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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 7			
34	Monday Feb 7	Friday Feb 11	Monday Feb 21
35	Friday Feb 11	Friday Feb 18	Monday Feb 28
36	Friday Feb 18	Monday Feb 28	Monday Mar 7
37	Monday Feb 28	Monday Mar 7	Monday Mar 14

*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*.

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CONTENTS

MCAR AMENDMENTS AND ADDITIONS

Inclusive listing for Issues 27-33. 1168

PROPOSED RULES

Commerce Department

Securities and Real Estate Division

Amendments of Rules SDiv 2117 and SDiv 2118 which Implement and Interpret the Provisions of Minn. Stat. § 80A.15, subdivisions 2(g) and 2(h) Governing Exempt Transactions; Correcting a Cross Reference in Rule SDiv 2021 (c) (4) and Clarifying Rule SDiv 2034(a) [notice of intent to amend rules without a public hearing] 1170

Revenue Department

Income Tax Division

Proposed Repeal of Numerous Income Tax Rules [notice of intent to repeal rules without a public hearing] 1172

ADOPTED RULES

Administration Department

Cable Communications Board

Adopted Rules Governing Cable Communications Systems 1174

Commerce Department

Commissioner of Banks

Adopted Amendments to Rules Governing the Operation of Regulated Lenders (Formerly Small Loan Lenders) and Industrial Loan and Thrift Companies (Chapter 3: BD 100-109 and Chapter 4: BD 120-127) 1174

Public Welfare Department

Licensing Division

Adopted Rule Governing Standards for the Licensing of Private Child-Care or Child-Placing Agencies (12 MCAR § 2.004) 1174

Public Welfare Department

Social Services Division

Adopted Amendment and Repeal of Rules Governing Community Social Services or Programs 1175

Twin Cities Area Metropolitan

Transit Commission

Adopted Rule Repealing Rules Governing Operations of Transit Carriers, Transit Carrier Tariff, Accounting and Insurance Rules and Rules of Practice 1175

TAX COURT

State of Minnesota, Tax Court. Russell L. and Lois Ellingboe, Appellants, v. Commissioner of Revenue, Appellee. In the Matter of the Appeal From the Commissioner's Order dated November 23, 1981, Relating to the Income Tax of Appellant for the Year 1980. Order Dated January 26, 1983. Docket No. 3519. 1176

SUPREME COURT

Decisions Filed Friday, February 4, 1983

C9-82-258 American National Bank and Trust Company v. Terry Robert Young v. Avemco Insurance Company, Appellant 1178
 C0-82-472 In re the Marriage of: Rita V. Taylor, petitioner, Appellant, v. Russell C. Taylor, Ramsey County 1178
 C9-82-681 LeRoy Wagner v. Farmer's Union Central Exchange, *et al.*, and State Treasurer, James Lord,

Custodian of the Special Compensation Fund, Relator. Workers' Compensation Court of Appeals 1179

STATE CONTRACTS

Administration Department

Rental of Office Space 1179

Energy, Planning and Development Department

Energy Division

Energy Efficient House Research Project 1179

Minnesota Housing Finance Agency

Bid Request for Installation of Meters in 48 Minnesota Homes 1179

Iron Range Interpretive Center

Food Service Operator 1181

Metropolitan Council

Transportation Division

Transit Alternatives Analysis/Draft Environmental Impact Statement 1181

Minnesota State Senate

Director of Senate Legal and Research Services 1181

Transportation Department

Technical Services Division

Office of Engineering Standards
 Preparation of an Audio-visual Aid Presentation 1182

OFFICIAL NOTICES

Energy, Planning and Development

Planning Division

Office of Local Government

Meeting Notice 1182

Health Department

Application for Licensure — Scheduled

Advanced Life Support 1183

State Board of Investment

Investment Advisory Council

Notice of Regular Meeting 1183

Metropolitan Council

Notice of Change in Preliminary Review Schedule

Water Resources Management Development Guide, Part 1 Sewage Treatment and Handling Policy Plan 1183

Metropolitan Council

Metropolitan Health Board

Public Hearing of the Metropolitan Council and Metropolitan Health Planning Board for the Joint Consideration of: I. 1983-84 Application for Renewal of HSA Designation, and II. 1983 Annual Implementation Plan 1183

Minnesota Pollution Control Agency

Outside Opinion Sought Regarding Proposed Redesignation of the Twin Cities Metropolitan Area for Carbon Monoxide 1184

Minnesota State Retirement System

Regular Meeting, Board of Directors 1185

Waste Management Board

Notice of Proposed Areas to Complete the Inventory of Preferred Areas for Hazardous Waste Processing Facilities 1185

Waste Management Board

Proposed Hazardous Waste Processing Facility Areas in the Twin Cities Metropolitan Area [notice of and order for hearing] 1186

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 and filed with the Secretary of State before September 15, 1982, are published in the Minnesota Code of Agency Rules 1982 Reprint. ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES filed after September 15, 1982, will be included in a new publication, Minnesota Rules, scheduled for publication in late summer 1983. In the MCAR AMENDMENT AND ADDITIONS listing below, the rules published in the MCAR 1982 Reprint are identified with an asterisk. Proposed and adopted TEMPORARY RULES appear in the State Register but are not published in the 1982 Reprint due to the short-term nature of their legal effectiveness.

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

Table with 2 columns: Issue/Range and Issue/Range. 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 1982 Reprint.

MCAR AMENDMENTS AND ADDITIONS

TITLE 2 ADMINISTRATION

Part 1 Administration Department

2 MCAR §§ 1.8001-1.8023 (adopted) 1040

TITLE 3 AGRICULTURE

Part 1 Agriculture Department

3 MCAR §§ 1.0260-1.0264 (proposed) 1009

TITLE 4 COMMERCE

Part 1 Commerce Department

4 MCAR §§ 1.0100 (BD 100), 1.0101 (BD 101), 1.0102 (BD 103), 1.0103 (BD 104), 1.0104 (BD 105), 1.0105 (BD 106), 1.0106 (BD 107), 1.0107 (BD 109), 1.0120 (BD 120), 1.0121 (BD 121), 1.0122 (BD 122), 1.0123 (BD 123), 1.0124 (BD 124) (adopted) 1174
SDiv 2021, SDiv 2034, SDiv 2117-2118 (proposed) 1170
4 MCAR §§ 1.9255-1.9270 (proposed) 1014
Ins 32, 24 (proposed repeal) 1014

Part 2 Energy, Planning and Development Department (Economic Development)

4 MCAR §§ 2.501-2.508 (adopted) 1061

Part 3 Public Service Department

PSC 240, 242 (proposed repeal) 1009

Part 4 Cable Communications Board

4 MCAR §§ 4.001, 4.016, 4.046, 4.061-4.062, 4.066, 4.092, 4.100, 4.133-4.135, 4.140-4.141, 4.202-4.204, 4.211-4.212, 4.215, 4.250 (adopted) 1174

Part 8 Board of Barber Examiners

4 MCAR § 8.079 (proposed) 1107

TITLE 5 EDUCATION

Part 5 Education Department

5 MCAR §§ 1.01031-1.01032 (adopted) 1089

TITLE 6 ENVIRONMENT

Part 1 Natural Resources Department

6 MCAR § 1.0200 (adopted) 1121

Part 2 Energy, Planning and Development Department (Energy Agency)

6 MCAR §§ 2.2301 [Temp], 2.2314 [Temp] (continued) 1120

6 MCAR §§ 2.3109, 2.3120 (proposed) 1085

6 MCAR § 2.2301 [Temp] (proposed) 1107

6 MCAR §§ 2.4021-2.4034 (proposed) 1141

Part 8 Waste Management Board

6 MCAR §§ 8.501-8.507 (proposed) 1116

TITLE 7 HEALTH

Part 1 Health Department

7 MCAR §§ 1.212, 1.216 (withdrawn) 1088

7 MCAR §§ 1.217 C.4., 1.218 D. (proposed repeal withdrawn) 1088

7 MCAR §§ 1.601-1.630 (adopted) 1044

7 MCAR §§ 1.541-1.543 (repealed) 1044

TITLE 8 LABOR

RS 1, RS 14-15, RS 18-19 (withdrawn) 1088

TITLE 11 PUBLIC SAFETY

Part 1 Public Safety Department

11 MCAR §§ 1.0065-1.0071 (proposed) 1111

SafAd 72-73 (proposed repeal) 1111

MCAR AMENDMENTS AND ADDITIONS

11 MCAR §§ 1.3060-1.3066 (proposed)..... 1114
 11 MCAR §§ 1.6101-1.6106 (adopted)..... 1121
 11 MCAR §§ 1.6120-1.6125 (proposed)..... 1108

