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# STATE REGISTER

STATE OF MINNESOTA



VOLUME 6, NUMBER 38

March 22, 1982

Pages 1601-1624

# STATE REGISTER

## 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 6 | | |
| 39 | Monday March 15 | Monday March 22 | Monday March 29 |
| 40 | Monday March 22 | Monday March 29 | Monday April 5 |
| 41 | Monday March 29 | Monday April 5 | Monday April 12 |
| 41 | Monday April 5 | Monday April 12 | Monday April 19 |

*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.

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



**Cover graphic:** ***Minnesota State Capitol,*** **ink drawing by Ric James.**

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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:

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Issues 14-25, inclusive
Issue 26, cumulative for 1-26
Issue 27-38, inclusive
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# EXECUTIVE ORDERS

## Executive Order No. 82-4

### Providing for the Establishment of a Governor's Council on County Financial Accounting and Reporting Standards (COFARS)

I, Albert H. Quie, Governor of the State of Minnesota, by virtue of the authority vested in me by the Constitution and applicable statutes, including but not limited to Minnesota Statutes §§ 4.035 and 15.0593 (1981), do hereby issue this Executive Order:

WHEREAS, the State Auditor, the Intergovernmental Information Systems Advisory Council and representatives of numerous state and county governmental agencies have worked toward the development of an accounting system to improve the fiscal management and reporting capabilities of county government; and

WHEREAS, this joint intergovernmental effort has resulted in the development of the County Financial Accounting and Reporting Standards (COFARS) system; and

WHEREAS, it is necessary to assure that the implementation of COFARS is conducted with the full cooperation of the involved state and county governmental agencies;

NOW, THEREFORE, I ORDER:

1. The establishment of a Governor's Council on County Financial Accounting and Reporting Standards (COFARS) pursuant to Minnesota Statutes §§ 4.035 and 15.093 (1982) and other applicable statutes.

2. The Task Force shall be composed of eleven (11) members appointed by the Governor and shall consist of:

a. One representative from each of the following State agencies and offices: Office of the State Auditor, Health Department, Department of Public Welfare, Department of Corrections, and the Department of Transportation.

b. One member representing the following offices of county government from the counties of Minnesota: county auditor, department of public welfare, department of community corrections, county engineer, and a county financial officer.

c. One member representing the Minnesota Association of Counties who must be a county commissioner.

Representatives of county government shall be selected to maximize the representation of different counties and different regions of the State. The Chairman of the Council shall be the State Auditor.

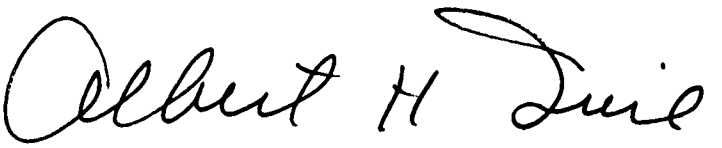
3. The Council shall provide assistance to the counties of the State in adoption of the County Financial Accounting and Reporting Standards (COFARS) system and shall provide a forum for representatives of the counties and State to work together to develop uniform standards for financial reporting. The Committee shall assist the Governor in recommending to the State Auditor changes in the chart of accounts necessitated by changes in financial reporting standards. All agencies of State government are directed to submit to the Council for its review and comment any proposed changes in their fiscal reporting requirements for counties. The Council shall undertake such other advisory duties related to charts of accounts and data standards as it deems necessary and shall make recommendations to the Governor, State Auditor and other appropriate individuals and agencies.

4. The Council shall prepare a report to the Governor and State Auditor one (1) year from

the effective date of this Order describing the activities of the Council and recommending any necessary changes in the financial reporting requirements for counties.

Pursuant to Minnesota Statutes § 4.035 (1981), this Order shall be effective fifteen (15) days after filing with the Secretary of State and publication in the *State Register* and shall remain in effect until it is rescinded by proper authority or expires in accordance with Minnesota Statutes § 4.035, subd. 3 (1981).

IN TESTIMONY WHEREOF, I have hereunto set my hand this 26th day of February, 1982.



# ADOPTED RULES

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

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

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

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

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

### Adoption by Reference of Occupational Safety and Health Standards

Pursuant to Minn. Stat. § 182.655 (1980) notice was duly published at *State Register*, Volume 6, Number 31, p. 1365 (6 S.R. 1365) dated February 1, 1982 specifying the establishment and modification of certain Occupational Safety and Health Standards; specifically, the proposed adoption of the unstayed portions of the Hearing Conservation Amendment of the Occupational Exposure to Noise Standard (29 CFR 1910.95), the proposed adoption of the previously stayed portions of the Occupational Exposure to Lead Standard (29 CFR 1910.1025), the deletion of the Occupational Exposure to Cotton Dust in Cotton Gins Standard (29 CFR Parts 1910.1046 and 1928.113), and corrections in the General Industry Electrical Standard (Subpart S of 29 CFR Part 1910). That notice included effective (startup) dates, both previous and upcoming, for the Occupational Exposure to Lead Standard and the Hearing Conservation Amendment to the Occupational Exposure to Noise Standard.

No written requests for hearing on objections have been received; therefore, these Occupational Safety and Health Standards are adopted and are identical in every respect to their proposed form.

Russell B. Swanson
Commissioner of Labor and Industry

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.

# Minnesota Board of Teaching

## Adopted Rule Governing Procedures for the Issuance of Life Licenses

The rule proposed and published at *State Register*, Volume 5, Number 42, pages 1637-1638 (5 S.R. 1637) is now adopted with the following modifications:

### Rule as Adopted

**5 MCAR § 3.002 Procedures for the issuance of life licenses.** Any teacher currently holding a valid license to teach granted by the Minnesota Board of Teaching ~~have~~ having a minimum of five years teaching experience in Minnesota, who was actually employed as a classroom teacher or other similar professional employee on a regular contract in any one of three years immediately preceding July 1, 1969, may apply for and receive a life license for those grades, subjects, and fields for which Minnesota licensure was held prior to July 1, 1969, upon payment of a processing fee of ~~twenty dollars ($20.00)~~ $35. The application period to apply for a life license according to the provisions of this rule shall expire July 1, 1982. The application shall be in writing on a life license application form addressed to:

Minnesota State Department of Education
Personnel Licensing Section
Sixth Floor, Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101

Life license application forms may be obtained from:

Minnesota State Department of Education
Personnel Licensing Section
Sixth Floor, Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-2046

# SUPREME COURT

## Decisions Filed Friday, March 12, 1982

## Compiled by John McCarthy, Clerk

**81-348/Sp. State Farm Insurance Companies, Appellant, v. Marian Galajda and Zurich-American Insurance Company. Hennepin County.**

A recipient of uninsured motorist benefits may settle a wrongful death claim separately from the subrogation claim of an uninsured motorist insurer where the insurer is notified of the settlement and his subrogation rights are not prejudiced thereby.

