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STATE REGISTER

STATE OF MINNESOTA

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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			
46	Monday May 3	Monday May 10	Monday May 17
47	Monday May 10	Monday May 17	Monday May 24
48	Monday May 17	Monday May 24	Monday May 31
49	Monday May 24	Friday May 28	Monday June 7

*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*.

Albert H. Quie
Governor

Carol Anderson Porter
Editor

David Zunker
Information Officer

James J. Hiniker, Jr.
Commissioner
Department of Administration

Paul Hoffman, Robin PanLener, Roy Schmidtke, Jean Walburg
Editorial Staff

Stephen A. Ordahl
Director
State Register and
Public Documents Division

Debbie Kobold
Circulation Manager

Margaret Connelly
State Register Index Editor

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NOTICE

How to Follow State Agency Rulemaking Action in the State Register

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

The PROPOSED RULES section contains:

- 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:

Table with 2 columns: Issue/Section and Cumulative Listing. Includes: Issues 1-13, inclusive; Issues 14-25, inclusive; Issue 26, cumulative for 1-26; Issue 27-38, inclusive; Issue 39, cumulative for 1-39; Issues 40-51, inclusive; Issue 52, cumulative for 1-52.

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

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EXECUTIVE ORDERS**Executive Order No. 82-7****Providing for the Establishment of a Governor's Task Force on Income Tax Simplification**

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, Sections 4.035 and 15.0593 (1981), do hereby issue this Executive Order:

WHEREAS, the individual income tax system was adopted by the Legislature in 1933; and

WHEREAS, during the past 49 years, the Legislature has made numerous changes in Minnesota's individual income tax system; and

WHEREAS, many of these changes have made the income tax system more complicated and difficult to understand; and

WHEREAS, the goals of any income tax system should be to provide equity and simplicity.

NOW, THEREFORE, I Order:

1. The establishment of a Governor's Task Force on Tax Simplification pursuant to Minn. Stat. § 15.0593 and other applicable statutes. The task force shall consist of fifteen (15) members appointed by the Governor. At least one-half of the members of the task force shall be taxpayers who are not professional tax practitioners. The chair of the task force shall be chosen by the Governor.

2. The task force shall examine three major approaches to simplification of the individual income tax system: (1) a federal piggyback system, including the option of actual federal collection and the option of state collection based on a percent of federal tax or a percent of federal adjusted gross income; (2) alternative changes in Minnesota law, other than the federal piggyback system, which would facilitate tax simplification; and (3) simplification of forms and instructions under existing law.

3. The task force shall prepare a report containing detailed recommendations to be submitted to the Governor and to the Senate Committee on Taxes and Tax Laws and the House Committee on Taxes by October 1, 1982.

4. The Department of Revenue shall provide staff for the task force.

5. The terms of task force members shall coincide with the term of this Executive Order.

EXECUTIVE ORDERS

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

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

Albert H. Jurek

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

Department of Commerce Insurance Division

Proposed Amendments to Rules Relating to Proxies, Consents and Authorizations

Notice of Intent to Amend Rules without a Public Hearing

Notice is hereby given that the Insurance Division proposes to adopt amendments to the above-entitled rules without a public hearing. The Commissioner of Insurance has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes § 15.0412, subd. 4h (1980).

Persons interested in these rules, which were published in the *State Register* January 4, 1982, shall have 30 days to submit comments. The proposed rules 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.

No public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes § 15.0412, subd. 4-4f.

Persons who wish to submit comments or a written request for a public hearing should mail them to:

Bill Howard
Insurance Division
500 Metro Square Building
St. Paul, MN 55101

Authority for the adoption of these rules is contained in Minnesota Statutes § 60A.22. Additionally, a statement of need and reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

Any person who desires to be advised of the submission of this material to the Attorney General for approval may make this request in writing to the above named person.

Michael D. Markman
Commissioner of Insurance

Department of Natural Resources Minerals Division

Proposed Amendment of Rules Governing Permits to Prospect for and Leases to Mine Copper, Nickel and Associated Minerals

Notice of Intent to Amend Rules without a Public Hearing

Notice is hereby given that the Minnesota Department of Natural Resources proposes to adopt amendments to the above-entitled rules without a public hearing. The commissioner has determined that the proposed amendments of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412 (1980), subd. 4h, as amended by Laws of 1981, ch. 253, § 14. The only substantive change to the rules is the addition of a special royalty provision. All other changes shown by ~~strikeout~~ or underlining are renumbering or revisions of style or form made by the Revisor of Statutes pursuant to legislative mandate to make uniform the style and form of rules of all state agencies.

Persons interested in these rules shall have 30 days 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 (1980), subs. 4-4f, as amended by Laws of 1981, ch. 253, §§ 8-12.

Persons who wish to submit comments should submit such comments to:

Elwood F. Rafn
Department of Natural Resources
Box 45
Centennial Office Building
658 Cedar Street
St. Paul, Minnesota 55155
Phone: (612) 296-4807

Persons who wish to submit a request for a public hearing should submit such written request to Elwood F. Rafn.

Authority for the adoption of the proposed amendments is contained in Minn. Stat. §§ 93.08-93.12 and 93.25. 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 is available from Elwood F. Rafn upon request.

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.

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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 Elwood F. Rafn.

A copy of the proposed amendments is attached to this notice. Copies of this notice and the proposed amendments are available and may be obtained by contacting Elwood F. Rafn.

Joseph N. Alexander, Commissioner
Department of Natural Resources

Rule as Proposed

~~NR 94 6~~ MCAR § 1.0094 Permits and leases, copper, nickel and associated minerals.

- (a) Reletter as A.
- (b) (1)-(4) Reletter and renumber as B. 1.-4.
- (c) Reletter as C.
- (d) Reletter as D.
- (e) Reletter as E.
 - (1) (aa)-(cc) Renumber and reletter as 1. a.-c.
 - (2) Renumber as 2.
 - (3) Renumber as 3.

(f) Reletter as F.

~~(g)~~ G. Form of lease. The form of lease for prospecting for, mining and removing copper, nickel, and associated minerals belonging to the state shall consist of the following provisions, with such insertions, changes, or additions as may be necessary to incorporate the royalty rates and other particulars applicable to each lease as may be authorized under these rules and regulations:

This indenture, made this ____ day of _____, 19____, by and between the State of Minnesota, hereinafter called the state, and _____, hereinafter called the lessee, WITNESSETH:

- (1) Renumber as 1.
- (2) (aa)-(bb) Renumber and reletter as 2. a.-b.
- (3)-(7) Renumber as 3.-7.
- ~~(8)~~ 8. Royalty rates.

~~(aa)~~ a. The royalty rate to be paid to the state by the lessee for the copper, nickel, and associated metals and mineral products recovered from each ton of ore mined from said mining unit shall be the base rate described hereinafter, plus and additional ____ percent of the value of the metals and mineral products recovered in the mill concentrate from each ton of dried crude ore.

For ores mined by either underground or open pit methods during the unexpired portion of the calendar year in which the lease commences plus the first succeeding ten ~~(10)~~ calendar-year period, the base rate shall be two ~~(2)~~ percent of the value of the metals and mineral products recovered in the mill concentrate from each ton of dried crude ore, plus an additional two ~~(2)~~ percent of that portion of the value of the metals and mineral products recovered in the mill concentrate that exceeds seventeen (17) dollars per ton of dried crude ore.

For ores mined by underground methods during the second ten ~~(10)~~ calendar-year period, the base rate shall be ~~two and one quarter~~ ~~(2-1/4)~~ percent of the value of the metals and mineral products recovered in the mill concentrate from each ton of dried crude ore, plus an additional ~~two and one quarter~~ ~~(2-1/4)~~ percent of that portion of the value of the metals and mineral products recovered in the mill concentrate that exceeds seventeen (17) dollars per ton of dried crude ore; and for the third ten ~~(10)~~ calendar-year period, the base rate shall be ~~two and one half~~ ~~(2-1/2)~~ percent of the value of the metals and mineral products recovered in the mill concentrate from each ton of dried crude ore, plus an additional ~~two and one half~~ ~~(2-1/2)~~ percent of that portion of the value of the metals and mineral products recovered in the mill concentrate that exceeds seventeen (17) dollars per ton of dried crude ore; and for the fourth ten ~~(10)~~ calendar-year period, the base rate shall be ~~two and three quarters~~ ~~(2-3/4)~~ percent of the value of the metals and mineral products recovered in the mill concentrate from each ton of dried crude ore, plus

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an additional ~~two and three-quarters~~ (2-3/4) percent of that portion of the value of the metals and mineral products recovered in the mill concentrate that exceeds seventeen (17) dollars per ton of dried crude ore; and for the remaining portion of the lease term thereafter, the base rate shall be three (3) percent of the value of the metals and mineral products recovered in the mill concentrate from each ton of dried crude ore, plus an additional three (3) percent of that portion of the value of the metals and mineral products recovered in the mill concentrate that exceeds seventeen (17) dollars per ton of dried crude ore.

For ores mined by open pit mining methods, after the first ten (10) calendar-year period, the base rate shall be ~~thirty-three and one-third~~ (33-1/3) percent greater than those shown above for underground ore.

b. If the value of the metals and mineral products recovered in the mill concentrate from each ton of dried crude ore exceeds the special royalty base, as hereinafter defined, the lessee shall pay a special royalty in addition to the royalties specified in a. The amount of special royalty to be paid to the state shall be determined by multiplying the special royalty rate by that portion of the value of the metals and mineral products recovered in the mill concentrate from each ton of dried crude ore that exceeds the special royalty base.

The special royalty rate shall be four hundredths of one percent (.04%) of that portion of the value of the metals and mineral products recovered in the mill concentrate from each ton of dried crude ore that exceeds the special royalty base. The special royalty rate shall be subject to increase or decrease each calendar month by multiplying the special royalty rate by a fraction, the numerator of which shall be that month's base value of the metals and mineral products recovered in the mill concentrate from each ton of dried crude ore, and the denominator of which shall be that month's value of the metals and mineral products recovered in the mill concentrate from each ton of dried crude ore.

The special royalty base shall be \$50 per ton of dried crude ore, subject to increase or decrease each calendar month by multiplying the special royalty base by a fraction, the numerator of which shall be that month's value of the metals and mineral products recovered in the mill concentrate from each ton of dried crude ore, and the denominator of which shall be that month's base value of the metals and mineral products recovered in the mill concentrate from each ton of dried crude ore.

c. If the special royalty to be paid for any calendar month exceeds 20 percent of that month's value of the metals and mineral products recovered in the mill concentrate from each ton of dried crude ore, the lessee may apply to the commissioner for a modification of the special royalty rate in regard to the amount exceeding 20 percent. Any modification of the lease agreed upon between the lessee and the commissioner must be approved by the state executive council.