TITLE 12 SOCIAL SERVICES

Part 2 Public Welfare Department

12 MCAR § 2.004 (adopted) 1174
 12 MCAR § 2.010 (adopted) 1047
 12 MCAR §§ 2.120-2.129 (proposed)..... 1033
 12 MCAR §§ 2.202, 2.208-2.209, 2.215 (adopted)..... 1175

Part 3 Housing Finance Agency

12 MCAR § 3.002 O. (adopted) 1089

TITLE 13 TAXATION

Part 1 Revenue Department

13 MCAR § 1.2220 (proposed)..... 1015
 13 MCAR §§ Inh Tax 11-14, 19-30, 56-57, 63-79, 86-88,
 94-107, 111-116, 126-130, 136-137, 158-159, 174-181, 186-188,
 219 (proposed repeal) 1015
 InhTax 2002, 2007(1), 2007.1(1), 2008(25), 2009(2)16,
 2009(3)-1, 2009(5)-4, 2009(5)-5, 2009(5)-8, 2009(6)-5,
 2009(7)(B)(a), 2009(10), 2009(16), 2009(17), 2009.5(1),

2009.5(2), 2009.5(3), 2009.5(4), 2010(6), 2010(7), 2013(1),
 2013(2), 2013(5)-1, 2013(5)-2, 2013(5)-6, 2013(10), 2013.1(1),
 2013.2(2)-6, 2013.2(2)-7, 2013.2(2)-8, 2013.2(2)-9, 2013.3(1)-1,
 2013.3(1)-2, 2013.6(8)-2, 2014, 2014(1), 2014(2), 2014(3),
 2014(5), 2014(6), 2014(8), 2016(1), 2016(3), 2016(4), 2016(5),
 2016(8)-1, 2016(9), 2016(14), 2017(1), 2017(4), 2021(4), 2026(1),
 2026(2), 2026(3), 2028.1(1), 2028.1(2), 2028.1(3), 2028.1(4),
 2028.1(5), 2028.1(7), 2029, 2031(1), 2031(4), 2031(6), 2031(7),
 2031(8), 2031(9), 2031(10), 2031(11), 2031(12), 2031(13)-1,
 2031(13)-2, 2031(14), 2031(15)-1, 2031(15)-2, 2031(16),
 2031(17), 2031(18), 2031(19), 2031(20), 2031(21), 2031(22),
 2031(23), 2031(24), 2031(25), 2031(26), 2032(1), 2032(2), 2033,
 2034(2), 2034(3), 2036.1(2), 2040(1), 2040(2), 2040(3), 2041(2),
 2042(1), 2042(6), 2045(1), 2045(4), 2049, 2050(1), 2052(1),
 2053(1), 2053(2), 2053(6), 2056, 2057, 2065(2), 2065(3), 2065(4),
 2065(5), 2065(8), 2092(4), 2092(5)-1, 2092(5)-2, 2092(5)-3,
 2092(5)-4, 2092(6), 2093(5), 2093(10)-1, 2093.3-1, 2093.3-2,
 2093.4-3 (repealed) 1173

TITLE 14 TRANSPORTATION

Part 2 Metropolitan Transit Commission

MTC 1-6, 20-24, 30-48 (repealed)..... 1175

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 Securities and Real Estate Division

Proposed Amendment of Rules SDiv 2117 and SDiv 2118 which Implement and Interpret the Provisions of Minn. Stat. § 80A.15, subdivisions 2(g), and 2(h) Governing Exempt Transactions; Correcting a Cross Reference in Rule SDiv 2021(c)(4) and Clarifying Rule SDiv 2034(a)

Notice of Intent to Amend Rules without a Public Hearing

Notice is hereby given that the Securities and Real Estate Division proposes to amend the above-entitled rules without a public hearing. The commissioner has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sections 14.21 to 14.28 (1982).

Persons interested in these amendments 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 be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes sections 14.13 to 14.20 (1982).

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

Daniel W. Hardy
Assistant to the Commissioner
Securities and Real Estate Division
500 Metro Square Building
St. Paul, Minnesota 55101
Phone (612) 296-5689

Authority for the adoption of these rules is contained in Minnesota Statutes section 80A.25. 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 rules has been prepared and is available from Mr. Hardy upon request.

Upon adoption of the final rules without a public hearing, the proposed amendments, 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 Mr. Hardy.

A copy of the proposed rules follows this notice.

Copies of this notice and the proposed rules are available and may be obtained by contacting Mr. Hardy.

January 27, 1983

Michael A. Hatch
Commissioner of Securities and Real Estate
Department of Commerce

Rules as Proposed

SDiv 2021.

- (a) and (b) [Unchanged.]
- (c) (1)-(3) [Unchanged.]

(4) When, upon proposal of merger and consolidation or other organic change, a depositor exercised his rights under ~~Minnesota Statutes, Sec. 301.40 (1971)~~ or Minnesota Statutes, Sec. 301.44 (1971) section 302A.471, ~~provided that if,~~ in the opinion of the commissioner, the proposed manner of sale of the escrowed shares does not tend to work fraud or inequity on other shareholders, present or proposed.

SDiv 2034 Commissions and Expenses.

(a) Selling expenses in connection with an offering of securities (whether such offering is sold entirely or partially within Minnesota) shall include underwriting discounts or commissions; the value of options or warrants excluding overallotment options to acquire securities granted or proposed to be granted in connection with the offering to an underwriter, or its partners, officers, directors or shareholders, or otherwise as such underwriter may lawfully direct; finder's fees paid or to be paid in connection with the offering, whether such fees are paid by the issuer or an affiliate of the issuer; the value of the difference between the fair value at the time of issuance and the price paid for securities of the issuer issued within two years prior to the offering or proposed to be issued to an underwriter or any of its partners, officers, directors or shareholders, to the extent such sales or issuances may be deemed by the Commissioner to have been in lieu of commissions, or material in the selection of an underwriter by the issuer, or otherwise directly or indirectly connected with the offering; and all other expenses directly or indirectly incurred in connection with the offering, including nonaccountable expenses of the underwriter, but excluding, however,

- (1) attorney's fees for services in connection with the offer, sale and issuance of the securities and their qualification for offer and sale under applicable laws and regulations;
- (2) charges of transfer agents, registrars, indenture trustees, escrow holders, depositaries, auditors, accountants, engineers, appraisers and other experts;
- (3) cost of prospectuses, circulars and other documents required to comply with such laws and regulations;
- (4) other expenses incurred in connection with such qualification and compliance with such laws and regulations;
- (5) cost of authorizing and preparing the securities and documents relating thereto, including issue taxes and stamps;

and.

Selling expenses shall at all times be reasonable, and, unless good cause for an exception is shown, shall not exceed the following percentages for the specified types of companies or securities based upon percentages of the aggregate offering price:

- (aa) Finance, mortgage and related companies10%
- (bb) Bonds, notes, debentures and secured issuers10%
- (cc) Common stocks15%
- (dd) Preferred stocks and other stock senior to common stock10%
- (ee) Investment companies10%

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

PROPOSED RULES

- (ff) REITS10%
- (gg) Investment contracts.....10%

(b) and (c) [Unchanged.]

SDiv 2117

Clarification of the term "financial institution or institutional buyer." The ~~terms~~ term "financial institution or institutional buyer" contained in ~~Minn. Stat. §~~ Minnesota Statutes, section 80A.15, subdivision 2, clause (g) (1978), ~~as amended, include~~ includes but ~~are~~ is not limited to: (1) ~~any~~ a corporation with a class of equity securities registered under Section 12(g) of the Securities Exchange Act of 1934, as amended, and (2) ~~any single investor who purchases \$100,000 or more of an issue with respect to such sale, provided the purchase is for cash and payment is made at the time of the sale, and~~ (3) ~~a Small Business Investment Company~~ a person who is an "accredited investor" within the meaning of *Federal Register*, volume 47, page 11262, to be codified as Code of Federal Regulations, title 17, section 230.501 (a).

