

81 Apr. 13

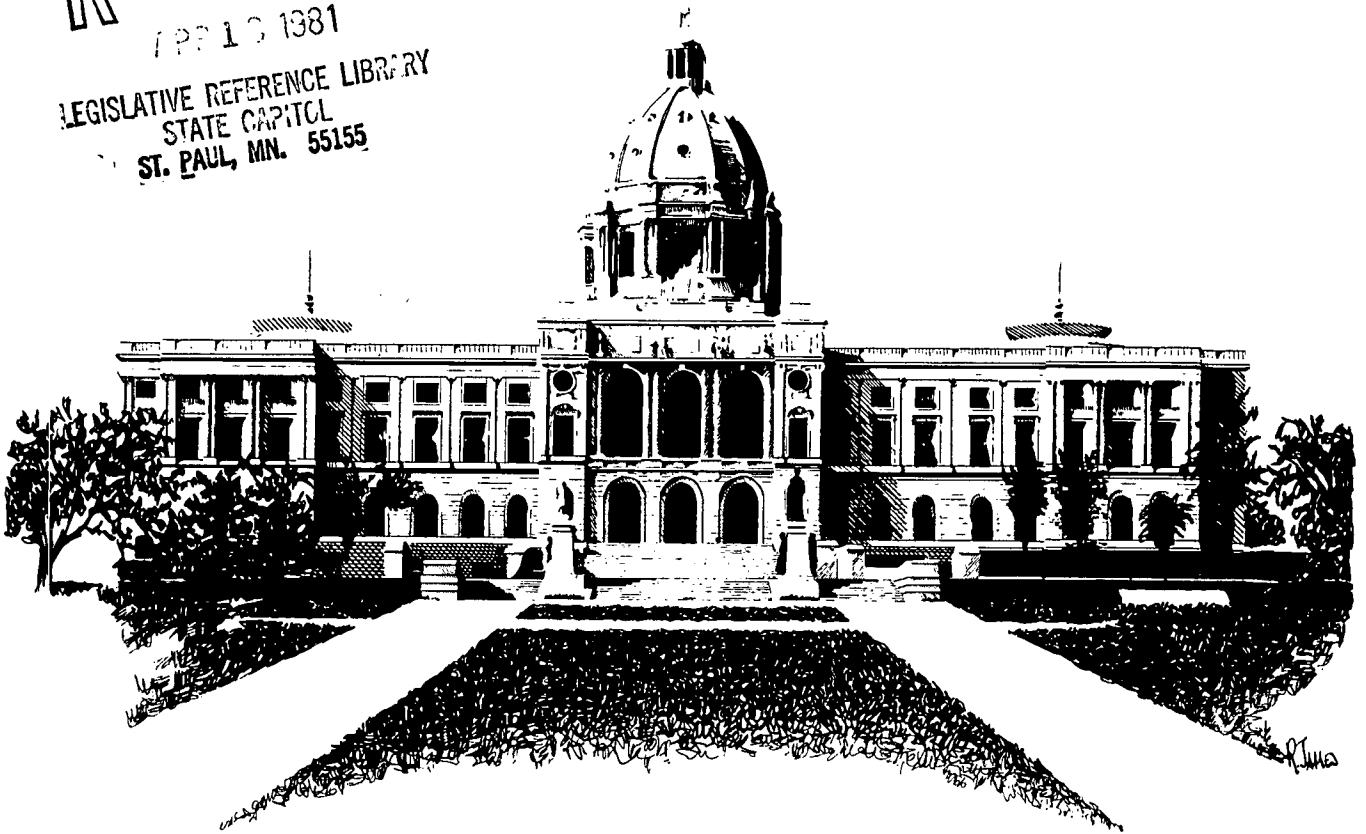
STATE REGISTER

STATE OF MINNESOTA

RECEIVED

APR 13 1981

LEGISLATIVE REFERENCE LIBRARY
STATE CAPITOL
ST. PAUL, MN. 55155



VOLUME 5, NUMBER 41

April 13, 1981

Pages 1599-1626



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 5			
42	Monday Apr 6	Monday Apr 13	Monday Apr 20
43	Monday Apr 13	Monday Apr 20	Monday Apr 27
44	Monday Apr 20	Monday Apr 27	Monday May 4
45	Monday Apr 27	Monday May 4	Monday May 11

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

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

Instructions for submission of documents may be obtained from the Office of the State Register, 506 Rice Street, St. Paul, Minnesota 55103, (612) 296-0930.

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, 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 \$120.00 per year, 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.

Subscribers who do not receive a copy of an issue should notify the *State Register* Circulation Manager immediately at (612) 296-0931. Copies of back issues may not be available more than two weeks after publication.

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

David Zunker
Information Officer

James J. Hiniker, Jr.
Commissioner
Department of Administration

Paul Hoffman, Robin PanLener
Editorial Staff

Stephen A. Ordahl
Director
State Register and
Public Documents Division

Roy Schmidtke
Circulation Manager

Cindy Peterson
Secretary

CONTENTS

MCAR AMENDMENTS AND ADDITIONS

Inclusive listing for Issues 40-41..... 1602

PUBLIC HEARINGS CALENDAR

Week of April 20-27, 1981..... 1602

PROPOSED RULES

Economic Security Department

Minnesota Youth Employment Act notice of extension of comment period on proposed amendments..... 1603

Pollution Control Agency

Air Quality Division

Permit Program for the Growth or Expansion of Industry in Nonattainment Areas [notice of intent to adopt rule without a hearing]..... 1603

Pollution Control Agency

Air Quality Division

Standards of Performance for Coal Handling Facilities within Designated Areas [notice of intent to amend rules without a public hearing]..... 1608

TAX COURT

State of Minnesota, Tax Court, Ramsey County, Regular Division, American Water Resources Association, Appellant, v. The Commissioner of Revenue, Appellee. In the Matter of An Appeal from the Commissioner's Order Dated December 19, 1978, Relating to the Denial of the Application for A Certificate of Exempt Status in Respect of Sales and Use Tax. Docket No. 2828. Order Dated March 24, 1981..... 1610

SUPREME COURT

Decisions Filed Friday, April 3, 1981

50183/Sp. Juanita L. Steele, Appellant, v. Edgar S. Steele, Hennepin County..... 1613
 81-134/Sp. State of Minnesota, Appellant, v. Ronald James Fisher, etc. Washington County..... 1613
 51329/240 Robert T. McClellan, Relator, v. Northwest Airlines, Inc., and Commissioner of Economic Security, Ramsey County..... 1613
 51393/338 1/2 Harold and Margot Siegel, Appellants, v. Empire Savings Bank; Empire Savings Bank v. Bio-Realty, Inc., Appellant, Brookdale Ten Investment Co., Appellant, Twin City Federal Savings and Loan Association, Defendant, and Harold and Margot Siegel, Appellants, Hennepin County..... 1613
 51587/Sp. James Paul Moffitt, Appellant, v. State of Minnesota, Ramsey County..... 1613
 50467/378 Gary Berggren, et al., petitioners, Appellants, v. Town of Duluth v. Bruce Lindberg, d.b.a. Bruce Lindberg Company, intervening respondent, St. Louis County..... 1613
 50669/3 Howard B. Carstedt, Appellant, v. Gordon L. Grindeland, et al. Hennepin County..... 1614
 50920/Sp. Northwestern National Bank of South St. Paul, Plaintiff, Richard L. Gill v. William H. Kroll and Irene W. Kroll, husband and wife, Appellants, Hennepin County..... 1614
 50637/338 Holiday Acres No. 3, a partnership, v. Midwest Federal Savings and Loan Association of Minneapolis, Appellant, Dakota County..... 1614
 50799/383 Fran McDonough, Angela McDonough, and Winkel's Inc., d.b.a. Fran McDonough's Bar and Restaurant, Appellants, v. Brite Lite Electric Company, Ramsey County..... 1614
 51245/4 Paul Frank Sargent, Relator, v. Preston-Haglin Construction Co., et al. Workers' Compensation Court of Appeals..... 1614
 51624/Sp. State of Minnesota v. William Lee Jones, Appellant, Ramsey County..... 1614

STATE CONTRACTS

Administration Department

Contract Management Division

Court Reporting Services..... 1615

Administrative Hearings Office

Hearing Examiner Services..... 1615

Energy Agency

Mini-Audit Follow-up Inspections (Engineer/Architect)..... 1615

Metropolitan Health Board

Meeting Notice..... 1616

Health Department

Community Services Division

Operation of An Automated Uniform Food Delivery and Management Information System for the Special Supplemental Food Program for Women, Infants, and Children (WIC)..... 1616

Higher Education Coordinating Board

Post-Secondary Level Continuing Education Projects..... 1616

Metropolitan Council of the Twin Cities Area

Services in Preparing the Regional Transportation Policy Plan..... 1617

Public Welfare

Income Maintenance Bureau

Outside Opinion Sought Concerning the Permanent Rule for Pre-admission Screening for Long-term Care..... 1617

Public Welfare Department

Residential Facility: Brainerd State Hospital

Medical Services (laboratory, physician, radiologist)..... 1617

Public Welfare Department

Moose Lake State Hospital

Medical Services (radiologist; psychiatrists; pathologist; specialist in physical & internal medicine; dermatologist; ophthalmologist)..... 1618

