use of health resources.

Oral and written comments on the Preliminary State Health Plan will be taken by the Statewide Health Coordinating Council at the public hearing scheduled for 9:30 a.m. at the St. Paul Civic Center, Room C 1 and 2, 143 West Fourth Street, St. Paul. Written comments may also be submitted to the State Planning Agency, State Health Planning and Development Agency, 101 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota 55101. Comments must be received by March 6, 1980. Copies of the Preliminary State Health Plan are available at the State

Planning Agency and at the seven Health Systems Agencies for examination and copying. For additional information, call the State Planning Agency at (612) 296-2407.

## Minnesota Pollution Control Agency

### Preparation of An Environmental Impact Statement on Proposed Expansion of St. Regis Paper Company Paper Mill at Sartell, MN

#### Notice of Public Meeting on Draft EIS

Notice is hereby given that a public meeting will be held by the Minnesota Pollution Control Agency to receive public comment on the Draft Environmental Impact Statement (EIS) that has been prepared on the proposed expansion of the St. Regis Paper Company paper mill at Sartell, Minnesota. The public meeting will commence at 7:30 p.m. on Wednesday, March 5, 1980, at the City of St. Cloud Council Chambers, 315 St. Germain Street in St. Cloud, Minnesota. The meeting will continue until all persons who desire to do so have had an opportunity to present comments on the Draft EIS.

The St. Regis Paper Company presently owns and operates a paper mill on the Mississippi River in Sartell, Minnesota, with a capacity of 140 tons per day of groundwood pulp and 240 tons per day of lightweight coated paper. Bleached market pulp, in addition to the groundwood pulp, is used to make this paper. The company has proposed to expand the mill by installing a new paper machine capable of producing 480 tons per day of coated, magazine grade paper. The Draft EIS addresses this proposed expansion.

The Draft EIS on the proposed expansion was filed with the Minnesota Environmental Quality Board on February 4, 1980. The Draft EIS is available for public inspection at the offices of the MPCA at 1935 W. County Road B-2, Roseville, Minnesota, and at the public library in St. Cloud at 405 St. Germain Street.

Anyone who wishes to make an oral statement or to submit a written statement will be permitted to do so at the meeting. In addition, the record shall remain open for a period of 20 days after the last day of hearing to allow any person to submit additional information or opinions. Persons wishing to submit written information or opinions should mail those to:

Mr. Dale McMichael  
Minnesota Pollution Control Agency  
1935 West County Road B-2  
Roseville, Minnesota 55113

All written and oral statements received into the record, or summaries thereof, will be included as a part of the Final EIS. It is anticipated that the MPCA will act on the Final EIS at its April 1, 1980, Board Meeting.

January 25, 1980

Terry Hoffman  
Executive Director

STATE OF MINNESOTA  
OFFICE OF THE STATE REGISTER

Suite 415, Hamm Building  
408 St. Peter Street  
St. Paul, Minnesota 55102  
(612) 296-8239

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