SDiv 2118

(a) [Unchanged.]

(b) The limitation of 25 purchasers contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (h) is waived in connection with any distribution resulting in sales to not more than 35 persons in this state in connection with any offering being made in compliance with rule ~~146 promulgated~~ 506 adopted by the Securities and Exchange Commission ~~[17 C.F.R. section 230.146]~~ *Federal Register*, volume 47, page 11266, to be codified as Code of Federal Regulations, title 17, section 230.506 or rules promulgated adopted under section 3(b) of the Securities Act of 1933, if such the offering is in compliance with any such these rules.

(c) The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (h) is withdrawn for any security representing an interest in or formed for the purpose of investing in any oil and gas venture, or any partnership, joint venture, group or association formed principally for the purpose of exploring for oil and gas or developing oil and gas reserves unless ~~said~~ the security is sold in compliance with rule ~~146 promulgated~~ 506 adopted by the Securities and Exchange Commission ~~[17 C.F.R. section 230.146]~~ in *Federal Register*, volume 47, page 11266, to be codified as Code of Federal Regulations, title 17, section 230.506.

(d) The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (h) is withdrawn for any security representing an interest in, or formed for the purpose of investing in, any animal breeding, animal feeding, animal leasing or similar venture, unless said security is sold in compliance with rule ~~146 promulgated~~ 506 adopted by the Securities and Exchange Commission ~~[17 C.F.R. Section 230.146]~~ in *Federal Register*, volume 47, page 11266, to be codified as Code of Federal Regulations, title 17, section 230.506.

(e)-(k) [Unchanged.]

(l) The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (h) and SDiv 2118; whether:

- (1) the sales are part of the single plan of financing;
- (2) the sales involve issuance of the same class of securities;
- (3) the sales have been made at or about the same time;
- (4) the same type of consideration is received; and
- (5) the sales are made for the same general purposes.

Department of Revenue Income Tax Division

Proposed Repeal of Numerous Income Tax Rules of the Department of Revenue

Notice of Intent to Repeal Rules without a Public Hearing

Notice is hereby given that the Department of Revenue proposes to repeal numerous existing income tax rules without a public hearing. The commissioner of revenue has determined that the proposed repeal of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.21 to 14.28.

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, sections 14.13 to 14.20.

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

D. M. Florence
Attorney, Income Tax Division
Minnesota Department of Revenue
Centennial Office Building
St. Paul, Minnesota 55145
(612) 296-3439

Authority for the repeal of these rules is contained in Minnesota Statutes, section 290.52. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of the rule repealers and identifies the data and information relied upon, to support the proposed rule repealers, has been prepared and is available from D. M. Florence upon request.

Upon adoption of the final rules without public hearing, the proposed rule repealers, this notice, the statement of need and reasonableness, all written comments received, and the final rule repealers as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General or who wish to receive a copy of the final rule repealers, as proposed for adoption, should submit a written statement of such request to D. M. Florence.

Copies of this notice and the proposed rule repealers are available and may be obtained by contacting D. M. Florence.

January 28, 1983

Arthur C. Roemer
Commissioner of Revenue

Rules as Proposed

Repealer. Income tax rules 2002; 2007(1); 2007.1(1); 2008(25); 2009(2)16; 2009(3)-1; 2009(5)-4; 2009(5)-5; 2009(5)-8 2009(6)-5; 2009(7)(B)(a); 2009(10); 2009(16); 2009(17); 2009.5(1); 2009.5(2); 2009.5(3); 2009.5(4); 2010(6); 2010(7); 2013(1); 2013(2); 2013(5)-1; 2013(5)-2; 2013(5)-6; 2013(10); 2013.1(1); 2013.2(2)-6; 2013.2(2)-7; 2013.2(2)-8; 2013.2(2)-9; 2013.3(1)-1; 2013.3(1)-2; 2013.6(8)-2; 2014; 2014(1); 2014(2); 2014(3); 2014(5); 2014(6); 2014(8); 2016(1); 2016(3); 2016(4); 2016(5); 2016(8)-1; 2016(9); 2016(14); 2017(1); 2017(4); 2021(4); 2026(1); 2026(2); 2026(3); 2028.1(1); 2028.1(2); 2028.1(3); 2028.1(4); 2028.1(5); 2028.1(7); 2029; 2031(1); 2031(4); 2031(6); 2031(7); 2031(8); 2031(9); 2031(10); 2031(11); 2031(12); 2031(13)-1; 2031(13)-2 2031(14); 2031(15)-1; 2031(15)-2; 2031(16); 2031(17); 2031(18); 2031(19); 2031(20); 2031(21); 2031(22); 2031(23); 2031(24); 2031(25); 2031(26); 2032(1); 2032(2); 2033; 2034(2); 2034(3); 2036.1(2); 2040(1); 2040(2); 2040(3); 2041(2); 2042(1); 2042(6); 2045(1); 2045(4); 2049; 2050(1); 2052(1); 2053(1); 2053(2); 2053(6); 2056; 2057; 2065(2); 2065(3); 2065(4); 2065(5); 2065(8); 2092(4); 2092(5)-1; 2092(5)-2; 2092(5)-3; 2092(5)-4; 2092(6); 2093(5); 2093(10)-1; 2093.3-1; 2093.3-2; 2093.4-1; and 2093.4-3 of the Department of Revenue are repealed.

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.

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 Administration Cable Communications Board

Adopted Rules Governing Cable Communications Systems

The rules proposed and published at *State Register*, Volume 7, Number 11, Pages 302-312, September 13, 1982 are now adopted as proposed with the following modification:

Rule as Adopted

4 MCAR § 4.002 Definitions.

C. Cable communications system. "Cable communications system" means a system which operates the service of receiving and amplifying programs broadcast by one or more television or radio stations and other programs originated by a cable communications company or by another party, and distributing those programs by wire, cable, microwave or other means, whether the means are owned or leased to persons who subscribe to the service. This definition does not include:

1. a system which serves fewer than 50 subscribers or a system which serves more than 50 but fewer than 1,000 subscribers if the governing bodies of all political subdivisions served by the system, vote, by resolution, to remove the system from the provisions of Minnesota Statutes, chapter 238. Any system which serves more than 50 but fewer than 1,000 subscribers that has been removed from the provisions of Minnesota Statutes, chapter 238 shall be returned to the provisions of Minnesota Statutes, chapter 238 if the governing bodies of 50 percent or more of the political subdivisions served by the system vote, by resolution in favor of the return,

2. a master antenna television system,
3. a specialized closed-circuit system which does not use the public rights-of-way for the construction of its physical plant; and
4. a translator system which receives and rebroadcasts over-the-air signals.

Department of Commerce Commissioner of Banks

Adopted Amendments to Rules Governing the Operation of Regulated Lenders (Formerly Small Loan Lenders) and Industrial Loan and Thrift Companies (Chapter 3: BD 100-109 and Chapter 4: BD 120-127)

The rules proposed and published at *State Register*, Volume 7, Number 18, pages 668-670, November 1, 1982 (7 S.R. 668) are adopted as proposed.

Department of Public Welfare Licensing Division

Adopted Rule Governing Standards for the Licensing of Private Child-Care or Child-Placing Agencies (12 MCAR § 2.004)

The rule proposed and published at *State Register*, Volume 6, Number 48, pages 2018-2020, May 31, 1982 (6 S.R. 2018) is adopted with the following modifications:

Rule as Adopted

12 MCAR § 2.004 Standards for the licensing of private child-caring or placing agencies.

D. Organization and administration.

6. Qualifications of personnel.

a. The executive or director shall have had training and responsible experience in work with children and their families and demonstrated executive ability.

b. The ~~ease work~~ social work supervisor shall hold a master's degree in social work from an accredited school of social work. In addition, the ~~ease work~~ social work supervisor must have had a minimum of two years experience in a ~~family and children's agency, or in a children's agency,~~ child-caring or placing agency as a case worker or ~~ease worker~~ social work supervisor. In agencies not having a ~~ease work~~ social work supervisor, the executive or case worker shall meet these qualifications.

c. Case workers shall be at least college graduates.

d. Where an agency currently licensed does not meet these requirements, future changes in personnel shall conform to these requirements.

