

84 April 16

STATE REGISTER

STATE OF MINNESOTA

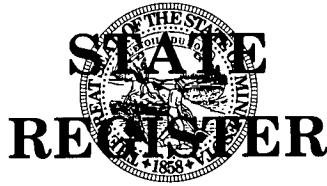


VOLUME 8, NUMBER 42

April 16, 1984

Pages 2241-2292

RECEIVED
APR 16 1984
LEGISLATIVE REFERENCE LIBRARY
STATE CAPITOL
ST. PAUL, MN. 55155



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 8			
43	Monday Apr 9	Monday Apr 16	Monday Apr 23
44	Monday Apr 16	Monday Apr 23	Monday Apr 30
45	Monday Apr 23	Monday Apr 30	Monday May 7
46	Monday Apr 30	Monday May 7	Monday May 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.

The *State Register* is published by the State of Minnesota, State Register and Public Documents Division, 117 University Avenue, St. Paul, Minnesota 55155, pursuant to Minn. Stat. § 14.46. Publication is weekly, on Mondays, with an index issue in September. In accordance with expressed legislative intent that the *State Register* be self-supporting, the subscription rate has been established at \$130.00 per year, postpaid to points in the United States. Second class postage paid at St. Paul, Minnesota. Publication Number 326630. (ISSN 0146-7751) No refunds will be made in the event of subscription cancellation. Single issues may be obtained at \$3.25 per copy.

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

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

Rudy Perpich
Governor

Marsha Storck
Editor

Sandra J. Hale
Commissioner
Department of Administration

Robin PanLener
Editorial Staff

Stephen A. Ordahl
Director
State Register and
Public Documents Division

Margaret Connelly
State Register Index Editor

Debbie Kobold
Circulation Manager

CONTENTS

MCAR AMENDMENTS AND ADDITIONS

Issues 39-51, inclusive 2244

MINNESOTA RULES AMENDMENTS AND ADDITIONS

Issues 39-51, inclusive 2245

MINNESOTA RULES

Office of the Revisor of Statutes; and State Register and Public Documents Division

Announcement of New Minnesota Rules Format 2245

PROPOSED RULES

Labor and Industry Department

Workers' Compensation Division and Office of Administrative Hearings

Proposed Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings 2246

Pollution Control Agency

Proposed Rules Governing Hazardous Waste Priority Assessment Criteria 2269

ADOPTED RULES

Commerce Department

Adopted Amendment to Rules Relating to Workers' Compensation Competitive Rating 2273

Labor and Industry Department Prevailing Wage Division

Adopted Amendments to Rules Relating to the Establishment of Prevailing Wages 2274

Pollution Control Agency

Adopted Rule APC 2, Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability, to be Retitled Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment, and Circumvention 2275

Adopted Rules Relating to Air Emission Facility Permits 2276

Adopted Rules Relating to Hazardous Waste Facility Permits 2276

Adopted Rules Relating to Indirect Source Permits 2277

Adopted Rules Relating to National Discharge Elimination System Permits 2277

Adopted Rules Relating to Permits 2278

OFFICIAL NOTICES

Secretary of State's Office

Notice of Vacancies in Multi-Member State Agencies 2280

Agriculture Department Planning Division

Outside Opinion Sought Regarding Proposed Rules Governing Licensing, Bonding, and Auditing of Grain Buyers as Authorized by Minnesota Statute § 223, et al 2280

Governor's Commission on Education for Economic Growth

Notice of Meetings 2281

Health Department

Outside Opinion Sought Concerning an Amendment to 7 MCAR § 1.601-1.630 to Permit Intermediate Care Emergency Medical Technicians to Administer Cardiac Drugs 2281

Health Department

Bureau of Community Services

Public Hearing Regarding Fiscal Year 1985 Minnesota State Plan of Program Operations and Administration for the Special Supplemental Food Program for Women, Infants, and Children 2282

Minnesota State Retirement System

Regular Meeting, Board of Directors 2282

Pollution Control Agency Division of Water Quality

Behind-Schedule and Substandard Projects List 2282

Transportation Department

Petition of the City of St. Paul for a Variance from State Aid Standards for Street Width 2283

STATE CONTRACTS

Administration Department

Procurement Division

Commodities Contracts and Requisitions Currently Open for Bidding 2284

Commerce Department

Request for Proposals for Investment Management and/or Trustee and Custodial Services of the Minnesota Worker's Compensation Assigned Risk Plan Funds 2284

Health Department

Division of Services for Children with Handicaps

Availability of Contracts for Medical and Related Services for Handicapped Children 2285

Metropolitan Council

Request for Proposals (RFP) for Soil Borings and Testings for Environmental Impact Statement on Sludge Ash Landfill Site 2285

Natural Resources Department

Request for Proposals for Integration of Iron and/or Steel Production with Existing Taconite Operations 2285

Public Welfare Department

Fairbault State Hospital

Request for Proposals for Medical Services to be Performed on a Contractual Basis 2286

Public Welfare Department

Social Services Division

Request for Proposals (RFP) for Local Programs to Improve the Provision of Guardian *Ad Litem* Representation for Juveniles in Proceedings 2287

Vocational-Technical Education Board; and Economic Security Department, Governor's Job Training Office

Request for Proposals for JTPA—Education Coordination Services for Special Needs Groups ... 2287

SUPREME COURT

Decisions of the Court of Appeals Filed Wednesday, April 4, 1984 2288

Decisions of the Supreme Court Filed Friday, April 6, 1984 2289

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 spring of 1984. 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:

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

The listings are arranged in the same order as the table of contents of the *MCAR 1982 Reprint*.

MCAR AMENDMENTS AND ADDITIONS

TITLE 3 AGRICULTURE

Part 1 Agriculture Department

3 MCAR § 1.0172 [Temp] (extended) 2144

TITLE 4 COMMERCE

Part 1 Commerce Department

4 MCAR §§ 1.0001-1.0032 [Temp] (extended) 2186

4 MCAR §§ 1.9140-1.9141, 1.9143-1.9147 [Amend] (adopted) 2273

Part 13 Board of Peace Officer

Standards and Training

4 MCAR § 13.040 (adopted) 2145

TITLE 6 ENVIRONMENT

Part 2 Energy and Economic Development Department

6 MCAR §§ 2.4045 [Temp], 2.4047-2.4048 [Temp] (extended) 2145

Part 4 Pollution Control Agency

6 MCAR § 4.0002 (adopted) 2275

6 MCAR §§ 4.4001-4.4021 (adopted) 2278

6 MCAR §§ 4.4101-4.4111 (adopted) 2277

6 MCAR §§ 4.4201-4.4224 (adopted) 2276

6 MCAR §§ 4.4301-4.4305 (adopted) 2276

6 MCAR §§ 4.4311-4.4321 (adopted) 2277

TITLE 8 LABOR

Part 4 Economic Security Department

8 MCAR §§ 1.8003-1.8004, 1.8006-

1.8007 [Amend] (adopted) 2274

8 MCAR § 4.0101 [Temp] (extended) 2144

8 MCAR § 4.0102 [Temp] (extended) 2144

TITLE 14 TRANSPORTATION

Part 1 Transportation Department

14 MCAR § 1.5032 (adopted) 2146

MINNESOTA RULES AMENDMENTS AND ADDITIONS

OFFICE OF ADMINISTRATIVE HEARINGS

Workers' Compensation Hearings
1415.0100-1415.3600 (proposed) 2246

STATE BOARD OF EDUCATION

3500.2010-3500.2110 (proposed) 2210

ENERGY, PLANNING & DEVELOPMENT

Energy & Economic Development Authority

4350.0200, 4350.0400, 4350.0600 (proposed) 2050

4351.0500-4351.0800 (proposed) 2051

8300.0100, 8300.0300, 8300.0500-8300.0600,

8300.1000-8300.1200, 8300.1500-8300.2200 (proposed) 2056

8300.0200, 8300.0700 (repealed) 2056

ENVIRONMENTAL QUALITY BOARD

4405.0100-4405.1300 (proposed) 2061

MN HOUSING FINANCE AGENCY

4900.0550-4900.0580 (proposed) 2213

POLLUTION CONTROL AGENCY

Water Quality Division

7050.0110, 7050.0130-7050.0150, 7050.0170-7050.0220
(proposed) 2066

7050.0400-7050.0480 (proposed) 2082

7044.0100-7044.1200 (proposed) 2270

BUREAU OF CRIMINAL APPREHENSION

7502.0100-7502.0400, 7502.0410-7502.0430,
7502.0500-7502.0700 2186

PUBLIC UTILITIES COMMISSION

7825.2390-7825.2850, 7825.3000 (proposed) 2214

DEPARTMENT OF REVENUE

Property Equalization Division

8100.0300 (proposed) 2223

8110.0100-8110.0500 (proposed) 2220

SMALL BUSINESS FINANCE AGENCY

8300.0100, 8300.0300, 8300.0500-8300.0600,

8300.1000-8300.1200, 8300.1500-8300.2200 (proposed; see
Energy & Econ. Dev.) 2056

8300.0200, 8300.0700 (repealed; see Energy & Econ. Dev.) .. 2056

MINNESOTA RULES

Office of the Revisor of Statutes State Register and Public Documents Division

Announcement of New Minnesota Rules Format.

Beginning with the March 19 issue of the *State Register*, proposed rules published in the *State Register* will be drafted in a new format and will use a new numbering system. This format and numbering system change was made by the Revisor of Statutes as part of the Revisor's recompilation of state administrative rules. This recompilation has been published and is known as *Minnesota Rules*.

The MCAR format will still appear when agencies publish changes to proposed rules that were published in the MCAR format. The changes will follow the MCAR format so that readers can easily compare the proposed and adopted rules. Also, rules that began at the proposal stage in the MCAR format before the changeover will still appear in the MCAR format in the *State Register*. After the rules have been adopted, the revisor will recompile them in the new format for inclusion in *Minnesota Rules*.

Copies of the *Minnesota Rules Drafting Manual*, which explains the new format, can be purchased from the State Register and Public Documents Division of the Department of Administration. The cost is \$11.00 plus 6% sales tax (Minnesota residents only) and \$1.50 handling charge (handling charge applicable to mail orders only). Prepayment is required.

Concordance tables for converting MCAR numbers into MR numbers and vice versa is also available. It is included in Volume 6 of the new set of *Minnesota Rules*, 1983. The entire six-volume set is available for \$115.00 plus tax (all orders prepaid; the seventh volume will be mailed out later). A limited number of individual volumes is available. The cost of Volume 6 of *Minnesota Rules* is \$17.00 plus sales tax and handling charge (\$1.50 for mail orders), and is available from the State Register and Public Documents. For questions about specific MCAR-MR conversions, call Barbara Moehrl, Revisor's Office, at 297-2958.