~~(9)~~ 9. Value of metal and mineral products. The value of metals and mineral products recovered in the mill concentrate from each ton of dried crude ore shall be determined monthly as follows: Multiply the total pounds respectively of copper, nickel, and each associated metal and mineral product recovered during the month in the mill concentrate from the mining unit, by the average market price per pound respectively for that month of each such fully refined metal and of each such mineral product. The total amount of copper and nickel recovered in any form in the mill concentrate shall be valued for royalty purposes as fully refined metal. For the purpose of this lease, associated mineral products shall mean the mineral products other than those that are principally valuable for their copper or nickel content. When less than ~~fifty~~ (50) percent of any associated metal or mineral product recovered in the mill concentrate is sold or otherwise gainfully disposed of, then only the quantity of such associated metal or mineral product actually sold or otherwise gainfully disposed of shall be multiplied by the market price in determining the value of such metal or mineral product for royalty purposes. Add the values thus obtained for each such metal and each such mineral product for the month, and divide the sum by the total number of tons of dried crude ore from the mining unit concentrated in the mill during the month, to obtain the value of the metals and mineral products recovered from each ton of dried crude ore.

The base value of the metals and mineral products recovered in the mill concentrate from each ton of dried crude ore shall be determined monthly in the same manner, except that the total pounds respectively of copper, nickel, and each associated metal and mineral product recovered during the month in the mill concentrate from the mining unit shall be multiplied by the respective average of the average market price per pound of each fully refined metal and of each mineral product for each of the 12 complete calendar months of 1981.

The average market price of copper per pound for each month shall be that quoted for domestic refinery electrolytic copper in carload lots, f.o.b. Atlantic Seaboard Refineries, as reported in the "Metals and Minerals Markets" section of the Engineering and Mining Journal. The average market price of nickel per pound for each month shall be that quoted for nickel

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cathods, in carload lots, f.o.b. Port Colborne, Ontario, Canada, United States import duty (if any) included, as reported in said journal. The average market price of other metals and of mineral products per pound for each month shall be that quoted for their usual and customary shipping quantities, f.o.b. the usual and customary place of shipment, United States import duty (if any) included, as reported in said journal. If said journal or its successors ceases to furnish such quotations, or its quotations cease to be recognized in the trade, or a particular metal or mineral product is not listed, then the quotations of such other source as the parties may agree upon shall govern.

(10)-(15) Renumber as 10.-15.

(16) (aa)-(ee) Renumber and reletter as 16. a.-e.

(17)-(34) Renumber as 17.-34.

~~(h) [Section 8.] Effective date. These rules and regulations shall become effective upon filing of same in the offices of the secretary of state and commissioner of administration in accordance with Minnesota Statutes, 1965, Section 15.0413, and shall remain in full force and effect until modified, amended, or revoked.~~

Department of Public Welfare Support Services Bureau

Proposed Rule Concerning the Investigation and Reporting of Maltreatment of Vulnerable Adults in DPW Facilities (12 MCAR § 2.010)

Notice of Hearing

A public hearing concerning the above entitled matter will be held in Room 83, State Office Building, 435 Park Street, St. Paul, Minnesota 55155 on June 15, 1982, commencing at 9:00 a.m. and continuing until all interested persons have an opportunity to be heard. The proposed rule may be modified as a result of the hearing process. Therefore, if you are affected in any manner by the proposed rule, you are urged to participate in the rule hearing process.

Following the agency's presentation at the hearing, all interested or affected persons will have an opportunity to ask questions and make comments. Statements may be made orally and written material may be submitted. In addition, whether or not an appearance is made at the hearing, written statements or material may be submitted to Jon Lunde, Hearing Examiner, Office of Administrative Hearings, 400 Summit Bank Building, 310 South Fourth Avenue, Minneapolis, Minnesota 55415, 612/341-7645, either before the hearing or within five working days after the public hearing ends. The hearing examiner may, at the hearing, order that the record be kept open for a longer period not to exceed 20 calendar days. The rule hearing procedure is governed by Minn. Stat. §§ 15.0411-15.0417 and 15.052, and by 9 MCAR §§ 2.101-2.112 (Minnesota Code of Agency Rules). If you have any questions about the procedure, call or write the hearing examiner.

Notice is hereby given that 25 days prior to the hearing, a statement of need and reasonableness will be available for review at the agency and at the Office of Administrative Hearings. This statement of need and reasonableness will include a summary of all the evidence and argument which the agency anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rule. Copies of the statement of need and reasonableness may be obtained from the Office of Administrative Hearings at a minimal charge.

Rule 10 (12 MCAR § 2.010) establishes standards for the protection of vulnerable adults in facilities licensed by the Department of Public Welfare as established in Minn. Stat. § 626.557 (1980), "Reporting of Maltreatment of Vulnerable Adults."

This rule applies to all residential and nonresidential programs providing services to adults and licensed pursuant to Minn. Stat. §§ 245.78 to 245.812.

This rule contains the following:

1. A list of definitions;
2. The contents required in the program abuse and prevention plan; in the individual plan, and in the internal reporting and investigating policies and procedures;
3. The time frames for: developing the plan; orientation of clients to the plan; developing the individual abuse and neglect prevention plan for each vulnerable adult; review and revision of the individual plan; orientation for clients to the internal reporting system and orientation of reporters to requirements of Minn. Stat. § 626.557 and 12 MCAR § 2.010; and
4. The requirements for review and revision of the plan; for distribution of the plan; for the involvement of the client and/or

client representative in developing the plan; for the posting of policies and procedures relating to Rule 10; for conducting in-service training for mandated reports at least annually; and for establishing and maintaining a current list of persons who provide services in or to the facility who meet the definition of a mandated reporter.

The agency's authority to adopt the proposed rule is contained in Minn. Stat. § 626.557.

The adoption of this rule will not require expenditure of public monies by local public bodies totaling or exceeding \$100,000 in either of the two years immediately following adoption of the rule.

The programs required to meet the provisions of this rule will be developing their program abuse and neglect prevention plans within their existing administrative/program staff. The individual abuse and neglect prevention plans will be developed by the existing interdisciplinary team as a part of the clients individual program plan.

Copies of the proposed rule are now available and at least one free copy may be obtained by writing to Vivian Miller, Department of Public Welfare, Centennial Building, St. Paul, MN 55155, telephone (612) 296-2852. Additional copies will be available at the hearing. If you have any questions on the content of the proposed rule contact Vivian Miller.

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

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, 1979 supp., 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.

April 22, 1982

Arthur E. Noot
Commissioner of Public Welfare

Rule as Proposed (all new material)

12 MCAR § 2.010 Reporting maltreatment of vulnerable adults in licensed facilities.

A. Applicability. Rule 12 MCAR § 2.010 applies to residential and nonresidential programs providing services to adults and licensed pursuant to Minn. Stat. §§ 245.781-245.812.

B. Definitions. As used in 12 MCAR § 2.010, the following terms have the meanings given them.

1. Abuse. "Abuse" means:

a. Any act which constitutes a violation of Minn. Stat. § 609.322, related to prostitution;

b. Any act which constitutes a violation of Minn. Stat. §§ 609.342-609.345, related to criminal sexual conduct; or

c. The intentional and nontherapeutic infliction of physical pain or injury, or any persistent course of conduct intended to produce mental or emotional distress.

2. Agency. "Agency" means any individual, organization, association, or corporation which regularly provides services to adults and is licensed by the Department of Public Welfare pursuant to Minn. Stat. §§ 245.781-245.812.

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3. Client. "Client" means a vulnerable adult, as defined in 12.
4. Client representative. "Client representative" means any family member, legal guardian, or other interested person acting or speaking in place of a client or on behalf of a client.
5. Facility. "Facility" means a residential or nonresidential facility providing services to adults and licensed by the Department of Public Welfare pursuant to Minn. Stat. §§ 245.781-245.812.
6. Governing body. "Governing body" means the individual, corporation, partnership, voluntary association, or other public or private organization legally responsible for the operation of a day care or residential facility or service or agency.
7. Interdisciplinary team. "Interdisciplinary team" means the individuals from the various disciplines which are required by Department of Public Welfare licensing rules to be involved in program and treatment planning. If only one person is designated by the rule under which the program is licensed to develop the individual program plan with the client, this person shall consult with members of other disciplines as required by that licensing rule to be involved in developing the individual program or treatment plan.
8. Investigative authority. "Investigative authority" means the local police department, county sheriff, local welfare agency, or appropriate licensing or certifying agency.
9. Mandated reporter. "Mandated reporter" means each employee of a program and each person providing client-related services in or to a program.
10. Neglect. "Neglect" means failure by a caretaker to supply or to ensure the supply of necessary food, clothing, shelter, health care, or supervision for a client.
11. Program. "Program" means a residential or nonresidential facility or an agency providing services to adults and licensed by the Department of Public Welfare pursuant to Minn. Stat. §§ 245.781-245.812.
12. Vulnerable adult. "Vulnerable adult" means any person 18 years of age or older who is a resident of a facility or who receives services at or from a program.

C. Program abuse and neglect prevention plan.

1. Requirement. The program's governing body shall establish and enforce a written abuse and neglect prevention plan. This plan shall be completed within 60 days of the effective date of this rule.
2. Plan contents. The plan must contain the following information:
 - a. An assessment of the population, the physical plant for each facility and for each site when living arrangements are provided by an agency, and its environment, identifying the factors which may encourage or permit abuse or neglect;
 - b. A description of the specific steps which will be or have been taken to minimize the risk of abuse or neglect identified in any of the assessed areas, including physical plant repairs and modifications responsive to problems in the program's environment where necessary; and
 - c. A timetable for the implementation of corrective actions that will be taken, such as training staff, initiating new procedures, or adjusting staffing patterns.
3. Assessment factors.
 - a. The assessment of the population shall include an evaluation of the following factors: the age, sex, mental functioning, physical and emotional health or behavior of clients, the need for specialized programs of care for clients, the need for training of staff to meet identified resident needs, and the existence of a documented history of abuse or neglect of clients.
 - b. The assessment of the physical plant, if required, shall include an evaluation of the following factors: the condition and design of the building as it relates to the safety of the clients and the existence of areas in the building which are difficult to supervise.
 - c. The assessment of the environment, if required, shall include an evaluation of the following factors: the location of the program in a particular neighborhood or community, the type of grounds surrounding the building, the type of internal programming, the program's staffing patterns, and the existence of a documented history of abuse or neglect by staff.
4. Plan review. The program's governing body shall review the plan at least annually using the assessment factors in the plan and any reports of abuse or neglect that have occurred. The governing body shall revise the plan so that it reflects the results of the review.
5. Plan orientation for clients. The program shall provide for its clients a general orientation to the program abuse and neglect prevention plan. Client representatives shall have the opportunity to be included in the orientation. The program shall provide this initial orientation within 60 days after the effective date of this rule, and, thereafter, for each new client within 24 hours of admission.