Affirmed. Otis, J.

**81-380/Sp. Wilma O. Bloese v. Twin City Etching, Inc., *et al.*, Relators. Workers' Compensation Court of Appeals.**

The limitation period within which employee was required by Minn. Stat. § 176.151(7) (1974) to give notice of her claim and to commence a proceeding for compensation began to run when she received information from which as a reasonable person she should have recognized the nature, seriousness, and probable compensable character of her disabling disease.

Reversed. Otis, J.

**81-946/Sp. State of Minnesota v. Ashraf Muhammed, petitioner, Appellant. Hennepin County.**

Trial court did not err in admitting evidence establishing clearly and convincingly that petitioner, charged with burglary and criminal sexual conduct in the first degree, had committed a pattern of numerous remarkably similar other offenses before and after the charged offense.

Trial court properly concluded that reference by petitioner to counsel in the middle of a statement he gave to police was not a

request that interrogation cease or that counsel be present before interrogation continued, nor did trial court err in denying a motion to suppress petitioner's statement to police as being the fruit of an unreasonable delay in taking him before a magistrate.

Affirmed. Peterson, J.

**81-274 Ed Smith and Vera Smith, Appellants, v. Steve Carriere. Red Lake County.**

The jury verdict finding that plaintiff was 50% negligent in causing an accident in which his truck was struck from the rear by defendant's vehicle is not reasonably supported by the evidence.

Reversed and remanded. Todd, J.

**81-393/Sp. State of Minnesota v. Raymond Allen Soutor, *et al.*, Appellants. Kandiyohi County.**

Omnibus court did not err in denying motion to suppress evidence found and seized in consensual search of trunk of automobile.

Evidence was sufficient to establish that material defendants were charged with possessing with intent to sell was hashish, the resinous form of marijuana.

Affirmed. Scott, J.

**81-155/Sp. State of Minnesota v. Richard Plan, Appellant. Ramsey County.**

Evidence was sufficient to support defendant's conviction of second-degree murder.

Trial court did not err in admitting evidence that murder victim was son of police officer, where prosecutor did not improperly use this evidence to try to inflame the passions of the jury.

Defendant was properly found by the trial court to be a dangerous offender under Minn. Stat. §§ 609.155 and 609.16 (1978).

Defendant's conviction for third-degree murder is vacated pursuant to Minn. Stat. § 609.04 (1978), which prohibits two convictions of the same offense or of one offense and a lesser-included offense on the basis of the same criminal act.

Four convictions affirmed; one vacated. Simonett, J.

**81-533 Lynette Fitzgerald Miller v. Mark Shugart, *et al.*, and Milbank Mutual Insurance Company, Appellant. Winona County.**

When an insured, whose insurer is disputing coverage, settles directly with the plaintiff claimant and stipulates to a judgment incorporating the settlement terms, the plaintiff claimant may seek to collect on that judgment in a garnishment proceeding against the insurer.

On the facts of this case the insureds did not breach their duty to cooperate with the insurer, which was then contesting coverage, by settling directly with the plaintiff.

The judgment in favor of the plaintiff claimant stipulated to by the insureds was not obtained by fraud or collusion.

Where the insureds stipulate to a money judgment entered against them in favor of the plaintiff claimant but also stipulate the judgment is not to be collected from them personally, only from the insurer if coverage is established, the burden is on the plaintiff judgment creditor to show that it was reasonable and prudent for the insureds to have entered into the settlement.

Here the insurer is required to pay the judgment stipulated to by the plaintiff claimant and the defendant insureds to the limits of its policy coverage but interest accrues only on the amount of such limits and only from the date of the judgment in the garnishment action.

Affirmed in part and reversed in part. Simonett, J. Took no part, Kelley, J.

**81-621/Sp. State of Minnesota v. Debra Lynne Braasch, Appellant. Becker County.**

Trial court did not err in denying defendant's motion to suppress evidence seized in warranted search of defendant's residence.

Affirmed. Simonett, J.

**81-933/Sp. Donald Saenger v. Liberty Carton Company, *et al.*, Relators. Workers' Compensation Court of Appeals.**

When employee, who was found in a prior compensation proceeding not to have been totally disabled and to have retired and voluntarily withdrawn from the labor market after August 16, 1977, sought to vacate an order and decision dismissing his subsequent claim for permanent total disability on grounds of mistake and substantial change of condition, he was required to furnish evidence from which the Workers' Compensation Court of Appeals could determine whether he had returned or had attempted to return to gainful employment in the interim between August 16, 1977, and the time at which he allegedly became totally disabled.

Reversed in part, affirmed in part and remanded. Simonett, J.

# SUPREME COURT

## Decision Filed Friday, March 5, 1982

81-18 State of Minnesota v. Daniel K. Smith, Appellant. Hennepin County.

Defendant's sentencing appeal is remanded for reconsideration of sentence by the trial court in light of *State v. Randolph*, _____ N.W. 2d _____ (Minn. filed February 23, 1982), which was filed after defendant's sentence was imposed.

Remanded. Amdahl, C. J.

## Decision Filed Monday, March 8, 1982

81-1202/Sp. In the Matter of the Welfare of: J.F.K. Grant County.

Juvenile court was correct in its findings and did not abuse its discretion in determining that the child was not suitable to treatment and that the public safety would not be served by keeping juvenile in the juvenile court system, and therefore the decision of the three-judge district court panel affirming the juvenile court's decision to grant the reference motion pursuant to Minn. Stat. § 260.125 (1980) is affirmed.

Affirmed and remanded for trial. Peterson, J.

# 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** **Tax Court**

Olympia Brewing Company,
Appellant,

v.

The Commissioner of Revenue,
Appellee.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT

Docket No. 3202

Order dated March 4, 1982

The above matter was submitted to the Minnesota Tax Court, Judge Carl A. Jensen presiding, on the basis of Stipulated Facts, Stipulated Exhibits, briefs of the parties, and oral argument.

John M. Sullivan and Steven Z. Kaplan, attorneys, Briggs & Morgan, appeared on behalf of Appellant.

Paul R. Kempainen, Special Assistant Attorney General, appeared for Appellee.

**Syllabus**

Under the Minnesota Business Income Tax Law sales are apportioned to Minnesota when deliveries are made in the state to the purchaser regardless of whether the purchaser immediately takes the purchase out of the state and regardless of whether the purchaser's residence or place of business is in Minnesota or in some other state. Sales made by a Minnesota taxpayer and shipped by a common carrier or contract carrier to another state are not apportioned to Minnesota.