PROPOSED RULES

Pursuant to Minn. Stat. of 1980, §§ 14.21, 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 §§ 14.13-14.20 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. § 14.29, 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 Labor and Industry Workers' Compensation Division and Office of Administrative Hearings

Proposed Joint Rules of Practice of the Workers' Compensation Division and the Office of Administrative Hearings

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Labor and Industry, Workers' Compensation Division, and the Office of Administrative Hearings propose to adopt the above-captioned rules without a public hearing. The Commissioner and Chief Hearing Examiner have determined that the proposed adoption of these rules will be noncontroversial in nature and have elected to follow the procedures set forth in Minnesota Statutes §§ 14.21-14.28 (Supp. 1983).

Persons or groups 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 §§ 14.13-14.20 (Supp. 1983).

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

Steve Keefe, Commissioner
Department of Labor and Industry
5th Floor, Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101

Authority for the adoption of these rules is contained in Minnesota Statutes §§ 14.51 and 176.83 (i) (Supp. 1983). 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 upon request from the Commissioner at the above address.

Upon adoption of the final rules without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written comments and requests received, and the final Rules as Adopted will be delivered to the Attorney General for review as to legality and form as it relates to 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 their written requests to the Commissioner at the above address.

The text of the proposed rules follows this notice in the *State Register*. The rules specify the procedures to be followed in litigating workers' compensation claims before settlement judges in the Workers' Compensation Division and compensation

PROPOSED RULES

judges in the Office of Administrative Hearings pursuant to Minnesota Statutes § 176.305 (1982). Administrative conferences conducted pursuant to Minnesota Statutes §§ 176.102, 176.103, 176.242, 176.243 (Supp. 1983) are specifically exempt from these rules.

One free copy of the proposed rules may be obtained from the Commissioner at the above address.

March 30, 1984

Steve Keefe, Commissioner of
the Department of Labor and Industry

Duane Harves
Chief Hearing Examiner
Office of Administrative Hearings

Rules as Proposed (all new material)

1415.0100 SCOPE AND PURPOSE.

Parts 1415.0100 to 1415.3500 govern all workers' compensation matters in litigation before settlement judges in the Workers' Compensation Division of the Department of Labor and Industry and compensation judges in the Office of Administrative Hearings under Minnesota Statutes, section 176.305. Parts 1415.0100 to 1415.3500 do not apply to administrative conferences conducted by the division under Minnesota Statutes, sections 176.102, 176.103, 176.135, 176.136, 176.242, and 176.243.

1415.0200 GENERAL AUTHORITY.

Subpart 1. Assignment or transfer of cases. The chief hearing examiner has responsibility for the assignment of cases for trial to compensation judges. The chief hearing examiner may transfer to another compensation judge the proceedings on any case in the event of the death, extended absence, or disqualification of the compensation judge to whom it has been assigned, and may otherwise reassign a case if necessary to expedite the proceedings if no oral testimony has been received in the case.

Subp. 2. Authority of compensation judges. In any case which has been regularly assigned to a judge for trial, a compensation judge shall have full power, jurisdiction, and authority to hear and determine all issues of fact and law presented except those issues specifically reserved to the commissioner, the department, or the board, panel, or Court of Appeals, by the act. The judge shall issue interlocutory and final orders, findings, decisions, and awards necessary to the full adjudication of a case.

1415.0300 DEFINITIONS.

Subpart 1. Scope. For the purposes of parts 1415.0100 to 1415.3500, the following terms have the meanings given them.

Subp. 2. Act. "Act" means the Workers' Compensation Act, Minnesota Statutes, chapter 176.

Subp. 3. Board. "Board" means the Medical Services Review Board.

Subp. 4. Calendar judge. "Calendar judge" means the workers' compensation judge from the Office of Administrative Hearings responsible for hearing motions and other proceedings in cases not yet assigned to a particular compensation judge.

Subp. 5. Chief hearing examiner. "Chief hearing examiner" means the chief hearing examiner of the Office of Administrative Hearings.

Subp. 6. Commissioner. "Commissioner" means the commissioner of the Department of Labor and Industry.

Subp. 7. Compensation judge. "Compensation judge" means a workers' compensation judge from the Office of Administrative Hearings.

Subp. 8. Court of appeals. "Court of appeals" means the workers' compensation court of appeals.

Subp. 9. Division. "Division" means the Workers' Compensation Division of the Department of Labor and Industry.

Subp. 10. DVR. "DVR" means the Division of Vocational Rehabilitation, Department of Economic Security.

Subp. 11. Fund director. "Fund director" means the director of the Special Compensation Fund, Workers' Compensation Division, Department of Labor and Industry.

Subp. 12. Judge. "Judge" means a calendar or compensation judge from the Office of Administrative Hearings or a settlement judge from the Department of Labor and Industry.

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

PROPOSED RULES

Subp. 13. Office. "Office" means the Office of Administrative Hearings.

Subp. 14. Panel. "Panel" means the Rehabilitation Review Panel.

Subp. 15. Petition. "Petition" means a claim filed by or on behalf of an injured or deceased employee, employer, insurer, or special compensation fund which initiates a contested workers' compensation case requiring assignment for hearing.

Subp. 16. Petitioner. "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf, an employer or insurer, or the special compensation fund.

Subp. 17. Settlement judge. "Settlement judge" means a workers' compensation judge from the Department of Labor and Industry.

1415.0400 MEDICAL AUTHORIZATIONS.

An employee shall provide the employer and insurer with appropriate signed medical authorizations within 15 working days of receipt of a written request for them. A written request for medical authorization must inform the employee of the 15-day requirement. In pending litigation failure to comply with the request for appropriate medical authorizations constitutes grounds for striking the case from the active trial calendar until authorizations are furnished. The employer or insurer may bring a motion to strike the case from the calendar if authorizations have not been furnished and the employer or insurer is unable to adequately defend its case.

1415.0500 LEGAL DOCUMENTS.

Forms and documents used or filed in all workers' compensation proceedings before the division or the office must be on standard size 8½ by 11 inch paper.

Unless otherwise provided by law, requests for action by the division or office after the filing of a petition must contain the caption, the employee's social security number, any appropriate identification numbers of the case, and indicate the type of action requested.

All legal documents filed by an attorney must include the attorney's Minnesota Supreme Court license number.

1415.0600 EXAMINATION OF WORKERS' COMPENSATION FILES.

Persons desiring to examine a file maintained by the division or office shall present a written authorization to inspect the file to designated personnel of the division or office. The authorization must be signed and dated by a party to the claim who is either the employee, the employer, the insurer, a dependent in death cases, or a legal guardian in cases of mental or physical incapacity. The authorization must specify the person or party authorized to review the file. The authorization is placed in and becomes part of the file.

This part does not grant greater access to the files than that given by the Minnesota Data Privacy Act or the Workers' Compensation Act.

1415.0700 SERVICE.

Subpart 1. Service by state. The division and the office must serve all notices, findings, orders, decisions, or awards upon the parties or their attorneys or agents of record by first class mail at their addresses of record or by personal service.

Subp. 2. Service by parties. A party may serve documents by first class mail or by personal service. Service of documents required to be served on a party must also be served on the party's attorney or authorized agent. Filed documents must be accompanied by an affidavit or proof of service in a form acceptable to the district courts.

Subp. 3. Computation of time. Computation of time for service is governed by Minnesota Statutes, section 645.15.

1415.0800 NOTICE OF REPRESENTATION.

Subpart 1. Filing. When an employee is represented by an attorney, written notice of representation must be filed with the division, or if the case has been certified to the office, with the office.

A. The notice of representation must be signed by the attorney, signed by the employee or dependent, and include the address and telephone number of the attorney, the attorney's Minnesota Supreme Court license number, the employee's social security number, and the date of the claimed injury or disease. A copy of the fully executed retainer agreement must be attached to the notice of representation filed with the division or office.

B. Copies of the notice must be sent to the employer, the insurer, and other parties, if any.

C. Failure to file the notice and retainer agreement will be considered in determining attorney fees.

Subp. 2. Substitution of attorney. If the employee or dependent is represented by an attorney who may have an undetermined claim for fees and the employee or dependent subsequently desires to change attorneys, the attorney assuming representation shall file a substitution of attorney and consent form signed by the client, the previous attorney, and the new attorney, together

with a copy of the new retainer agreement. The new notice of representation must be filed within 20 calendar days of the signing of a retainer agreement.

Subp. 3. Appearance without attorney. If a party is not represented by an attorney at legal proceedings conducted by the division or the office, the presiding official shall advise the party of the right to representation by an attorney and ask if the party wishes to proceed without an attorney.

1415.0900 NOTICE OF CLAIM FOR WORKERS' COMPENSATION BENEFITS.

Subpart 1. Notice required. Prior to the filing of a claim petition for workers' compensation benefits, the employee or dependent or the claimant's attorney shall notify the parties against whom the claim is made, including all employers and insurers that will be named as parties and the special compensation fund if it will be named as a party, of the claim pursuant to Minnesota Statutes, section 176.271, subdivision 2.

Subp. 2. Form of notice. The notice of claim must specifically state, if applicable:

A. the exact dates of temporary total disability, temporary partial disability, or permanent total disability claimed and the part of the body involved;

B. the percentage of permanent partial disability claimed and the part of the body involved;

C. the amount of dependency benefits claimed;

D. an itemization of penalties claimed;

E. an itemization of unpaid medical expenses claimed under Minnesota Statutes, section 176.135; and

F. an itemization of other expenses or benefits claimed.

Subp. 3. Supporting documentation. The employee or dependent must attach to the notice of claim all medical reports, medical bills, and other bills supporting the claim.

Subp. 4. Defective notice. If the division determines that the notice of claim is defective, the employee or dependent will be notified of the deficiency. The claim petition is not considered filed until the deficiency is corrected. However, the claim petition will be considered filed absent the correction where compliance with this part would result in the claim being barred by Minnesota Statutes, section 176.151 or other statutes.