6. Plan distribution. The program shall post a copy of the plan in a prominent location in the facility and at each site when living arrangements are provided by an agency and have a copy available for review by clients, client representatives, and mandated reporters upon request.

D. Individual abuse and neglect prevention plan.

1. Requirement. The client's interdisciplinary team shall develop an individual abuse and neglect prevention plan, and this plan shall be implemented for each client. The team shall develop a plan for each current client within 60 days after the effective date of this rule and, thereafter, for each new client as part of the initial individual program plan, as required by the Department of Public Welfare rule under which the program is licensed.

2. Plan contents. The plan must be a part of the client's individual program plan and must include the following information:

- a. An assessment of the client's susceptibility to abuse, including self-abuse and neglect;
- b. A statement of the specific measures which will be taken to minimize the risk of abuse and neglect to the individual client when the individual assessment indicates the need for specific measures in addition to the general measures specified in the program abuse and neglect prevention plan; and
- c. Documentation of results of the individual assessment when it does not indicate the need for specific measures in addition to the general measures specified in the program abuse and neglect prevention plan.

3. Plan review. The review and evaluation of the individual abuse and neglect prevention plan shall be done as part of the review of the client's individual program plan. The interdisciplinary team shall review the abuse and neglect prevention plans at least annually, utilizing the individual assessment and any reports of abuse or neglect relating to the client. The plan shall be revised to reflect the results of this review.

4. Client participation. Whenever possible, the client shall participate in the development of the individual abuse and neglect prevention plan. The client shall have the right to have a client representative participate with or for the client in the development of the plan. If the client or client representative does not participate, the reasons shall be documented by the team in the plan.

E. Internal reporting and investigation system and records.

1. Establishment. The program's governing body shall establish and enforce internal written reporting and investigating policies and procedures for abuse and neglect, including suspected or alleged abuse and neglect. The same policies and procedures shall apply in all cases, regardless of the results of the internal investigation.

2. Reporting. The policies and procedures must include a process for the mandatory reporting of abuse or neglect of vulnerable adults. The policies and procedures must specify how reports are to be made and provide for all reports to be made promptly when a mandated reporter has reasonable cause to believe that a client is being or has been abused or neglected, or has knowledge that a client has sustained a physical injury which is not reasonably explained by the client's history of injuries. The policies and procedures shall also contain a provision that persons other than mandated reporters may and should report incidents of abuse or neglect and shall identify the persons to whom internal reports should be made. The procedure shall specify that reports may be made directly to the outside investigative authorities or to the person designated by the program or both. The person responsible for forwarding internal reports to outside authorities shall be clearly identified. All mandated reporters shall be informed of their responsibility to ensure that their report reaches the appropriate outside investigative authorities. Reporters shall be informed when a report has been forwarded and to whom it has been forwarded. Reports shall include the following information:

- a. The name and location of the client and the program;
- b. The nature of the abuse or neglect;
- c. Pertinent dates and times;
- d. Any history of abuse or neglect;
- e. The name and address of the reporter;
- f. The name and address of the alleged perpetrator; and

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g. Any other information that might be helpful in investigating the abuse or neglect.

3. Investigation. The policies and procedures shall include identification of the person responsible for the internal review and investigation of abuse or neglect. However, if the person responsible for the review and investigation is suspected of committing the abuse or allowing the neglect, another person shall be designated to conduct the review and investigation.

4. Records. The policies and procedures shall include a provision requiring that records are maintained regarding the internal review and investigation of cases of abuse and neglect. These records shall contain a summary of the findings, persons involved, persons interviewed, persons and investigating authorities notified, conclusions and any actions taken. The records shall be dated and authenticated by signature and identification of the person doing the review and investigation.

5. Communication. The policies and procedures shall include a provision requiring the communication of all knowledge and written information regarding incidents of abuse or neglect to the Department of Public Welfare.

6. Cooperation. The policies and procedures shall include a provision requiring the cooperation of the program with the department in the course of the investigation.

7. Orientation for clients. The program shall provide for its clients an orientation to the internal reporting system. Client representatives shall have the opportunity to be included in the orientation. The program shall provide this initial orientation within 60 days after the effective date of this rule and, thereafter, for each new client within 24 hours of admission.

8. Distribution of copies. The program shall post a copy of the internal reporting policies and procedures in a prominent location in the facility or at the offices of an agency and have it available upon request to mandated reporters, clients, and client representatives.

F. Personnel requirements.

1. Orientation of reporters. Within 60 days after the effective date of this rule, the program shall inform mandated reporters about the requirements of Minn. Stat. § 626.557, the provisions of 12 MCAR § 2.010, and all internal policies and procedures related to vulnerable adults. All staff shall be informed that individuals, other than those mandated to report, may report suspected cases of abuse or neglect to the appropriate investigative authorities and that staff must provide information to those requesting it regarding the procedure for contacting the authorities. Thereafter, the program shall provide this orientation for new mandated reporters no later than during the first shift worked.

2. Training. The program shall conduct in-service training at least annually for mandated reporters to review Minn. Stat. § 626.557, the provisions of 12 MCAR § 2.010, and all internal policies and procedures related to vulnerable adults.

3. List of persons providing services. The program shall establish and maintain a current list of persons who provide services in or to the program who meet the definition of a mandated reporter.

Waste Management Board

Proposed Rules Governing Supplementary Review

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Waste Management Board proposes to adopt the above-entitled rules without a public hearing. The Waste Management Board has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes § 15.0412, subd. 4(h) (1980).

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules 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 rules 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 Minnesota Statutes § 15.0412, subds. 4-4(f).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Waste Management Board
Attention: Sharon Decker
123 Thorson Building
7323-58th Avenue North
Crystal, Minnesota 55428
(612) 536-0816

Authority for the adoption of these rules is contained in Minn. Stat. § 115A.32. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed has been prepared and is available from the Waste Management Board, Attention: Sharon Decker, 123 Thorson Building, 7323-58th Avenue North, Crystal, Minnesota, 55428, upon request.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the statement of need and reasonableness, all written comments received, and the final rules 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 rules as proposed for adoption, should submit a written statement of such request to the Waste Management Board, Attention: Sharon Decker, 123 Thorson Building, 7323-58th Avenue North, Crystal, Minnesota, 55428.

The rules proposed for adoption relate to the following matters: (1) eligibility for review, (2) contents and acceptance of a petition for review, (3) identification of issues to be reviewed, (4) appointment of temporary board members, (5) mediation, (6) establishing the scope and procedures for review, (7) hearing procedures, (8) approval or disapproval of proposed facilities, (9) terms and conditions of permits, and (10) revocation of approvals.

Copies of this notice and the proposed rules are available and may be obtained by contacting the Waste Management Board, Attention: Sharon Decker, 123 Thorson Building, 7323—58th Avenue North, Crystal, Minnesota, 55428.

Robert G. Dunn, Chairman
Waste Management Board

Rules as Proposed (all new material)

6 MCAR § 8.201 Supplementary review of decisions concerning establishment of certain facilities. Rules 6 MCAR §§ 8.201-8.218 establish the procedures by which the Waste Management Board will review petitions for supplementary review. Under Minn. Stat. §§ 115A.32-115A.39, the Waste Management Board may entertain a petition for supplementary review whenever an authorized applicant has received all necessary permits from the Pollution Control Agency for a proposed facility but a political subdivision has refused to approve the establishment or operation of the facility.

6 MCAR § 8.202 Definitions. For the purposes of 6 MCAR §§ 8.202-8.218, the following terms have the meanings given them unless the context requires otherwise.

A. Agency. "Agency" means the Pollution Control Agency.

B. Board. "Board" means the Waste Management Board.

C. Chairperson. "Chairperson" means the chairperson of the Waste Management Board.

D. Person. "Person" means any human being, any municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity, but does not include the Pollution Control Agency or the Waste Management Board.

E. Political subdivision. "Political subdivision" means any municipal corporation, government subdivision of the state, local government unit, special district, or local or regional board, commission, or authority authorized by law to plan or provide for waste management.

6 MCAR § 8.203 Eligibility for supplementary review. The following persons shall be eligible to request supplementary review by the board pursuant to Minn. Stat. §§ 115A.32-115A.39:

A. A generator of sewage sludge within the state who has been issued permits by the agency for a facility to dispose of sewage sludge or solid waste resulting from sewage treatment, except that the Metropolitan Waste Control Commission shall not be eligible to request review for a sewage sludge disposal facility or for a solid waste facility with a proposed permitted life of longer than four years;

B. A political subdivision which has been issued permits by the agency, or a political subdivision acting on behalf of a person who has been issued permits by the agency, for a solid waste facility which is located outside the metropolitan area and which is no larger than 250 acres, not including any proposed buffer area, provided that if the petitioner is a political subdivision acting

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on its own behalf, the political subdivision shall have completed a plan conforming to the requirements of Minn. Stat. § 115A.46;

C. A generator of hazardous waste within the state who has been issued permits by the agency for a hazardous waste facility to be owned and operated by the generator, on property owned by the generator, and to be used by the generator for managing the hazardous wastes produced by the generator only;

D. A person who has been issued permits by the agency for a commercial hazardous waste processing facility at a site included within one of the areas on the board's inventory of preferred areas for such facilities adopted pursuant to Minn. Stat. § 115A.09;

E. A person who has been issued permits by the agency for a disposal facility for the nonhazardous sludge, ash, or other solid waste generated by a permitted hazardous waste processing facility operated by the person.

6 MCAR § 8.204 Review of petitions for supplementary review.

A. Acceptance of petition. The chairperson on behalf of the board shall accept a petition for review if it conforms to the requirements of B. If the petition does not conform to the requirements of B., the chairperson shall return it to the petitioners with a statement identifying the deficiencies in the petition.

B. Contents of petition. A petition shall include:

1. The name, address, and telephone number of the petitioner;
2. The name, address, and telephone number of each owner or operator of the proposed facility if different from the petitioner specified in 1.;
3. The street address and legal description of the location of the proposed facility;
4. A description of the proposed facility;
5. A list of the existing permits and pending permit applications for the proposed facility together with a copy of any permits which have been issued;
6. An estimate of the required construction time;
7. An estimate of the functional life of the proposed facility;
8. For processing facilities, a description of the types of processes to be used;
9. For processing facilities, a statement of the design capacity of each process;
10. For processing facilities, a description of the materials which will be treated at the proposed facility as specified in the agency permit application;
11. A copy of the resolution, order, or other action of a political subdivision refusing to approve the establishment or operation of the proposed facility or a statement that the required approval has been refused;
12. For petitioners who qualify for review under 6 MCAR § 8.203 B., a copy of the required solid waste plan conforming to the requirements of Minn. Stat. § 115A.46; and
13. For petitioners who qualify for review under 6 MCAR § 8.203 D. or E., a brief discussion showing how the proposed facility is consistent with the hazardous waste management plan required under Minn. Stat. § 115A.11, if the plan has been adopted at the time the petition is submitted.