**Findings of Fact**

1. Appellant, Olympia Brewing Company ("Olympia"), is a corporation organized and existing under the laws of the State of Washington and has its principal place of business at Olympia, Washington. During 1975 and 1976, Olympia was authorized to conduct business in Minnesota, and, pursuant to such authority, operated a brewery in Saint Paul during those years.

2. During years 1975 and 1976, Olympia engaged in the brewing, bottling and sale of certain brands of its beer to

approximately 310 wholesale distributors who had their places of business in 15 states, including Minnesota. All of the wholesale distributors to whom Olympia sold its beer were required to hold a federal permit and federal tax stamp as wholesale beer dealers, as well as a state license to sell malt liquors at wholesale in any state in which they conducted such business.

3. Sales of beer from Olympia's Saint Paul brewery during 1975 and 1976 were made in accordance with the following procedures:

a. Based upon its data reflecting past purchases by each of its wholesale distributors, Olympia prepared a document, known as a "Product Scheduling Worksheet," which contained a description of the quantity of each product which Olympia estimated each distributor would require during the coming four-week period. The Product Scheduling Worksheet was sent to the wholesale distributor for its review. A copy of a representative example of the Product Scheduling Worksheet form was incorporated into the Stipulation of Facts.

b. At the time that it sent each wholesale distributor the Product Scheduling Worksheet, Olympia also provided the wholesale distributor with a pre-printed purchase order form setting forth the description and quantity of the products specified in the Production Scheduling Worksheet. A copy of the purchase order form was incorporated into the Stipulation of Facts, and it showed that on the form there was a column designated "Route Code" which contained three check boxes marked respectively as "Truck," "Rail" and "Special." There was also a blank for the customer to fill in a requested ship date.

c. After reviewing the Production Scheduling Worksheet and the purchase order form, the wholesale distributor noted on the order form any necessary changes in the quantity of desired products. Under the column designated "Route Code," the wholesale distributor indicated whether transportation of the products should be by rail or truck. The heading marked "special" under the Route Code column was not utilized for orders placed with Olympia's Saint Paul brewery.

d. During 1975 and 1976 approximately 23 percent of the products sold by Olympia's Saint Paul brewery to its wholesale distributors were transported by rail and the remaining 77 percent were transported by truck.

e. In those instances where the wholesale distributor specified transportation by truck, there were three modes utilized, consisting of common carriers, contract carriers (i.e., transportation companies having contracts with the distributor with variations under which a driver may or may not be furnished to the distributor), or pick-up by the distributor's own trucks at the Saint Paul brewery. During 1975 and 1976, various out-of-state distributors in Colorado, Illinois, Iowa, Indiana, Kansas, Michigan, Missouri, Nebraska, North Dakota, Ohio, South Dakota, and Wisconsin sent their own trucks to the Saint Paul brewery to transport the beer which they had purchased from Olympia. In terms of dollar sales volume, approximately 34.7 percent of all sales made to out-of-state distributors were picked up by them at the Saint Paul brewery using their own trucks.

f. In the case of all truck transportation (whether by common carrier, contract carrier or distributor's own truck), Olympia prepared a straight bill of lading the day prior to loading of the truck. As completed by Olympia, the bills of lading indicated, *inter alia*, the name of the carrier, the date, the quantity of products sold, the name of the consignee and the destination of the truck. If the method of transportation was by the distributor's own truck, the words "their truck" or "picked up" would be placed in the space provided for the name of the carrier on the bill of lading. A copy of the straight bill of lading form prepared at Olympia's Saint Paul brewery was incorporated into the Stipulation of Facts.

g. After they were completed, the bills of lading were hand carried to the brewery's truck loading dock foreman and were utilized to fill the distributor's order. As a matter of business practice, Olympia requested the truck driver to be present while the actual loading of the products in the truck was accomplished. Upon completion of the loading of the truck, the truck driver signed the original of the bill of lading and was provided with copies thereof.

h. On the day following loading of the truck, Olympia prepared sales or memorandum invoices which were mailed to the wholesale distributors. Copies of the sales and memorandum invoices prepared at the brewery during years 1975 and 1976 were incorporated into the Stipulation of Facts. In addition, Olympia prepared monthly shipping reports for each state where the distributors were located reflecting the following:

i. the name and address of the distributor;

ii. a summary showing each quantity of product transported by size, brand and invoice number;

iii. the quantity of packages transported in terms of gallons and barrels.

4. Of the 15 states to which Olympia's Saint Paul brewery sold beer, 6 states, Minnesota, South Dakota, Colorado, Kansas, Missouri and Ohio, imposed certain labeling requirements for beer sold by wholesale distributors. In general those requirements have been summarized by the parties in the Stipulation of Facts as follows:

In Minnesota, regulations of the Minnesota Department of Public Safety, Liquor Control Division, required that all beer sold in Minnesota by licensed wholesale distributors be labeled to disclose its alcoholic content. Specifically, all such beer containing more than 3.2 percent of alcohol by weight ("high beer") was required to be labeled as follows: "contains more than

3.2% of alcohol by weight" or "strong beer." Minnesota regulations also required that high beer sold in cans by wholesale distributors in the state have the word "strong" appear on one end of each can. Furthermore, beer held for sale in Minnesota by licensed wholesale distributors and containing more than ½ of 1 percent of alcohol by volume and not more than 3.2 percent of alcohol by weight ("low beer") also had to identify its alcoholic content and be labeled as follows: "contains not more than 3.2% of alcohol by weight" or some similar expression of like meaning.

Any product sold in Minnesota by a wholesale distributor which did not comply with these labeling requirements was subject to confiscation by the Commissioner of Public Safety.

During years 1975 and 1976, Minnesota was the only state in the United States which required that high beer be labeled as "strong" beer. Of the total volume of beer sold by Olympia's Saint Paul brewery during 1975 and 1976, approximately 8 percent was low beer and 92 percent was high beer. Of the volume of beer sold to Minnesota wholesale distributors for sale in Minnesota, approximately 31 percent was low beer and 69 percent was high beer.

Of the 15 states, including Minnesota, to which Olympia's Saint Paul brewery shipped beer, the only states which required the labeling of low beer were Minnesota, South Dakota, Colorado, Kansas, Missouri and Ohio.

The only high beer shipped from Olympia's Saint Paul brewery which was labeled "strong" was that beer which was sold to wholesale distributors licensed in Minnesota. The only low beer shipped from Olympia's Saint Paul brewery which was labeled to indicate that it contained not more than 3.2 percent alcohol by weight was that which was sold to wholesale distributors licensed in Minnesota, South Dakota, Colorado, Kansas, Missouri or Ohio.