1415.1000 COMMENCEMENT OF PROCEEDINGS.

Subpart 1. Commencement of proceedings. All proceedings for adjudication of claims for personal injuries or occupational diseases are instituted by petition addressed to the division, and must be on forms prescribed by the division, containing:

A. the name, address, and social security number of the employee;

B. the name and address of each employer at the time an injury or disease is alleged to have occurred;

C. the name of each employer's workers' compensation insurer;

D. the date of each injury or occupational disease claimed;

E. the position held by the employee at the time of the alleged injury or disease;

F. the weekly wage at the time of injury or disease;

G. the nature of the injury or disease;

H. a statement that the injury or disease arose out of and in the course of employment and that the employer had knowledge or notice of the injury or disease;

I. an itemization of all benefits claimed, including the type of disability and the time period for which coverage is claimed;

J. an itemization of medical benefits claimed;

K. the name, address, and claim or policy number of any third party who has paid medical, disability, welfare, or unemployment benefits, or rehabilitation benefits provided by DVR; and

L. the name, address, telephone number, and Minnesota Supreme Court license number of the employee's attorney.

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

Subpart 2. Service of petition, filing. The petitioner shall serve a copy of the petition on each adverse party personally or by first class mail. "Adverse party" includes all employers, insurers, potential intervenors, and the fund director, if the employee is uninsured or the special compensation fund is named. The original petition, together with the copy of the notice of claim required by Minnesota Statutes, section 176.271, subdivision 2 and any medical or other supporting documentation not filed with the notice of claim, must be filed with the division with proof of service.

Subp. 3. Defects in petition. If the division or office notifies the petitioner or the petitioner's attorney of any defect in the petition, the defect must be corrected and the corrected petition served on the other parties. If the party fails to correct a substantial defect, the claim will be stricken from the active calendar.

Subp. 4. Amended petitions. A party may file an amended petition. Amended petitions must be served on the other parties. If a new claim is raised and an adverse party objects to it, the judge shall grant a continuance for the portion of the case involving new issues if the adverse party has insufficient time to prepare for a proceeding before the office or division regarding new issues raised in the amended petition.

1415.1100 NOTICE TO POTENTIAL INTERVENORS.

Subpart 1. Responsibilities of attorneys. All attorneys, whether representing employees, employers, or any other parties to a workers' compensation proceeding, shall ask their clients whether a third party, other than the workers' compensation insurer, has paid monetary benefits or treatment expense to the employee or on the employee's behalf. Attorneys shall specifically ask their clients whether the DVR has provided rehabilitation services to the employee.

Subp. 2. Notice to third parties. If inquiry discloses that a third party has made a payment, the attorney discovering that fact then has the duty to promptly place the third party on written notice of its right to petition for intervention and reimbursement. The DVR must be given notice if inquiry discloses that the DVR provided rehabilitation services to the employee. The attorney shall attach to the notice a copy of part 1415.1200, a copy of all pleadings in the case, and a copy all notices and orders served in the case to date. The notice must specifically advise:

A. that the petitioner has commenced a proceeding to recover workers' compensation benefits, and that under Minnesota Statutes, section 176.361 and part 1415.1200, the third party has the right to petition for intervention and reimbursement of payments of monetary benefits, treatment expenses, or rehabilitation services;

B. the name and address of parties to the proceeding and the name and address of their attorney;

C. the name of a third party's insured, the nature of the payments made, and any identifying claim and policy number;

D. that the failure of a third party to comply with part 1415.1200 will result in a denial of the claim for reimbursement unless the judge determines that the error or omission is merely technical.

Subp. 3. Time to notify. Attorneys shall comply with this part within 30 days after the filing of an answer, or within 60 days of receipt of a petition if no answer is required. Attorneys shall promptly notify a potential intervenor whose interest arises upon payment made or services rendered after the claim petition or answer was filed.

1415.1200 INTERVENTION.

Subpart 1. Motion. A person desiring to intervene in a workers' compensation case as a party shall submit a timely motion to intervene to the compensation or settlement judge to whom the case has been assigned. If the case has not yet been assigned, the motion shall be made to the calendar judge if the case has been certified to the office, or to the division if the case has not been certified to the office.

A. The motion must be served on all parties either personally or by first class mail. A motion to intervene must be served and filed within 60 days after a person has received notice that a petition has been filed as provided in part 1415.1100. An untimely motion is subject to denial under subpart 6. In any other situation, timeliness will be determined by the judge in each case based on circumstances at the time of filing.

B. The motion must show how the moving party's interests may be determined or affected by the case; state the reasons for which intervention is sought; and indicate the moving party's statutory right to intervene. The commissioner may intervene by showing an interest in administering, enforcing, or defending the rule or law which is being challenged in the proceeding. The motion must be accompanied by the following, if applicable:

(1) an itemization of disability payments showing the period during which the payments were or are being made; the weekly or monthly rate of the payments; and the amount of reimbursement claimed;

(2) a summary of the medical or treatment payments, or rehabilitation services provided by DVR, broken down by creditor, showing the total bill submitted, the period of treatment or rehabilitation covered by that bill, the amount of payment on that bill, and to whom the payment was made;

(3) copies of all medical or treatment bills on which some payment was made;

- (4) copies of the work sheets or other information stating how the payments on medical or treatment bills were calculated;
- (5) a copy of the relevant policy or contract provisions upon which the claim for reimbursement is based;
- (6) a proposed order allowing intervention with sufficient copies to serve on all parties;
- (7) the name and telephone number of the person representing the intervenor who has authority to reach a settlement of the issues in dispute;
- (8) proof of service;
- (9) at the option of the intervenor, a proposed stipulation which states that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the case and that, if the petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor; and
- (10) if represented by an attorney, the name, address, telephone number, and Minnesota Supreme Court license number of the attorney.

Subp. 2. Stipulation. If the person serving the motion for intervention has included a proposed stipulation, all parties shall either execute and return the signed stipulation to the intervenor who must file it with the division or office or serve upon the intervenor and all other parties and file with the division or office specific and detailed objections to any payments made by the intervenor which are not conceded to be correct and related to the injury or condition the petitioner has asserted is compensable. If a party has not returned the signed stipulation or filed objections within 30 days of service of the motion, the intervenor's right to reimbursement for the amount sought is established provided that the petitioner's claim is determined to be compensable.

Subp. 3. Attendance by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall attend all settlement or pretrial conferences and shall attend the regular hearing if ordered to do so by the compensation judge.

Subp. 4. Order. If an objection to intervention remains following settlement or pretrial conferences, the calendar judge shall rule on the intervention and the order is binding on the compensation judge to whom the case is assigned for hearing.

Subp. 5. Presentation of evidence by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, the intervenor shall present evidence in support of the claim at the hearing unless otherwise ordered by the compensation judge.

Subp. 6. Effects of noncompliance. Failure to comply with this part will result in a denial of the claim for reimbursement unless the compensation judge determines that the noncompliance is merely technical.

1415.1300 JOINDER OF PARTIES.

Subpart 1. Motion. Upon a motion of a party or upon a judge's own motion, a judge may order the joinder of additional parties necessary for the full adjudication of the case.

Subp. 2. Service. A party requesting joinder of additional parties shall serve a copy of the motion on all existing parties, and the party to be joined, and file the original with proof of service with the judge no later than the date the pretrial statement is due. The party to be joined must also be served with copies of all pleadings and notice of the date, time, and place set for a settlement or pretrial conference.

Subp. 3. Late joinder. When a party requests joinder after the date the pretrial statement was due, the motion must be accompanied by an affidavit of the moving party stating why joinder at a later date should be allowed. The judge shall allow joinder at a later date when the moving party has shown that the party to be joined is a necessary party; that the moving party was unable, through due diligence, to previously ascertain the name of or necessity of joining the party; and that the joinder is necessary for a full and final determination of the rights or liabilities of the parties.

Subp. 4. Delay. If joinder is ordered less than ten days before the hearing date, the judge shall continue the matter to allow the parties sufficient preparation time.

If the judge has denied the joinder because of the moving party's failure to meet the time requirements, the case will not be stricken, continued, or otherwise delayed for the purpose of joinder, unless the attorney for the petitioner consents to it.

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

Subp. 5. Contents of motion. All motions for joinder must include:

- A. the party to be joined and its insurer, if any;
- B. the date and nature of the claimed personal injury or impairment;
- C. the detailed circumstances, in affidavit form, showing that the party to be joined is a necessary party;
- D. the supporting medical opinions relied upon, if applicable; and

E. if the party to be joined is the special compensation fund, the detailed circumstances, in affidavit form, showing the specific basis claimed for joinder, including the date of registration of prior impairment or injury where applicable.

Subp. 6. Order. The judge shall issue an order granting or denying the joinder.

1415.1400 ANSWER.

Subpart 1. Service, filing. An answer must be served and filed with the division within 20 days after service of the petition unless an extension has been obtained under Minnesota Statutes, section 176.321, subdivision 3. The answer must be accompanied by proof of service upon the petitioner, petitioner's attorney, and other parties to the proceedings.

Subp. 2. Form of answer. The answer must include:

A. specific responses to all material allegations regarding the date and nature of injury, the employment status, notice, wage, relationship of the injury to employment, insurance, benefits paid, medical issues raised, matters in dispute, affirmative defenses, and additional matters deemed necessary by the answering party;

B. medical reports upon which the answer is based, if available;

C. the date, time, and place for a medical examination by the employer's or insurer's doctor. If the medical examination has already taken place, the answer must so state. A request for an extension of time for scheduling the examination will be subject to the approval of the division or a compensation or settlement judge; and

D. the name, address, telephone number, and Minnesota Supreme Court license number of the attorney representing the answering party.

Subp. 3. Failure to answer. If a party fails to answer a petition within the 20-day period, an opposing party may apply for a default award under part 1415.1500.

Subp. 4. Refusal. The division shall not accept an answer which does not comply with subpart 2.

1415.1500 DEFAULT AWARD.

Subpart 1. Filing. If a party against whom an award is sought has failed to answer within the time allowed, the party entitled to an award by default shall serve the other parties and file with the division or the office if the matter has been certified to the office:

A. a notice of motion and motion for default award with proof of service;

B. an affidavit of no appearance and no answer; and

C. an affidavit stating the essential facts.

Subp. 2. Response to motion. The defaulting party must respond to the motion within 20 days. If an answer is filed within the 20-day response period, a default will not be awarded unless the employee shows substantial prejudice due to the delay.

Subp. 3. Hearing, order. If the judge requires proof of the facts alleged in the claim petition, a hearing on the motion will be scheduled. If a hearing is scheduled, the parties must be served with notice of the hearing at least 20 days before the hearing. The parties may present the issues fully, including the right to introduce evidence and cross-examine adverse witnesses. Whether or not a hearing is held, the judge shall issue an order or award based upon the facts presented.

1415.1600 AWARD ON THE PLEADINGS.

After the answer is filed, a party may move for an award on the pleadings if the hearing will not be delayed because of the motion. If the parties to a proceeding stipulate to an award being entered on the pleadings, the chief hearing examiner shall immediately assign the matter to a compensation judge for determination on the pleadings. If, on a motion for an award on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the court on its own motion shall assign the matter for hearing on those issues on which testimony is necessary.