6 MCAR § 8.205 Additional information. The chairperson may request the petitioner to submit additional information whenever the chairperson determines that the information would be necessary or useful in deciding whether the petition should be approved or disapproved.

6 MCAR § 8.206 Procedure for supplementary review.

A. First phase. The first phase of the supplementary review process shall take place in the 90-day period following acceptance of a petition. In this phase of the review, temporary board members shall be appointed, the issues which will be the subject of review shall be identified, and mediation services shall be made available to the petitioner and the political subdivision.

B. Second phase. The second phase of the supplementary review process shall commence with the board's decision on the scope and procedures for the review and shall extend for a period of 90 days following the decision. During the second phase of the review, the board shall hold any required public hearings and make its final decision on approving or not approving the proposed facility.

6 MCAR § 8.207 Identification of issues.

A. Meetings with petitioner and political subdivision. Within 40 days after the board has accepted a petition for review, the chairperson shall prepare a compilation of the issues which may be relevant to the supplementary review. To assist in the identification of these issues, the chairperson may meet with the petitioner and representatives of the political subdivision, either separately or together, or the chairperson may request a written statement of the issues which the petitioner and the political subdivision believe should be addressed in the review.

B. Public meetings. Within 60 days after the Board has accepted a petition for review, the board shall hold an informal public meeting in the area where the facility is proposed. The purpose of this meeting shall be to permit members of the public to discuss the issues which should be reviewed by the board.

C. Public meeting procedures.

1. The board shall announce the public meeting by providing press releases to newspapers and radio and television stations in the area where the facility is proposed and by letter to the political subdivisions within which the facility is proposed to be located.

2. The meeting shall be held in the area in which the facility is proposed to be located.

3. The meeting shall be conducted by the chairperson or his designee.

4. Copies of the compilation of issues prepared by the chairperson shall be available for review.

5. Members of the public shall be given an opportunity to suggest additional issues which should be considered and present reasons why particular issues should or should not be considered.

6. A summary of the issues raised at the public meeting shall be prepared.

6 MCAR § 8.208 Appointment of temporary board members.

A. Notification to political subdivision. Within ten days after a petition has been accepted for review, the chairperson shall notify the political subdivisions which have the responsibility to appoint temporary board members that a petition affecting their areas has been accepted.

B. Appointment by political subdivision. The political subdivisions shall appoint temporary board members in accordance with Minn. Stat. § 115A.34 within 45 days after the date the petition was accepted by the board.

C. Failure to appoint members. If a political subdivision fails to appoint the required temporary board members within 45 days after the date the petition was accepted by the board, the chairperson shall notify the governor's office within five working days of the failure to appoint. The appointment of the temporary board members shall then be made by the governor in accordance with Minn. Stat. § 115A.34.

6 MCAR § 8.209 Mediation.

A. Notice of mediation. Within ten days following acceptance of a petition for review, the chairperson shall notify both the petitioner and the political subdivision that the services of an impartial mediator will be made available to the petitioner and the political subdivision to assist in the resolution of the issues separating the petitioner and the political subdivision.

B. Conditions for mediation. Mediation services shall be offered in every dispute involving supplementary review. The offer of mediation services shall terminate 25 days after a petition is accepted. Mediation services may be requested by either the petitioner or the political subdivision; however, the petitioner and the political subdivision must agree to mediation.

C. Selection of mediator. A single impartial mediator shall be selected for each review. The petitioner and the political subdivision shall have a ten-day period after notification of an agreement to mediate to select a mediator acceptable to both parties. If an impartial mediator has not been selected within this ten-day period, a mediator shall be appointed by the chairperson.

D. Length of mediation. Mediation shall be conducted for a period of 30 days following the appointment of a mediator by the chairperson unless the chairperson determines that continued mediation services will be beneficial to the resolution of the case.

E. Termination of mediation. The mediator, the petitioner, or the political subdivision may terminate mediation at any time. The mediator shall immediately notify the chairperson of the termination of mediation.

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F. Compensation for mediator. The board shall pay the costs of mediation.

G. Decision. If an agreement is reached by the close of the mediation period, the agreement shall be referred to the board for review.

6 MCAR § 8.210 Recommended statement of issues. At least ten days before the board meeting held to determine the scope and procedures for review and to commence the supplementary review process, the chairperson shall prepare a recommended statement of the issues involved in the review. The chairperson shall make copies of the recommended statement available to members of the public. Copies of the recommended statement of issues shall be provided to the petitioner and the political subdivision.

6 MCAR § 8.211 Board meeting to establish scope and procedures for the second phase of the review.

A. Scope; statement of issues. At the meeting held to commence the supplementary review process, the chairperson shall present the recommended statement of issues involved in the review to the board including the temporary board members. The board, after providing an opportunity for public comment, shall adopt a statement of issues for review.

B. Procedures.

1. If no mediated agreement has been reached, the board shall direct that a contested review be conducted under 6 MCAR § 8.213.

2. If a mediated agreement has been reached which may require the imposition of more stringent permit terms, conditions, or requirements, or if significant issues are identified in the statement of issues adopted by the board which were not addressed in the agreement, the board shall direct that a review hearing be conducted under 6 MCAR § 8.212.

3. If a mediated agreement has been reached which does not require the imposition of more stringent permit terms, conditions, or requirements, and if all significant issues which were identified in the statement of issues are addressed in the agreement, the board shall suspend the review pending final approval of the proposed facility by the political subdivision and shall dismiss the petition and terminate the review upon final approval of the proposed facility by the political subdivision.

6 MCAR § 8.212 Hearing procedures following mediated agreement.

A. Timing of hearing. The public hearing on the mediated agreement shall be held within 45 days after the board meeting held to establish the scope and procedures for review.

B. Notice of hearing. The board shall provide written notice of the hearing to each political subdivision in which the facility is proposed to be located. The board shall also publish notice of the supplementary review. Hearing in a newspaper or newspapers of general circulation in the area for two successive weeks ending at least 15 days before the date of the hearing. The published notice shall:

1. Specify the date, time, and location of the hearing;

2. Describe the proposed facility and its location;

3. Describe the permits which have been issued for the proposed facility;

4. Briefly set out the process by which the agreement was reached and the scope and procedures which will be used in the supplementary review;

5. Identify the location or locations within the city, town, or county where copies of the agreement, the permit applications, agency permits, and the board's scope and procedures for review are available for review; and

6. Include the name of a person on the board's staff to whom questions about the review may be directed.

C. Location of hearing. The hearing shall be held in the county where the facility is proposed to be located and as near as practical to the site of the proposed facility.

D. Procedures for the hearing.

1. The hearing shall be conducted by a hearing examiner from the Office of Administrative Hearings.

2. A majority of the permanent board members shall be present at the hearing.

3. The hearing shall be opened by the hearing examiner who will explain the hearing procedures.

4. A member of the board's staff shall explain the purpose of the hearing, the statement of issues adopted by the board, and any additional permit terms, conditions, or requirements which the board is considering to implement the agreement.

5. The political subdivision and the petitioner shall explain the mediated agreement.

6. Members of the public shall have an opportunity to comment upon the agreement, the issues identified in the statement of issues, and any proposed additional permit terms, conditions, or requirements.

7. Questions may be directed to any representative of the political subdivision or the petitioner regarding the mediated agreement and to any person who presents a statement at the hearing.

8. The chairperson may request any person who has information related to the hearing to present the information if the chairperson determines the information would be helpful in reaching a decision in the case.

9. The hearing examiner may exclude testimony or disallow questions which are irrelevant, unduly repetitious, argumentative, harassing, or adversarial in nature.

10. No person shall interfere with the conduct of the hearing or disrupt or threaten to disrupt the hearing.

11. A transcript of the hearing shall be prepared.

6 MCAR § 8.213 Contested supplementary review hearing.

A. Timing of hearing. A contested supplementary review hearing shall be held within 45 days after the board meeting held to establish the scope and procedures for review.

B. Notice of hearing. Written notice of the hearing shall be provided to each political subdivision in which the facility is proposed to be located. The board shall also publish notice of a contested review hearing in a newspaper or newspapers of general circulation in the area for two successive weeks ending at least 15 days before the date of the hearing. The published notice shall:

1. Specify the date, time, and location of the hearing;
2. Describe the proposed facility and its location;
3. Describe the permits which have been issued for the proposed facility;
4. Briefly set out the scope and procedures which will be used in the supplementary review;

5. Identify the location or locations within the city, town, or county where copies of the permit applications, agency permits, and the board's scope and procedures for review are available for review and where copies may be obtained;

6. Include the name of a person on the board's staff to whom questions about the review may be directed.

C. Location of hearing. The hearing shall be held in the county where the facility is proposed to be located and as near as practical to the site of the proposed facility.

D. Definition; party. "Party" for the purposes of E.-V. means the petitioner, the political subdivision which refused to authorize the facility, and any person who is granted intervention under I.

E. Hearing examiner; duties. The hearing shall be conducted by a hearing examiner assigned by the Chief Hearing Examiner. The hearing examiner shall perform the following duties:

1. Hear and rule on motions;
2. Grant or deny requests for discovery including the taking of depositions;
3. Receive and act upon requests for subpoenas when appropriate;
4. Preside at the hearing;
5. Administer oaths and affirmations;
6. Examine witnesses when the hearing examiner deems it necessary to make a complete record;
7. Make preliminary, interlocutory, or other orders as the hearing examiner deems appropriate;
8. Rule on objections;
9. Do all things necessary and proper to the performance of 1.-8.; and
10. Perform other duties which may be delegated to the hearing examiner by the board.

The hearing examiner will not prepare a report following the hearing.

F. Disqualification of hearing examiner. The hearing examiner shall withdraw from participation in a contested review at any time if he deems himself disqualified for any reason. Upon the filing in good faith by a party of an affidavit of prejudice, the Chief

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PROPOSED RULES

Hearing Examiner shall determine the matter as a part of the record. The affidavit must be filed no later than five days prior to the date set for hearing.

G. Waste Management Board members. A majority of the permanent board members shall be present at the hearing. Members of the board may address questions to any witness or party.

H. Right to counsel. Any party may be represented by legal counsel throughout the proceedings by a person of his choice or by himself if not otherwise prohibited as the unauthorized practice of law.