5. During 1975 and 1976, Olympia carried on a trade or business partly within and partly without Minnesota within the meaning of Section 290.17, subd. 2(4), *Minn. Stat. Ann.* As a consequence, Olympia was required to apportion its net income to Minnesota in accordance with the sales, tangible property and payroll factors specified in Section 290.19, subd. 1, *Minn. Stat. Ann.*

6. In computing sales made in Minnesota for purposes of Section 290.19, subd. 1 (1) (a) and subd. 1a, *Minn. Stat. Ann.*, Olympia excluded all beer sold by its Saint Paul brewery to out-of-state wholesale distributors. Olympia included in its computation of sales made in Minnesota all beer sold by its Saint Paul brewery to Minnesota wholesale distributors. The determination of which sales had been made to out-of-state wholesale distributors was made from the company's retained copies of the bills of lading and the sales and memorandum invoices which had been prepared based upon such bills of lading. The determination of which sales had been made to Minnesota wholesale distributors was also based upon an analysis of the same records.

7. Upon audit examination, Appellee determined that all sales of beer from the Saint Paul brewery to out-of-state distributors which were transported by common or contract rail or truck carriers were properly classified as sales made outside Minnesota. Appellee treated all sales of beer from the Saint Paul brewery to out-of-state distributors as sales made within Minnesota in all cases where the transportation mode utilized was pick-up by the distributor's own trucks at the Saint Paul brewery. Appellee's determination of which sales were picked up by the distributor's own trucks was made from Olympia's retained copies of the bills of lading which had the words "their truck" or "picked up" in the space provided for the name of the carrier.

8. Olympia does not monitor or trace the commercial flow of its beer products after they are sold to a distributor. However, neither party is aware of any instance in which beer sold by Olympia's Saint Paul brewery to an out-of-state distributor during 1975 and 1976 was subsequently sold by that distributor in Minnesota or was resold by that distributor to any other party for sale within this state.

9. As a result of its determination that sales made to out-of-state distributors constituted sales made in Minnesota in those instances where the distributor provided its own truck for transportation of the beer, Appellee issued an Order on August 26, 1980, assessing additional income tax and interest in the following amounts:

| Year | Tax | Interest | Total |
|---|---|---|---|
| 1975 | $15,466 | $ 5,261.73 | $ 20,727.73 |
| 1976 | 86,745 | 23,081.29 | 109,826.69 |
| | | TOTAL | $130,554.02 |

Olympia subsequently filed a timely appeal with the Tax Court challenging the validity of this order.

10. The apportionment of sales as determined by the Appellee is correct and the Order assessing additional tax should be affirmed.

**Conclusions of Law**

1. The apportionment of sales as determined by the Appellee is correct and the Order of the Appellee assessing additional tax is affirmed.

IT IS SO ORDERED. A STAY OF 15 DAYS IS HEREBY ORDERED.

By the Court,
Carl A. Jensen, Judge

**Memorandum**

The question involved in this case is the interpretation of Minn. Stat. § 290.19 and the particular parts of that section that are involved are as follows:

290.19, subd. 1 (1) (a). The percentage which the sales made within this state is of the total sales wherever made;

* * * * * * * * * * * * *

290.19, subd. 1a. Sales of tangible personal property are made within this state if the property is delivered or shipped to a purchaser within this state, and the taxpayer is taxable in this state, regardless of the f.o.b. point or other conditions of the sale.

The purpose of the statute is to allocate taxable income fairly between states in which business is transacted. Two of the factors for apportioning business income for tax purposes are the percentage of property owned by the taxpayer in the state and the percentage of the taxpayer's total payroll in the state. These are not involved in this proceeding. This proceeding involves only the sales factor in the apportionment formula.

Prior to the passage of the present Minnesota law, sales were assigned for apportionment purposes to Minnesota on the basis of whether the sales were made within the state through offices, agencies, branches or stores within the state. In 1973, the present law was adopted, which is sometimes referred to as a destination sales law. The law Minnesota adopted is basically part of the "Uniform Division of Income for Tax Purposes Act" which is hereafter referred to as UDITPA.

The language in the Minnesota Act is almost identical to the language in UDITPA except that Minnesota did not adopt the so-called throw back rule which provides that if sales are made outside of this state and not assignable to any other state, they will be assigned to Minnesota and also that part of UDITPA which provides that sales to the United States are to be assigned to Minnesota. Neither of these exceptions affects the decision in this case.

In this case the Appellant sold beer to distributors in Minnesota and surrounding states. Some of the distributors picked up the beer at Appellant's dock and the rest of the deliveries were made by delivery by the Appellant to a common carrier or a contract carrier selected by the purchaser. Appellant had assigned to Minnesota all sales that were made to Minnesota distributors whether they were picked up by the Minnesota distributor or whether they were shipped to the Minnesota distributor by common or contract carrier. Appellant did not assign to Minnesota the sales that were made to distributors outside the State of Minnesota whether they were picked up by the purchaser or whether they were shipped by common or contract carrier.

Appellee audited Appellant's books and assigned to Minnesota all sales that were picked up at the dock by the purchaser whether the purchaser was from Minnesota or from some other state. Appellee did not assign to Minnesota sales that were shipped outside of the state by common or contract carriers.

Appellant contends that sales should not be assigned to Minnesota where the purchaser is from some other state even though the purchaser takes delivery at the Appellant's dock in Minnesota.

The apparent purpose of UDITPA is to see that sales are attributed to some state but not to more than one state to avoid double taxation. If all states adopted UDITPA and interpreted it in the same way, it would appear that 100 percent of sales would be attributed to some state. Because Minnesota did not adopt the throw back rule or the rule relative to sales to the United States, it would appear that in most cases in Minnesota less than 100 percent of sales will be attributed, so in a sense the taxpayer may be paying less than he should, at least in comparison with some business that is wholly contained within the state and has no sales to other states or in comparison with taxpayers in states that have adopted all of the UDITPA provisions.

The taxpayer did not allege that any other state was attempting to attribute the sales in controversy to that other state so there seems to be no claim of double taxation. From page 18 of Appellant's reply to the brief of the Multi-State Tax Commission, it appears that Wisconsin interprets their apportionment statute in the same way as Minnesota does. Appellant also appears to admit that most other states are interpreting UDITPA in the same way that Minnesota is interpreting it. Appellant also indicates that it has been informally advised that some breweries in Wisconsin may be challenging Wisconsin's interpretation of this law. It appears that Florida is the only state where the courts have interpreted the law and Florida has interpreted it in accord with Appellant's position. However, there was a strong dissent in that case which we will discuss later.