1415.1700 DISMISSAL.

Subpart 1. Voluntary dismissal. If contested matters are resolved by voluntary agreement between the parties, and a stipulation for settlement is not necessary, the parties may request that the petition commencing proceedings be dismissed. Unless otherwise stated in the order of dismissal, the dismissal is without prejudice.

Subp. 2. Involuntary dismissal. The judge may, on the judge's own motion or upon motion of a party with notice to the parties, dismiss an action or claim for failure to prosecute; or to substantially comply with this chapter, the act, or an order of a judge; or any other reason allowable in the district courts of Minnesota.

1415.1800 SETTLEMENT CONFERENCE BY DIVISION.

Subpart 1. Purpose. A settlement conference is for the primary purpose of assisting the parties in resolving disputes and for the secondary purpose of narrowing the issues and preparing for hearing.

Subp. 2. Time limits. Within ten days after a claim petition is filed, the commissioner shall refer the matter to a settlement judge. If the judge determines that a settlement conference is appropriate, the judge shall schedule the settlement conference within 60 days of receipt of the matter from the commissioner. The parties must be notified of the date, time, and place of the settlement conference.

If the judge determines that a settlement conference is not appropriate, the judge shall certify the matter to the chief hearing examiner within 60 days of receipt of the matter from the commissioner. If a settlement conference is held, the judge shall retain jurisdiction if settlement is reached or upon consent of the parties so long as progress is being made toward a settlement. A party may bring a motion at any time to have the matter certified to the office on the grounds that no progress is being made.

Subp. 3. Attendance. All parties, including intervenors unless otherwise excused, shall attend any settlement conference conducted by a judge. A representative of a party shall be prepared to engage in meaningful settlement negotiations and shall have authority to reach a full settlement on the issues in dispute or have immediate access by telephone to a person having authority to reach a full settlement.

Subp. 4. Preconference discussions. The parties shall discuss the possibility of settlement before a settlement conference if they believe that a reasonable basis for settlement exists.

Subp. 5. Information provided. At the settlement conference, the parties shall provide the information required by part 1415.1900, subpart 5.

Subp. 6. Settlement not reached. If, following a settlement conference, a settlement has not been reached but the parties have reached an agreement on any facts, legal or medical issues, or level of benefits, the judge presiding over the settlement conference shall, if he or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. The order is binding on the compensation judge who is subsequently assigned to hear the case.

If a settlement is not reached at the settlement conference, the settlement judge shall certify the matter to the chief hearing examiner.

1415.1900 PRETRIAL PROCEDURES.

Subpart 1. Independent medical evaluation. If the claim is disputed and the employer and insurer require an independent medical evaluation, it must schedule the evaluation within 30 days of the filing of the claim petition and complete the evaluation within 120 days of the filing of the claim petition.

Subp. 2. Conference. All cases are subject to a pretrial conference with a calendar or compensation judge at which all parties shall attend or be represented, unless a calendar or compensation judge orders otherwise. A compensation judge shall order that a pretrial conference be conducted for the purpose of settlement, narrowing of the issues, or trial preparation, if any party requests that one be conducted. The chief hearing examiner or compensation judge may set a pretrial conference on his or her own motion once the matter has been received from the commissioner. If parties are represented by attorneys, the attorneys shall bring with them their appointment calendars. If a party is not represented by an attorney, the party shall appear personally and be prepared to set a date for the hearing. Parties or their attorneys attending a pretrial conference must have authority to settle their respective claims.

Subp. 3. Location, notice of conference. A pretrial conference must be conducted by telephone if the set location would require a party to travel more than 50 miles to attend, unless the party prefers to be physically present. If a telephone conference is scheduled, the parties not in attendance must be available by telephone at the time of the conference. Written notice of the pretrial conference must be given at least 20 days before the conference.

Subp. 4. Settlement discussions. Prior to a pretrial conference, the parties shall discuss the possibility of settlement if they believe a reasonable basis for settlement of all or some of the issues exists. Parties or attorneys appearing at pretrial conferences

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

shall be prepared to participate in meaningful settlement discussions and shall have authority to reach a full settlement on the issues in dispute or have immediate access by telephone to a person having authority to reach a full settlement.

Subp. 5. Conference procedures. At the pretrial conference:

- A. Parties shall be prepared to state the issues.
- B. Parties shall state the names, and addresses, if known, of all witnesses they intend to call.
- C. Parties shall give notice of amendments to pleadings that may still be necessary.
- D. Parties shall file copies of all medical reports not already on file. Reports of medical examinations completed after settlement or pretrial conferences must be filed as soon as available before the hearing.
- E. Each party shall state what exhibits, including photographs, motion picture films, video tapes, and documentary evidence, are intended to be used at the hearing. Copies of these exhibits must be made available to opposing counsel no later than ten days before the hearing. If any party requests showing of motion picture films or video tapes before the hearing, it shall pay the expense for the showing and may tax this expense as a disbursement.
- F. If the petitioner plans to introduce hospital records into evidence, the petitioner or petitioner's attorney shall provide written authorizations allowing opposing counsel to examine those records if the authorizations have not previously been provided.
- G. If the petitioner is claiming medical or other treatment expenses, the petitioner or the attorney shall state those expenses at the time of the settlement or pretrial conferences, and shall furnish opposing counsel with copies of itemized bills for the expenses at least ten days before the settlement or pretrial conference.
- H. If the petitioner is claiming temporary total disability, the petitioner or attorney shall state the dates of time lost from work.
- I. If the petitioner is claiming temporary partial disability, the petitioner or attorney shall state the dates of the claim, the approximate amount of the claim, and the names and addresses of the employers for whom the employee worked during the period of the claim. Authorizations to permit opposing counsel to confirm wages earned in those employments must be furnished, if requested, at least ten days before the pretrial conference. An itemized breakdown of the claim for temporary partial disability must be submitted to the compensation judge and opposing counsel at least ten days before the hearing.
- J. The parties or their attorneys shall state whether payment of disability benefits, medical treatment, or funeral expenses has been made by a party other than the workers' compensation carrier and whether DVR has provided rehabilitation services. If payment has been made, the name and address of the party making payment must be furnished to the calendar or compensation judge, together with any identifying policy or claim numbers.
- K. If a dispute exists on the wage rate at the time of the injury, the attorney for the employer and insurer shall furnish to opposing counsel, at least ten days before the pretrial conference, copies of the relevant wage records of the petitioner.
- L. The attorney for the petitioner shall give the calendar or compensation judge a copy of the retainer agreement with the petitioner and state the amount of retainer fee paid. The attorney shall be prepared at the time of hearing or settlement to show the reasonableness of any attorney's fees or costs, in accordance with Minnesota Statutes, section 176.081.

Subp. 6. Pretrial statement. At the time a case is first set for a pretrial conference or before setting the date for a hearing, the calendar or compensation judge may order the parties to file a pretrial statement containing items in subpart 5 which the judge deems appropriate. In determining whether to require a pretrial statement, the judge shall consider the number of parties involved in the case, the nature, and extent of the medical issues, and the nature, extent, and type of disability claimed. When a pretrial statement is ordered, the petitioner shall serve the statement on the other parties and file it within 20 days of the order. The responding parties shall serve and file their statement within 30 days of the order. Thereafter, a petitioner may serve and file an amended pretrial statement based solely on information presented in the responding parties' statements and not on new issues. The amended statement must be filed within 40 days of the order.

In a petition or objection to discontinuance proceeding, each party if so ordered must file a pretrial statement within ten days of the pretrial order. Thereafter, a party may serve and file an amended pretrial statement based solely on information presented in another party's statement and not on new issues. The amended pretrial statement must be filed within 15 days of the pretrial order.

Subp. 7. Evidence not disclosed at conference. Evidence, or other matters listed in subpart 5 which have not been disclosed at a settlement or pretrial conference or in a pretrial statement except impeachment or rebuttal witnesses, may not be presented at the hearing unless it is shown to the compensation judge that:

- A. the evidence or other matters offered were discovered subsequent to the filing of a pretrial statement or pretrial evidence, whichever occurs last;

B. the evidence or other matters offered were not discoverable through the exercise of due diligence before that time; and

C. the other parties have been advised of the evidence or other matters before the hearing and have had an opportunity to review them.

Subp. 8. Matters agreed upon. If, following a pretrial conference, a settlement has not been reached but the parties have reached an agreement on any facts, legal or medical issues, or levels of benefits, the judge presiding over the pretrial conference shall, if he or she approves of those matters agreed upon, issue an order confirming and approving those matters agreed upon. Issues once agreed upon and approved may be reopened by the compensation judge only upon motion of a party on the basis of newly discovered evidence which was not reasonably discoverable at the earlier time.

Subp. 9. Medical, treatment issues. If the petition includes a claim for medical or other health care treatment or supplies under Minnesota Statutes, section 176.135, the issues will be determined as provided in part 1415.2900, subpart 3, item F. If a claim petition raises medical or health care issues over which a judge has no jurisdiction together with other issues over which the judge does have jurisdiction, the claim petition will be referred first to the office for a determination of the nonmedical issues and then it will be returned to the division for a determination on the medical or health care issues.

1415.2000 SETTLEMENTS.

Subpart 1. Stipulations. Stipulations for settlement are allowed under Minnesota Statutes, sections 176.081, subdivision 7a, and 176.521 and must conform to those sections and to the requirements of this part.

Subp. 2. Filing. All stipulations for settlement must be filed within 30 days of the date the settlement was negotiated. Stipulations must be filed with the division unless the matter has been certified to the office, in which case the stipulation must be filed with the office.

Subp. 3. Approval. Stipulations for settlement are subject to approval by a compensation judge or settlement judge except in cases filed under Minnesota Statutes, section 176.081, subdivision 7a, or where all parties are represented by attorneys and the settlement does not include a final and complete settlement of the employee's right to medical compensation or rehabilitation benefits. If the stipulation includes a final and complete settlement of medical or rehabilitation benefits, those issues are subject to approval by a judge under part 1415.2900, subpart 3, item F.

If a settlement is made under Minnesota Statutes, section 176.081, subdivision 7a, the offer and acceptance when filed, must include findings of fact, conclusions, and an award on all issues, including attorney's fees and costs. It must be filed with the division or the office which must immediately issue the agreed upon award. If approval is not required under Minnesota Statutes, section 176.521, the award shall be immediately signed by the compensation judge or settlement judge, served on all parties, and filed with the commissioner.