I. Intervention. Any person who desires to intervene as a party shall submit a petition to intervene to the hearing examiner at least ten days before the hearing. Copies of the petition to intervene shall be served on the parties to the hearing. The petition shall state how the petitioner will be affected by the hearing, shall set forth grounds and purposes for which intervention is sought, and shall show that no other party is able to adequately represent the petitioner's interests at the hearing. At a time determined by the hearing examiner, but no later than the commencement of the hearing, the hearing examiner shall review any petitions for intervention and shall permit the parties to the hearing to present their objections to the intervention. Intervention shall be allowed unless the hearing examiner determines that the petitioner's interest is adequately represented by one or more parties participating in the case.

J. Default. The board may decide a review adverse to a party which defaults. Upon default, the allegations and evidence provided by the nondefaulting party shall be deemed true without further evidence. A default occurs when a party fails to appear at a hearing, fails to comply with any interlocutory orders of the hearing examiner, or fails to timely prefile testimony, and is unable to demonstrate that good cause existed for any failure.

K. Participation by the public. The hearing examiner may hear the testimony of and receive exhibits from any person at the hearing, but no person shall become, or be deemed to become, a party by reason of the person's participation. Persons offering testimony or exhibits may be questioned by parties to the proceeding.

L. Prefiled testimony. The petitioner, the political subdivision which refused to approve the facility, and any party seeking to intervene shall file their testimony with the hearing examiner and the board at least ten days before the hearing unless the hearing examiner directs otherwise. Testimony in the hearing shall be limited to the issues identified by the board in its statement of issues.

M. Rights of parties. Parties shall have the right to present evidence, rebut evidence, argue with respect to the issues, and cross-examine witnesses.

N. Witnesses. Any party may be a witness or may present witnesses on the party's behalf at the hearing. All oral testimony shall be under oath or affirmation. The board may call its own witnesses if the board or the chairperson acting on behalf of the board determines that testimony from the witness would be helpful in reaching a decision in the case. The board's staff may also present evidence during the review.

O. Prehearing procedures.

1. The purpose of the prehearing conference is to obtain stipulations regarding foundation for testimony or exhibits, to consider the proposed witnesses for each party, and to consider other matters that may be necessary or advisable to consider. Upon the request of any party or upon his own motion, the hearing examiner may, in his discretion, hold a prehearing conference prior to each contested review hearing. The hearing examiner may require the parties to file a prehearing statement prior to the prehearing conference. The statement shall contain items the hearing examiner deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the hearing examiner. Agreements on any matters considered by the prehearing conference may be entered on the record or may be made the subject of an order by the hearing examiner. The hearing examiner shall hold any prehearing conferences in a manner and at a time which will not interfere with the completion of the review process in the time allowed by Minn. Stat. § 115A.35 and this rule.

2. Any application to the hearing examiner for an order shall be by motion, shall state the grounds for the order, and shall set forth the relief or order sought. A written notice of any motion shall be provided to all parties and to the board and shall be served five days prior to the submission of the motion except where impractical. All orders by the hearing examiner, other than those made during the course of the hearing, shall be in writing and shall be served upon all parties of record and the board. In ruling on motions where these procedures are silent, the hearing examiner shall apply the Rules of Civil Procedure for the District Courts for the State of Minnesota to the extent that he or she determines that it is appropriate to do so in order to promote a fair and expeditious proceeding.

P. Discovery.

1. Each party shall, within ten days of a demand by another party, disclose the names and addresses of all witnesses that a party intends to call at the hearing. All witnesses unknown at the time of the disclosure shall be disclosed as soon as they

become known. Each party shall also disclose any relevant written or recorded statements made by the party or by witnesses on behalf of a party. The demanding party shall be permitted to inspect and reproduce those statements. Any party unreasonably failing upon demand to make the disclosure required by this rule may, in the discretion of the hearing examiner, be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

2. A party may serve upon any other party a written request for the admission of relevant facts or opinions, or of the application of law to relevant facts or opinions, including the genuineness of any document. The request must be served at least 15 days prior to the hearing and it shall be answered in writing by the party to whom the request is directed within ten days of receipt of the request. The written answer shall either admit or deny the truth of the matters contained in the request or shall make a specific objection thereto. Failure to make a written answer shall result in the subject matter of the request being deemed admitted.

3. Upon the motion of a party, the hearing examiner may order discovery of any other relevant material or information, provided that privileged work product of attorneys, investigators, and similar people shall not be discoverable. The hearing examiner shall also recognize all other privileged information or communications which are recognized at law. Upon proper motion made to the hearing examiner, any means of discovery available pursuant to the Rules of Civil Procedure for the District Courts of the State of Minnesota may be allowed provided that the request can be shown to be needed for the proper presentation of a party's case, can be completed within the time allowed in this rule, and the issues are significant enough to warrant extensive discovery. Upon the failure of a party to reasonably comply with this type of order by the hearing examiner, the hearing examiner may order that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order, or may refuse to allow the party failing to comply to support or oppose designated claims or defenses, or may prohibit him from introducing designated matters in evidence.

4. When a party is asked to reveal material which he considers to be proprietary information or trade secrets, he shall bring the matter to the attention of the hearing examiner who shall make protective orders which are reasonable and necessary or as otherwise provided by law.

5. Discovery shall be conducted in a manner to ensure the completion of the review in the time permitted by Minn. Stat. § 115A.35 and this rule. The hearing shall not be continued to permit additional time for discovery.

Q. Depositions to preserve testimony. Upon the request of any party, the hearing examiner may order that the testimony of any witness be taken by deposition to preserve the testimony in the manner prescribed by law for depositions in civil actions. The request shall indicate the relevancy of the testimony and shall make a showing that the witness will be unable or cannot be compelled to attend the hearing or show other good cause.

R. Subpoenas. Requests for subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the hearing examiner, shall contain a brief statement demonstrating the potential relevance of the testimony or evidence sought, shall identify any documents sought with specificity, and shall name all persons to be subpoenaed. A subpoena shall be served in the manner provided by the Rules of Civil Procedure for the District Courts of the State of Minnesota unless otherwise provided by law. The cost of service, fees, and expenses of any witnesses subpoenaed shall be paid by the party at whose request the witness appears. The person serving the subpoena shall make proof of service by filing the subpoena with the hearing examiner, together with his affidavit of service. Upon motion made promptly, and in any event at or before the time specified in the subpoena for compliance with it, the hearing examiner may quash or modify the subpoena if he finds that it is unreasonable or oppressive.

S. Rules of evidence.

1. The hearing examiner may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable prudent persons are accustomed to rely in the conduct of their serious affairs. The hearing examiner shall utilize the rules of privilege recognized by law. Evidence which is incompetent, irrelevant, or unduly repetitious may be excluded.

2. All evidence to be considered in the case shall be offered and made a part of the record in the case. No other factual information or evidence shall be considered in the determination of the case.

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PROPOSED RULES

3. Documentary evidence in the form of copies or excerpts may be received or incorporated by reference in the discretion of the hearing examiner or upon agreement of the parties.

4. The hearing examiner or the board may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

5. A party may call an adverse party, his agent or employees, and interrogate him or them by leading questions and contradict and impeach him or them on material matters in all respects as if he had been called by the adverse party. The adverse party may be examined by his counsel upon the subject matter of the examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by his testimony.

6. Testimony in the hearing shall be limited to issues identified by the board in its statement of issues.

T. The record. The board shall maintain the official record in each contested review hearing. The record in a contested review shall contain:

1. All pleadings, motions, and orders;
2. Evidence received or considered;
3. Offers of proof, objections, and rulings on them;
4. All memoranda or data submitted by any party in connection with the case; and
5. The transcript of the hearing.

U. Conduct of hearing. Unless the hearing examiner determines that the public interest will be equally served otherwise, the hearing shall be conducted substantially in the following manner:

1. The hearing examiner shall briefly review the procedural rules for the hearing;
2. Each party may make an opening statement in a sequence determined by the hearing examiner;
3. Each party may then present a summary of its prefiled testimony in a sequence determined by the hearing examiner;
4. Cross-examination of witnesses shall be conducted in a sequence determined by the hearing examiner;

5. When all parties and witnesses have been heard, opportunity shall be offered to present final argument in a sequence determined by the hearing examiner. Final argument may, in the discretion of the board, be in the form of written memoranda or oral argument. Written memoranda may, in the discretion of the board, be submitted simultaneously or sequentially and within time periods the board may prescribe; provided, however, that all written material shall be submitted at least 30 days before the close of the supplementary review period; and

6. The record of the case shall be closed on the date set by the board for receiving the final written memorandum or late filed exhibits which the parties and the board have agreed should be received into the record, or upon receipt of the transcript of the hearing.

V. Completion of hearing. The hearing examiner shall conduct the hearing in a manner to ensure its completion in the time required by Minn. Stat. § 115A.35 and this rule.

6 MCAR § 8.214 Reconciliation procedures. At least 30 days before making its final decision in a review, the board shall make a determination as to whether a report should be made to the legislature and whether intervention should be requested as provided in Minn. Stat. § 115A.38.

6 MCAR § 8.215 Decision of Waste Management Board.

A. The record. No factual information or evidence which is not a part of the hearing record shall be considered by the board in the determination of the case.

B. Administrative notice. The board may utilize its experience, technical competence, and specialized knowledge in the evaluation of the evidence in the hearing record.

C. Participation in decision. Board members not present at the hearing may participate in the final decision to approve or not approve the proposed facility following a review of the record of the hearing.

D. Recommended disposition. In the case of a mediated agreement, the mediated agreement shall serve as the recommended decision. When an agreement has not been reached, the board's staff shall prepare and, at least ten days prior to the board's final decision in the case, distribute a recommended decision to each party to the proceeding and to any other person who has requested in writing a copy of the recommended decision.

E. Basis of decision. In its decision to approve or not approve a proposed facility, the board shall consider and base its

decision on the factors listed in 1.-6. Neither the petitioner nor the political subdivision shall be deemed to have the burden or proof as to any of the factors. The factors are:

1. The risk and effect of the proposed facility on local residents, units of government, and the local public health, safety, and welfare, including such dangers as an accidental release of wastes during transportation to the facility; water, air, and land pollution; and fire or explosion, where appropriate; and the degree to which the risk or effect may be alleviated;

2. The consistency of the proposed facility with, and its effect on, existing and planned local land use and development, local laws, ordinances, and permits; and local public facilities and services;

3. The adverse effects of the facility on agriculture and natural resources and opportunities to mitigate and eliminate the adverse effects by additional stipulations, conditions, and requirements respecting the proposed facility at the proposed site;

4. The need for the proposed facility, especially its contribution to abating solid and hazardous waste disposal, the availability of alternative sites, and opportunities to mitigate or eliminate need by additional and alternative waste management strategies or actions of a significantly different nature;

5. Whether, in the case of solid waste resource recovery facilities, the applicant has considered the feasible and prudent waste processing alternatives for accomplishing the purposes of the proposed project and has compared and evaluated the costs of the alternatives, including capital and operating costs and the effects of the alternatives on the cost to generators; and

6. Any issue within the established scope of the supplementary review which is not addressed by 1.-5.

F. Final decision. The board shall review a mediated agreement and shall approve the agreement unless the agreement is clearly inappropriate based on the factors set out in 6 MCAR § 8.215 E. and the record of the hearing, fails to address significant issues relevant to the review, or requires the imposition of permit terms, conditions, or requirements outside of the authority of the board. If the board disapproves a mediated agreement, the board shall direct the staff to prepare a recommended decision based on the hearing record. When no mediated agreement has been reached or when a mediated agreement has been rejected, the board shall base its decision to approve or not approve a facility on the factors set out in 6 MCAR § 8.215 E. and the record of the hearing.