Public Welfare Department

Rochester State Hospital

Medical Services (pathologist; clinical laboratory)..... 1618

Public Welfare Department

Willmar State Hospital

Medical Services (psychiatrists; radiologists; laboratories; physicians; chaplain)..... 1619

OFFICIAL NOTICES

Agriculture Department

Agronomy Services Division

Notice of Special Local Need Registration for SBP-1382-40MF "Z"..... 1620
 Notice of Special Local Need Registration for Velpar Gridball Brush Killer..... 1620

State Board of Education

(State Board for Vocation Education)

Department of Education

Vocation-Technical Division

Outside Opinion Sought Regarding Proposed Rules Governing Complaint Procedures..... 1621

Health Department

Health Systems Division

Outside Opinion Sought Relating to the Vulnerable Adult Abuse Act..... 1621

Pollution Control Agency

Outside Opinion Sought Regarding Review of the Existing Rule APC 8. Open Burning..... 1622

Transportation Department

Resolution of the City of Virginia's Objections to the Denial by the Commissioner of Transportation of A Variance from Design Standard for the Chestnut Street Renovation Project [order for and notice of hearing]..... 1623

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:

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A 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:

Issues 1-13, inclusive	Issue 39, cumulative for 1-39
Issues 14-25, inclusive	Issues 40-51, inclusive
Issue 26, cumulative for 1-26	Issue 52, cumulative for 1-52
Issue 27-38, inclusive	

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

MCAR AMENDMENTS AND ADDITIONS

TITLE 6 ENVIRONMENT

Part 4 Pollution Control Agency

6 MCAR § 4.0033 (proposed)	1608
6 MCAR § 4.0041 (proposed)	1603
6 MCAR § 4.6086 (adopted)	1583

TITLE 13 TAXATION

Part 1 Revenue Department

13 MCAR §§ 1.0001-1.0007 (proposed)	1572
13 MCAR §§ 1.0022, 1.0027 (proposed)	1572

**Public Hearings on Agency Rules
April 20-27, 1981**

Date	Agency & Rule Matter	Time & Place
Apr 21	Corrections Department Juvenile Residential Facilities Hearing Examiner: Peter Erickson	9:30 a.m., State Capitol Bldg., Rm. 123, St. Paul, MN

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

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

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

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 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Economic Security

Proposed Amendments to the Rule Governing the Minnesota Youth Employment Act

Notice of Extension of Request Period

The Minnesota Department of Economic Security gave notice at *State Register*, Volume 5, Number 37, pp. 1433-1436, March 16, 1981 (5 S.R. 1433) that it intends to adopt certain changes in the rule governing procedures under the Minnesota Youth Employment Act, Minnesota Statutes §§ 268.34-268.36. The department has determined that these changes will be noncontroversial and has chosen to proceed without a public hearing pursuant to the provisions of Minnesota Statutes § 15.0412, subdivision 4(h). However, should seven or more persons submit a written request for a public hearing in the manner set forth below, the department will hold a public hearing on its proposed changes. Additionally, the public is invited to comment on the proposed rule, and the rule may be modified if modifications are supported by the data and views submitted. Written requests for a public hearing and/or comment must be submitted to Lawrence W. Cheetham, State Youth Services Supervisor, Minnesota Department of Economic Security, Room 528, 390 North Robert Street, Saint Paul, Minnesota 55101. The purpose of this notice is to announce the extension of the request and comment period, with requests and comments to be accepted until 4:30 p.m. on May 15, 1981.

Pollution Control Agency

Air Quality Division

Proposed Rule Governing the Agency's Permit Program for the Growth or Expansion of Industry in Nonattainment Areas

Notice of Intent to Adopt A Rule without A Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (hereinafter, "agency") intends to adopt the above-entitled rule without a public hearing. The agency has determined that the proposed adoption of this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, § 15.0412, subd. 4h (1980).

If adopted, the proposed rule would establish a permit program for the expansion or growth of emission facilities in areas of the state identified as nonattainment areas. The permit conditions set out in the proposed rule will insure that a subject emission facility grows or expands in a manner that results in an improvement in air quality.

The agency is authorized to adopt this rule under Minn. Stat. § 116.07, specifically, Minn. Stat. § 116.07, subd. 4 and subd. 4a (1980).

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

PROPOSED RULES

The agency has prepared a Statement of Need and Reasonableness that describes the agency's reasons for each provision of the proposed rule and identifies the data and information relied upon by the agency to support the proposed rule. A copy of the Statement of Need and Reasonableness and of the proposed rule are available and may be obtained by contacting:

Mr. Douglas Benson
Division of Air Quality
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
[Telephone: (612) 296-7740].

Persons interested in this rule have until May 14, 1981, to submit comments on the proposed rule. The proposed rule may be modified if the data and views submitted to the agency warrant modifications and the modifications do not result in a substantial change in the proposed language of the rule.

If, during the comment period, seven or more persons submit to the agency a written request for a hearing on the proposed rule, the agency shall proceed to schedule a public hearing before adoption of the proposed rule. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f.

Persons who wish to submit comments or to request a public hearing should submit such comments or requests no later than May 14, 1981, to Mr. Douglas Benson at the address given above. The agency asks that persons requesting a public hearing identify the particular provisions objected to, the suggested modifications to the proposed rule and the reasons and data relied on to support the suggested modifications.

In the event a hearing is required, a new notice of hearing will be mailed out and published in the *State Register*. Unless seven or more persons submit written requests for a public hearing, a public hearing will not be held and the agency will consider the adoption of the proposed rule at the May, 1981, agency meeting or as soon thereafter as possible. Persons who wish to receive a copy of the final rule as proposed for adoption should submit a written statement of such request to Mr. Douglas Benson at the address noted above.

After adoption of the final rule by the agency, without a public hearing, the proposed rule, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rule as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rule as proposed for adoption, should submit a written statement of such request to Mr. Douglas Benson at the address noted above.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as 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 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.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

Louis J. Breimhurst, Executive Director
Pollution Control Agency

Rule as Proposed (all new material)

14 MCAR § 4.0041 Offset rule.

A. Purpose. The purpose of this rule is to establish conditions to be included in permits which the agency issues, in accordance with the requirements of Minn. Stat. § 116.07, subd. 4a, to certain new, expanded, aggregated, or reconstructed stationary emission facilities in nonattainment areas. As such this rule shall be known as the "offset rule."

B. Applicability.

1. Except as provided in B.2., this rule applies to persons who propose to construct or modify a subject emission facility,

as described in B.4., in any nonattainment area. An emission facility shall be subject to this rule if, on the date of submittal of a complete permit application, the area in which the emission facility is proposed to be located is designated nonattainment.

2. This rule shall not apply in those nonattainment areas of the state for which a Plan has been developed and approved by the agency and the Environmental Protection Agency as providing sufficient emission reductions to both:

- a. bring the area into attainment with the primary ambient air quality standards by December 31, 1982; and,
- b. allow for growth in the nonattainment area during that period of time the area is designated nonattainment.

3. As used in this rule, the term modification shall not include:

- a. routine maintenance, repair or replacement;
- b. changes in method of operation unless such changes are disallowed by an agency rule, stipulation agreement, permit or order, or by a court order;
- c. increases in production rates unless such increases exceed the operating design capacity of any emission facility;
- d. increases in hours of operation unless such increases are otherwise restricted;
- e. use of a fuel generated from municipal solid waste;
- f. a change in ownership; or,
- g. use of a fuel or raw material in an emission facility that:
 - (1) was designed to accommodate such use prior to December 21, 1976; or,
 - (2) is commencing or has commenced the fuel or raw material use pursuant to an order under sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, 15 U.S.C. § 792 (1980), under a natural gas curtailment plan pursuant to the Federal Power Act, 16 U.S.C. § 791a (1980), or under section 125 of the Clean Air Act of 1977, 42 USC Section 7425.

4. "Subject emission facility" means:

- a. the proposed construction or modification of a new or existing stationary emission facility that:
 - (1) is or will be located in any area designated nonattainment for any ambient air quality standard except ozone and will result in a gross increase in emissions of at least 100 tons per year of the same criteria pollutant for which the area is designated nonattainment; or,
 - (2) is or will be located in an area designated nonattainment for ozone and will result in a gross increase in emissions of at least 100 tons per year of nonmethane hydrocarbons; or,
- b. the proposed modification of an existing stationary emission facility that:
 - (1) is located in any area designated nonattainment for any ambient air quality standard except ozone, has existing restricted emissions of at least 100 tons per year of the same criteria pollutant for which the area is designated nonattainment, and will result in a significant in-plant gross increase in emissions of that criteria pollutant. An in-plant gross increase is significant if the rate of the increase is at least the rate specified below:

(a) carbon monoxide:	100 tons per year;
(b) sulfur dioxide:	40 tons per year;
(c) nitrogen oxides:	40 tons per year;
(d) total suspended particulate matter:	25 tons per year;
(f) lead:	0.6 tons per year; or
 - (2) is located in an area designated nonattainment for ozone, has existing restricted emissions of at least 100 tons per year of nonmethane hydrocarbons, and will result in an in-plant gross increase of at least 40 tons per year of nonmethane hydrocarbons.