In Appellant's reply to the brief of the Multi-State Tax Commission, Appellant states that the statute should be interpreted in the way suggested by Appellant and similar to the Sales Tax Law. It appears to us that in order to do this, UDITPA would have to be substantially rewritten. In the Sales Tax Act, Minn. Stat. § 297A.25, subd. 1(d), the legislature distinguished between sales of personal property shipped or transported outside of Minnesota for use in a trade or business and sales to consumers.

The Income Apportionment Act and UDITPA do not so distinguish. If we were to adopt Appellant's reasoning, it would be logical that all retail establishments in Minnesota would not apportion to Minnesota the amount of all charge statements mailed to customers outside Minnesota regardless of whether or not those purchases had physically been made in stores in Minnesota. The dissenting opinion in the *Department of Revenue v. Parker Banana Company*, 391 S. 2d 762 (D.Ct. App. Fla. 1980) stated the same thing and said it would be "an entirely unmanageable situation."

Although the legislature could change the law to be similar to the provisions relative to the sales tax, which appear to be quite explicit, it has not seen fit to do so. Since Minnesota's law is basically a uniform law which is being uniformly interpreted, the legislature would probably not be inclined to change Minnesota law unless UDITPA was changed first. Basically UDITPA seems to be for the purpose of providing a relatively fair apportionment of sales to the various states involved. The interpretation that has been given by Appellee and also by most of the other jurisdictions that have been cited as considering the matter results in uniform treatment easily administered. The interpretation requested by Appellant would make the law difficult to administer. It appears to us that Florida will have to amend its law to make it possible to administer it. Since Florida is a tourist state, it would appear that a large portion of sales are made to non-residents to be immediately taken out of the state and presumably these sales would not be attributed to Florida under the *Parker Banana Co.* case. In any event, the Florida case was decided by a 2 to 1 margin and we find the dissenting opinion much more persuasive than the majority opinion. It does not appear from the Florida opinion that the court was really made aware of what was happening in the interpretation of UDITPA in other jurisdictions or at least there was no reference to this by either the majority or the dissent.

The Minnesota statute says:

"The sales of tangible personal property are made within this state if the property is delivered or shipped to a purchaser within this state, and the taxpayer is taxable in this state, regardless of the f.o.b. point or other conditions of the sale."

We think this phrase can be separated into two statements as follows:

delivered to a purchaser within this state

and

shipped to a purchaser within this state

It appears clear to us that the words "delivered to a purchaser within this state" mean exactly that. That is, the delivery was made in the state and the purchaser was in the state at the time. It does not say delivered within this state to a resident or a purchaser residing in this state. It simply says that the purchaser was in the state at the time.

The words "shipped to a purchaser within this state" also appear to be clear without any explanation.

Since there are the only sales that are assigned to this state by this statute, sales of goods shipped out of this state are not included but the goods have to be "shipped" out of the state by the seller and there is no provision for exclusion of those sales where a non-resident purchaser comes into the state and takes delivery in the state. Although under the law of sales and the U.C.C., goods are deemed to be delivered to the purchaser when they are delivered to a carrier, UDITPA specifically states that this rule does not apply for interpreting this law.

Appellant argued that *American Home Products Corp. v. Iowa State Board of Tax Review*, 302 N.W. 2d 140 (Iowa 1981), supported its position. The case is really not in point at all because the goods were delivered to a common carrier outside Iowa and shipped into the State of Iowa. The taxpayer contended that the sales should not be included in Iowa sales because they were "delivered" to the common carrier outside the State of Iowa and under the ordinary sales law and U.C.C. this would be considered delivery. The Iowa Court said that delivery meant the point at the delivery end of the common carrier and that this is what most people consider delivery to mean. Actually Iowa did not have UDITPA which clearly provides for the situation in the Iowa case. Iowa ruled the same as the specific provision in UDITPA.

The throw back rule provides that if sales are not taxable in the state to which the goods are shipped, then they will be assigned to the state from which they were shipped. Since Minnesota did not adopt the throw back rule and since Wisconsin apparently is interpreting their UDITPA version to mean that goods picked up by a purchaser in Minnesota and brought back to Wisconsin are not assignable to Wisconsin, it would mean that these sales would not be assigned to any state and this was not the intention of UDITPA. The intention of UDITPA was that 100% of sales would be assigned to some state but no more than 100%.

Appellant has cited a large number of writers of text books or articles relative to UDITPA. It is possibly true that these citations could be construed to support Appellant's position except that they are all general statements and none of them deal with the specific facts. Since UDITPA is being uniformly construed by most of the jurisdictions in accord with the construction of the Appellee, it would seem reasonable to expect that writers on the subject would be construing this specific situation in the same way. We can only conclude that the writers did not have in mind the exact fact situation that prevails here when they wrote their general statements.

Appellant argues a great deal on the use of the word "destination" and that the legislature intended to adopt the destination rules when they adopted this legislation. This is perhaps true in a sense but the statute did not use the word destination. If the word destination had been used in UDITPA or in the Minnesota Statutes, we would be called on to interpret it and we would examine exactly how it was used. Actually, it is used as a general word to describe approximately what the statute does. Since the word is not specifically used, there is no great point in spending much time in trying to construe what is meant by it.

Although Appellant's construction might easily be applied to this one particular business in this particular situation, it would not be easily applied to many other businesses and Appellee has to use the same methods and standards in all cases.

Petitioner refers to *Woods v. Jack Daniel's Distillers* (Tenn. 1977). Appellant provided a copy of this decision as it apparently was not printed in any of the reports. It is marked "not designated for publication" which might mean that the Court did not consider it an important case. The Court construed a statute which used the word "customer" which is not used in UDITPA or the Minnesota Law. Appellee pointed out that this statute no longer exists. Since the language of the law was different and since it no longer exists, it is of little value in attempting to interpret an entirely different statute.

Appellant used *American Home Products Corp. v. Iowa State Board of Tax Review*, supra, to support its construction of the statute, but there is nothing in that Iowa case that would indicate that Iowa would attempt to apportion to Iowa a sale made in Minnesota to a purchaser from Iowa where the purchaser transported the goods back to Iowa himself. It would be very difficult for Iowa to audit this type of situation, even if it did feel that such sales in Minnesota would be assignable to Iowa.

Appellant argues that the opinion of this Court in *Pickands Mather and Co. v. Commissioner of Revenue*, Case No. 2193, 2228, and 2430, November 25, 1981, concurs with Appellant's position, and we were referred to pages 26 to 30 and pages 67 and 68 of that decision.