G. Ex parte communication. No party to a hearing shall communicate with any board member concerning the hearing except in writing, or orally as part of a presentation at the hearing or at a board meeting. Copies of any written communication shall be sent to all parties to the hearing and to all board members.

6 MCAR § 8.216 Terms, conditions, and requirements of permitting agencies.

A. Board action. The board shall resolve any conflicts between state agencies regarding terms, conditions, and requirements for a permit in favor of the more stringent terms, conditions, and requirements. Should there be a question as to which term, condition, or requirement is more stringent, the board shall make the determination of which term, condition, or requirement is more stringent.

B. Addition of provisions. If, based on the factors set out in 6 MCAR § 8.215 E., the board determines that more stringent permit terms, conditions, or requirements should be imposed in connection with the approval of a facility, the board shall direct that the terms, conditions, or requirements be added to the permit.

C. Notification of decision. The board shall notify permitting agencies affected by the board's decision requiring the permitting agencies to impose more stringent terms, conditions, or requirements within ten days after the board's final decision.

6 MCAR § 8.217 Revocation of approval. The board may revoke its approval of a facility if, following a contested case hearing under the Contested Case Procedures of Minn. Stat. §§ 15.0418-15.052 and the rules of the Office of Administrative Hearings relating to contested case proceedings in 9 MCAR §§ 2.201-2.222, it is determined that the petitioner knowingly made material false statement, representations or certifications, or knowingly withheld material information in any application, record, report, or other document filed pursuant to provisions of 6 MCAR §§ 8.210-8.213.

6 MCAR § 8.218 Computation of time. In computing any period of time prescribed under 6 MCAR §§ 8.201-8.215, the date of the last act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so completed shall be included unless it is a Saturday, Sunday, or legal holiday.

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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 Energy, Planning and Development Energy Division (Minnesota Energy Agency) Alternative Energy Development Section

Adopted Rules for the Administration of the District Heating Bonding Act Regarding Design Loans

The rules proposed and published at *State Register*, Volume 6, Number 34, Pages 1468-1471, February 22, 1982 (6 S.R. 1469) are now adopted with the following modifications:

Rules as Adopted

6 MCAR § 2.4014 Application contents.

~~A. Information required.~~ An application shall contain the following information:

- ~~1. A.~~ A. Name, address, and telephone number of the responsible official of the municipality;
- ~~2. B.~~ B. A comprehensive business plan for the project as specified in 6 MCAR § 2.4015;
- ~~3. C.~~ C. A resolution in support of the project from the governing body of the municipality, which must include the pledges the municipality proposes to make to guarantee repayment of the design loan;
- ~~4. D.~~ D. A resolution or letter of intent from the proposed owner or operator of the district heating system indicating that he would expect to proceed with construction if the results of the design and final feasibility project are consistent with the preliminary feasibility study;
- ~~5. E.~~ E. Identification of all licenses, permits, zoning regulations, and other requirements of federal, state, or local governments with which the project would be expected to comply, and the present status of each;
- ~~6. F.~~ F. A list of key personnel and their qualifications as they relate to the project;
- ~~7. G.~~ G. An estimate of the type and amount of fuel to be saved per year from the full operation of the district heating system compared to the type and amount of fuel ~~to be~~ used by the existing system;
- ~~8. H.~~ H. A copy of a completed environmental impact statement, or a negative declaration of the need for an environmental impact statement from a completed environmental assessment worksheet, or in those cases where no environmental rules or regulations apply, a statement as to the environmental effects of the project.

~~B. Waiver of negative declaration.~~ The commissioner may waive the requirement of ~~A.8.~~ upon written request by the municipality. This request will be considered as part of the application and must contain the municipality's rationale in support of a waiver.

Department of Health

Disease Prevention and Control Division

Adopted Amendments to Rules Relating to Prophylaxis for Ophthalmia Neonatorum

The amendments to rules proposed and published at *State Register*, Volume 6, Number 28, pp. 1297-1298, January 11, 1982 (6 S.R. 1297) are adopted.

Rule as Adopted

MHD 326 Additional control measures for certain communicable diseases.

(o) Ophthalmia neonatorum.

(1) Definition. Any condition of the eye or eyes of an infant, independent of the nature of the infection, in which there is any inflammation, swelling, or redness in either one or both eyes of any such infant, either apart from, or together with, any unnatural discharge from the eye or eyes of any such infant within two weeks of the birth of such infant, shall be known as ophthalmia neonatorum.

(2) Prophylaxis. The licensed health professional in charge of the delivery at the time of the birth of any newborn infant shall instill or have instilled, within one hour of birth or as soon as possible thereafter, a one percent solution of silver nitrate, or tetracycline ointment or drops, or erythromycin ointment or drops.

(3) Treatment. A licensed health professional who is not a licensed physician but who is in charge of the care of a newborn infant shall immediately bring to the attention of a licensed physician every case in which symptoms of inflammation develop in one or both eyes of an infant in his or her care.

(4) Objections. If a parent objects or both parents object to the prophylactic treatment of a newborn infant and the health professional has honored the objection, the health professional shall retain a record of the objection.

Minnesota Pollution Control Agency

Adopted Rules Governing Sewage Sludge Management

The rules proposed and published at *State Register*, Volume 6, Number 26, pages 1187-1210, December 28, 1981 (6 S.R. 1187) are now adopted with the following modifications:

Rules as Adopted

6 MCAR § 4.6103 Definitions. For the purpose of 6 MCAR §§ 4.6101-4.6136, the following terms have the meanings given them.

JJ. Road right-of-way. "Road right-of-way" means any interstate, United States, state, county, municipal, or township highway or road including any shoulder and drainage ditch alongside the road.

6 MCAR § 4.6111 Requirements and limitations. The following requirements and limitations apply to the management of landspreading sites.

B. Pathogen control.

5. Public access to a landspreading site shall be controlled during and for a period of 12 months following sewage sludge application unless the sewage sludge was treated by a process to further reduce pathogens. Fencing or posting of appropriate signs is required if the site is likely to be frequented by the general public. If the site is remote, or used for agricultural purposes, fencing and or posting are is not required if unless inadvertant public contact is ~~deemed unlikely~~ likely.

H. Separation distances.

1. A distance of at least 200 feet from any place of habitation and a distance of at least 600 feet from any residential development or recreational area shall be maintained, unless written permission is obtained from the appropriate party all persons responsible for residential developments and places of recreation and all persons inhabiting within the otherwise protected distance.

J. Long-term dewatered sewage sludge storage.

2. Long-term storage of sewage sludge for landspreading areas of 40 acres or less shall not take place within 400 feet from any place of habitation. This separation distance shall increase 100 feet for every additional ten acres of landspreading area, or portion thereof, up to a maximum of 1,000 feet. Separation distances may be reduced if written permission is obtained from the appropriate party all persons inhabiting within the otherwise protected distance.

5. Long-term storage of sewage sludge shall not be allowed on land with greater than two percent slope unless measures are taken to control runoff₂, in which case the maximum land slope may be increased to six percent.

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ADOPTED RULES

6 MCAR § 4.6121 Requirements and limitations. The following requirements and limitations apply to the management of landspreading facilities.

A. Ground water protection.

2. The facility shall comply with the following minimum design requirements unless the permittee can demonstrate that compliance with 1. will be accomplished.

a. A minimum of six ground water monitoring wells shall be installed at the facility. Four wells shall be placed within the facility boundaries, two upgradient and two downgradient of ground water flow. The remaining two wells shall be placed within the area of landspreading. All wells shall be placed in the uppermost portion of the first aquifer below the landspreading facility that is currently being used or may be used in the future for drinking ~~well~~ water purposes. All wells shall sample the same portion of the aquifer. At a minimum, the frequency of sampling shall be semi-annually. The parameters to be tested for and a sampling frequency exceeding the minimum shall be determined by the director and will be based upon soil permeabilities, depth to water table, direction of ground water flow in relation to the location of potable water supply wells, distance to potable water supply wells, sewage sludge application rates, sewage sludge quality, and suitability of the ground water as a source of potable drinking water.

6 MCAR § 4.6135 Determination of sewage sludge application rate based on crop nitrogen requirements. Sewage sludge application rates shall be based upon soil texture, crop nitrogen requirements and yield goals, sewage sludge nitrogen availability, carry-over nitrogen supplied by past sewage sludge applications, and available nitrogen added by manures or fertilizers. The procedures in A.-E. shall be used:

C. Net allowable available nitrogen level. To determine the net allowable available nitrogen level in pounds per acre subtract carry-over nitrogen, nitrogen added from other sources such as fertilizer or animal manure, if known, and available nitrogen applied the previous year to fallow land, from the maximum allowable available nitrogen level.

E. Sewage sludge application rate. Divide the net allowable available nitrogen level in pounds per acre from C. by the available nitrogen in sewage sludge in pounds per ton from D. to obtain the sewage sludge application rate in tons of solids per ~~ton~~ year.

Department of Labor and Industry Occupational Safety and Health Division

Clarification of Effective Dates for the Occupational Safety and Health Standard Governing Hearing Conservation

On February 1, 1982, the Department of Labor and Industry published a "Request for Comments" in the *State Register* (6 S.R. 1369) announcing the proposed adoption of the Hearing Conservation Amendment to the Occupational Noise Exposure Standard, 29 CFR 1910.95; the standard was adopted on March 22, 1982.

A general schedule of effective dates for this standard was included in the February notice. Because portions of the standard are administratively stayed, this schedule of effective dates is misleading. Therefore, a more detailed schedule of effective dates has been prepared listing effective dates for individual paragraphs of the Hearing Conservation Amendment.