Department of Public Welfare Social Services Division

Adopted Amendment and Repeal of Rules Governing Community Social Services or Programs

The rules proposed and published at *State Register*, Volume 7, Number 24, pages 918-922, December 13, 1982 (7 S.R. 918) are adopted as proposed.

Twin Cities' Area Metropolitan Transit Commission

Adopted Rule Repealing Rules Governing Operations of Transit Carriers, Transit Carrier Tariff, Accounting and Insurance Rules and Rules of Practice (MTC 1-48, Chapters 1-3, 14 MCAR § 2)

The rule repealing the above-referenced rules which was proposed and published at *State Register*, Volume 7, Number 22, pp. 818-819, November 29, 1982 (7 S.R. 818) is adopted without amendment.

Rule As Adopted

Repealer: MTC 1, 2, 3, 4, 5, 6, 20, 21, 22, 23, 24, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, and 48 are repealed.

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

TAX COURT

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

State of Minnesota

Tax Court

Russell L. and Lois Ellingboe,

Appellants,

v.

Commissioner of Revenue,

Appellee.

In the Matter of the Appeal from the Commissioner's Order dated November 23, 1981, Relating to the Income Tax of Appellant for the Year 1980.

Order dated January 26, 1983

Docket No. 3519

The above entitled matter was heard by the Minnesota Tax Court on October 29, 1982, Judge Carl A. Jensen presiding.

Russell and Lois Ellingboe, Appellants, appeared on their own behalf.

Paul R. Kempainen, Special Assistant Attorney General, appeared on behalf of the Appellee.

Briefs were subsequently filed by both parties.

Syllabus

1. A so-called lifetime sale of "personal services property" between Russell Ellingboe (hereinafter, "Ellingboe"), the Appellant herein, and P. & T.S., which was stated to be a trust of some kind does not affect the taxability of income that Ellingboe received from his employer. The employer is required to withhold income taxes, pay social security taxes, carry workers compensation, and do any other things required of any other employer.

2. An attempt to avoid withholding taxes by an employee by claiming more exemptions or deductions than are allowable and making said claims on his tax return is tantamount to fraud and willful evasion of taxes under Minnesota Statutes § 290.53.

Findings of Fact

1. The Appellants herein, Russell and Lois Ellingboe, are cash-basis calendar year taxpayers and residents of the State of Minnesota. The taxable year at issue herein is 1980.

2. During the entire year 1980, Appellant Russell Ellingboe (hereinafter, "Ellingboe") was employed as a truck driver by Driver's Service, Inc., an Illinois company. Ellingboe's employment with the truck company began in May 1973 and continued throughout 1980. Ellingboe was also employed in 1980 as a part-time driver by Quickie Transport Company of Minneapolis, Minnesota. By reason of this employment, Ellingboe was paid by Driver's Service, Inc. a total of \$28,411.06 in compensation during the taxable year 1980. Ellingboe also received a total of \$1,621.62 in compensation from his employment with Quickie Transport Company during the taxable year 1980. The amount paid by Quickie Transport to Ellingboe was fully reported on his return as income and is not at issue herein.

3. During the entire year 1980, Ellingboe was clearly an employee of Driver's Service, Inc. This employment relationship was proven by Ellingboe's own testimony, by the compensation paid to him, by the issuance of W-2 forms and by the fact that he was subject to all the controls and entitled to all the employee benefits (e.g., vacations, pension benefits, etc.) as all other employees of the Driver's Service, Inc. Ellingboe's employment with Driver's Service, Inc. was governed by the union contract of his local Teamster's Union #344. Driver's Service deducted his union dues from his paycheck. Ellingboe never quit or attempted to quit his employment relationship with Driver's Service, Inc.

4. In January, 1980, Ellingboe became familiar with an organization called Professional and Technical Services (hereinafter, "P. & T.S.") located in New York, and operated by an individual named Frank Forrester. On January 9, 1980, Ellingboe signed a document called a "personal services contract" with P. & T.S. by which he allegedly assigned or sold all of his future personal services, and the income derived therefrom, to P. & T.S. However, Ellingboe's employer was never made aware of this alleged contract.

5. Under the alleged arrangement between Ellingboe and P. & T.S., Ellingboe was to take all of his paychecks received from Driver's Services, Inc. and sign them over to either P. & T.S. or its designee: International Dynamics, Incorporated (hereinafter, "IDI") an organization also controlled by Forrester. In actual fact, Ellingboe received his paychecks, which were made out to him, endorsed them over to IDI, and then mailed them to Forrester in New York. After these transactions Forrester then proceeded to make payments of money to Ellingboe, which Ellingboe called "gifts" to himself. These payments

back to Ellingboe came within two weeks of his sending his paycheck to IDI and the payments amounted to a large part of his paycheck income.

6. The above-described arrangement is in substance a single tax avoidance transaction used by Ellingboe but controlled by Frank Forrester of New York, who the evidence shows is in charge of P. & T.S. and IDI. Ellingboe testified that only Forrester knew how these schemes worked.

7. The "personal services contract" entered into by Ellingboe did not in any way sever or otherwise change his status as an employee of Driver's Service, Inc. (Finding of Fact 2, *supra*). Despite its ostensible "ownership" of Ellingboe's personal services, P. & T.S. never contacted Driver's Service, Inc. in any manner regarding the employment status of Ellingboe, nor did P. & T.S. ever enter into any contract with the Driver's Service, Inc. regarding Ellingboe's employment, nor did P. & T.S. ever attempt to find a job for Ellingboe.

8. On line 1 of Appellants' 1980 Minnesota income tax return, federal adjusted gross income was reported by Ellingboe. This figure was arrived at after Ellingboe subtracted from his wage income a total of \$20,976.00 for what he called "Factors discount on accounts receivables—resold" (hereinafter, "Factors Discount") representing the amount of his 1980 paychecks he had signed over to IDI.

9. Upon audit by the Commissioner of Revenue, Ellingboe's claimed subtraction for "Factors discount" was disallowed and the Appellant's correct 1980 income tax liability was computed by the commissioner. As a result of these changes, the following additional tax, plus interest, was assessed against Appellant:

<u>Year</u>	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
1980	\$2,169.00	\$104.35	\$2,273.35

The Commissioner issued his Order of assessment on August 20, 1981.

10. A so-called lifetime sale of "personal services property" between Russell Ellingboe, the Appellant herein, and P. & T.S., which was stated to be a trust of some kind, does not affect the taxability of income that Ellingboe received from his employer. The employer is required to withhold income taxes, pay social security taxes, carry workers compensation, and do any other things required of any other employer.

11. An attempt to avoid withholding taxes by an employee by claiming more exemptions or deductions than are allowable and making said claims on his tax return is tantamount to fraud and willful evasion of taxes under Minnesota Statutes § 290.53.

Conclusion of Law

The Commissioner's Order of assessment for additional taxes for the year 1980 is hereby affirmed.

LET JUDGMENT BE ENTERED ACCORDINGLY.

By the Court,
Carl A. Jensen, Judge
Minnesota Tax Court

Memorandum

This case is very similar to the case of *Gerald and Betty Landsberger v. Commissioner of Revenue*, Docket No. 3354, which was decided by this Court June 11, 1982, and which was confirmed by Order of the Supreme Court dated November 10, 1982.

Appellant in his brief, which appears to have been written by Frank Forrester, states the following:

"The Landsberger's case is not similar since the Landsberger's case is filled with LIES, FRAUDS, DISHONESTY, DISHONOR, and MALIGNANT PREJUDICE. All of the LIES in the Landsberger's case do not add up to a single truth."

We would be inclined to agree with the above summation of Landsberger and his statements and allegations, although we did not go quite that far in our decision in the *Landsberger* case.

Appellant's brief is replete with the use of the word "lies." Appellant charges the Appellee with lies but the Appellee did not testify. Apparently Appellant is characterizing the arguments of Appellee's attorney as being lies. Appellee's statements in his brief are all based on testimony of the Appellant. Appellee's interpretation of the statements of Appellant are in accord with the findings of this Court.

There is some difference between this case and the *Landsberger* case in that Landsberger was a participant in the scheme devised by Frank Forrester and his dummy corporations and trusts.