C. Definitions. The definitions specified in Minn. Rule APC 2 shall apply to the terms used in this rule unless otherwise defined herein. The following words shall have the meaning defined below:

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

PROPOSED RULES

1. "Air quality control region" means any of the seven geographic areas specified by the Agency for administrative purposes based on jurisdictional boundaries, urban and industrial concentrations, climate, meteorology, topography, and other factors affecting the interchange and diffusion of pollutants in the atmosphere. These areas are identified in 40 C.F.R. Subpart Y, Sections 52.1221 and 52.1226 (1980).
2. "Ambient air quality standards" mean the pollutant concentrations in Minn. Rule APC 1.
3. "Criteria pollutant" means any of the following: sulfur dioxide, suspended particulate matter; nitrogen oxides; carbon monoxide; ozone; nonmethane hydrocarbons; and lead.
4. "Fugitive emissions" mean those pollutant discharges which do not pass through a stack, chimney, vent, or other functionally equivalent opening and which discharges are quantifiable by methods in "Compilation of Air Pollutant Emission Factors: (OAQPS AP-42, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, N.C. 27711), or methods that the director has determined are comparably reliable.
5. "Lowest achievable emission rate" means, for any emission facility, the most stringent emission limitation or standard of performance that is achievable in practice by such class or category of emission facility. In no case shall the lowest achievable emission rate be construed to allow emissions in excess of any applicable standard. The emission limitation specified in any other state's plan shall be presumed to be achievable in practice unless a person demonstrates to the director that such emission limitation or standard of performance is not achievable for reasons other than economic costs.
6. "Net air quality benefit" means that offsets proposed to be obtained by a person, pursuant to paragraph D.1., are sufficient to result in a net reduction (on both a pounds per hour and a tons per year basis) in both the rate of emissions and level of ambient air quality in the area(s) affected by the proposed new or modified facility. The director shall find that there is such a net reduction if Y divided by X is equal to or greater than 1.1, where:
 - a. X = the proposed restricted emissions of a criteria pollutant for which an emission facility is subject to this rule;
 - b. Y = the legally enforceable reductions in restricted emissions to be used as offsets; and:
 - (1) for total suspended particulate matter and sulfur dioxide, modeling analyses consistent with "Guidelines on Air Quality Models" (OAQPS No. 1.2-080, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards) or methods that the director finds to be comparably reliable, provided by the permit applicant demonstrate that a majority of the receptor points in the modeled area affected by the subject emission facility show decreased ambient concentrations; or,
 - (2) for emissions of carbon monoxide, nitrogen oxides, lead, and nonmethane hydrocarbons, the offsets are obtained in the same air quality control region.
7. "Nonattainment area" means any geographic region that has been designated by the Agency as violating ambient air quality standards or by the U.S. Environmental Protection Agency as violating a federal standard set out in 40 C.F.R. Part 50.
8. "Offsets" means any documented reductions in restricted emissions of criteria pollutant(s) that:
 - a. are legally enforceable;
 - b. are achieved after August 7, 1977, or after the date of completion of the emission inventory used by the Agency in developing the most recent revision to the plan, whichever is later; and
 - c. result in a net air quality benefit.
9. "Plan" or "State Implementation Plan" means the state air quality control laws, rules, permits, stipulation agreements, and procedures, developed to insure compliance with state and federal ambient air quality standards.
10. "Plant" means any assemblage of building(s), structure(s), or emission facilities, on one or more adjacent or contiguous properties that are under common ownership or control and that are identified by the same two digit Standard Industrial Code as specified in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement.
11. "Restricted emissions" mean the maximum criteria pollutant discharges, including fugitive emissions, which may be emitted from an emission facility based on the most stringent of the following:
 - a. any emission standard or performance standard established in an applicable rule;
 - b. any emission standard or performance standard established in an applicable installation or operating permit or stipulation agreement;
 - c. any emission rate resulting from operation at design efficiency of air pollution control equipment for an emission facility;

d. any emission rate used as the basis for a revision to the State's Plan unless such a rate is shown to be in error within 90 days of the effective date of this rule in which case the corrected rate shall be used; or,

e. the emission rate to which the subject emission facility is physically limited.

D. Conditions for permit. The agency shall not issue permits for any subject emission facility unless the permit applicant has satisfied the conditions in this paragraph.

1. Prior to constructing or modifying a subject emission facility, except an emission facility that will be located in a nonattainment area for less than two years, the owner or operator of that facility shall obtain offsets for all emissions of nonattainment criteria pollutants that will result from construction or modification, except that, in the case of ozone nonattainment areas, the owner or operator of that facility shall obtain offsets for all emissions of nonmethane hydrocarbons that will result from construction or modification. An emission facility that remains in a nonattainment area for at least two years shall be subject to all the applicable requirements of this rule.

2. Prior to constructing or modifying an emission facility subject to this rule due to emissions of sulfur dioxide or total suspended particulate matter, a permit applicant shall perform a modeling analysis to determine whether the offsets to be obtained are sufficient to result in a net air quality benefit, shall analyze the data obtained and shall submit to the agency the modeling data, the modeling analyses, a detailed description of the system of continuous emission reduction planned, and emission estimates. All modeling shall be performed in accordance with "Guidelines on Air Quality Models" (OAQPS No. 1.2-080, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards) or methods that the director finds to be comparably reliable.

3. The permit applicant shall certify that all emission facilities in Minnesota which are owned or operated in whole or in part, by the same person or persons or owned or operated under common control of the same person or persons, are in compliance or are on a compliance schedule.

4. Any permit issued to a subject emission facility shall include a provision that limits emissions from said facility as follows:

a. The owner or operator of a subject emission facility shall install technology that restricts emissions from said facility to the lowest achievable emission rate of the nonattainment criteria pollutants for which the facility is subject to this rule. The permit shall specify the lowest achievable emission rate as defined in C.5.

b. The director shall waive the requirement of paragraph D.4.a. if the director determines that a performance standard based on design, equipment, work practice, operation or other alternative standard is more practicable than an emission rate.

E. Banking.

1. A person who has obtained a reduction in the amount of restricted emissions emitted from an emission facility shall be permitted to bank that reduction for future use as an offset (as allowed by this rule) under the following circumstances, limitations and conditions.

2. This rule authorizes a person to bank only those reductions in emissions that;

a. were obtained after August 7, 1977, but prior to the effective date of this rule and that are reported to the agency within six months of the effective date of this rule; or,

b. are obtained after the effective date of this rule.

3. In order to be eligible for banking, the emission reductions shall be final and enforceable, either through the terms of a stipulation agreement, permit, or other legal instrument obtained by an owner of a facility or through a permanent, physical alteration of the facility.

4. In order to be able to bank reductions in emissions, the person obtaining those reductions shall report to the Director the amount and location of the banked emissions and the time at which the banked emissions have become permanently and finally implemented. Such report shall be made within six months after the reductions have become final and enforceable or within six months after this rule has been adopted, whichever is later.

F. Limitation on use of offsets. To the extent that this rule creates a program for the use of offsets or allows persons to

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

PROPOSED RULES

purchase or obtain offsets, this rule shall not be construed to create a property right that requires compensation from the State should offsets later become unuseable due to a change in an applicable emission limitation or standard of the Agency.

G. Severability. If any provision of this rule or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect any other provision or application of any other part of this rule or any other rule which can be given effect without the invalid provision or application and to this end the provisions of this rule and the various applications thereof are declared to be severable.

Pollution Control Agency Air Quality Division

Proposed Amendments to 6 MCAR §§ 4.0033.B.7. and 4.0033.B.8.a., Standards of Performance for Coal Handling Facilities within Designated Areas

Notice of Intent to Amend Rules without A Public Hearing

Notice is hereby given that the Minnesota Pollution Control Agency (agency) intends to adopt amendments to the above entitled rule without a public hearing. The agency has determined that the proposed adoption of amendments to this rule will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h (1980).

The proposed amendments to 6 MCAR §§ 4.0033.B.7. and 4.0033.B.8.a. would, if adopted, make it clear that if fugitive emissions from enclosed coal handling facilities located within the Minneapolis-St. Paul Air Quality Control Region or within the boundaries of the City of Duluth exceed 20 percent opacity, the owner or operator of such facility must control those emissions by *either* installing control equipment *or* by using dust suppression methods. If the control equipment option is chosen, then the standard applicable to the facility is expressed in terms of a particulate grain loading. If dust suppression methods are used, then the standard applicable to the facility will be expressed in terms of opacity. A copy of the proposed amendments is enclosed.

Additional copies of this Notice and the proposed amendments are available and may be obtained by contacting Bradley Beckham at the following address and telephone number:

Bradley Beckham
Division of Air Quality
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113
Telephone: (612) 296-7265

Persons interested in these amendments shall have 30 days, specifically until May 15, 1981, to submit comments on the proposed amendments. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f (1980).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to Bradley Beckham at the address and telephone number previously stated.

Authority for the adoption of these amendments is contained in Minn. Stat. § 116.07, subd. 4 (1980). Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments and identifies the data and information relied upon to support the proposed amendments has been prepared and may be obtained by contacting Jayne Stilwell at the address stated above, telephone (612) 296-7280.

Upon adoption of the final amendments without a public hearing, the proposed amendments, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Amendments as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final amendments as proposed for adoption, should submit a written statement of such request to Bradley Beckham at the address and telephone number previously stated.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as 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, 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.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota 55155, telephone. (612) 296-5615.