Hearing Conservation Amendment		
Paragraph	Effective dates	Effective Date
(c) Hearing Conservation program		4/1/82
(d) Initial Determination		
All paragraphs		Stayed
(e) Monitoring		
All paragraphs—except (e)(1)		Stayed
(e)(1)		6/22/82
(f) Employee notification		
All paragraphs		Stayed
(g) Method of measurement		
All paragraphs—except (g)(2)(ii)(b)		Stayed
(g)(2)(ii)(b)		4/1/82

(h) Calibration of monitoring equipment All paragraphs	Stayed
(i) Observation of monitoring All paragraphs—except (i)(1) (i)(1)	Stayed 4/1/82
(j) Audiometric testing program All paragraphs—except those listed below (j)(1), (2), (3) and (4) (j)(5) Baseline audiogram (j)(5)(i) and (ii) (j)(6) Annual audiogram (j)(6)(i) and (ii) (j)(7) (j)(8) Followup procedures (j)(8)(i) and (ii) (j)(8)(iv) (j)(8)(iv)(a), (b) and (c)	Stayed 8/22/82 8/22/82 8/22/82 8/22/82 8/22/82 8/22/82 8/22/82 8/22/82 8/22/82
(k) Audiometric test requirements All paragraphs	4/1/82
(l) Hearing protectors All paragraphs	4/1/82
(m) Hearing protector attenuation All paragraphs	4/1/82
(n) Training program All paragraphs—except those listed below (n)(3)(i) (n)(3)(iii), (iv), and (v)	4/1/82 Stayed Stayed
(o) Access to information and training materials All paragraphs	4/1/82
(p) Warning signs All paragraphs	Stayed
(q) Recordkeeping All paragraphs—except those listed below (q)(1)(ii) (q)(1)(ii)(a), (b), and (c) (q)(2)(ii)(d) (q)(2)(ii)(g) (q)(3)(ii) (q)(3)(ii)(a) and (b) (q)(4) (q)(4)(i) and (ii) (q)(4)(ii)(a), (b), and (c) (q)(5)(iii) and (iv)	4/1/82 Stayed Stayed Stayed Stayed Stayed Stayed Stayed Stayed Stayed
(r) Appendices All paragraphs	4/1/82
(s) Effective Dates All paragraphs—except (s)(4) and (s)(5) (s)(4) and (5)	4/1/82 Stayed
Appendix A: Noise Exposure Computation	4/1/82
Appendix B: Temporal Sampling Procedures for Use with a Sound Level Meter	Stayed
Appendix C: Audiometric Measuring Instruments	4/1/82

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ADOPTED RULES

Appendix D: Audiometric Test Rooms (Except Table D-1)	4/1/82 Stayed
Appendix E: Acoustic Calibration of Audiometers	4/1/82
Appendix F: Calculations and Application of Age Corrections to Audiograms	Stayed
Appendix G: Methods for Estimating the Adequacy of Hearing Protector Attenuation (Except (iv)(B))	4/1/82 Stayed
Appendix H: Availability of Referenced Documents	4/1/82
Appendix I: Definitions	4/1/82

A copy of the Hearing Conservation Amendment to the Occupational Noise Standard, 1910.95, may be obtained by writing the Department of Labor and Industry, OSH Division, 444 Lafayette Road, St. Paul, Minnesota 55101.

George E. O'Connell
Assistant Commissioner
Department of Labor and Industry

SUPREME COURT

Decisions Filed Friday, April 30, 1982

Compiled by John McCarthy, Clerk

81-573/Sp. Bituminous Roadways, Inc., Relator, v. The Commissioner of Revenue. Tax Court.

Taxpayer's purchase of paving mix did not constitute a purchase of material used or consumed in the industrial production of other personal property, and therefore was not a retail sale exempt from sales and use taxation under Minn. Stat. § 297A.25, subd. 1(h) (1980).

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

81-467/Sp. Fireman's Insurance Company of Newark, New Jersey, v. David Viktora, *et al.*, etc., Appellants, and Sandra Olson, *et al.* St. Louis County.

The language "residents of the Named Insured's household" is not ambiguous and, therefore, not subject to application of rules of construction which favor finding coverage.

Under the facts of this case, the trial court erred in finding defendant not a resident of his parents' household and not an insured under his parents' homeowner's insurance policy.

Reversed and remanded. Wahl, J. Dissenting, Otis, J., and Peterson, J. Took no part, Kelley, 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 Corrections Minnesota Correctional Facility—Stillwater

Notice of Request for Proposals to Provide Physical Examinations

Notice is hereby given to request proposals for providing physical examinations for approximately 75 Correctional Counselor trainees at an annual cost not to exceed \$5,512.00. This proposal shall include the following: completion of a comprehensive

health history questionnaire by the trainee candidate, and evaluation of the questionnaire by medical personnel providing the exam, routine diagnostic blood and urine lab tests, audiogram, pulmonary function screening when necessary as determined by the physician, an examination by a licensed physician, and baseline measurements of height, weight, blood pressure, and vision screening. These proposals must be submitted by 4:30 p.m., June 14, 1982, to David Corbo, Personnel Director. Please contact Mr. Corbo at (612) 439-1910, Ext. 320 if interested.

Department of Corrections Minnesota Correctional Facility—Stillwater Minnesota Correctional Facility—Oak Park Heights

Notice of Request for Proposals for Provision of Food Services

MCF—Stillwater

Notice is hereby given to request proposals for the professional management of our Food Service Activity at an annual cost not to exceed \$200,000. This proposal shall include all civilian personnel to operate the service. These proposals must be submitted by 4:30 p.m., June 14, 1982 to John Twohig, Assistant Institution Administrator. Please contact Mr. Twohig at 612-439-1910, Extension 336 if interested.

MCF—Oak Park Heights

Notice is hereby given to request proposals for the professional management of our Food Service Activity at an annual cost not to exceed \$100,000. This proposal shall include all civilian personnel to operate the service. These proposals must be submitted by 4:30 p.m., June 14, 1982 to Don Cooper, Associate Warden of Administration. Please contact Mr. Cooper at 612-779-1461.

Department of Corrections Health Care Unit

Notice of Request for Proposals for Professional/Technical Services Contracts

Notice is hereby given that the Minnesota Department of Corrections is seeking the following services for the period July 1, 1982 through June 30, 1983. These services are to be performed at the indicated state correctional institutions.

1. Services of a Pharmacist for the Minnesota Correctional Facility-Stillwater on a full-time basis and the Minnesota Correctional Facility-Shakopee approximately 14 hour/week to supervise the total pharmacy program. The estimated amount of the contract will not exceed \$38,536.

2. Services of a Radiologist approximately 32 hours per month to provide full radiological services to Minnesota Correctional Facility-Stillwater. The estimated amount of the contract will not exceed \$23,711.

3. Services of a Registered Dietitian approximately 88 hours per month to provide the total consultant dietitian services at the Minnesota Correctional Facilities-Stillwater and Lino Lakes. The estimated amount of the contract will not exceed \$15,444.

Direct inquiries for the above listed contracts to Clyde Eells, Health Services, Minnesota Correctional Facility-Stillwater, Stillwater, Minnesota 55082.

4. Services of a Psychiatrist approximately 44 hours per month to provide psychiatric consultations at the Minnesota Correctional Facility-Stillwater and the in-patient Mental Health Unit. The estimated amount of the contract will not exceed \$35,925.

5. Services of a Psychiatrist approximately 20 hours per month to provide psychiatric consultation services to the Minnesota Department of Corrections' Mental Health Unit located at the Minnesota Correctional Facility-Stillwater. The estimated amount of the contract will not exceed \$12,712.

Direct inquiries to Kenneth Carlson, Ph.D., Mental Health Unit located at the Minnesota Correctional Facility-Oak Park Heights, Box 10, Stillwater, Minnesota 55082.

Proposals for the above listed contracts must be submitted no later than May 31, 1982.

Department of Corrections

The Minnesota Correctional Facility—Sauk Centre

Notice of Request for Proposals for Licensed Psychological Services

Duties are as follows:

- 1) Interview incoming residents (300 to 400 per year), interpret MMPI, Social History and other test data, and complete psychological evaluations.
- 2) Complete supplemental evaluations on residents from the general population on request.
- 3) Consult with institution staff on problem cases, including development of treatment plans, if necessary.
- 4) Provide direct service to selected residents when requested as part of an individual treatment plan.

Services are to be provided at the institution. Approximately 65-72 work days per year are required to provide the required level of service.

Contact Dennis Rykken, Corrections Juvenile Program Director for a copy of proposal guidelines at (612) 352-2296. All proposals must be submitted by 5:00 p.m., May 28, 1982.

Notice of Request for Proposals for Qualified Chemical Dependency Services

Duties are as follows:

- 1) Perform chemical dependency evaluations by a qualified chemical dependency counselor, as required.
- 2) Conduct weekly chemical dependency orientation meetings for juveniles each week.
- 3) Coordinate and direct participation of institution juvenile students at community AA meetings.
- 4) Provide individual chemical dependency counseling sessions to juvenile residents, as required.
- 5) Provide staff consultation and case planning assistance regarding chemical dependency for residents.
- 6) Conduct chemical dependency in-service training sessions for staff, as required.

Services are to be provided at the institution. Approximately 17 hours per week are required to provide the required level of services.

Contact Dennis Rykken, Corrections Juvenile Program Director for a copy of proposal guidelines at (612) 352-2296. All proposals must be submitted by 5:00 p.m., May 28, 1982.

Notice of Request for Proposals for CPE Protestant Chaplain to Provide Religious Services

Duties are as follows:

- 1) Share with other religious staff the responsibility for weekly ecumenical worship services.
- 2) Be available for religious counseling of patients.
- 3) Provide a Protestant presence for non-Catholic students.
- 4) In general, function as a team member with other religious staff with the task of providing a meaningful and beneficial religious program for all students.

Services are to be provided at the institution. Approximately 20 to 24 hours per week will be required to provide the required level of services.

Contact Dennis Rykken, Corrections Juvenile Program Director, for a copy of proposal guidelines at (612-352-2296). All proposals must be submitted by 5:00 p.m., May 28, 1982.

Department of Public Welfare Systems and Data Flow Division

Notice of Request for Proposals for Software Development

The Department of Public Welfare (DPW) is requesting proposals for the development of software for the Public Welfare State Institutions System (PWSIS). This software is to operate on Texas Instruments Model 990/10 mini-computers utilizing the DX10 operating system, 1974 ANSI COBOL, and Texas Instrument utilities (TI-FORM, SORT/MERGE).

DPW is developing four of twelve modules of the planned PWSIS with this proposal. The Security/Menu Module is the primary "housekeeping" portion of the system which will allow or prohibit access to programs, functions and files based on the identity of the user; and call the programs, procedures and files requested by the authorized user. The Resident ID Module will consist of the procedures and data required to establish and update a master control and index file for all data pertaining to an individual resident. The Resident Status Module will record location and status data in order to support aggregate population reporting and statistics, and provide individual resident histories. The Resident Banking Module will process the deposit and withdrawal of resident and social welfare monies, resident purchase orders, interest posting, periodic statements, and provide for auditing, balancing and control functions.