Subp. 4. Contents. Stipulations for settlement must contain:

A. A brief statement of the admitted material facts.

B. A detailed statement of the matters in dispute, stating the positions of the parties and supported by medical reports or other documents.

C. The weekly wage and compensation rate of the petitioner.

D. An itemization of the sums, if any, previously paid by the employer and insurer.

E. A statement that all medical, rehabilitation, or treatment expenses have been paid by the employer and insurer, or an itemization of the expenses which have not been paid by the employer and insurer, indicating which payments, if any, have been made by insurer, and which payments, if any, have been made by the employee. The stipulation must specifically state whether a third party has paid expenses, monetary benefits, or whether DVR has provided rehabilitation services. If so, the stipulation must list the name and address of the third party, relevant claim or policy numbers, and indicate whether the third party has petitioned to intervene.

F. The number of weeks, rate of compensation, and, in cases of permanent partial disability, the percentage loss or loss of use upon which the compromise agreement is based.

G. Where applicable, a statement that the employee has been fully advised of the provisions of Minnesota Statutes,

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

sections 176.132 and 176.645, and the effect of the settlement upon any future claims for supplementary benefits or adjustment of benefits.

H. Where applicable, a statement that the petitioner is claiming or waiving the right to make application for an award of attorney's fees against the employer or insurer under Minnesota Statutes, section 176.081, subdivision 7 or 8, 176.135, or 176.191.

I. Where rehabilitation, retraining, or medical benefits are closed out, a statement in which the claims and contentions of the parties are sufficiently specific to provide a basis for the judge's determination that the settlement is fair, reasonable, and in conformity with the act.

Subp. 5. Attorney's fees detailed. Stipulations for settlement of cases in which the petitioner has engaged the services of an attorney must be accompanied by a statement of attorney's fees on a form prescribed by the commissioner and an itemization of the costs incurred, specifying who will be responsible for payment of each cost. The statement must provide sufficient information to show the reasonableness of the requested fees and costs under Minnesota Statutes, section 176.081, if approval is required. If no fees are requested, the stipulation must so state.

Subp. 6. Medical reports. Stipulations for settlement must be accompanied by copies of all relevant medical reports in the possession of the parties which have not previously been filed.

Subp. 7. Award. The parties involved in the settlement must submit an award on stipulation prepared for signature by a judge.

Subp. 8. Copy to client. The attorney representing the petitioner shall give a copy of the stipulation for settlement to the client when the client signs the stipulation.

Subp. 9. Signatures. Stipulations for settlement shall be signed by all parties as required by Minnesota Statutes, section 176.521.

Subp. 10. Payment. The employer and insurer shall make payments under an award on stipulation within 14 days from the date the award on stipulation is filed with the commissioner.

1415.2100 OBJECTIONS TO DISCONTINUANCE AND PETITIONS TO DISCONTINUE COMPENSATION PAYMENTS.

Subpart 1. Hearing. When either an objection to discontinuance of compensation payments or a petition to discontinue benefits has been filed and the matter has been referred to the chief hearing examiner, it must be set for hearing on a priority basis not less than 30 days nor more than 75 days from the date of the receipt of the matter from the commissioner.

Subp. 2. Objection to discontinuance as claim petition. Any objection filed more than 120 days after service of a notice of intention to discontinue, a notice of discontinuance, or an administrative decision of the commissioner allowing the discontinuance, whichever is latest, will be treated as a claim petition for purposes of scheduling a hearing and will not be heard on a priority basis.

Subp. 3. Petitions for discontinuance after administrative conference. After an administrative conference on a notice of intention to discontinue, a petition to discontinue under Minnesota Statutes, section 176.242, subdivision 5, filed more than 120 days following the issuance of the commissioner's administrative decision disallowing the discontinuance will not be given priority status for the purpose of scheduling a hearing.

1415.2200 DISCOVERY.

Subpart 1. Demand. Each party shall, within 30 days of a demand by another party, unless a shorter time is indicated by this part, disclose or furnish the following:

A. The names and addresses of all known witnesses that a party intends to call at the hearing, including doctors by cross-examination or who will testify by report only. All witnesses unknown at the time of the disclosure must be disclosed within 15 days after they become known if a prior demand has been made.

B. Relevant written or recorded statements made by witnesses on behalf of a party. The demanding party must be permitted to inspect and reproduce such statements at the demanding party's expense. A party unreasonably failing upon demand to make the disclosure required by this part, upon proper motion made to the compensation judge at the hearing, may be foreclosed from presenting evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

C. Medical privilege is waived as to the injuries or conditions alleged in the petition by the filing of the petition alleging injury or occupational disease. Medical authorizations must be furnished within 15 days of an adverse party's demand. All medical reports must be provided, upon demand to adverse parties. The petitioner shall disclose the names and addresses of all persons who have treated the petitioner in the past for injuries or conditions identical or related to those alleged in the petition, the dates of the treatment, and provide medical authorization for each.

Subp. 2. Depositions. Under Minnesota Statutes, section 176.411, subdivision 2, depositions may be taken in the manner which the law provides for depositions in civil actions in the district courts for the state, except where a judge orders otherwise.

A. When a party has objected to the taking of a deposition, the party requesting the deposition shall bring a motion before the judge, before whom the case is pending at the time of the motion, who shall determine whether the deposition should proceed. The motion must state, with specificity, the facts or other reasons supporting the need for the deposition. The judge shall order the deposition to proceed if the judge finds that:

- (1) the deposition is needed for the proper presentation of a party's case;
- (2) the deposition is not for purposes of delay;
- (3) unusual or extraordinary circumstances exist which compel extensive discovery; or
- (4) the issues or amounts in controversy are significant enough to warrant extensive discovery.

B. Depositions to preserve testimony or to present testimony due to the unavailability of the witness are allowed. The deposition must be taken sufficiently in advance of the hearing so that the deposition is filed before or at the commencement of the hearing, unless, for good cause shown, the party taking the deposition has the permission of the calendar judge or compensation judge to whom the case has been assigned for hearing to take or file the deposition subsequent to the hearing.

C. Under Minnesota Statutes, section 176.155, subdivision 5, the cross-examination of a physician or health care provider before a hearing is specifically allowed. When a deposition for the purpose of cross-examination of a physician or health care provider is taken under this item, redirect examination is allowed. Unless ordered otherwise by a compensation judge, the cross-examination deposition must be completed and the original filed with the office at or before the hearing.

D. The original deposition taken for purposes of presenting testimony in the case must be filed with the office if the matter has been referred to the chief hearing examiner for assignment, or with the division if the matter has not been certified to the chief hearing examiner for hearing. The original deposition taken solely for purposes of discovery must be sealed and filed as in the case of evidentiary depositions but will not be reviewed or used in any fashion by the compensation judge unless the deposition is formally entered as evidence in the case.

E. The party initiating the taking of any deposition, including a cross-examination deposition under Minnesota Statutes, section 176.155, subdivision 5, is responsible for all costs of the deposition, including witness fees and court reporter fees.

Subp. 3. Motions for additional discovery. Upon the motion of a party, the judge having jurisdiction at the time of the motion may order discovery of other relevant material or information, recognizing all privileges recognized at law. The judge may order discovery available under the rules of civil procedure for the district courts of Minnesota provided that the discovery:

- A. is needed for the proper presentation of a party's case;
- B. is not for purposes of delay; and
- C. the issues or amounts in controversy are significant enough to warrant extensive discovery.

Subp. 4. Motion for direct testimony by physician or health care provider. A motion for full testimony of a physician or health care provider must comply with part 1415.2900, subpart 9, item C, subitem 1.

Subp. 5. Penalties. Upon the failure of a party to reasonably comply with discovery or a judge's order under this part, the following orders of the compensation judge are allowed upon a party's motion:

- A. an order that the subject matter of the order for discovery or other relevant facts is established in accordance with the moving party's claim; or
- B. an order refusing to allow the party failing to comply to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

Subp. 6. Proprietary information. When a party is asked to reveal material which that party considers proprietary information or trade secrets, he or she may bring the matter to the attention of the appropriate judge, who shall make protective orders as are reasonable and necessary or as otherwise provided by law.

Subp. 7. Employment expert examinations. If an employee claims that his or her ability to earn has been substantially reduced because of the injury in combination with other factors, the employee must submit to a physical and oral examination by the

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

employer's or insurer's expert, if requested by the employer or insurer. The employee shall provide appropriate authorizations relating to wages and employment to adverse parties, upon demand. Expert reports must be provided, upon demand, to adverse parties. A party who objects to the scope of the requested examination may bring a motion for protection. The motion must be served on the parties and filed with the division, or the office if the matter has been certified to the office. The judge shall issue an order allowed by Rule 26.03 of the rules of civil procedure for the district courts.

1415.2300 TEMPORARY ORDERS.

Subpart 1. Payment of benefits by insurer or self-insurer. If an insurer or self-insurer voluntarily agrees to pay benefits under Minnesota Statutes, section 176.191, subdivision 1, it shall file a formal petition for a temporary order.

A. The petition must contain:

- (1) the name of the employer and its insurer or self-insurer consenting to payment;
- (2) the dispute involved, including the name and address of any other employer and insurer, if known, that may be liable for workers' compensation benefits and the date of the alleged injury while working for that employer;
- (3) the beginning date of the employee's present disability, and the compensation rate that the insurer or self-insurer will pay; and
- (4) a statement of whether an intervenor or potential intervenor has paid or is paying the employee or the employee's dependents substitute wage benefits such as group disability benefits, general assistance, or aid to families with dependent children (AFDC).

B. The original petition for a temporary order, with proof of service on necessary parties, must be filed with the division, the office, or the court of appeals, depending upon where the matter is pending.

C. Attorney fees for the employee's attorney must be withheld from the periodic payments made to the employee under the temporary order unless the employee's attorney waives the withholding of attorney fees, or the employee has no attorney.

D. The petition for temporary order must be accompanied by a prepared formal order in substantially the following form:

"I (name) have examined the petition for temporary order and the compensation files and records in this case. It appears that a temporary order for payment of compensation benefits should be issued pending a final determination under Minnesota Statutes, section 176.191, subdivision 1;

"NOW, THEREFORE, IT IS ORDERED that (name of insurer or self-insurer), having consented to payment of compensation benefits under Minnesota Statutes, section 176.191, shall pay to (name), the employee, compensation at the weekly rate of \$(amount), during the period of the employee's disability, beginning (date) and shall also pay reasonable medical expenses and rehabilitation benefits related to this disability of the employee.

"IT IS FURTHER ORDERED that following a final determination of liability and if it has been determined that some other employer or insurer is liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge, or Court of Appeals shall order the parties held liable to reimburse (name of paying party) for that part of the compensation paid under this temporary order, for which the other parties are held liable, including interest at the rate of 12 percent a year.