This case is almost identical to the case of *Dale and Rhonda Korkowski*, Minnesota Tax Court Docket Nos. 3372 and 3587,

TAX COURT

dated January 10, 1983. This Court sustained the Commissioner's Orders of assessments for additional taxes in the *Korkowski* case. We stated and repeat from the *Korkowski* case the following:

"The United States Supreme Court in *Lucas v. Earl*, 281 U.S. 111, 50 S. Ct. 241, 74 L. Ed. 731 (1930), clearly stated the law as follows:

'This case is not to be decided by attenuated subtleties. It turns on the import and reasonable construction of the taxing act. There is no doubt that the statute could tax salaries to those who earned them and provide that the tax could not be escaped by anticipatory arrangements and contracts however skillfully devised to prevent the salary when paid from vesting even for a second in the man who earned it. That seems to us the import of the statute before use and we think that no distinction can be taken according to the motives leading to the arrangement by which the fruits are attributed to a different tree from that on which they grew.'

This holding in *Lucas vs. Earl*, *supra*, has been consistently upheld and reaffirmed.

In *United States v. Bayse*, 410 U.S. 441, 450, 93 S. Ct. 1980, 1086, 35 L. Ed. 2d 412 (1973), the Court said that:

The principle of *Lucas v. Earl*, that he who earns income may not avoid taxation through anticipatory arrangements no matter how clever or subtle, has been repeatedly invoked by this Court and stands today as a cornerstone of our graduated income tax system.'

The holding in these cases has been consistently adopted and applied to the Income Tax Laws of Minnesota. *Drew v. Commissioner of Taxation*, 222 Minn. 186, 23 N.W. 2d 565 (1946); *Fury v. Commissioner*, Dkt. No. 2626 (Aug. 24, 1978), affirmed by order of the Minnesota Supreme Court dated June 11, 1959; *Baldwin v. Commissioner of Revenue*, 309 N.W. 2d 750 (Minn. 1981); and *Landsberger v. Commissioner of Revenue*, Tax Court Dkt. No. 3354 (June 11, 1982), affirmed by the Minnesota Supreme Court dated November 10, 1982."

C.A.J.

SUPREME COURT

Decisions Filed Friday, February 4, 1983

Compiled by John McCarthy, Clerk

C9-82-258 *American National Bank and Trust Company v. Terry Robert Young, v. Avemco Insurance Company, Appellant. Ramsey County.*

The trial court's findings of fact are not clearly erroneous. Minn. R. Civ. P. 5201.

A Breath of Warranty endorsement is an independent policy of insurance between the insurer and mortgagee unaffected by any acts or neglect of the mortgagor.

Policy exclusions for drug trafficking and governmental seizure triggered by acts or neglect of a mortgagor do not preclude coverage for a mortgagee under a standard mortgage clause.

A territorial limitation in a policy of insurance triggered by acts or neglect of a mortgagor is inapplicable to a mortgagee under a standard mortgage clause.

Affirmed. Todd, J.

C0-82-472 *In re the Marriage of: Rita V. Taylor, petitioner, Appellant, v. Russell C. Taylor. Ramsey County.*

A. Treatment of husband's pension rights as a source for future payment of spousal maintenance was not just and equitable where it resulted in husband receiving an excessive share of marital assets.

B. It was not an abuse of discretion for trial court to postpone wife's receipt of her share of husband's pension benefits until his actual receipt of benefits.

C. Reduction of wife's share of marital assets by her future social security income was not just or equitable.

It was an abuse of discretion for the trial court to make no immediate award of spousal maintenance to wife considering the financial circumstances of the parties and husband's concession that some maintenance was warranted.

Affirmed in part, reversed in part. Scott, J.

C9-82-681 *LeRoy Wagner v. Farmer's Union Central Exchange, et al., and State Treasurer, James Lord, Custodian of the Special Compensation Fund, Relator.* Workers' Compensation Court of Appeals.

An employer or insurer must begin payment of compensation benefits within 30 days of notice to or knowledge by the employer of an injury compensable under the Workers' Compensation Act in order to avoid the 100% penalty imposed by Minn. Stat. § 176.221, subd. 3 (1982), when no denial of liability or request for an extension of time is filed.

Affirmed, as modified. Scott, J.

STATE CONTRACTS

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

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

Department of Administration

Notice of Request for Proposals for Rental of Office Space

The Department of Administration requests proposals for the rental of approximately 13,600 useable square feet of office and courtroom space for the Court of Appeals, in the City of St. Paul, preferably in a building with a law library or within walking distance to a law library.

Contact: Department of Administration
Real Estate Management Division
50 Sherburne Avenue, Room G-22
St. Paul, Minnesota 55155
Telephone: (612) 296-6674

PROPOSALS MUST BE SUBMITTED BY 2:00 P.M. (CDST), ON MONDAY, FEBRUARY 28, 1983

Department of Energy, Planning and Development Energy Division

Notice of Request for Proposals for an Energy Efficient House Research Project

The Energy Division has issued a Request For Proposal (RFP) for a contractor to perform investigations and prepare a report for an energy efficient house research project. The granting of this contract is contingent upon the approval of an unsolicited proposal submitted by the Energy Division to the U.S. Department of Energy.

A copy of the RFP may be obtained between February 14 and March 14, 1983 from: Bruce D. Nelson, DEPD-Energy Division, 980 American Center Building, St. Paul, Minnesota 55101. Telephone 612/296-8279.

The deadline for receipt of proposals is March 14, 1983 at 2:00 p.m. The amount of funds available for this contract is expected to be approximately \$81,500.

Minnesota Housing Finance Agency

Bid Request for Installation of Meters in 48 Minnesota Homes

Description

Bids are requested from qualified contractors for installation of scientific metering in 48 Minnesota homes. Locations of these homes and water heater fuel types are listed in Table 1, attached.

STATE CONTRACTS

All meters will be provided by Minnesota Housing Finance Agency (MHFA). Miscellaneous hardware (screws, wire, etc.) shall be provided by the contractor. The work statement is as follows:

Contractor shall install one run-time meter in each of the 48 houses. If house has an electric water heater, a 220 V hour-meter (provided by MHFA) shall be installed on it to measure run-time of the heating elements. The total run-time of both elements of a 2-element heater can be measured with one hour-meter. (The wiring diagram may be obtained by calling Bruce Nelson, MN Department of Energy, Planning & Development. See Page 3.) Power consumption of water heater elements shall be checked with KWH meter or ammeter so that monthly power consumption of the water heater can be calculated to $\pm 5\%$ from hour meter reading.

If the house has a gas water heater, a 24 V hour meter (provided by MHFA) shall be installed on the main gas valve of the furnace to measure burner on time. The burner power consumption shall be checked by timing revolutions of the gas meter so that gas consumption by the furnace can be calculated to $\pm 5\%$ from the burner run-time readings.

Contractor shall install one recording thermometer unit in each of 24 houses without basements and two recording thermometer units in each of 24 houses with basements. Location of units in each house will be specified by DEPD. These recording thermometers must be set to read the correct time on installation and a note made on the paper tape indicating the date and time of installation.

Contractor shall contact homeowners to arrange time for installation. Names, phone number and addresses of all homeowners will be provided by MHFA upon signing of the contract.

Contractor shall provide to the state upon completion of the work described above, a report on the date and time of installation of meters for each house, furnace/burner gas consumption rates, water heater electricity consumption rates and noting unusual circumstances for any installation.

LIABILITY. Contractor agrees to indemnify and save and hold the state, its agents and employees harmless from any and all claims or causes of action arising from the performance of this contract by CONTRACTOR or CONTRACTOR'S agents or employees. This clause shall not be construed to bar any legal remedies CONTRACTOR may have for the STATE'S failure to fulfill its obligations pursuant to the contract.

Contractor shall: provide acceptable evidence of compliance with the workers' compensation insurance coverage requirements of Minnesota Statutes, 1981 Supplement, section 176.181, subdivision 2.

Contractor shall: provide adequate bonding and insurance to meet the requirements and conditions of this contract.

All work shall be completed by March 25, 1983.

Submission of Bids

Bids must be received by:

Han Lee
Minnesota Housing Finance Agency
333 Sibley Street #200
St. Paul, Minnesota 55101
(612) 296-9850

no later than 12:00 noon March 8, 1983. Questions regarding this bid request may be directed to Bruce Nelson, Minnesota Energy Division (612) 296-8279.