March 26, 1981

Louis J. Breimhurst, Executive Director
Pollution Control Agency

Amendments as Proposed

6 MCAR § 4.0033 Standards of performance for coal handling facilities within designated areas.

B. Standards of performance for certain coal handling facilities. The owner or operator of a new or existing coal handling facility which is located within the Minneapolis-St. Paul Air Quality Control Region or within the boundaries of the City of Duluth shall perform the following abatement measures unless otherwise exempted by portions of this rule.

7. Enclosed coal handling facilities or emission sources not specifically covered by any other provision in this rule. If exhaust gases from any enclosed coal handling facility exceed 20 percent opacity, then the owner or operator of such facility shall select and implement one of the following further controls:

a. Install exhaust air system and control exhaust gases so that particulate emissions in such gases do not exceed 0.020 gr/dscf.

b. Control exhaust gases from any enclosed coal handling operations using dust suppression methods so that particulate emissions in such gases do not exceed 0.020 gr/dscf or exhibit greater than 20 percent opacity.

8. Railcar unloading.

a. When the amount of coal unloaded by rail is 200,000 tons per year or greater, unload railcars only within a permanent building or structure and. If exhaust gases from such building or structure exceed 20 percent opacity, then the owner or operator of such facility shall select and implement one of the following further controls.

1. Install an exhaust air system and control exhaust gases so that particulate emissions in such gases do not exceed 0.020 gr/dscf. or

2. Control exhaust gases using apply dust suppression methods such so that fugitive particulate emissions from any openings do not exceed exhibit greater than 20 percent opacity.

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

TAX COURT

Pursuant to Minn. Stat. § 271.06, subd. 1, an appeal to the tax court may be taken from any official order of the Commissioner of Revenue regarding any tax, fee or assessment, or any matter concerning the tax laws listed in § 271.01, subd. 5, by an interested or affected person, by any political subdivision of the state, by the Attorney General in behalf of the state, or by any resident taxpayer of the state in behalf of the state in case the Attorney General, upon request, shall refuse to appeal. Decisions of the tax court are printed in the *State Register*, except in the case of appeals dealing with property valuation, assessment, or taxation for property tax purposes.

State of Minnesota
Ramsey County

American Water Resources
Association,

Appellant,

v.

The Commissioner of Revenue,

Appellee.

Tax Court

Regular Division

In the Matter of An Appeal from the Commissioner's
Order Dated December 19, 1978, Relating to the Denial
of the Application for A Certificate of Exempt Status in
Respect of Sales and Use Tax.

Docket No. 2828

Order Dated March 24, 1981

The above matter came on for trial in the Tax Court in the City of St. Paul, Minnesota, before the Honorable Jack Fena, who was then one of the Judges of the Court, on January 17, 1980. Subsequent to that, briefs were filed by the parties and Judge Fena's term of office ended February 2, 1981, before he had rendered his decision in the matter. The parties through their attorneys agreed to have the case submitted to another Tax Court Judge upon the transcript, briefs and other materials in the file and the case was submitted to the Honorable Carl A. Jensen, Judge of the Minnesota Tax Court.

Mr. James B. Lockhart of the firm of Popham, Haik, Schnobrich, Kaufman & Doty, Ltd. represented the appellant.

Mr. James W. Neher, Special Assistant Attorney General represented the appellee.

Issue

The issue is whether or not the appellant under all of the facts produced at the trial of this matter qualified as a charitable or educational organization exempt from sales and use taxes under Minnesota Statute, § 297A.25, subd. 1(p).

Decision

The facts do not substantiate a finding that appellant was an exempt organization under the Minnesota Sales and Use Tax Law, and the Order of the appellee denying a Certificate of Exemption to the appellant is hereby affirmed.

From all the files, records and proceedings herein the Court finds as follows:

Findings of Fact

1. Appellant, American Water Resources Association, is a corporation organized under the laws of the State of Illinois. The testimony indicated that the Association had been in existence since 1964 and the evidence does not indicate when the Association was incorporated. The Articles of Incorporation are not included in the record.

2. The appellant adopted a constitution and a set of bylaws on November 11, 1979, indicating that the Association's principle place of business would be in the City of Minneapolis, Minnesota or its metropolitan area.

3. On June 12, 1975, appellant applied for exemption from the sales and use tax as an Association organized and operated exclusively for charitable or educational purposes within the meaning of Minn. Stat. § 297A.25, subd. 1(p).

4. By Order dated December 19, 1978, the Commissioner of Revenue denied appellant's application for exempt status.

5. On February 12, 1979, appellant filed a timely Notice of Appeal from the Commissioner's Order.

6. Article II of the Constitution of appellant reads as follows:

"Article II. Objectives and Operating Limitations. Section 1. The principal objectives of the Association shall be: a. The advancement of water resources research, planning, development, management, and education. b. The establishment of a common meeting ground for physical, biological, and social scientists, engineers, and other persons concerned with water resources. c. The collection, organization, and dissemination of ideas and information in the field of water resources science and technology.

Section 2. No part of the net earnings of the Association shall inure to the benefit of, or be distributable to, its members, officers, or other private persons, except that the Association shall be authorized and empowered to pay reasonable

compensation for services rendered and to make payments and distributions in furtherance of its purposes as an educational and scientific association. No substantial part of the activities of the Association shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Association shall not participate in, or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these articles, the Association shall not carry on any other activities not permitted to be carried on by a corporation exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code (or the corresponding provision of any future United States Internal Revenue Law)."

7. Appellant receives no income from private donations or gifts. All of its income is derived from membership and meeting fees.

8. Article III, Section 2 of appellant's Constitution indicating the categories of membership reads as follows:

"Section 2. The following kinds of membership shall be recognized: a. Member. A professional person who desires to cooperate in the furtherance of the objectives of the Association and otherwise complies with the requirements of the Constitution and Bylaws of the Association is eligible for membership therein. b. Honorary Member. To be eligible for election as an honorary member, one must have attained acknowledged eminence in some branch of water resources science or technology. An honorary member shall be entitled to all the privileges of the Association, and may be exempted by the Board of Directors from the payment of annual dues. Honorary members and their number elected in any year shall be determined by the Board of Directors. A member of the Board of Directors is ineligible for election to honorary membership during the member's term of office. c. Fellow Member. A person who has been a member of the Association for at least 10 consecutive years, has served at least 1 year on any of its committees or has been a Director or Officer of the Association, and has an eminent record in some branch of water resources science or technology, is eligible for election to fellow membership by the Board of Directors. A member of the Board of Directors is ineligible for election to fellow membership during the member's term of office. d. Student Member. A full-time student while in attendance at a college or university of recognized standing is eligible for student membership, under conditions specified in the Association Bylaws. e. Corporate Member. A business firm, corporation, or association or a nonprofit organization or group interested in any phase of the objectives of the Association is eligible for corporate membership. f. Institutional Member. An educational institution or department thereof or a federal, state, provincial, or local governmental agency or body is eligible for institutional membership."

9. The Association has three types of meetings. It has an Annual Meeting, other meetings called Symposiums, and local section meetings. All these meetings cover various aspects of water resources. The testimony indicated that 60-70% of the people that attended the national meetings in recent years were not members of the organization.

10. The Association publishes the "Water Resources Bulletin" every other month.

11. Appellant does not provide charitable or educational services to the general public.

12. Appellant received an exemption from federal income tax dated May 6, 1975.

13. The appellant received an exemption from Minnesota income tax dated December 10, 1975.

14. Appellant received a letter from the Illinois Department of Revenue dated March 21, 1972, stating that the "American Water Resources Association of Urbana, Illinois" was a not for profit corporation and that sales to said Association were exempt from the Illinois retailers occupation tax, the service occupation tax, the use tax and the service use tax. The letter indicated that the Illinois Department of Revenue did not issue exemption numbers but that a copy of the letter could be given to vendors of tangible personal property to claim the exemption.

15. Minnesota Statute, § 297A.25, subd. 1(p) provides that certain organizations organized and operated exclusively for charitable, religious, or educational purposes are exempt from Minnesota sales and use taxes. Minnesota Department of Revenue regulation tax S & U 415 was adopted pursuant to the foregoing statutory section and further defines some of the terms used in the statute.

16. Appellant is not an organization operated exclusively for charitable or educational purposes within the meaning of the statutes and regulations and is not entitled to an exemption certificate for the purchase of tangible personal property.

Conclusions of Law

1. Appellant is not an exempt organization as that term is used under the Minnesota sales and use tax laws, and the order of the Commissioner of Revenue denying a certificate of exemption should be affirmed.

Order for Judgment

The Commissioner's order, dated December 19, 1978, denying appellant's application for exempt status under Minnesota sales and use tax laws is hereby affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF 15 DAYS IS HEREBY ORDERED.

MINNESOTA TAX COURT
Carl A. Jensen, Judge

Memorandum

Appellant appears to be an association for the collection, discussion, printing and dissemination of information relative to water resources for members of the Association and members of the public who wish to purchase the bulletins or pay the required fees and attend the meetings. Apparently appellant concedes that it is not a charitable organization as referred to in the Minnesota sales and use tax statutes. Appellant strenuously argues that it is an educational organization as defined in the Minnesota sales and use tax statutes and regulations.

The statutes and regulations require that an exempt organization must be "organized and operated exclusively" for educational purposes. Although the collection, discussion, and dissemination of information may be considered educational in some respects, it would not be instruction or training as those terms as used in tax S & U 415.