Dated at _____, Minnesota
this _____ day of _____.

COMPENSATION JUDGE OR
COURT OF APPEALS

By _____ "

The original and enough copies of the order to serve necessary parties and attorneys representing them must be filed.

Subp. 2. Payment of benefits by special compensation fund. An employee seeking payment of benefits by the special compensation fund or the fund requesting to pay benefits under Minnesota Statutes, section 176.191, subdivision 2, shall file a formal petition for temporary order with the commissioner.

A. The petition shall contain:

- (1) evidence that all parties agree that benefits are payable under the act;
- (2) a statement that written demand for payment under Minnesota Statutes, section 176.191, subdivision 1, has been made against all employers and insurers party to the claim and that the payment demand has been refused;
- (3) the names and addresses of all employers and insurers or self-insurers who are parties to the claim;
- (4) a statement as to the dispute involved and the dates of all alleged injuries while working for each employer;

(5) the beginning date of the employee's present disability, the compensation rate applicable for each injury date, the proposed compensation rate to be paid by the special compensation fund, and an itemization of all medical expenses and rehabilitation benefits requested to be paid under the temporary order;

(6) copies of medical reports supporting the claimed period of disability and the causal relationship of that disability to the petitioner's employment; and

(7) a statement of whether an intervenor or potential intervenor has paid or is paying the employee or the employee's dependents substitute wage benefits such as group disability benefits, general assistance, or aid to families with dependent children (AFDC).

B. The original of the petition for temporary order, with proof of service on necessary parties, must be filed with the division, the office, or the court of appeals, depending upon where the matter is pending.

C. Attorney fees for the employee's attorney must be withheld from the periodic payments made to the employee under the temporary order unless the employee's attorney waives the withholding of attorney fees or the employee has no attorney.

D. The petition for temporary order must be accompanied by a prepared formal order in substantially the following form:

"I, (name), have examined the petition for temporary order and the compensation files and records in this case. It appears that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minnesota Statutes, section 176.191, subdivision 2;

"NOW, THEREFORE, IT IS ORDERED that the State Treasurer, as custodian of the special compensation fund shall, under Minnesota Statutes, section 176.191, subdivision 2, pay to (name), the employee, compensation at the weekly rate of \$(amount), during the period of employee's disability beginning (date), and shall also pay reasonable medical expenses and rehabilitation benefits related to this disability of the employee.

"IT IS FURTHER ORDERED that following a final determination of liability and if it has been determined that one or more employers or insurers are liable for all or part of the compensation paid pursuant to this temporary order, then the division, the compensation judge, or Court of Appeals shall hold the parties liable to reimburse the State Treasurer, as custodian of the special compensation fund, for that part of the compensation paid under the temporary order, for which the other parties are held liable, including interest at the rate of 12 percent a year.

Dated at _____, Minnesota
this _____ day of _____.

**WORKERS' COMPENSATION
DIVISION**

Commissioner of
Labor and Industry"

The original and enough copies of the order to serve necessary parties and attorneys representing them must be filed.

Subp. 3. Necessary parties. For the purpose of this part, the following are necessary parties:

- A. the employee or dependent;
- B. insurers or self-insurers named in the petition for temporary order;
- C. an employer who is uninsured or whose insurer for the date of the alleged injury in that employment is unknown;
- D. the fund director, if the petition is made under Minnesota Statutes, section 176.191, subdivision 2; and
- E. intervenors and potential intervenors.

Subp. 4. Answer. Within ten days after being served with a copy of the petition for temporary order and proposed order, employers or their insurers, an intervenor, or the fund director may file a verified answer to the petition stating objections to the proposed order.

Subp. 5. Circumstances of nonapproval of temporary order. A temporary order will not be approved if made contingent upon the employee's waiver of the right to claim an additional award under Minnesota Statutes, section 176.225, or waiver of the right to have attorney fees assessed against the employer and insurer in addition to compensation under Minnesota Statutes, section 176.081, subdivision 8, or if it would prejudice an intervenor's claim for reimbursement.

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

Subp. 6. Effect of filing. A hearing date will not be assigned upon filing of a petition for temporary order unless it is accompanied by a petition for contribution or reimbursement.

1415.2400 PETITIONS FOR CONTRIBUTION OR REIMBURSEMENT.

Subpart 1. Contents. Petitions for contribution or reimbursement in cases pending before the office must describe in detail the basis of the claim for contribution or reimbursement against the additional employer, insurer, or the state treasurer, custodian of the special compensation fund. The petition must be supported by medical evidence, signed, and verified. If a claim petition is currently pending, and the party from whom contribution or reimbursement is sought is not a party, the petition for contribution or reimbursement must be accompanied by either a petition for joinder of the party from whom reimbursement or contribution is sought, or a petition for consolidation under part 1415.2500. The two actions may be combined on a joint petition.

Subp. 2. Filing. A petition for contribution or reimbursement must be filed no later than ten days before a pretrial conference or within 20 days of receipt of a pretrial order if a pretrial conference is not automatically set. Copies of all pleadings, including a notice of pretrial conference must be served upon the additional employers or insurers by the party bringing the petition.

Subp. 3. Answer. Within 20 days after being served with a copy of a petition for contribution or reimbursement, employers or their insurers, other than the petitioning party, shall file a verified answer to the petition under Minnesota Statutes, section 176.321 and, if not already set for a pretrial conference, the matter may be set for a pretrial conference under part 1415.1900.

1415.2500 CONSOLIDATION.

Subpart 1. Authorization. Consolidation of two or more related cases may be ordered for the purpose of receiving evidence. Consolidation may be ordered upon motion by a party to the calendar or compensation judge or upon the calendar or compensation judge's own motion if the judge determines:

- A. that separate cases present substantially the same issues of fact and law;
- B. that a holding in one case would affect the rights of the parties in the other case; and
- C. that the consolidation would not substantially prejudice the rights of any party.

Notwithstanding the requirements of this part, the parties may stipulate to consolidation.

Subp. 2. Receipt of evidence. After consolidation, documentary evidence previously received in an individual case must be reintroduced in the consolidated proceedings under a master file if the compensation judge assigned to try the case designates one file as a master file. When so combined, the evidence becomes part of the record of each of the several consolidated cases. Evidence received after the order of consolidation is a part of the record of each case.

Subp. 3. Notice of order. Following an order for consolidation, the calendar or compensation judge shall promptly serve the order on the parties. The order must contain:

- A. a description of the cases for consolidation;
- B. the reasons for consolidation; and
- C. notification of a consolidated pretrial conference if one has been requested.

Subp. 4. Objection to consolidation. A party may object to consolidation or move for severance by filing with the calendar judge or compensation judge, if one is assigned, and serving upon all parties at least seven days before the hearing, a motion for severance from consolidation which includes reasons for the motion.

If the judge finds that justice will be best served by granting severance, the judge shall grant the motion for severance.

Subp. 5. Service of pleadings and decisions. Separate pleadings must be filed and separate findings, orders, decisions, and awards will be made and filed in each case consolidated for hearing.

1415.2600 DISQUALIFICATION.

Subpart 1. By judge. A compensation judge shall withdraw from participation in a case at any time if the judge deem himself or herself disqualified, prejudiced, or biased for any reason.

Subp. 2. By a party. A party or his attorney may file an affidavit of prejudice if the party reasonably believes that a hearing before the assigned judge cannot be fair due to the judge's prejudice or bias. The affidavit must be served on opposing parties and filed with the chief hearing examiner not more than ten days after the filing party has received notice of the assigned judge or has knowledge of the grounds for disqualification, whichever occurs last. Each party is allowed one filing per case under this subpart. Upon filing of the affidavit with proof of service, the chief hearing examiner shall assign the case to another judge.

A party or the party's attorney may file a motion to disqualify a compensation judge for a cause other than or in addition to that described in an affidavit of prejudice. The motion must be supported by an affidavit detailing the facts establishing the grounds for disqualification and filed with the chief hearing examiner not more than ten days after the moving party has received

notice of the assigned judge or has knowledge of the grounds for disqualification, whichever occurs last. The motion will be decided by the chief hearing examiner or a designee.

Subp. 3. Continuances. Unless required because of the unavailability of a compensation judge to hear the case, no continuance will be granted because of a disqualification under this part. If a continuance is necessary, another hearing will be scheduled as early as possible.

Subp. 4. Consolidated cases. Consolidated cases are considered one case under this part.

Subp. 5. Settlement and pretrial conferences. This part is not applicable to settlement or pretrial conferences.

1415.2700 SUBPOENAS.

Subpoenas may be obtained without charge from the office or the division. The name, address, and telephone number of the party or attorney requesting service of the subpoena must be included on the subpoena before service is tendered in accordance with Minnesota Statutes, section 357.22.

The settlement or calendar judge, or compensation judge, if the case has been assigned for hearing, shall quash or modify a subpoena upon a party's motion if the judge finds that it is unreasonable or oppressive. The motion must be promptly made, no later than the date specified in the subpoena for compliance.

1415.2800 CONTINUANCES.

Subpart 1. Continuances not favored. Requests for continuances are inconsistent with the requirement that workers' compensation proceedings be expeditious, are not favored, and will be granted only upon a clear showing of good cause. The parties are expected to submit for decision all matters in controversy at a single hearing and to produce at the hearing all necessary evidence, including witnesses, documents, medical reports, payroll statements, and all other matters considered essential in the proof of a party's claim or defense.

Subp. 2. Request. When a continuance is requested before the hearing date, the party requesting the continuance shall first contact all other parties to determine whether mutual agreement to the continuance can be reached and, if the continuance is granted, the availability of all parties for hearing at future specific dates. When all parties are in agreement with the request for continuance and have agreed to a date for a future hearing, which date has been approved by the compensation or calendar judge before whom the matter is pending, and when the continuance request is made no less than ten working days before the hearing date, the continuance will be granted.

Subp. 3. Motion. If all parties have not agreed to a continuance, requests for continuances must be made to the compensation or calendar judge before whom the matter is pending. When made more than ten working days before the hearing date, the request must be in writing in the form of a motion for continuance and served on all parties. If less than ten working days remain before the hearing date, notice of the motion must be made orally. A hearing on the motion will be conducted only if ordered by the compensation or calendar judge to whom the motion is made.