February 14, 1983

TABLE I
LOCATIONS OF HOMES FOR METER INSTALLATIONS

Location*	Number of Houses (Type)	Domestic Hot Water
Moorhead	8 (quad)	Electric
Champlin	4 (det)	Natural Gas
St. Paul	4 (det)	Natural Gas
Northfield	8 (det)	Natural Gas
Winona	4 (quad)	Electric
Hutchinson	8 (det)	Electric
Inver Grove Heights	12 (tri/quad)	Electric

*All houses in each city are located in the same subdivision.

Iron Range Interpretive Center

Notice of Request for Proposals for Contractual Food Service Operator

The Iron Range Interpretive Center is seeking proposals from Minnesota food service operators to staff and operate/manage a kitchen/dining room located in the Iron Range Interpretive Center, Chisholm, MN.

The purpose of this service will be to provide an ethnic food experience for visitors of the Iron Range Interpretive Center, and to demonstrate the various techniques utilized in specialty food preparation.

For formal REQUEST FOR PROPOSAL documents, interested parties should contact:

Mr. Joseph D. Drazenovich, Assistant Director
Iron Range Interpretive Center
P. O. Box 392
Chisholm, MN 55791

Proposals must be submitted no later than March 15, 1983.

Contractor may request renewal of contract for one additional season upon successful completion of first year's operation.

Metropolitan Council Transportation Division

Notice of Request for Proposals for Transit Alternatives Analysis/Draft Environmental Impact Statement

The Metropolitan Council solicits a proposal for entering into a contract for the performance of services in the preparation of an Alternatives Analysis/Draft Environmental Impact Statement (AA/DEIS) in the Southwest/University Ave. corridors. The study will be funded by an Urban Mass Transportation Administration (UMTA) grant received by the council in December, 1982. The management of the study is the joint responsibility of eleven participating agencies through a Steering Committee and a Project Management Team.

The Southwest Corridor, starting in downtown Minneapolis, generally follows the Chicago and Northwestern Railroad right-of-way in a southwesterly direction. The University Ave. Corridor connects the Minneapolis and St. Paul downtowns by way of intermediate major trip generators. The AA/DEIS will define and analyze the physical, operational, economic, and financial characteristics of various bus and rail alternatives in order to select a preferred transit option in each corridor. Applicants should be proficient in transportation planning and engineering, transit planning and operations, economic and financial analysis, and land development analysis.

Copies of the Request for Proposals (RFP) can be obtained from Mr. Natalio Diaz at (612) 291-6341.

The council, by this RFP, does not promise to accept the lowest, or any other, proposal and specifically reserves the right to reject any or all proposals, to waive any formal proposal requirements, to investigate the qualifications and experience of any proposer, to reject any provisions in any proposal, to obtain new proposals, or to proceed to do the work otherwise. All proposals received in the council office no later than 5:00 p.m. on March 7, 1983, will be considered; and in the event that a proposal is accepted, the council will notify the successful proposer in writing within 30 days following its consideration of the proposal. Consultant selection will be the responsibility of a study steering committee made up of representatives of the eleven participating agencies. The steering committee provides policy direction for the study.

It is the policy of the Metropolitan Council to provide equal economic opportunity in the procurement of all goods and services. Minority business enterprises are encouraged to submit bids or proposals and will be given equal competitive opportunity. The awarding of contracts by the council will be made without discrimination based on race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, age, or political affiliation.

Minnesota State Senate

Applications Sought for Director of Senate Legal and Research Services

The Minnesota State Senate is seeking applicants for chief administrator of Senate Research and Senate Counsel. This individual will supervise the activities of the units, recommend hiring, assign projects to staff, provide leadership in anticipating information, legal and research needs of the Senate.

Qualified candidates for this position should have a college degree, advanced degree or comparable experience preferred.

STATE CONTRACTS

Candidates should have proven administrative and management skills and experience, possess knowledge of the legislative process, state, local and national government operations, have the ability to communicate verbally and in writing, and have the ability to evaluate research products.

Salary range: \$40,000 — \$50,000, depending on experience.

Send resume detailing education, experience and salary requirements by February 18, 1983 to:

Janine Mattson
Senate Personnel Officer
Room 233 State Capitol
St. Paul, MN 55155

Equal Opportunity Employer

Department of Transportation Technical Services Division Office of Engineering Standards

Notice of Availability of Contract for Preparation of an Audio-visual Aid Presentation

The Department of Transportation, acting as the agent for the Local Road Research Board requires the service of a consultant for the preparation of a twenty-minute synchronized slide-tape presentation on State Aid street and highway width design standards in terms easily understood by non-engineers.

The objectives of the presentation are to explain to public officials and the public the reasons for and the need for standards, how standards are developed, and how standards are applied; and specifically, explain the State Aid street and highway width standards.

The board has budgeted a maximum of twenty thousand (\$20,000) dollars for this work. Those interested may obtain a request for proposal form:

Gabriel S. Bodoczy, P.E.
Research Services Engineer
Office of Research and Development
Minnesota Department of Transportation
Room B-9, Transportation Building
St. Paul, Minnesota 55155
Telephone: 612-296-4925

Request For Proposals will be available through March 18, 1983. All proposals will be due no later than March 25, 1983.

OFFICIAL NOTICES

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

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

Department of Energy, Planning and Development Office of Local Government Planning Division

Notice of Meeting

The Juvenile Justice Advisory Committee will meet on Friday, February 18, 1983 at 9:00 a.m., in Training Room 1, Third Floor, Space Center, 444 Lafayette Road, St. Paul, Minnesota.

Department of Health

Application for Licensure — Scheduled Advanced Life Support

As of February 14, 1983, a complete application for scheduled advanced life support transportation service was submitted by the University of Minnesota Board of Regents, 2030 University Avenue S.E., Minneapolis, Minnesota 55414. The University of Minnesota Board of Regents now hold a scheduled basic life support license. The current license and the requested license include both a land life support vehicle and a fixed-wing aircraft. The application is requested to provide transportation service for the Neonatal program at the University of Minnesota Hospitals.

Each Municipality, County, Community Health Services Agency, and any other interested person wishing to comment on this application may receive a copy of the application and submit comments to the Metropolitan Health Board at 300 Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101, Atten: Mr. John Hurley (612) 291-6356. Your comments must be submitted before the close of business on March 16, 1983.

The Health Systems Agency (Metropolitan Health Board) will hold a public hearing in one of the municipalities in which the service is to be provided, the Health Systems Agency shall recommend that the Commissioner of Health grant or deny a license or recommend that a modified license be granted. The Metropolitan Health Board shall make the recommendations and reasons available to any individual requesting them.

Within 30 days of the receipt of the Health Systems Agencies recommendations, the Commissioner of Health shall grant or deny the license to this applicant.

State Board of Investment Investment Advisory Council

Notice of Regular Meeting

The State Board of Investment will meet on Wednesday, February 23, 1983 at 9:30 a.m. in the Weyerhaeuser Room, Minnesota Historical Building, 690 North Cedar Street, Saint Paul.

The Investment Advisory Council will meet at 7:30 a.m. on Wednesday, February 23, 1983 in the MEA Building Conference Room, 41 Sherburne, Saint Paul.

Metropolitan Council

Notice of Change in Preliminary Review Schedule Water Resources Management Development Guide, Part 1 Sewage Treatment and Handling Policy Plan

The Metropolitan Council has made schedule changes in its review of proposed amendments to its policy plan on regional water resources management. The new dates are:

- | | |
|----------------|--|
| March 3, 1983 | Physical Development Committee
Reviews the public hearing report and adopts final amendments. |
| March 10, 1983 | The Metropolitan Council adopts final amendments. |

If you have questions about the schedule or the plan, call John Harrington, the council's water pollution program manager at 291-6324.