All of the cases cited by both parties are cases which have held that the organization was not exempt from the taxes involved in the case which in some instances were real estate taxes and in some instances were sales and use taxes.

Appellant urges that the finding of exemption for income tax purposes by the Internal Revenue Service and the Minnesota Department of Taxation raises a presumption that appellant is exempt under the Minnesota sales and use tax statutes. We find that there is no such presumption and that the appellant has the burden of proof to show that it is in fact entitled to the exemption under the sales and use tax statutes.

The exemptions under the income tax statutes, Minnesota Statute, § 290.05, subd. 1 are much broader than under the sales and use tax statutes. The income statute includes organizations organized exclusively for scientific, literary or artistic purposes in addition to religious, charitable, or educational purposes. We have no difficulty in finding that appellant was organized for a scientific or literary purpose, but that does not entitle it to exemption under the sales and use tax statute.

The letter of the Illinois Department of Revenue issued in 1972 granting exemption under the Illinois sales and use tax laws is of no binding effect on Minnesota. It is of questionable probative value as evidence in this case. That letter indicated that appellant was "*an exclusively charitable organization.*" It does not even appear that the appellant is now claiming that it is a *charitable* organization. It would appear that this letter is of little value as evidence in this case.

The statute requires that the organization must be "*organized and operated exclusively*" for charitable or educational purposes. Appellant is really more involved in the exchange of information rather than in the education of any persons or groups. Certainly an exchange of information is educational but the cases cited by both the appellant and appellee involved the exchange of information together with many other things. It is true, as the appellant states, that there are many differences between this case and the other cases that were cited that deny the exemption. In the other cases the courts found that there were a number of reasons why the exemption should not be granted. It is true that appellant has correctly shown that many of these reasons do not apply to this appellant, but appellant must affirmatively show that it is entitled to the exemption.

This is not a professional association in the ordinary sense of the word since the members are from various walks of life but there is one thread of similarity and that is they all have an interest for some reason or other in water resources. The evidence did not go into this in any great detail, but we would suspect that many of the corporate members are involved in profitable activities involving water resources. This would seem to be borne out by the fact that corporate members are entitled to have their professional card listed in the bulletins.

The Commissioner asks us to place substantial weight on the fact that the appellant does not provide educational services to the general public. From a perusal of the table of contents of the Water Resources Bulletins that were offered as appellee's Exhibits A, B, and C, it would appear that most of the articles are fairly technical and would not have a great appeal to the ordinary member of the public. We do not find, however, that educational services must be provided to the general public. Most education is provided to persons who are learning specific professions or occupations or are already engaged in specific professions or occupations. For example, it would appear that schools offering continuing education programs for medicine, law, accounting, real estate or other similar matters would be considered educational organizations entitled to the exemptions.

We are also persuaded by the first principal objective of the Association contained in Article II of the constitution which is as follows:

"The advancement of water resources research, planning, development, management, and education."

Our statute requires that the organization be "organized and operated *exclusively*" for educational purposes and from the above it is obvious that this organization is not organized "exclusively" for education.

We also note tax S & U 415 E. spells out further requirements for an "exempt organization." Some of these are as follows:

"b. It is supported and maintained at least in part by benevolent contributions; that is, one of its sources of support is donations, income from donations, and contributions and dues of members for which they receive no direct benefit.

The fact that an organization is non-profit does not necessarily make it an "exempt organization."

2. If an organization, by the terms of its articles, has purposes that are broader than the "exempt purposes" specified in Minn. St. 297A.25, subd. 1(p), the fact that its actual operations have been exclusively in furtherance of "exempt purposes" is not sufficient to make it an "exempt organization."

It appears that the appellant fails in both of these requirements. It appears that the organization is supported and maintained solely by dues of members and fees paid by non-members for which they receive direct benefits. It also appears that the purposes stated in Article II of the constitution as cited above include purposes that are not exempt.

It is well established that a person seeking an exemption from a tax statute has the burden of proof and we find that the appellant has not sustained that burden.

SUPREME COURT**Decisions Filed Friday, April 3, 1981****Compiled by John McCarthy, Clerk**

50183/Sp., 50205 Juanita L. Steele, Appellant, v. Edgar S. Steele. Hennepin County.

The trial court properly distributed the marital property in issue here, awarding the homestead to wife, who resided there; dividing the interest of the parties above encumbrances between the parties equally; and allocating stock in a corporation 60% to the husband and 40% to the wife.

Affirmed. Sheran, C. J.

81-134/Sp. State of Minnesota, Appellant, v. Ronald James Fisher, etc. Washington County.

State, in pretrial appeal pursuant to Minn. R. Crim. P. 29.03 from order suppressing evidence in a criminal case, must demonstrate clearly and unequivocally that the order appealed from will have a critical impact on the outcome of the trial; *held*, state has failed to establish that suppression order will have a critical impact on the outcome of the trial and therefore we do not reach the issue raised by the appeal.

Affirmed. Sheran, C. J.

51329/240 Robert T. McClellan, Relator, v. Northwest Airlines, Inc., and Commissioner of Economic Security. Ramsey County.

An arbitration award of back pay and the period of wrongful suspension and involuntary unemployment for which it was awarded constitute "wage credits" and "credit weeks," respectively, under Minn. Stat. § 268.04, subds. 26, 29 (1980), for the purpose of computing the unemployment compensation benefits to which the employee is entitled during a second interval of involuntary unemployment.

Reversed and remanded. Otis, J.

51393/338 1/2 Harold and Margot Siegel, Appellants, v. Empire Savings Bank; Empire Savings Bank v. Bio-Realty, Inc., Appellant, Brookdale Ten Investment Co., Appellant, Twin City Federal Savings and Loan Association, Defendant, and Harold and Margot Siegel, Appellants. Hennepin County.

Under Minnesota Law as set forth in *Holiday Acres No. 3 v. Midwest Federal Savings and Loan Association of Minneapolis*, filed herewith, paragraph 19 is enforceable per se. Otis, J.

51587/Sp. James Paul Moffitt, Appellant, v. State of Minnesota. Ramsey County.

Under Minn. Stat. § 609.15, subd. 1 (1980), the trial court may order sentence of imprisonment to run consecutively to previously imposed but unexecuted sentence.

Affirmed. Otis, J.

50467/378 Gary Berggren, et al., petitioners, Appellants, v. Town of Duluth, v. Bruce Lindberg, d.b.a. Bruce Lindberg Company, intervening respondent. St. Louis County.

The order of the special term court was a denial of a temporary injunction only and did not constitute an adjudication on the merits.

SUPREME COURT

On the facts of this case, a temporary injunction should be granted to maintain the status quo of the parties until the case can be decided on the merits.

Since resolution of the issues involved in this action will require a determination of the status of a county zoning ordinance, the county should be made a party by joinder or by consolidation of this case with Case No. 144051 currently pending in St. Louis County District Court.

Reversed and remanded with directions. Peterson, J.

50669/3 Howard B. Carstedt, Appellant, v. Gordon L. Grindeland, et al. Hennepin County.

In order for a statement to be fraudulent it must not only be factually inaccurate, but it must be shown that the declarant knew or should have known it was false.

Where the parties have contractually agreed to alternative procedures should a specified event not occur, the nonoccurrence of that event cannot be the grounds to set aside the contract by reason of mutual mistake.

Reversed. Todd, J. Took no part, Sheran, C. J. and Scott, J.

50920/Sp. Northwestern National Bank of South St. Paul, Plaintiff, Richard L. Gill v. William H. Kroll and Irene W. Kroll, husband and wife, Appellants. Hennepin County.

Minn. Stat. § 481.13(1) (1978) is held inconsistent with and limited by Minn. Stat. §§ 510.01 and 510.05 to the extent that former appears to authorize the attachment of an attorney's lien to exempt homestead property owned by the debtor.

Reversed and remanded. Todd, J.

50637/338 Holiday Acres No. 3, a partnership, v. Midwest Federal Savings and Loan Association of Minneapolis, Appellant. Dakota County.

Minnesota law concerning the exercise of a mortgage contract due-on-sale clause which allows acceleration upon transfer by the mortgagor at the option of the lender is not preempted by congressional legislation or by Federal Home Loan Bank Board regulation.

There are no material facts in dispute so as to make summary judgment improper.

The endorsement of due-on-sale clauses in the transfer of investment residential property is not per se unreasonable.

This court will not prohibit the exercise of a mortgage contract due-on-sale clause when the contract concerns investment property and no inequities in the bargaining of the contract are proved.

The due-on-sale clause contained in the mortgage agreement in this case does not constitute an unlawful restraint upon the alienation of the investment residential property at issue.

Reversed. Wahl, J.

50799/383 Fran McDonough, Angela McDonough, and Winkel's Inc., d.b.a. Fran McDonough's Bar and Restaurant, Appellants v. Brite Lite Electric Company. Ramsey County.

Errors assigned to the trial court's instructions of law on the applicable standard of care and with respect to damages are harmless where the jury found no causation between negligence and damages.

Affirmed. Wahl, J.

51245/4 Paul Frank Sargent, Relator, v. Preston-Haglin Construction Co., et al. Workers' Compensation Court of Appeals.

Under the unique circumstances of this case, where the injured employee, under a settlement agreement, has precluded the judicial establishment of the liability of his employer, the employer's insurer is not deprived of its subrogation and credit under Minn. Stat. § 176.061, subd. 6 (1976).