It is true that that decision discussed the apportionment law and used the words "ultimate destination." As we have previously indicated, UDITPA is referred to in general terms as a destination basis law. The words "destination" or "ultimate destination" are not specifically used in either UDITPA or Minnesota law. We suspect that the drafters of this uniform law may very well have considered using the word "destination" but probably concluded that many difficulties would arise with the use of that word. For example, if we use the word "destination," it would seem to follow that the taxpayer should keep a record of whether the sale is made to a resident of Minnesota or to a non-resident regardless of where delivery is made. Under the apportionment statute, sales to ultimate consumers or to businesses are treated in the same way. This would mean that where Wisconsin residents came to shop in Minnesota stores the sale should be attributed to Wisconsin. It would perhaps be possible for the store to ask each purchaser what their residence was and at least they could attribute all charge accounts for residents of other states to those other states. It would appear to us that this might be an insurmountable problem for both businesses and the Department of Taxation. This point was also effectively made in the dissenting opinion in *Department of Revenue v. Parker Banana Company*, supra.

We do not feel that the *Pickands Mather and Co.* case specifically touched on the issue involved here. In that case the Minnesota corporation was owned by corporations in other states who used the Minnesota corporation's product. It would be difficult to determine when the foreign corporations actually took delivery. The Court in that case stated the following:

"If the question whether apportionment is to be permitted or not to be permitted is to be resolved by reference to the question of whether gross receipts are determined in any given case, specifically by reference to sales, the obvious result would be that some taconite producers for the purpose of computing the limitation amount under clause (b) would be entitled to apportionment while others would not. The discrimination which would result among the taconite producers themselves for the purpose of computing the said limitation amount could not have been intended by the legislature."

In our opinion it was really not necessary for this Court to consider the apportionment statute at all in the *Pickands Mather and Co.* case. The taconite statute that was involved in that case was Minnesota Statutes § 298.40, which provided for a maximum tax limitation on taconite companies. The limitation provided for in that law was either the amount of the tax that was being levied in 1963 on taconite or

"(b) the amount which would be payable if such person or corporation were taxed with respect to such mining, production, or beneficiation under the income, franchise, and excise tax laws generally applicable to manufacturing corporations transacting business within the state, as such laws may be enacted or amended from time to time, except for the purpose of the computation under this clause (b), *(1) income shall be apportioned to Minnesota in the manner which may be otherwise specified by law;*" (Emphasis added)

This statute did not say that the legislature had to apply the corporation tax to taconite companies. It simply provided that the amount of the tax put on taconite companies could not exceed the amount that would be determined if the corporation tax law were applied to the taconite companies except that the legislature was specifically allowed to attribute all taconite company income to Minnesota. As we understand the decision in that case, if all taconite company income had been attributed to Minnesota, the increases that had been made by the legislature would not have exceed the maximum allowed.

The Taconite Law specifically excluded the apportionment formula in the business income law and specifically provided that the legislature could attribute all of the income of taconite companies to Minnesota, so there was no necessity for considering the application of the apportionment factors in the taconite case.

The Taconite Law provided that the tax on taconite could not exceed an amount determined by applying the rates generally applicable to manufacturing companies on income, franchise, and excise tax laws except that *all of the income of taconite companies could be apportioned to Minnesota.*

In other words, we feel that any interpretation of the apportionment formula of the business income tax law was unnecessary for the decision in *Pickands Mather and Co.*, supra. Further than that, we feel that if such interpretation had been necessary the situation was entirely different than that in the subject case. The interrelationships between the taconite companies and the companies that purchased their product make it impossible to compare their situation with ordinary business transactions such as exist in the subject case. It may very well have been that that is the reason that the taconite statute specifically provided that in determining the maximum amount of tax that could be levied on taconite companies, the legislature could attribute all of their income to Minnesota.

In conclusion, we find that the clear and ordinary interpretation of the statute requires us to adopt the position of the Appellee. Despite the majority opinion in the Florida case, we find the language of the statute quite clear considering all of the facts and circumstances that have been brought to the attention of this Court. It would appear to this Court that if the legislature were to attempt to clarify the statute, they would clarify it to mean explicitly the position of the Appellee and all of the other jurisdictions that are interpreting UDITPA in the same way. Uniform laws are meant to result in uniform interpretation. UDITPA was intended to clarify and make uniform the assignment of sales for the purpose of attributing income for tax purposes to the various states involved. The interpretation of the Appellee and of all the other jurisdictions that have adopted it does that and prevents double taxation which was undoubtedly one of the reasons for developing a uniform law.

C.A.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 Energy, Planning and Development Developmental Disabilities Program

### Notice of Request for Proposals for Regional Problem Solving Projects Related to Services Provided to Developmentally Disabled Persons

The Developmental Disabilities Program announces that it is seeking proposals from eligible public or private non-profit organizations with the interest and capacity to undertake the following tasks:

To identify and bring to resolution a regional problem associated with the provision of services to developmentally disabled persons. Financial support will be provided by the Developmental Disabilities Program of the Department of Energy, Planning and Development using a grant from the McKnight Foundation.

Funding of up to $100,000 is available for these projects. Organizations receiving grants will be expected to begin work on the project no later than October 1, 1982. The grant will be for a one-year period.

The guidelines to be used in the preparation of an application are available from the Developmental Disabilities Program Office. Deadline for receipt of applications in the office is 5:00 p.m., Friday, May 28, 1982. To obtain a copy of the guidelines, please write or call:

Ronald E. Kaliszewski
Developmental Disabilities Program
201 Capitol Square Building
550 Cedar
St. Paul, MN 55101
Phone: (612) 297-3207

# Developmental Disabilities Program

## Notice of Request for Proposals for Modifying of Developmental Achievement Centers to Make Them Accessible to Persons in Wheelchairs

The Developmental Disabilities Program announces that it is seeking proposals from eligible public or private non-profit organizations concerning the following tasks:

To undertake modifications to existing Developmental Achievement Center facilities in order to make the facility accessible to persons in wheelchairs. Financial support will be provided by the Developmental Disabilities Program of the Department of Energy, Planning and Development using a grant from the McKnight Foundation.

Funding of up to $100,000 is available for these projects. Organizations receiving grants will be expected to have the work completed by September 1, 1983.

The guidelines to be used in the preparation of an application are available from the Developmental Disabilities Program Office. Deadline for receipt of applications in the office is 5:00 p.m., Friday, May 14, 1982. To obtain a copy of the guidelines, please write or call:

Ronald E. Kaliszewski
Developmental Disabilities Program
201 Capitol Square Building
550 Cedar
St. Paul, MN 55101
Phone: (612) 297-3207

# Minnesota Pollution Control Agency Solid and Hazardous Waste Division

## Notice of Request for Proposals for Contractural Services to Assess Hydrogeology of Selected Waste Management Facilities

The Minnesota Pollution Control Agency (MPCA) is seeking proposals from qualified consulting firms to obtain soil borings, install monitoring points, and provide analytical support at selected waste management facilities in Minnesota. The data gained from these site-specific studies will be used by MPCA to add to the data base needed to develop a ground-water protection strategy framework for the state. Facilities to be considered under this proposal include sites within each of the following categories:

1. Wastewater effluent spray irrigation systems (three sites);
2. Community septic tank drainfield systems (one site);
3. Industrial surface impoundments (two sites).