Metropolitan Council Metropolitan Health Board

Public Hearing of The Metropolitan Council and Metropolitan Health Planning Board for the Joint Consideration of: I. 1983-84 Application for Renewal of HSA Designation, and II. 1983 Annual Implementation Plan

The Metropolitan Council and Metropolitan Health Planning Board will jointly hold a public hearing on Wednesday, March 2, 1983 at 7 p.m. in Room E of the Metropolitan Council, 300 Metro Square Building, St. Paul, Minnesota 55101 for the purpose of

OFFICIAL NOTICES

receiving written and oral comments on the 1983-84 Application for Renewal of the Metropolitan Council/Metropolitan Health Planning Board's HSA Designation and the 1983 Annual Implementation Plan. Copies of the 1983-84 HSA Application and the Annual Implementation Plan are available for public inspection beginning February 1, 1983 at the following locations:

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

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

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

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

Carver County Library — Chaska Branch
314 Walnut St.
Chaska, MN 55318

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

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

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

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

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

Metropolitan Health Planning Board
300 Metro Square Bldg.
St. Paul, MN 55101

Copies of the Annual Implementation Plan, and Work Program and Budget for the agency are available at cost from the Metropolitan Council Public Information Office, 300 Metro Square Bldg., St. Paul, MN 55101, Telephone 612-291-6464.

Persons wishing to speak at this public hearing may register in advance by contacting Debbie Conley at 291-6352. Those who register first will be scheduled to speak first. If you cannot attend, you are encouraged to send written comments to the Metropolitan Health Planning Board, up to 10 working days following this hearing. For further information contact the Metropolitan Health Planning Board at 291-6352.

Gerald J. Isaacs, Chairman
Metropolitan Council

LaVonne E. Barac, Chairperson
Metropolitan Health Planning Board

Minnesota Pollution Control Agency

Notice of Intent to Solicit Outside Opinion Regarding Proposed Redesignation of the Twin Cities Metropolitan Area for Carbon Monoxide

Notice is hereby given that the Minnesota Pollution Control Agency is seeking information and opinions from sources outside the agency regarding the proposed redesignation of the Twin Cities region carbon monoxide nonattainment area. A

nonattainment area is a geographic region in which ambient air quality standards are not being met. In the redesignation process the current ambient air quality data will be examined in order to propose a more accurate attainment/nonattainment determination for the Twin Cities metropolitan area for carbon monoxide. Opinions and information on the specific boundaries of the proposed nonattainment area are being requested.

Interested persons may submit statements of information and opinions orally or in writing. Written or oral statements should be directed to Douglas M. Benson at the address or telephone number listed below. Oral comments or inquiries will be accepted during regular business hours over the telephone and in person at the agency office.

Douglas M. Benson
Minnesota Pollution Control Agency
Division of Air Quality
1935 West County Road B-2
Roseville, Minnesota 55113
612-296-7743

All statements of information and opinion will be accepted until March 31, 1983.

February 7, 1983

Sandra S. Gardebring
Executive Director

Minnesota State Retirement System

Regular Meeting, Board of Directors

A meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, February 18, 1983, at 8:30 a.m., in the office of the system, 529 Jackson Street, St. Paul, Minnesota.

Waste Management Board

Notice of Proposed Areas to Complete the Inventory of Preferred Areas for Hazardous Waste Processing Facilities

On Friday, December 17, 1982, the Minnesota Waste Management Board ("board") proposed 16 local areas be considered for inclusion in its "inventory of preferred areas" for hazardous waste processing facilities. These proposed areas are in 13 Twin Cities metropolitan area communities.

The final inventory, to be completed by the board in July, 1983, will include "preferred areas" for each of these types of facilities: hazardous waste incinerators, chemical waste processing facilities and transfer/storage facilities for hazardous wastes. The board will not specifically site or construct facilities at the areas in its inventory. Instead, the board will encourage private firms to establish these facilities in areas designated as "preferred" by the state.

On April 22, 1982, the board placed eight (8) outstate areas (outside the seven (7) county Twin Cities metropolitan area) on its inventory of "preferred areas." All eight areas were designated for transfer/storage facilities, three of the areas were also designated for chemical processing and two of the eight areas were designated for hazardous waste incinerators.

Public hearings will be conducted during March and April in each of the communities affected by the board's December 17, 1982 proposal. A hearing schedule appears in this issue of the *State Register*.

The following lists the communities affected by the board's proposed areas in the Twin Cities metropolitan area and the facilities for which the board considers these local areas suitable.

These 16 areas were proposed by the board on December 17, 1982 as "preferred" for hazardous waste processing facilities (areas are designated for the type of facility for which the Board considers them suitable: T = transfer storage; I = incinerator; C = chemical processing):

<u>Shakopee</u> —	an area south of Highway 101, including the Valley Industrial Park (C, T, I)
<u>Minneapolis</u> —	several scattered industrial areas within the city including the Midway industrial area and the industrial area north of downtown (C, T)
<u>Roseville</u> —	an area on the western edge of the city south of County Road C (C, T)
<u>Lakeville</u> —	an area including the Airlake Industrial Park (C, T)

OFFICIAL NOTICES

- Ramsey — an area north of Highway 10 and south of the Anoka Landfill, including the Gateway North Industrial Park (C, T, I)
- Forest Lake — an area east of I-35W and south of Broadway (C, T)
- Inver Grove Heights — an area on the southeastern edge of the city, on either side of Highway 55 (C, T, I)
- Rosemount — an area on the northeastern edge of the city, along Highway 55 (C, T, I)
- Plymouth — an area south of Highway 55 and to the east and west of I-494 (C, T)
- St. Paul — scattered industrial areas in the city including the Midway Industrial area and the Riverview Industrial Park (C, T)
- Fridley — an area in the northern part of the city between the Burlington Northern railroad tracks and the Moundsview city limits (C, T)
- Cottage Grove — an area south of Highway 61 at Chemolite Road (C, T, I)
- Hastings — an area including the Hastings Industrial Park (C, T)

Waste Management Board

Proposed Hazardous Waste Processing Facility Areas in the Twin Cities Metropolitan Area

Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that information gathering hearings concerning the above-entitled matter will be held by the Waste Management Board ("WMB") pursuant to Minn. Stat. § 115A.09, subd. 3 (1982) at the times and dates listed below:

<u>Proposed Area</u>	<u>Date</u>	<u>Location</u>	<u>Time</u>
Shakopee	March 2, 1983	Scott County Courthouse Assembly Room 428 S. Holmes Shakopee, MN	1:00 p.m. and 7:30 p.m.
Minneapolis- Areas A, B, C	March 8, 1983	Minneapolis City Hall Room 319 Minneapolis City Hall Room 317	1:00 p.m. 7:30 p.m.
Roseville	March 15, 1983	Roseville City Hall 2660 Civic Center Dr. Roseville, MN	1:00 p.m. and 7:30 p.m.
Lakeville	March 16, 1983	Lakeville City Hall 8747-208th St. Lakeville, MN	1:00 p.m. and 7:30 p.m.
Ramsey	March 21, 1983	Ramsey City Hall 15153 Northern Blvd. NW Ramsey, MN	1:00 p.m. and 7:30 p.m.
Forest Lake	March 23, 1983	Forest Lake City Hall 220 N. Lake Street Forest Lake, MN	1:00 p.m. and 7:30 p.m.
Inver Grove Heights, Rosemount	March 30, 1983	Dakota County Area Vocational Technical Institute County Road 42 Akron Road Rosemount, MN	1:00 p.m. and 7:30 p.m.
Plymouth	April 5, 1983	Plymouth City Hall 3400 Plymouth Blvd Plymouth, MN Armstrong Senior High School (Cafeteria) 10635 - 36th Avenue N. Plymouth, MN	1:00 p.m. 7:30 p.m.

St. Paul Areas A and B	April 11, 1983	St. Paul City Hall Council Chambers 15 W. Kellogg St. Paul, MN	1:00 p.m. and 7:30 p.m.
Fridley	April 19, 1983	Fridley City Hall 6431 University Ave. NE Fridley, MN	1:00 p.m. and 7:30 p.m.
Cottage Grove	April 25, 1983	City Hall 7516-80th St. S. Cottage Grove, MN Park Senior High School Cafeteria 8040-80th Street S. Cottage Grove, MN	1:00 p.m. 7:30 p.m.
Hastings	April 27, 1983	Hastings City Hall 100 Sibley St. Hastings, MN	1:00 p.m. and 7:30 p.m.