Affirmed. Simonett, J. Took no part, Scott, J.

51624/Sp. State of Minnesota v. William Lee Jones, Appellant. Ramsey County.

Defendant's two convictions of soliciting another person to practice prostitution were based on separate distinct acts and not on an indivisible, uninterrupted course of conduct and therefore neither the two convictions nor the consecutive sentences violated Minn. Stat. §§ 609.04 and 609.035 (1980).

Affirmed. Simonett, J.

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 Administration Contract Management Division

Notice of Request for Proposals for Court Reporting Services

The Minnesota Department of Administration is acting as contracting agent for state departments and agencies that have a need for court reporting services to provide an accurate and verbatim record of all proceedings and depositions pursuant to the Administrative Procedure Act, Chapter 15. Additional information on the requested services will be included in the Request for Proposal which will be sent to all persons or associations who ask to receive one. Persons or associations desiring to receive a Request for Proposal must request one by notifying Sharon A. Schmidt, Office of Administrative Hearings, 1745 University Avenue, St. Paul, MN 55104, telephone (612) 296-8103, *no later than 4:30 p.m.*, May 15, 1981. Final proposals must be *received* by the Contract Management Division of the Department of Administration by 4:30 p.m., Friday, May 22, 1981.

Office of Administrative Hearings

Notice of Request for Proposal for Hearing Examiner Services

The Minnesota Office of Administrative Hearings will be contracting with qualified attorneys to serve as hearing examiners for the fiscal year 1982, beginning July 1, 1981, and ending on June 30, 1982. Attorneys must be admitted to practice law in the State of Minnesota at the time they apply. Remuneration for contractual hearing examiners is presently \$30.00 per hour. Remuneration for the next biennium and other information will be detailed in the Request for Proposal which will be sent to all persons who ask to receive one. Persons desiring to receive a Request for Proposal must request one by notifying Duane R. Harves, Chief Hearing Examiner, Minnesota Office of Administrative Hearings, Room 300, 1745 University Avenue, St. Paul, Minnesota 55104, telephone 612/296-8100, *no later than 4:30 p.m.* on Friday, May 15, 1981. Final proposals must be *received* by the Office of Administrative Hearings by 4:30 p.m. on Friday, May 29, 1981.

Energy Agency Conservation Division

Notice of Request for Proposal to Perform Mini-Audit Follow-up Inspections

The Commercial and Institutional Programs unit, Conservation Division, Energy Agency is seeking an engineering and/or architectural firm to perform Follow-Up inspections of approximately 100 previously Mini-Audited buildings throughout the state. These inspections are required by state and federal regulations governing the Institutional Buildings Grants Program. These inspections will be performed at the building site and will require detailed engineering analysis of the building's energy use, energy conservation potential and compliance in implementing Mini-Audit recommendations. The results of these Follow-Up inspections will be a final report to the Agency detailing results and recommendations of the building inspections. The procedures and requirements of this contract are outlined in detail in the Request for Proposal (RFP). The formal RFP may be requested from and all inquiries should be directed to:

Kevin Wm. Halbach, A.I.A., Manager
Commercial and Institutional Programs
Minnesota Energy Agency
980 American Center Building
150 East Kellogg Boulevard
St. Paul, MN 55101
(612) 297-2310

It is estimated that the cost of services provided under this contract shall not exceed \$45,000. The deadline for submission of completed proposals will be 4:30 p.m., Friday, May 1, 1981. No proposals submitted after this date will be considered. Each proposal must be accompanied by a statement that the responder has applied for a Certificate of Compliance from the

STATE CONTRACTS

Minnesota Department of Human Rights. Application for such certificates can be obtained by written request from the Minnesota Department of Human Rights, 240 Bremer Building, St. Paul, MN 55101.

Metropolitan Health Board

Meeting Notice

The Metropolitan Health Board of the Twin Cities Area meets regularly on the second and fourth Wednesdays of each month at 4 p.m. in the Metropolitan Council Chambers, 300 Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101. The subcommittees of the Metropolitan Health Board usually meets at various starting times on these same days prior to the Metropolitan Health Board meetings. The public is cordially invited to attend any of these meetings. For additional information or questions on any of these meetings with regard to time, locations or agendas, please contact the Metropolitan Health Board, 300 Metro Square Building, St. Paul, Minnesota 55101, telephone 291-6352.

Barbara O'Grady, Chairperson
Metropolitan Health Board

Department of Health Community Services Division

Notice of Request for Proposals for the Operation of An Automated Uniform Food Delivery and Management Information System for the Special Supplemental Food Program for Women, Infants, and Children (WIC)

The Minnesota Department of Health is interested in soliciting proposals for the provision of automated data processing services for the Special Supplemental Food Program for Women, Infants, and Children. An RFP is available upon request. All proposals must be received by June 1, 1981. For further information, contact Mr. Greg Smith, Minnesota Department of Health at (612) 296-5233.

Higher Education Coordinating Board

Notice of Request for Proposals for Post-Secondary Level Continuing Education Projects

Notice is hereby given that the Minnesota Higher Education Coordinating Board seeks proposals for experimental projects to be funded through Title I of the federal Higher Education Act. Projects shall address one of the following:

1. Removal of access barriers to participation of low income, minority or educationally disadvantaged adults in post-secondary education.
2. Information and/or services to assist the public in evaluating and choosing post-secondary education.

Those interested in receiving requests for proposals should contact:

Linda S. Dlugosch
Title I Program
Minnesota Higher Education Coordinating Board
400 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
612/296-9689

Proposals will be accepted no later than noon, June 4, 1981. Grants will be awarded in September 1981 and will be for a one-year duration. Funding contingent upon federal appropriation.

Metropolitan Council of the Twin Cities Area

Notice of Request for Proposals for Services in Preparing the Regional Transportation Policy Plan

The Metropolitan Council solicits a proposal for entering into a contract for the performance of services in preparing the Regional Transportation Policy Plan. The proposal should be submitted in four copies and mailed to the Metropolitan Council, Suite 300 Metro Square Building, St. Paul, Minnesota 55101, Attention: Stephen Alderson, Contract Manager.

The council, by this RFP, does not promise to accept the lowest, or any other, proposal and specifically reserves the right to reject any or all proposals, to waive any formal proposal requirements, to investigate the qualifications and experience of any proposer, to reject any provisions in any proposal, to obtain new proposals, or to proceed to do the work otherwise. All proposals received in the council office no later than 4:00 p.m. on May 1, 1981 will be considered by the council and, in the event that a proposal is accepted, the council will notify the successful proposer in writing within 30 days following its consideration of the proposal.

Requests for copies of the RFP should be directed to Stephen Alderson at (612) 291-6337.

Department of Public Welfare Income Maintenance Bureau

Notice of Intent to Solicit Outside Opinion Concerning the Permanent Rule for Pre-admission Screening for Long-term Care

Notice is hereby given that the Minnesota Department of Public Welfare is developing a permanent rule based on Temporary Rule 12 MCAR § 2.065, Pre-admission Screening for Long Term Care. This rule governs the establishment of screening teams to screen persons applying for admission to a nursing home. The screening is mandatory for persons who are eligible for Medical Assistance or who will be within 90 days of admission to a nursing home.

Authority for this rule is contained in Minnesota Laws of 1980, ch. 575 (amending Minn. Stat. § 256B.091).

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing. Written statements of information and comment may be addressed to:

Marie Scheer, Coordinator
Pre-admission Screening Program
Department of Public Welfare
Space Center Building
444 Lafayette Road — PO Box 43208
St. Paul MN 55164

Oral statements of information and comment will be received during business hours over the telephone at (612) 297-3583.

All statements of information and comment must be received by May 11, 1981. Any written material received by the Department shall become part of the hearing record.

Department of Public Welfare Residential Facility: Brainerd State Hospital

Notice of Request for Proposal for Medical Services

Notice is hereby given that the Brainerd State Hospital, Mental Health Bureau, Department of Public Welfare, is seeking the following services for the period July 1, 1981, through June 30, 1982: These services are to be performed as requested by the administration of the Brainerd State Hospital.

1) To perform laboratory services including post mortem examinations. The estimated amount of the contract will not exceed \$28,000.

2) Services of a physician to provide "on call" service for acute ward, make hospital rounds, and conduct clinics. The estimated amount of the contract will not exceed \$29,000.

STATE CONTRACTS

3) Services of a radiologist to interpret x-rays taken at Brainerd State Hospital or special x-rays done under his/her direction at St. Joseph's Hospital, Brainerd, MN. The estimated amount of the contract will not exceed \$18,000.

The estimated amount of the contract in each of these areas will not exceed; 1) \$28,000; 2) \$29,000; 3) \$18,000. Responses must be received by May 4, 1981, 11 a.m.

Direct inquiries to:

Elmer O. Davis
Assistant Administrator—(218) 828-2399
Brainerd State Hospital
Box 349
Brainerd, Mn 56401

Department of Public Welfare Moose Lake State Hospital

Notice of Request for Proposals for Medical Services

Notice is hereby given that the Moose Lake State Hospital, Department of Public Welfare, is seeking the following services for the period July 1, 1981 through June 30, 1982. These services are to be performed as requested by the Administration of the Moose Lake State Hospital.