Information gained from the studies should be of sufficient detail to allow the MPCA to make a determination of the extent to which location, design, and operation of the subject facilities are protecting the environment. Prospective responders may submit proposals on one or any combination of facilities as described in more detail in the scope of work, however, the estimated total cost of the studies shall not exceed a total of $70,000. Persons having questions or who would like a copy of the scope of work for any or all of the studies may call or write:

Minnesota Pollution Control Agency
Solid and Hazardous Waste Division
1935 West County Road B2
Roseville, Minnesota 55113

Contact Persons:

1. For community drainfield and spray irrigation systems: Brad Sielaff (612-297-2712);
2. For industrial surface impoundments: Rick Johnston (612-297-2717);
3. For general questions concerning the Request for Proposal: Tom Clark (612-297-2720).

Deadline for submission of proposals is April 12, 1982.

# 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 Energy, Planning and Development Bureau of Business Licenses

### Notice of Intent to Solicit Outside Opinions and Information Concerning Rules on a Master Application Procedure to Expedite the Identification and Processing of Business Licenses

Notice is hereby given that the Bureau of Business Licenses, Minnesota Department of Energy, Planning & Development, is seeking opinions and information from sources outside the agency for the purpose of considering development of rules on a master application procedure in order to expedite the identification and processing of licenses for business undertakings, projects and activities. Such rules are authorized by Minn. Stat. § 362.467.

Under Minn. Stat. § 362.467 the Bureau of Business Licenses is required to provide a centralized office for business license applicants and the general public to obtain comprehensive licensing information and assistance. Under Minn. Stat. § 362.475 the Bureau of Business Licenses is also required to develop and implement a Master Application procedure to expedite the identification and processing of licenses for business undertakings, projects and activities. The rules referred to in this notice will establish the procedures by which an interested party may obtain related and similar licenses from different licensing agencies of the state through a master application submitted to the Bureau of Business Licenses.

Any person desiring to submit information or comment on this subject may do so either orally or in writing. In seeking outside opinions and comments, the Department of Energy, Planning & Development is particularly interested in receiving comments as to whether rules are the appropriate mechanism for establishment and implementation of a master application process, or whether the number of licensing departments and the number and kind of licenses and permits contained in the statutory definition of "business license" (Minn. Stat. § 362.452, subd. 2) would indicate that non-rule procedures might be more appropriate. All statements of information or comment should be received by April 29, 1982. Written information or comment received by this date will become part of the record on any rules hearing on this subject. Written or oral information or comment should be addressed to:

MN Dept. of Energy, Planning & Development
Bureau of Business Licenses
Attn: Madeline Harris
480 Cedar Street
St. Paul, MN 55101 (612) 296-5023

March 8, 1982

W. Wesley Cochrane, Assistant Commissioner
Energy, Planning & Development

# Department of Energy, Planning and Development Energy Division

## Recertification of the Sherburne County Generating Unit No. 3 as Proposed by Northern States Power Company, Southern Minnesota Municipal Power Agency, and United Minnesota Municipal Power Agency, Joint Applicants

### Notice and Order of Continued Hearing

It is hereby ordered and notice is hereby given that the contested case hearing in the above-entitled matter will be continued at the following times and places:

| | | |
|---|---|---|
| March 29 through April 1 | 8:30 a.m. | Federal Building, Room 178, Saint Paul |
| April 5 through 8 | 8:30 a.m. | Federal Building, Room 584, Saint Paul |
| April 12 through 15 | 8:30 a.m. | Federal Building, Room 584, Saint Paul |
| Monday, April 19 | 8:30 a.m. | Federal Building, Room 178, Saint Paul |
| Tuesday, April 20 | 8:30 a.m. | Federal Building, Room 586, Saint Paul |
| Wednesday, Thursday, April 21 through 22 | 8:30 a.m. | Federal Building, Room 584, Saint Paul |
| April 26 through 29 | 8:30 a.m. | Federal Building, Room 584, Saint Paul |

If additional hearing sessions are needed, they will be scheduled by the hearing examiner. If, on the other hand, there appears to be need for any of the sessions scheduled to be cancelled, the hearing examiner may cancel any of the sessions indicated. Citizens are encouraged to attend these hearings concerning the need for the proposed 800 megawatt coal-fired power plant and alternatives to the plant. If any member of the public wishes to testify or present exhibits, they may do so by making special arrangements with the hearing examiner. Interested members of the public may also submit written comments before the end of the hearings to the hearing examiner. Citizens may contact Phyllis A. Reha, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415.

For more information, or a copy of the original Order for Hearing, which contains additional details on the hearing process, interested members of the public may contact David Jacobson at (612) 296-7502 or toll free (800) 652-9747.

March 8, 1982

Phyllis A. Reha
Hearing Examiner

# Minnesota Pollution Control Agency

## Notice of Request by the City of Waverly for a Variance for its Wastewater Treatment Facility from the Phosphorus Requirement of 6 MCAR § 4.8014 C.6.

### Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a public hearing concerning the above-entitled matter will be held by the Minnesota Pollution Control Agency ("MPCA") on Tuesday, April 27, 1982, at the Waverly City Office, Waverly, Minnesota 55390, commencing at 7:00 p.m. The MPCA is authorized to hold the hearing and grant the requested variance pursuant to Minn. Stat. § 116.07, subd. 5 (1980), 6 MCAR §§ 4.3006 and 4.8014 A.9.

The City of Waverly, Minnesota, has applied for a permanent variance from the phosphorus limitation (1 milligram per liter (mg/l) specified in 6 MCAR § 4.8014 C.6. The city currently owns and operates a contact stabilization wastewater treatment plant (WWTP) located in the SW¼ of the NE¼ of Section 4, Township 118 North, Range 26 West, Woodland Township, Wright County, Minnesota. The wastewater treatment facility has a continuous discharge to Carrigan Lake, which is located immediately west of the facility. The current average phosphorus concentration in the city's discharge is estimated to be 2.0 mg/l.

The purpose of the hearing is to determine whether the proposed variance should be issued and, if so, the terms and conditions of such variance. In addition to the issues identified by the City of Waverly in its application for variance, such other issues as are germane to the determination of the issuance or denial of the proposed variance, as may be determined during prehearing conferences, may be addressed at the hearing.