Subp. 4. Good cause. Good cause does not include:

A. when an insurer retains more than one counsel on its own payroll who practice in the field of workers' compensation law, and counsel assigned to the case is unavailable because of engagement in another court or otherwise, unless all the counsel are committed elsewhere;

B. when a law firm consists of more than one member who practice in the field of workers' compensation law, and counsel assigned to the case is unavailable because of engagement in another court or otherwise, unless all the counsel are committed elsewhere;

C. unavailability of an individual law practitioner because of engagement in another court, if he has failed to notify the judge in charge of the trial court calendar of that court that he has been assigned to a date and time certain in a workers' compensation case; or

D. unavailability of a medical or other witness if the deposition of the witness could have been taken after receipt of the notice of hearing date and before the hearing.

1415.2900 THE HEARING

Subpart 1. Notice. A place, date, and time certain will be assigned to each case. Written notice of the hearing will be given as soon as the assigned date is known, but must be given at least 30 days in advance of the hearing, except:

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

- A. when notice is waived by the parties;
- B. when a different time is expressly agreed to by the parties; or
- C. when the notice is governed by contrary law or rule.

The notice must include the place of hearing, the amount of time allowed for the hearing, and the name of the compensation judge assigned, if known. Oral or written notice of the date, time, and place of the hearing given to the parties by a judge at a settlement or pretrial conference is sufficient notice. An attorney who receives notice of the hearing date at the settlement or pretrial conference must notify his or her client. Cases will be set for one location only, that most convenient for the petitioner. Adequate time will be allowed so that the case may be completely heard in one sitting. If an additional hearing date is required, it must be agreed to by all parties and the compensation judge. If the parties cannot agree, the compensation judge shall set the date and time.

Subp. 2. Availability of witnesses. As soon as the parties know the hearing date, they shall immediately notify all witnesses in writing and arrange for their presence or for the taking of their deposition under part 1415.2200.

Subp. 3. Medical evidence. Rules governing medical evidence are as follows:

A. If a party believes that the oral testimony of a physician or health care provider is crucial to the accurate determination of the employee's disability, the party shall prepare, serve on all other parties, and file with the office a written motion and supporting affidavits, requesting a written finding from a judge on the cruciality of the oral testimony. An affidavit must contain facts sufficient upon which the judge can make a determination; a mere statement that the attorney believes that the testimony is crucial is insufficient without a further factual basis. The motion must be served and filed no later than 25 days prior to the scheduled hearing date. Any party may file an objection to the motion. Objections must be filed within ten calendar days of service of the motion. A compensation judge shall, after writing for objections to be filed, issue an order granting or denying the motion, stating the reasons for the order.

B. Whether or not a motion has been filed, the judge shall issue an order requiring that the full testimony be presented in person or by oral deposition if the judge finds that the oral testimony of a physician or health care provider may be crucial to the accurate determination of the employee's disability.

C. If, during the course of a hearing, or within 25 days before the hearing, a judge determines, on a party's or the judge's motion, that the appearance of the physician or health care provider is crucial to the accurate determination of the employee's disability, the judge shall either continue the hearing to a date, time, and place for the testimony to be taken, or order that the testimony be taken in full by oral deposition.

D. The production of medical evidence in the form of written reports is required by Minnesota Statutes, section 176.155, subdivision 5. These reports must include, in the following order:

- (1) the date of the examination;
- (2) the history of the injury;
- (3) the patient's complaints;
- (4) the source of all facts in the history and complaints;
- (5) findings on examination;
- (6) opinion as to the extent of disability and work limitations, if any;
- (7) the cause of the disability and, if applicable, whether the work injury was a substantial contributing factor toward the disability;
- (8) the medical treatment indicated;
- (9) if permanent disability is an issue, an opinion as to whether or not the permanent disability has resulted from the injury and whether or not the condition has stabilized. If stabilized, a description of the disability with a complete evaluation;
- (10) if a permanent partial disability is a result of two or more injuries or occurrences; or if part of the permanent disability is a result of a preexisting disability that arises from a congenital condition, traumatic injury, or incident, whether or not compensable under Minnesota Statutes, chapter 176; the physician or health care provider shall apportion the disability between the injuries, occurrences, or conditions;
- (11) if future medical care or treatment is anticipated, a statement of the nature and extent of treatment recommended and, if possible, the anticipated results;
- (12) the reason for each opinion; and
- (13) if applicable, a statement that the physician or health care provider has read the rules concerning determination of permanent partial disability, understands them, and has applied those rules in making the determination.

E. Medical reports to be used at the hearing must be served on the parties and filed with the office, with proof of service, sufficiently in advance of the hearing to allow other parties the opportunity to cross-examine the physician or health care provider, if desired, unless the delay in filing the report was caused by a failure of the employee to report for an adverse medical examination or to provide medical support for the claim on a timely basis, or other good cause. If the report is filed too late to allow the cross-examination, the record will be held open to allow other parties to cross-examine the physician or health care provider after the hearing.

F. If the claim petition includes a claim for medical or other health care treatment or supplies under Minnesota Statutes, sections 176.103, 176.135, and 176.136, and the parties agree at or before the hearing to the reasonableness and necessity of the treatment or supplies, the judge shall approve or disapprove the agreement to settle that portion of the claim provided the agreement is placed in the record of the proceeding. If the parties are unable to reach agreement on the issues of medical or other health care treatment or supplies, that portion of the claim must be referred back to the division upon conclusion of the hearing for a determination under Minnesota Statutes, sections 176.103, 176.135, and 176.136. The parties may, however, present medical evidence at the hearing for later use by the division in determining medical issues. A party has the right, even if another party objects, to present medical evidence at the hearing. An intervenor who has paid health care benefits and whose claim remains unsettled is a real party in interest with an independent right to pursue its claim under Minnesota Statutes, section 176.103.

Subp. 4. Rights of parties. All parties have the right to present evidence, to cross-examine witnesses, and to present rebuttal testimony.

Subp. 5. Witnesses. A party may be a witness and present other witnesses at the hearing. Oral testimony at the hearing must be under oath or affirmation. At the request of a party or upon the judge's motion for good cause, the compensation judge may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

Subp. 6. Rules of evidence. Rules of evidence are as follows:

A. Except as provided by the act and parts 1415.0100 to 1415.3500 the compensation judge is not bound by the common law, statutory rules of evidence, or technical or formal rules of pleading or procedure.

B. All evidence to be considered in the case, including records and documents in the possession of a party, or an accurate photocopy, must be offered and made a part of the record in the case. An independent investigation by the compensation judge under Minnesota Statutes, section 176.391, subdivision 1, is part of the record if the parties are aware of the investigation and have had an opportunity to participate in it.

C. Documentary evidence in the form of copies of excerpts from books, documents, or records may be received or incorporated by reference upon agreement of the parties or if ordered by the compensation judge.

D. The compensation judge may take administrative notice of general, technical, or scientific facts within the judge's specialized knowledge under Minnesota Statutes, section 14.60, subdivision 4, but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

E. A party may call an adverse party and question, contradict, and impeach the party on material matters in all respects as if they had been called by the other party. The adverse party may be examined by counsel according to the rules of civil procedure for the district courts of Minnesota applicable to direct examination, and may be cross-examined, contradicted, and impeached by any party adversely affected by the testimony. An adverse party includes:

- (1) the adverse party's managing agent or employees;
- (2) an officer, director, managing agent, or employee of the state, excluding judges, members of the panel or board, mediators, and other employees of the division designated to conduct conferences or hearings; and
- (3) an officer, director, managing agent, or employee of:
 - (a) a political subdivision of the state;
 - (b) a public or private corporation;
 - (c) a partnership or association; or
 - (d) a political body.

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

Subp. 7. The record. Record requirements are as follows:

A. The compensation judge shall maintain the official record, other than the stenographic notes of a hearing reporter if one was used, in each case until the issuance of the judge's final order.

B. The record in a compensation case shall contain:

- (1) all pleadings, motions, and orders, including the judgment roll, and the entire record from any previous hearing which is relevant to the issues under consideration;
- (2) evidence received or considered unless, through agreement of the parties or by order of the compensation judge, custody of an exhibit is given to one of the parties;
- (3) those parts of the division's official file on the matter which the compensation judge incorporates;
- (4) offers of proof, objections, and the resulting rulings;
- (5) the compensation judge's order;
- (6) memoranda and data submitted by a party in connection with the case and accepted by the judge;
- (7) a transcript of the hearing, if one was prepared; and
- (8) the audio-magnetic recording tapes used to record the hearing, if any.

C. The chief hearing examiner shall direct that the verbatim record of a hearing be transcribed if requested by any person. If the record is transcribed by the office, persons who request copies of the transcript must pay a reasonable fee. If transcribed by someone other than the office, the person requesting a transcript must pay the person preparing the transcript a reasonable fee.

D. Charges for transcripts prepared by the office shall be set by the chief hearing examiner, with the approval of the department of finance, and all money received for transcripts prepared by the office are payable to the State Treasurer, Office of Administrative Hearings Account.

E. Under Minnesota Statutes, section 176.421, subdivision 4, clause (3), a party may petition the chief hearing examiner for an order directing that a transcript be prepared, for purposes of appeal to the court of appeals, at no cost to the appellant. A petition filed under this provision must include:

- (1) the caption of the case;
- (2) case identification numbers;
- (3) the name, address, and telephone number of the attorney representing the appellant; and
- (4) a sworn affidavit from the appellant which must include:
 - (a) appellant's monthly personal income from all sources, including income from trusts, bonds, and savings certificates;
 - (b) a list, at market value, of all stocks, bonds, savings certificates, or other certificates of indebtedness held by the appellant, and by the appellant's spouse if residing in the same household;
 - (c) the monthly personal income from all sources of appellant's spouse, if residing in the same household;
 - (d) a statement of the monthly expenses for the appellant's household;
 - (e) if the appellant owns any rental property, a statement showing the appellant's equity in the property and the monthly income and expense for the property; and
 - (f) if the appellant owns outright or is purchasing the property in which he or she resides, a statement showing the market value of the property, the appellant's equity in the property, and the present monthly payments, if any.

Subp. 8. Continuances during hearing. If it appears in the interests of justice that further testimony should be received, the compensation judge may continue the hearing to a future date. Oral notice on the record shall be sufficient if given at the time of the original hearing. Otherwise, the notice of the date for the continued hearing must be in writing and served on all parties.

Subp. 9. Hearing procedure. The hearing procedure is as follows:

A. The compensation judge shall not communicate, directly or indirectly, with any party concerning issues of fact or law in a pending case, except upon notice and opportunity for all parties to participate. After the first witness is sworn all of the proceedings must be on the record, including motions, objections, offers of proof, rulings of the judge, arguments of the parties, or other comments of the parties, their representative, or the judge. A compensation judge shall not order a court reporter to refrain from recording anything said during the course of a hearing without the consent of the parties present nor shall a

compensation judge turn off an audio-magnetic recording device being used to record the proceedings, other than for reasonable breaks, without the consent of the parties present. The judge shall be in complete charge of the hearing. It is the judge's duty to see that the witnesses testify clearly so that the reporter may obtain a clear and transcribable record of all proceedings.