- 1) Services of a Radiologist to interpret X-ray films taken by the hospital's X-ray technician. The estimated amount of the contract will be \$14,000.00.
- 2) Services of two (2) Psychiatrists to perform consultation services in Psychiatry one day each week, each person, at the Moose Lake State Hospital. Other consultations will occur via phone or mail as needed and as deemed appropriate. The estimated amount of these contracts is \$35,000.00.
- 3) Services of a Psychiatrist to perform consultation services in Psychiatry two days each week at the Moose Lake State Hospital. Other consultations will occur via phone or mail as needed and as deemed appropriate. The estimated amount of the contract is \$35,000.00.
- 4) Services of a Pathologist to perform consultation services in Pathology and to perform autopsies as requested by the Chief Executive Officer. Consultation services will be performed at the Moose Lake State Hospital. The estimated amount of the contract will be \$4,200.00.
- 5) Services of a specialist in Physical & Internal Medicine to perform consultation services at the Moose Lake State Hospital. The estimated amount of the contract is \$16,000.00.
- 6) Services of a Dermatologist to perform consultation services in Dermatology at the Moose Lake State Hospital. The estimated amount of the contract is \$2,400.00.
- 7) Services of an Ophthalmologist to perform consultation services in Ophthalmology at the Moose Lake State Hospital. The estimated amount of the contract is \$2,400.00.

Responses for the above services must be received by May 4, 1981. Direct inquiries to:

Frank R. Milczark
Chief Executive Officer
Moose Lake State Hospital
Moose Lake, MN 55767
(218) 485-4411, Ext. 242

Department of Public Welfare Rochester State Hospital

Notice of Request for Proposals for Medical Services

Notice is hereby given that the Rochester State Hospital, Mental Health Division, Department of Public Welfare, is seeking the following services for the period of July 1, 1981 through June 30, 1982. These services are to be performed as requested by the Administration of the Rochester State Hospital.

1) Services of a pathologist on an approximate one half-time basis to oversee our laboratory and advise on technical problems. The amount of this contract will be approximately \$34,000.00.

2) Services of a clinical laboratory to do various tests on a contract basis according to a pre-arranged fee schedule. The amount of this contract will be approximately \$40,000.00.

Responses for the above services must be received by May 4, 1981.

Direct inquiries to:

Steven L. Greene
Rochester State Hospital
2110 East Center Street
Rochester, MN 55901
(507) 285-7491

Department of Public Welfare Willmar State Hospital

Notice of Request for Proposals for Medical Services

Notice is hereby given that the Willmar State Hospital, Mental Health Division, Department of Public Welfare, is seeking the following services for the period July 1, 1981, through June 30, 1982. These services are to be performed as requested by the Administration of the Willmar State Hospital:

1. Services of Psychiatrist, trained in General Psychiatry, to provide consultant to Adult Psychiatric Admission Unit, mental status examinations and assessments, treatment plan, recommendations and medication review. Estimated amount of the contract will not exceed \$36,800.00.

2. Services of Radiologists to interpret X-ray films; provide radiological supervision and X-ray consultation; provide specialized X-ray procedures. Estimated amount of the contract will not exceed \$11,440.00.

3. Services to perform diagnostic laboratory procedures necessary to conduct treatment programs at the Willmar State Hospital not available in our Laboratory. Estimated amount of the contract will not exceed \$16,500.00.

4. Services to perform diagnostic laboratory procedures; urine screening for drug and alcohol abuse. Estimated amount of the contract will not exceed \$11,000.00.

5. Services of Physicians to provide medical and surgical consultations, as needed to Patients/Residents of Willmar State Hospital at Willmar State Hospital. Estimated amount of the contract will not exceed \$14,000.00.

6. Services of Psychiatrist to provide consultation to Adolescent Treatment Unit, Psychiatric Rehabilitation Unit and Chemically Dependent Unit; special skills in adolescent and chronic mental illness psychiatry. Estimated amount of the contract will not exceed \$25,500.

7. Services of a full time Protestant Chaplain; to conduct services and other ministries to Mentally Ill, Mentally Retarded and Chemically Dependent Patients. Estimated amount of the contract will not exceed \$10,828.00.

Responses for the above services must be received by May 4, 1981.

Direct inquiries to:

Lester E. Johnson, Chief Executive Officer
Willmar State Hospital
Box 1128
Willmar, MN 56201
(612) 235-3322, Ext. 205

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 Agriculture Agronomy Services Division

Notice of Special Local Need Registration for SBP-1382-40MF "Z"

Pursuant to Minn. Stat. § 18A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture, on March 26, 1981, issued a Special Local Need Registration for "SBP-1382-40MF "Z" Insecticide," manufactured by Penick Corporation, Lyndhurst, New Jersey.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product label, this Special Local Need Registration permits the use of this pesticide for aerial application for mosquito control.

The application and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B, relative to this registration (identified as SLN # MN 81-0008) is on file for inspection at:

Minnesota Department of Agriculture
Pesticide Control Section
90 West Plato Blvd.
Saint Paul, Minnesota 55107
Phone: (612) 296-8379

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15, for the purpose of revoking, amending, or upholding this registration.

Mark W. Seetin, Commissioner
Department of Agriculture

Notice of Special Local Need Registration for Velpar Gridball Brush Killer

Pursuant to Minn. Stat. § 18A.23 and 3 MCAR § 1.0338 B., the Minnesota Department of Agriculture, on March 26, 1981, issued a Special Local Need Registration for "Velpar Gridball Brush Killer," manufactured by E. I. DuPont De Nemours & Co., Wilmington, Delaware.

The Commissioner of Agriculture, based upon information in the application, has deemed it in the public interest to issue such a registration, and has deemed that the information in the application indicates that the pesticide does not have the potential for unreasonable adverse environmental effects.

In addition to the uses prescribed on the product label, this Special Local Need Registration permits the use of this pesticide to control undesirable woody plants in reforestation areas.

The application and other data required under Minn. Stat. §§ 18A.22, subd. 2 (a-d), 18A.23, and 40 CFR 162.150-162.158, subpart B, relative to this registration (identified as SLN # MN 81-0009) is on file for inspection at:

Minnesota Department of Agriculture
Pesticide Control Section
90 West Plato Blvd.
Saint Paul, Minnesota 55107
Phone: (612) 296-8379

A federal or state agency, a local unit of government, or any person or group of persons filing with the commissioner a petition that contains the signatures and addresses of 500 or more individuals of legal voting age has thirty (30) days to file written objections with the Commissioner of Agriculture regarding the issuance of this Special Local Need Registration. Upon receipt of such objections and when it is deemed in the best interest of the environment or the health, welfare, and safety of the public, the Commissioner of Agriculture shall order a hearing pursuant to Minn. Stat. ch. 15, for the purpose of revoking, amending, or upholding this registration.

Mark W. Seetin, Commissioner
Department of Agriculture

State Board of Education (State Board for Vocational Education) Department of Education Vocational-Technical Division

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Complaint Procedures

Notice is hereby given that the State Department of Education is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing complaint procedures. The promulgation of these rules is authorized by Minnesota Statutes, § 121.11, subd. 12, which permits the agency to promulgate rules governing procedures by which the State Department of Education shall address complaints from the public which are brought against Area Vocational-Technical Institutes. The rules will also establish limitations as to time allowed for answering complaints. Rules will designate the State Board of Education as the final authority in disposition of cases.

The State Department of Education requests information and comments concerning the subject matter of these Rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing. Written statements should be addressed to:

Melvin E. Johnson
Minnesota State Department of Education
Room 548, Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone at 612-296-2421 and in person at the above address.

All statements of information and comment shall be accepted until May 20, 1981. Any written material received by the State Department of Education shall become part of the record in the event that the Rules are promulgated.

April 3, 1981

Melvin E. Johnson, Manager
Operational Services Section

Department of Health Health Systems Division

Notice of Intent to Solicit Outside Opinion Relating to the Vulnerable Adult Abuse Act

Notice is hereby given, pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6 (1980) that the Minnesota Department of Health will propose the adoption of new rules implementing the provisions of Minn. Stat. § 626.557 (1980). These new rules will apply to all health care facilities licensed by the Department of Health pursuant to Minn. Stat. § 144.50-.58 and Minn. Stat. Chapter 144A (1980). The law requires the reporting of maltreatment of vulnerable adults and also requires that licensed facilities establish an abuse prevention plan, individual abuse prevention plans and establish internal procedures for reporting and investigating suspected cases of abuse or neglect.

OFFICIAL NOTICES

All interested parties desiring to submit data or views relating to the proposed rules should address their comments (either written or oral) to:

Clarice Seufert, Chief
Survey and Compliance Section
Minnesota Department of Health
717 Delaware Street Southeast
Minneapolis, Minnesota 55440
Phone Number: (612) 296-5420

Evidence submitted for consideration should be pertinent to the matter at hand. Written material received by the Department of Health will become part of the hearing record.

Any material submitted shall be reviewed and considered by the Department of Health during the preparation of the proposed rules. Notice of the public hearing on the proposed rules shall be published in the *State Register* and given to all interested parties who have registered with the Department of Health in accordance with the provisions of the Administrative Procedures Act.

Under the provisions of Minn. Stat. §§ 10A.01, subd. 11 and 10A.03 (1980), any individual representing persons or associations attempting to influence administrative action, such as the promulgation of these proposed rules, must register with the State Ethical Practices Board as a lobbyist within five days of the commencement of such activity. The State Ethical Practices Board is located in Room 41, State Office Building, 435 Park Street, St. Paul, Minnesota 55155.