A contract will be awarded to the lowest bidder submitting a detailed work plan and time line, and demonstrating the necessary skills and experience to successfully complete the contract. Specific contractual requirements are defined in the Request for Proposal. The maximum value of this contract is estimated at \$50,000. All proposals must be received no later than May 31, 1982, with notification of award expected within 10 working days.

Inquiries and requests for proposals are available from:

Jeff Carman
Minnesota Department of Public Welfare
Mental Health Bureau Section
Space Center Building
444 Lafayette Road
Saint Paul, Minnesota 55101
(612) 296-0981

Department of Public Welfare Health Care Programs Division

Notice of Availability of Health Care Consultation Contracts

The Department of Public Welfare intends to issue consultant contracts to one dentist with a specialty in periodontics and one physician with a Board Certified specialty in adult psychiatry and a background and experience in the determination of disability. The physician's contract shall not exceed \$8,320 annually, and the dentist's contract shall not exceed \$3000 annually.

The contracts will be awarded to candidates based on their experience, education, achievements and professional standing. All proposals must be received by the department by May 30, 1982. The Department of Public Welfare shall make the final selection of consultants and issue contracts for the period of July 1, 1982 through June 30, 1983.

Proposals and inquiries should be directed to:

Thomas JoliCoeur, Supervisor
Health Care Programs Division
Professional Services Section
Space Center
444 Lafayette Road
St. Paul, MN 55101
(612) 296-8822

STATE CONTRACTS

Minnesota Waste Management Board

Request for Submission of Qualifications for Geophysical Investigation

The State of Minnesota Waste Management Board (WMB) hereby requests the submission of qualifications for geophysical exploratory work and related testing from prospective contractors.

The WMB will in the near future identify 6, or more, preliminary candidate sites for hazardous waste disposal. There is a need to carry out such exploration in order to reduce the size of each site and further examine their suitability; the time frame for such work is June-October, 1982.

The average size of the sites is about 3 square miles. The geophysical exploration will consist of carrying out surface electrical resistivity profiling and sounding. Depending on site geology and other factors, profiling will be conducted on 1/2-1/4 mile spacing, while it can be assumed that an average of 5 sounding stations will be required per site. The maximum necessary depth of effective remote sensing will be 50-75 feet for profiling and 100-125 feet for sounding.

The prospective contractor will be required to interpret the data gathered in the performance of this work in conjunction with existing drilling data, or with future ones that the state will provide on its own. A report that outlines the results of this investigation and the interpretation of the geologic conditions in the sites will be submitted to the state within three (3) months of commencement of the field work.

Submission of qualifications will be due on 5/30/82. After the board has identified the sites, the prospective contractors will be required to negotiate acceptable contracts with the state.

For further information, call M. P. Katsoulis at (612) 536-0816, or write to:

Waste Management Board
7323 58th Avenue North
Crystal, MN 55428

OFFICIAL NOTICES

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

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

Department of Administration

Notice of State Surplus Property Sale

In compliance with Minnesota Statutes § 94.09, *et seq.*, the Commissioner of Administration offers for sale by sealed bids a single family residence at 1304 North Union Street in Fergus Falls. The property is legally described as follows:

Lot 4, Block 1 Fergus Falls Hospital Plat No. 1

The sale shall include the improved site, which measures approximately 72' × 133'+, and the residence described as follows:

A rambler-style three bedroom, one bath, frame dwelling built in 1949. The house has approximately 1176 square feet living area with full basement and a detached single garage.

This property is one of four residential properties available for sale at this location. Depending on demand, it is contemplated that the remaining three will be offered for sale in the summer of 1982.

The property will be available for inspection by appointment only. Arrangements for showing may be made by contacting Les Baird at the address and telephone in an ensuing paragraph.

Sealed bids for the purchase of the property will be received in the Office of Real Estate Management, Room G-22 State Administration Building, 50 Sherburne Avenue, St. Paul, Minnesota 55155, until 2:30 p.m. on June 2, 1982, at which time and place bids will be publicly opened and read aloud.

Bids will be accepted only if submitted on forms supplied by the state. Bid forms with complete instructions as to the bidding procedure may be obtained by contacting the Office of Les Baird, Director of Plant Management, Fergus Falls State Hospital, Fergus Falls, Minnesota 56537, telephone 218-739-7321, or Howard Eicher, Assistant Director, Real Estate Management, at the St. Paul address in the previous paragraph, telephone 612-296-6674.

To qualify as an acceptable bid, a bid must be accompanied by bid security in the form of a cashier's check or a certified check or a money order payable to the State of Minnesota in an amount not less than 10% of the bid. The bid security will act as a down payment for the successful bidder. Bid security for all unsuccessful bidders will be returned within 15 days to each respective unsuccessful bidder.

Section 94.09, *et seq.*, of Minnesota Statutes, 1980, requires that the property be sold for a price which is not less than the appraised value plus the cost of the appraisals. In this instance the appraised value and the cost of the appraisals are in the total amount of \$45,000. All bids in an amount less than \$45,000 cannot be accepted.

The successful bidder will have the option of making payment of the balance remaining after use of the bid security as a down payment by one of the two following methods:

1. Payment in full of the remaining balance no later than September 2, 1982;
2. Payment of the remaining balance in not less than equal annual installments for not to exceed five years, with principal and interest payable annually in advance at the rate of 12% per annum on the unpaid balance, by certified check or cashier's check payable to the State Treasurer on or before June 1 of each year.

In the event the successful bidder elects to make payment in installments in accordance with Option (2) above, the Commissioner of Administration will enter into a contract for deed with the successful bidder. The contract for deed will set forth the conditions of the sale.

Bidders are advised that the property is offered "as is." Possession will be transferred to the successful bidder immediately after the successful bidder has (1) made payment in full, or (2) entered into a contract for deed with the Commissioner of Administration.

When payment in full has been received by the State of Minnesota, the State shall convey the property by QUIT CLAIM DEED. The State of Minnesota *will not* furnish an abstract. Prospective bidders are hereby admonished that the state assumes no obligation to perform any acts or to pay for any expenses incurred in connection with possible title deficiencies except to deliver an executed QUIT CLAIM DEED. Interested prospective bidders are advised to inspect the real estate and conditions of title in order to insure full knowledge of existing conditions.

The State of Minnesota will pay the real estate taxes, if any, due and payable against this property in the year 1982 and all prior years. The successful bidder shall be responsible for the payment of all real estate taxes due and payable in 1983, if any, and in all succeeding years.

The State of Minnesota will pay in full all special assessments due and payable against this property as of the date of the sale.

The Commissioner of Administration reserves the right to reject any or all bids and to waive informalities therein.

Department of Administration Cable Communications Board

Notice of Intent to Solicit Outside Opinion Regarding Rules Governing Multiple Unit Dwellings

The Cable Communications Board, a division of the Department of Administration, seeks to obtain information and opinions from sources outside of the agency in preparing to propose the adoption of rules governing cable access to multiple unit dwellings.

Interested persons and organizations are invited to submit data and views on this subject in writing or orally at the May 14 and June 11, 1982 board meetings convening at 9:00 a.m. Any written material received by this agency will become part of the official record to be submitted to the attorney general and hearing examiner.

The wording of Chapter 515 of the 1982 Session Laws, to which the board is responding, is as follows:

"Subd. 18. The board may adopt rules to ensure reasonable access by cable systems to multiple unit dwellings and any site, lot, field, or tract of land and water upon which two or more occupied mobile or immobile dwelling units are located."

Information or comments should be submitted to W. D. Donaldson, executive director, Cable Communications Board, Department of Administration, 500 Rice Street, Saint Paul, Minnesota 55103, (612) 296-2545.

OFFICIAL NOTICES

Department of Agriculture Agronomy Services Division

Notice of Special Local Need Registration For "Secticide-10"

Pursuant to Minnesota Statute § 18A.23, and 3 MCAR § 1.0338 B, the Minnesota Department of Agriculture on April 8, 1982, issued a Special Local Need Registration for "Secticide-10", distributed by Golden Sun Feeds, Inc., Estherville, Iowa 51334.

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.

This Special Local Need Registration permits the use of this pesticide as a livestock and poultry premise spray for the control of houseflies, faceflies, stableflies, and false stableflies.

The application and other data required under Minnesota Statute §§ 18A.22, subd. 2(a-d); 18A.23; and 40 CFR 162.150-162.158, subpart B, relative to this registration (identified as SLN #MN82-0007) is on file for inspection at:

Minnesota Department of Agriculture
Agronomy Services Division
Pesticide Control Section
90 West Plato Boulevard
Saint Paul, Minnesota 55107
Telephone: (612) 296-8547

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 Minnesota Statute, Ch. 15, for the purpose of revoking, amending, or upholding this registration.

April 15, 1982

Mark W. Seetin, Commissioner

Department of Commerce Banking Division

Bulletin No. 2582: Maximum Lawful Rate of Interest for Mortgages and Contracts for Deed for the Month of May 1982

Notice is hereby given that pursuant to Minnesota Statutes § 47.20, subd. 4a, (1980), the maximum lawful rate of interest for conventional home mortgages for the month of May 1982 is sixteen and three-quarters (16.75) percentage points. Further, pursuant to Minn. Stat. § 47.20, the maximum lawful rate of interest for contracts for deed for the month of May 1982 is sixteen and three-quarters (16.75) percentage points.

It is important to note that this maximum lawful interest rate does not apply to all real estate loans and contracts for deed. Under Minnesota's interest rate moratorium, which is identical to the Federal Usury Preemption, in most instances any rate may be charged on real estate mortgages and contracts for deed that constitute first liens.

This is based on the Federal National Mortgage Association (FNMA) April 26, 1982, auction results and an average yield for conventional mortgage commitments of 16.521%. Current rates regarding the monthly publication are available by telephoning the Banking Division's 24-hour information number, (612) 297-2751.

April 27, 1982

Michael J. Pint
Commissioner of Banks

**State Board of Education
Department of Education
Instruction Division****Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing
Approval of Automobile and Motorcycle Driver Education Programs**

Notice is hereby given that the State Department of Education is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing the approval of automobile and motorcycle driver education programs.

The promulgation of these rules is authorized by Minnesota Statutes, Chapter 548, Laws of 1982 which requires the State Board of Education to prescribe rules governing the approval of automobile and motorcycle driver education programs.

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:

Joseph E. Meyerring, Specialist
Traffic Safety Education
Department of Education
550 Cedar Street
St. Paul, Minnesota 55101

Oral statements will be received during regular business hours over the telephone by contacting Joseph E. Meyerring at (612) 296-4899, or in person at the above address.

All statements of information and comment shall be accepted for 20 days immediately following publication of this notice in the *State Register*. Any written materials received by the State Department of Education shall become part of the record in the event that the rules are promulgated.

April 28, 1982

John J. Feda
Commissioner of Education

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

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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.

Legislative Reference Library
Room 111 Capitol
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