Please be advised that these issues may, without further notice, be modified, and/or amended by the hearing examiner during prehearing conferences. Additionally, prehearing conferences may result in the establishment of foundation for witnesses and exhibits and, furthermore, may lead to a settlement of the issues surrounding the permit issuance.

The hearing will be held before Howard L. Kaibel Jr., 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota ( (612) 341-7608), 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, themselves, or any other representative of their choice, if not otherwise prohibited as the unauthorized practice of law. The hearing will be conducted pursuant to the procedures set out in Minn. Stat. §§ 15.0411 through 15.052, 9 MCAR §§ 2.201 through 2.299 (Office of Administrative Hearings Contested Case Rules), and 6 MCAR §§ 4.3001 through 4.3013 (Minnesota Pollution Control Agency Rules of Procedure), to the extent the latter rules do not conflict with the former rules.

The above-cited procedural rules are available for inspection at the Office of Administrative Hearings and the MPCA or may be purchased from the *State Register* and Public Documents Section of the Department of Administration, 117 University Avenue, Saint Paul, Minnesota 55155, telephone: (612) 297-3000.

The following persons are parties to the hearing at the present time pursuant to 6 MCAR § 4.3009: the applicant (the City of Waverly). In addition, the MPCA staff intends to file a Petition to Intervene as a party. Any other person wishing to become a party to the hearing must file a Petition to Intervene with the hearing examiner pursuant to 9 MCAR § 2.210, and a copy must be served on all existing parties and the MPCA. The petition must show how the petitioner's legal rights, duties, or privileges may be determined or affected by the hearing, and shall set forth the grounds and purposes for which intervention is sought and indicate the petitioner's statutory right to intervene if one should exist. The name and address of the hearing examiner are listed above. The name and addresses of representatives for the applicant (City of Waverly), and the MPCA Staff are as follows:

Adrian B. Duske, Mayor
City of Waverly
City Hall
Waverly, Minnesota 55390

Marlene E. Senechal
Special Assistant Attorney General
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113

The hearing examiner may, in the absence of a Petition to Intervene, nevertheless hear the testimony and receive exhibits from any person at the hearing, or allow a person to note his appearance, or allow a person to question witnesses, but no person shall become, or be deemed to have become, a party by reason of such participation. Persons offering testimony or exhibits may be questioned by parties to the hearing.

All persons are advised that no factual information or evidence which is not part of the hearing record shall be considered by the Hearing Examiner of the MPCA in determination of the above-entitled matter. Persons attending the hearing should bring all factual information or evidence bearing on the case which they wish to have included in the record.

The application form, authorization for hearing, comments received, and other documents related to this matter may be inspected and copied at any time between 8:30 a.m. and 4:00 p.m., Monday through Friday, at the Minnesota Pollution Control Agency, 1935 West County Road B2, Roseville, Minnesota telephone: (612) 296-7724.

Questions concerning the issues raised in this Notice of and Order for Hearing or concerning informal disposition or discovery may be directed to Special Assistant Attorney General Marlene E. Senechal.

All persons are advised that, if they intend to appear as parties at the hearing, a Notice of Appearance Form must be completed and returned to the Hearing Examiner within twenty (20) days of the date of service of the Notice of and Order for Hearing. SHOULD A PARTY FAIL TO APPEAR AT THE HEARING, THE ISSUES SET OUT IN THIS ORDER MAY BE DEEMED PROVED, with the consequence that the proposed variance may be granted.

If persons have good reason for requesting a delay of the hearing, the request must be made in writing to the Hearing Examiner as soon as possible but, in any event, at least five (5) days prior to the hearing. A copy of the request must be served on the MPCA and all other parties.

March 15, 1982

Louis J. Breimhurst
Executive Director

# Office of the Secretary of State

## Notice of Vacancies in Multi-member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul 55155-1299; (612) 296-2805. **Application deadline is April 13, 1982.**

BOARD OF RESIDENTIAL UTILITY CONSUMERS has 1 vacancy open immediately for a resident of Congressional District 4. The board establishes policy guidelines for the utility-related activities of the commerce department's consumer services section. Members are appointed by the Governor. Monthly meetings at the Commerce Department, Office of Consumer Services, 5th Floor, Metro Square Bldg., St. Paul; members receive $35 per diem plus expenses. For specific information, contact the Board of Residential Utility Consumers, Department of Commerce, 5th Floor, Metro Square Bldg., St. Paul, MN 55101, (612) 296-6032.

ENVIRONMENTAL QUALITY BOARD has 1 new position open immediately for a public member (MS 1980, § 116C:03, Subd. 2 as amended 1981). The board insures cooperation and coordination among state agencies on issues that affect the environment. Public members are appointed by the Governor and confirmed by the Senate. Members must file with the EPB. Meetings are monthly; members receive $35 per diem. For specific information, contact the Environmental Quality Board, Room 100, Capitol Square Bldg., St. Paul 55101; (612) 296-2723.

INVESTMENT ADVISORY COUNCIL has 1 vacancy open immediately for a member with experience in general investment matters. The council advises the Board of Investment on policy relating to investments from state funds. Members are appointed by the Board of Investment. Members must file with EPB, and receive no compensation. For specific information, contact the Investment Advisory Council, MEA Bldg., Rm. 105, 55 Sherburne Ave., St. Paul 55155; (612) 296-3328.

STATE EMPLOYEES SUGGESTION BOARD has 1 vacancy open immediately for a state employee. The board manages a state employee suggestion system for approximately 30,000 classified and unclassified state employees in order to provide tangible and intangible savings to the state, increase employee morale, and increase the safety of the employees and public. Members are appointed by the Governor. Members receive no compensation. Monthly meetings held at the Administration Bldg. For specific information, contact the State Employees Suggestion Board, 203 Administration Bldg., St. Paul 55155; (612) 296-6798.

SOLID WASTE MANAGEMENT ADVISORY COUNCIL has 7 positions open immediately for 2 public members, 3 representatives of local government units, and 2 representatives of private solid waste management firms. Experience is desirable but not required in the following areas: state and municipal finance, solid waste collection, processing and disposal, and solid waste reduction and resource recovery. The council makes recommendations to the Waste Management Board on its solid waste management activities. Members are appointed for 2 year renewable terms by the chairperson of the Waste Management Board. The current appointment term expires 6/30/82. Meetings are twice monthly in the metropolitan area; members are compensated for expenses. For specific information, contact Robert Dunn, Chairman, Waste Management Board, 7323-58th Ave. N., Crystal, MN 55428; (612) 536-0816.

STATE OF MINNESOTA

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

# ORDER FORM

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## 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.

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