George R. Pettersen, M.D.
Commissioner of Health

Pollution Control Agency

Notice of Intent to Solicit Outside Opinion Regarding Review of the Existing Rule APC 8, Open Burning

Notice is hereby given that the Minnesota Pollution Control Agency (agency) is seeking information or opinions from sources outside the agency regarding the review of the existing Rule APC 8 entitled Open Burning. Rule APC 8 places a ban on open burning in the state in all situations except those listed as specific exemptions in the rule or those allowed by obtaining a valid open burning permit. The rule provides for the establishment of Diseased Shade Tree Open Burning Sites in situations where no reasonable alternate method of disposal exists. The rule also addresses the subjects of Permit Issuance, Permit Denial, Permit Revocation, Liability, Conflicting Laws and Recreational Fires.

The agency requests information and comments concerning the subject matter of this rule. Interested persons or groups may submit statements of information orally or in writing. Written or oral statements of a technical nature should be directed to Richard J. Sandberg at the address and telephone number listed below. Inquiries of a non-technical nature or which relate to the rulemaking process should be directed to Marjorie Borchard at the address and telephone number listed below. Oral comments and inquiries will be accepted by Mr. Sandberg and Ms. Borchard during regular business hours over the telephone and in person at the agency offices.

Richard Sandberg
Division of Air Quality
MN Pollution Control Agency
1935 West County Road B2
Roseville, MN 55113
Telephone: (612) 296-7274

Marjorie Borchard
Public Information Office
MN Pollution Control Agency
1935 West County Road B2
Roseville, MN 55113
Telephone: (612) 296-7284

All statements of information and comments shall be accepted until June 1, 1981. Any written material received by the agency shall become a part of the hearing record in the event amendments to the rule are proposed and public hearings are held.

Dated this 3rd day of April 1981.

Louis J. Breimhurst
Executive Director

Department of Transportation

Resolution of the City of Virginia Objecting to the Denial by the Commissioner of Transportation of a Variance from Design Standard for the Chestnut Street Renovation Project

Order for Hearing and Notice Thereof

It is hereby ordered, and notice is hereby given, that a contested case hearing concerning the above-entitled matter will be held on May 13, 1981 at 9:00 a.m. in Room 54, Mesabi Community College, 905 West Chestnut at 9th Avenue, Virginia, Minnesota.

The hearing will be held before Mr. Kent Roberts, 1745 University Avenue, Saint Paul, Minnesota 55104 (Telephone: 612-296-8112) a Hearing Examiner appointed by the Chief Hearing Examiner of the State of Minnesota. All parties have the right to be represented by legal counsel or any other representative of their choice throughout the contested case proceeding. The hearing will be conducted pursuant to the contested case procedures set out in Minnesota Statutes § 15.0411 through Minnesota Statutes § 15.052 and 9 MCAR §§ 2.201 through 2.222. Questions concerning the issues raised in this Order or concerning informal disposition or discovery may be directed to Mr. John R. Murphy, Assistant Attorney General, Office of Attorney General, 515 Transportation Building, Saint Paul, Minnesota 55155 (Telephone: 612-296-3213).

The purpose of the hearing is to ensure that under the provisions of Minn. Stat. § 162.09, subd. 3a, and 14 MCAR § 1.5032 M., all parties and potential parties of interest are given an opportunity to be heard on the resolution of the City of Virginia objecting to the denial by the Commissioner of Transportation of a variance from design standard for the Chestnut Street renovation project.

The Resolution recites among other matters that:

“WHEREAS, the City of Virginia is presently in the process of a project for the renovation of the Chestnut Street area of the city which will provide a significantly approved and convenient downtown shopping area which will add to the economic activity and Tax base of the community, and

WHEREAS, in order to utilize state aid funds for a portion of said project it is necessary to obtain a variance from state aid standards, and

WHEREAS, the City has requested a variance, said variance being considered and denied and notification received from the Commissioner of the Minnesota Department of Transportation by letter dated February 17, 1981, and

WHEREAS, the City Council feels that it is in the best interests of the City to appeal said denial pursuant to the provisions of Minnesota Statutes 162.09, Subd. 3, on the basis that said denial is arbitrary and capricious and that the matter should be granted a contested case hearing in order that the merits of said variance be properly heard.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Virginia does hereby and herewith authorize that the above mentioned variance denial be granted a contested case hearing and that the Commissioner of the Department of Transportation of the State of Minnesota be properly advised of this request and that any other action necessary to obtain a contested case hearing be instituted and that the proper city officials, namely the Mayor and City Clerk, are authorized to execute any and all documents necessary.”

The ISSUE TO BE DECIDED at the hearing is whether the City of Virginia has shown by a preponderance of the evidence that it is entitled to the variance requested under the provision of Minn. Stat. § 162.09 (1980) and 14 MCAR § 1.5032 M.

Any person who desires to become a Party to this matter must submit a timely Petition to Intervene to the Hearing Examiner pursuant to 9 MCAR § 2.210, showing how the person’s legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought.

All parties are advised that if a party intends to appear at the hearing scheduled for May 13, 1981, the Notice of Appearance form enclosed with this order must be completed and returned to the Hearing Examiner at least 10 days before the hearing date. Should a Party fail to appear at the hearing, the allegations made in the petition may be taken as true.

The above cited procedural rules are available at the Office of Administrative Hearings or may be purchased from the Documents Section of the Department of Administration, Ford Building, 117 University Avenue, Saint Paul, Minnesota 55155 (Telephone: 612-297-3000). They provide generally for the procedural rights of the parties including: rights to advance notice of witnesses and evidence, right to a prehearing conference, rights to present evidence and cross-examine witnesses, and right to purchase a record or transcript. Parties are entitled to issuance of subpoenas to compel witnesses to attend and produce documents and other evidence.

OFFICIAL NOTICES

Persons attending the hearing should bring all evidence bearing on the case including any records or other documents. If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the Hearing Examiner at least 5 days prior to the hearing. A copy of the request must be served on the agency and any other parties.

April 6, 1981

Richard P. Braun
Commissioner of Transportation

STATE OF MINNESOTA
DEPARTMENT OF TRANSPORTATION

In the matter of the Resolution of the) NOTICE OF APPEARANCE
City of Virginia Objecting to the Denial)
by the Commissioner of Transportation of)
a variance from Design Standard for the)
Chestnut Street Renovation Project.

Date of Hearing: May 13, 1981

Name and Telephone Number of Hearing Examiner: Kent Roberts
1745 University Avenue
Saint Paul, Minn. 55104
296-8112

TO THE HEARING EXAMINER:

You are advised that the party named below will appear at the above hearing.

Name of Party: _____
Address: _____
Telephone Number: _____
Party's Attorney or Other Representative: _____

Signature of Party or Attorney: _____
Date: _____

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155

ORDER FORM

State Register. Minnesota's official weekly publication for agency rules and notices, executive orders of the Governor, state contracts, Supreme Court and Tax Court decisions.

_____ Annual subscription \$120.00
_____ Single copies \$2.25 each

The 1979-80 Audio Visual Catalog. A 275-page catalog of state agency films, slides and tapes available to the public.

_____ Single copy \$4.50 + \$.18 (sales tax) = \$4.68* each

Session Laws of Minnesota—1980. One volume. Laws enacted during the 1980 legislative session. Inquire about back volumes. \$40 plus tax.

State Register Binder. Durable 3½ inch, forest green binders imprinted with the *State Register* logo.

_____ *State Register Binder* \$6.00 + \$.24 (sales tax) = \$6.24* each

Finding Aids Annual. Contains cumulative findings aids to Volume 3 of the *State Register*, including MCAR Amendments and Additions, Executive Orders List, Executive Orders Index, Agency Index, Subject Matter Index.

_____ Single copy \$3.00

Minnesota Statutes Supplement—1979. One volume. \$40 plus tax.

Workmen's Compensation Decisions. Volume 33. Selected landmark decisions of the Workmen's Compensation Court of Appeals. Available by annual subscription, with quarterly update service.

_____ Annual subscription \$50.00

Minnesota Reports. Supreme Court Decisions. Volume 312 and previous numbers. (More recent volumes available from Supreme Court, Office of Court Administrator, 317E Capitol, St. Paul, MN 55155).

_____ \$8.25 each plus tax.

*To avoid Minnesota sales tax, please include your Certificate of Exempt Status issued by the Minnesota Department of Revenue.

Please enclose full amount for items ordered. Make check or money order payable to "State of Minnesota."

Name _____

Attention of: _____

Street _____

City _____ State _____ Zip _____

Telephone _____

FOR LEGISLATIVE NEWS

Publications containing news and information from the Minnesota Senate and House of Representatives are available free to concerned citizens and the news media. To be placed on the mailing list, write or call the offices listed below:

Briefly/Preview—Senate news and committee calendar; published weekly during legislative sessions. Contact Senate Public Information Office, Room B29 State Capitol, St. Paul MN 55155, (612) 296-0504.

Perspectives—Publication about the Senate. Contact Senate Information Office.

Weekly Wrap-Up—House committees, committee assignments of individual representatives, news on committee meetings and action, House action and bill introductions. Contact House Information Office, Room 8 State Capitol, St. Paul, MN, (612) 296-2146.

This Week—weekly interim bulletin of the House. Contact House Information Office.

Law Library
117 University

Interoffice