The following proposed areas will be considered at the hearings:

<u>Shakopee</u> —	an area south of Highway 101, including the Valley Industrial Park
<u>Minneapolis</u> —	scattered industrial areas within the city including the Midway industrial area and the industrial area north of downtown
<u>Roseville</u> —	an area on the western edge of the city south of County Road C
<u>Lakeville</u> —	an area including the Airlake Industrial Park
<u>Ramsey</u> —	an area north of Highway 10 and south of the Anoka Landfill, including the Gateway North Industrial Park
<u>Forest Lake</u> —	an area east of I-35W and south of Broadway
<u>Inver Grove Heights</u> —	an area on the southeastern edge of the city, on either side of Highway 55
<u>Rosemount</u> —	an area on the northeastern edge of the city, along Highway 55
<u>Plymouth</u> —	an area south of Highway 55 and to the east and west of I-494
<u>St. Paul</u> —	scattered industrial areas in the city including the Midway industrial area and the Riverview Industrial Park
<u>Fridley</u> —	an area in the northern part of the city between the Burlington Northern railroad tracks and the Moundsview city limits
<u>Cottage Grove</u> —	an area south of Highway 61 at Chemolite Road
<u>Hastings</u> —	an area including the Hastings Industrial Park

Specific details on the location of the areas may be obtained by contacting Sharon Decker, Waste Management Board, 7323-58th Avenue North, Crystal, Minnesota, 55428, Telephone (612) 536-0816 or 1-800-652-9747.

The hearings will be held before the following Hearing Examiners of the Office of Administrative Hearings, 400 Summit Bank Building, 310 - 4th Avenue South, Minneapolis, Minnesota, 55415, (612) 341-7600:

Shakopee, Minneapolis and Cottage Grove — Alan W. Klein

Roseville, Forest Lake and Fridley — Phyllis Reha

Ramsey, Inver Grove Heights-Rosemount, and St. Paul — Howard L. Kaibel

Lakeville, Plymouth and Hastings — Myron S. Greenberg

The purpose of the hearings is to gather additional information on the proposed areas which may be helpful to the WMB in determining which areas should be placed on the final inventory of hazardous waste processing areas. Information related to the criteria utilized by the WMB, as well as any other information which may assist the WMB in determining whether an area should be included in the final inventory of processing areas may be submitted at the hearing.

At the hearings, any local government unit in which an area is proposed for inclusion in the inventory may propose an alternative area or areas within its jurisdiction. Minn. Stat. § 115A.09, subd. 3 (1982). These alternatives may include (a) exclusion or inclusion of land within or near the designated proposed area, (b) a different location within the jurisdiction of the governing unit, (c) specification of the type of processing facility for an area, (d) other alternatives.

The WMB is a statutory agency of the State of Minnesota with responsibility for identifying areas which may be used for the establishment of commercial hazardous waste processing facilities. The nine member board includes eight citizen members, one

OFFICIAL NOTICES

from each of the state's Congressional districts, and a full-time chairman who is a state employee. The board is the final decision making authority of the agency. The chairman, in addition to being a member of the board, is also the executive and operating officer of the board and as such is authorized by statute to carry out the executive and administrative functions of the board. The WMB staff is supervised by the chairman.

Pursuant to Minn. Stat. § 115A.09 (1982), the WMB is required to prepare an inventory of areas of up to ten square miles in size for commercial hazardous waste processing facilities. The inventory must include at least three areas for each of the following categories of processing facilities: (a) a commercial chemical processing facility for hazardous waste, (b) a commercial incineration facility for hazardous waste, and (c) a commercial transfer and storage facility for hazardous waste. The Minnesota Pollution Control Agency is required to prepare a report on the suitability of each proposed area for the use intended. Sites within areas that are on the WMB processing facility inventory may qualify for supplementary review by the WMB. If a facility developer obtains a Pollution Control Agency permit for a facility within an inventoried area but a political subdivision refuses to approve the establishment or operation of the facility, a petition may be filed with the WMB requesting review of the decision of the political subdivision. If, on the basis of review criteria adopted by the WMB the WMB approves the facility, the WMB approval supersedes the decision of the political subdivision. Minn. Stat. §§ 115A.32-.39 (1982).

On April 22, 1982, eight (8) outstate (outside the seven county Twin Cities metropolitan area) areas were placed on the WMB inventory of preferred areas for hazardous waste processing facilities. A reexamination of the Twin Cities metropolitan area for possible preferred areas will be accomplished before the WMB inventory is completed.

The procedure for selecting areas to complete the final inventory is as follows:

1. The Waste Management Board develops criteria for selecting preliminary areas in the Twin Cities metropolitan area, including those criteria required to be considered by Minn. Stat. § 115A.09, subd. 2 and applies that criteria to identify preliminary areas;
2. The Board compares the preliminary areas on the basis of certain predetermined factors and selects as proposed areas those areas that seem most suitable.
3. Public hearings are held for each proposed area;
4. The hearing examiner's report is submitted to the WMB;
5. The WMB reviews the hearing examiner's findings and recommendations and the record of the hearing; and,
6. The WMB makes its final decision on the areas to be included in the processing facility inventory.

The board's final decision on the inventory will be based on the data developed by the WMB staff and submitted as part of the hearing record, testimony of witnesses at the hearing, exhibits submitted at the hearing and any other material included in the record of the hearing.

Copies of the criteria the WMB utilized to select the proposed areas for hazardous waste processing facilities in the Twin Cities metropolitan area will be available at the time the hearing is noticed. In addition, a report containing the basis for the board's decision to propose an area for inclusion in its inventory will be available prior to the hearing. To the extent feasible, these documents may be copied. PLEASE BE ADVISED that it may not be possible to copy certain documents such as large maps. PLEASE BE ADVISED that this hearing is neither a contested case hearing nor a rulemaking hearing. Therefore, the procedural rules applicable to contested case and rulemaking hearings are inapplicable. The following procedures shall be followed:

1. The hearing will be opened by the hearing examiner who will explain the hearing procedures.
2. The WMB staff will introduce the jurisdictional documents, the WMB criteria, and the report containing the basis for proposing the area for inclusion in the Board's inventory.
3. The WMB staff will briefly summarize the basis for including the proposed area in the inventory.
4. Members of the public will be given an opportunity to make oral statements, to offer written documents into the record and to direct questions to the WMB staff. Representatives of the WMB staff may address questions to members of the public.
5. The hearing examiner may exclude testimony which is irrelevant, immaterial, or unduly repetitious. In addition, the hearing examiner may disallow questioning which is irrelevant, immaterial, unduly repetitious, argumentative, harassing, or adversarial in nature.
6. Pursuant to Minn. Stat. § 624.72 (1982), no person shall interfere with the conduct of, or disrupt or threaten interference with or disruption of the hearing. In the event of any interference or disruption or threat thereof, the hearing examiner may take appropriate action.
7. Following the end of the hearing, members of the public will have seven working days in which to submit additional

documents and comments for the hearing record. Copies of these documents and comments must be submitted to both the hearing examiner and the WMB staff.

8. Following the seven day period discussed above, the WMB staff will have seven working days in which to respond to the public testimony presented at the hearing and subsequent documents submitted into the hearing record.

9. Copies of additional documents submitted by members of the public and the WMB staff responses will be available for inspection at the WMB offices.

10. No factual information or evidence which is not a part of the hearing record will be considered by the hearing examiner or the WMB in the determination of this matter.

11. The hearing examiner will prepare a report which will contain findings of fact, conclusions, and recommendations on issues related to the proposed areas.

12. The WMB staff will make final recommendation to the WMB regarding the proposed areas.

13. The WMB will make a determination as to which sites should be included in the final inventory based on the hearing record.

14. Persons wishing to be notified of the availability of the hearing examiner's report, the staff recommendation, or the board's determination on the final inventory of preferred areas may so indicate at the hearing.

Please be further advised that, while persons may submit documents or other information at the hearing or up to seven working days after the hearing, it would be very helpful to have documents submitted to the WMB staff in advance of the hearing. Therefore, persons wishing to submit documents or other information are encouraged to do so at the earliest possible time so that the WMB staff has sufficient time to review the documents and information.

Questions concerning the procedures indicated in this notice and order may be directed to Special Assistant Attorney Generals LeRoy C. Paddock or Alan W. Kowalchuk, 1935 W. County Road B-2, Roseville, Minnesota, 55113, telephone (612) 379-0424. To submit documents, obtain copies of WMB criteria, or for additional information, please contact Sharon Decker at the Board's address set forth above, telephone (612) 536-0816 or 1-800-652-9747.

February 4, 1983

Robert G. Dunn
Chairman

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