B. Unless the compensation judge determines that the substantial rights of the parties will be ascertained better in some other manner, the hearing will be conducted in the following manner:

(1) After opening the hearing, the compensation judge shall, unless all parties are represented by counsel, state the procedural rules for the hearing.

(2) Stipulations, settlement agreements, or consent orders entered into by the parties before the hearing must be entered into the record.

(3) If the compensation judge requests opening statements, the party with the burden of proof shall proceed first. Other parties shall make opening statements in a sequence determined by the compensation judge.

(4) After opening statements, the party with the burden of proof shall begin the presentation of evidence. That party will be followed by the other parties in a sequence determined by the compensation judge.

(5) Cross-examination of witnesses will be conducted in a sequence determined by the compensation judge.

(6) When the parties and witnesses have been heard and if the compensation judge believes that legal issues remain unresolved, final arguments may be presented in a sequence determined by the compensation judge. Final argument may, in the discretion of the compensation judge, be in the form of written memoranda or oral argument, or both. The compensation judge shall decide when memoranda must be submitted. Final arguments shall be limited to legal issues only.

(7) After final argument, if any, the hearing will end unless it is continued by the compensation judge. If continued, it must either be continued to a time and day announced at the hearing on the record, or continued to a date to be determined later, with at least 15 days written notice to the parties, including those joined at the hearing.

(8) The record of the case will be closed upon receipt of the final written memorandum, transcript, if any, or late-filed exhibits which the parties and the compensation judge have agreed should be received into the record, whichever occurs last.

C. These procedures are to be followed in the hearing:

(1) Counsel offering an objection shall briefly state the specific legal grounds for the objection, unless invited by the judge to argue.

(2) Arguments in opposition to, or in support of, objections must be brief.

(3) Before calling a witness to the stand, counsel shall instruct the witness to be responsive to the questions and to wait until the question is completed and a ruling made on an objection before answering. Counsel shall not instruct a witness while on the stand as to the manner of answering questions but may request the court to instruct the witness.

(4) A party calling a witness for whom an interpreter is required shall advise the court in advance of the need for an interpreter.

(5) Persons in the hearing room shall not converse in a disruptive manner, read newspapers, smoke, chew gum, eat food, or drink liquids other than water while the hearing is in session, and counsel shall so instruct parties they represent, witnesses they call, and persons accompanying them.

Subp. 10. Disruption of hearing. No television, newsreel, motion picture, still, or other camera, and no mechanical recording devices, other than those provided by the office may be operated in the hearing room during the course of the hearing unless permission is obtained from the compensation judge. Permission is subject to conditions set by the compensation judge to avoid disruption of the hearing.

Under Minnesota Statutes, section 624.72, no person may interfere with the free, proper, and lawful access to or egress from the hearing room. No person may interfere or threaten interference with a hearing, or disrupt or threaten disruption of a hearing. In the event of interference or disruption or threat of interference or disruption, the compensation judge shall read this item to those persons causing the interference or disruption and proceed as the judge deems appropriate.

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

1415.3000 THE COMPENSATION JUDGE'S DECISION.

Subpart 1. Basis for decision. The compensation judge shall not consider factual information or evidence which is not a part of the record.

Subp. 2. Compensation judge's decision. Within 60 days after the close of the record, the compensation judge shall prepare a decision and serve it on the parties. The compensation judge's decision must include, in the following order:

- A. The date and location of the hearing and the compensation judge's name.
- B. Appearances by parties, if representing themselves, or their attorneys, giving the full name and mailing address, including zip code, of each.
- C. The date the record of the hearing was closed.
- D. A notice of the right of parties to appeal and how the appeal can be perfected.
- E. A determination of each contested issue of fact or law. In cases involving many issues, the compensation judge may organize the decision by major subissues if the judge determines that organizing the decision in that manner will aid the reader in understanding its contents.
- F. A memorandum if necessary to delineate the reasons for the decision or to discuss the credibility of witnesses.

Subp. 3. Readability. A decision must be clear, concise, and written in a prose style which can be read and understood by persons of average intelligence. English, rather than Latin terms must be used unless it is necessary to use Latin terms.

Subp. 4. Proposed decision filed by party. A party may file a proposed decision with the compensation judge. The proposed decision must conform to this part and be served on the other parties. It must be in a form which would allow the compensation judge to sign and issue the decision if it is acceptable. It must also include a brief memorandum explaining the decision on each issue.

Subp. 5. Decision, extension of time. If the parties consent to extend the time for issuance of the decision, the written consent must include a statement of the reasons for the extension. It must be filed with the compensation judge and a copy filed with the chief hearing examiner. If the chief hearing examiner extends the time for issuance of the decision, the extension must be in writing and served on the parties of record.

1415.3100 REHEARING.

When a compensation judge has issued the findings, conclusions, and decision, the judge's jurisdiction over the case ends, except for taxation of disbursements or awarding of attorney's fees, unless the case is referred to the compensation judge by the court of appeals and the chief hearing examiner for supplemental findings, taking of additional testimony, rehearing, and other action. Compensation judges may correct clerical or mathematical errors in decisions any time before appeal.

1415.3200 ATTORNEY FEES.

Subpart 1. Controlling statute. Fees for legal services are governed by Minnesota Statutes, section 176.081.

Subp. 2. Withholding of attorney fees. Upon receipt of the notice of representation, the employer and insurer may withhold attorney fees on genuinely disputed portions of claims under Minnesota Statutes, section 176.081. Attorney fees must be withheld on genuinely disputed portions of claims if the employee's attorney so requests.

Subp. 3. Statement of fees, petition for disputed or excess attorney's fees. The following procedures must be followed in claiming fees:

A. If the claim for attorney fees does not exceed the fees allowed by Minnesota Statutes, section 176.081, subdivision 1, clause (1) (a), the party claiming fees shall file a statement of attorney's fees on a form prescribed by the commissioner, including:

- (1) the caption of the case;
- (2) the employee's social security number;
- (3) the date of injury or disease;
- (4) a list of benefits which were genuinely in dispute and which would not have been recovered without the attorney's involvement;
- (5) the amount of retainer received from the employee;
- (6) the amount the employee advanced for expenses;
- (7) the amount the employer and insurer are currently withholding as attorney's fees, if known;

- (8) the amount claimed for attorney's fees;
- (9) a statement that the attorney is licensed to practice law in the state;
- (10) a statement of whether or not an application is being made for attorney fees under Minnesota Statutes, sections 176.081, subdivisions 7 and 8, and 176.191;
- (11) a notice that the employee or insurer has ten calendar days to object to the attorney fees requested;
- (12) the date the statement was served on the employer and insurer; and
- (13) the full address and phone number of the employee's attorney.

The statement must be accompanied by the retainer agreement, if not previously filed, and a copy of the usual billing statement given to the employee. If, at the hearing or in a stipulation for settlement, all parties state on the record or include in the stipulation that they have no objection to the statement of attorney's fees, the judge shall issue an appropriate order without waiting ten calendar days. An oral statement of attorney fees may be presented at the hearing on the record if the case has been tried to a conclusion, no objection is made at the hearing, and a retainer agreement is filed. An oral statement of attorney fees must contain the information in this item.

B. If a party claims fees in excess of the amounts listed in Minnesota Statutes, section 176.081, subdivision 1, clause (1), the party shall file a petition for disputed or excess attorney's fees on a form prescribed by the commissioner, including:

- (1) the caption of the case;
- (2) the employee's social security number;
- (3) the date of the claimed injury or disease;
- (4) an exhibit showing specific legal services performed, the date performed, and the time spent;
- (5) the number of hours spent in the employee's representation;
- (6) a statement of expertise and experience in workers' compensation matters;
- (7) a brief description of the factual, medical, and legal issues in dispute;
- (8) the nature of proof required in the case;
- (9) a list of the benefits which were genuinely in dispute and which would not have been recovered without the attorney's involvement;
- (10) the amount of the retainer;
- (11) the amount employee advanced for expenses;
- (12) the amount claimed in fees;
- (13) the amount the employer and insurer is currently withholding, if known;
- (14) a list of the disbursements incurred and if the disbursement has been paid, by whom;
- (15) a statement that the attorney is licensed to practice law in the state;
- (16) a statement of whether or not an application is being made for attorney fees under Minnesota Statutes, sections 176.081, subdivisions 7 and 8, and 176.191;
- (17) whether or not a hearing on attorney fees is requested;
- (18) the date the statement was served on the employer and insurer; and
- (19) the full address and phone number of the employee's attorney.

The petition must be accompanied by a copy of the retainer agreement, if not previously filed, and proof of service.

Subp. 4. Fees, objection. If a timely objection to the statement of attorney's fees is filed, the compensation judge or settlement judge shall use Minnesota Statutes, section 176.081, subdivision 5, only as to those issues specifically raised by the objection.

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

Subp. 5. Filing. A statement of attorney's fees or petition for disputed or excess attorney's fees under this part must be filed with the compensation judge assigned to hear the case or a calendar judge if no assignment has been made, or a settlement judge if the matter has not been certified to the office.

Subp. 6. Settlements. In cases where an offer or settlement has been made in writing under Minnesota Statutes, section 176.081, subdivision 7a, and the offer has not been accepted, upon receipt of the compensation judge's decision, the following procedure must be followed:

A. The party seeking to impose the sanctions of Minnesota Statutes, section 176.081, subdivision 7a, shall file proof of the offer with the chief hearing examiner and serve the other parties within ten calendar days of the date of the compensation judge's decision. The filing must include an order prepared for signature by the chief hearing examiner amending the compensation judge's decision.

B. A party objecting to the entry of the order shall, within five calendar days of receipt of the proposed order, serve and file an objection, which may be in the form of a letter, stating in detail the reasons why the order should not be signed. A response to the objection, if any, must be filed within five calendar days of the objection.

C. If no objection is received, the chief hearing examiner shall sign, serve, and file the order within ten calendar days of its filing. If an objection has been received, the chief hearing examiner shall rule within ten calendar days after the filing of the objection. Parties do not have a right to a hearing on the objection. The chief hearing examiner's determination must be in writing and is appealable to the court of appeals.

1415.3300 TAXATION OF COSTS AND DISBURSEMENTS.

Subpart 1. When allowed. This part applies to costs in cases which have been heard by a compensation judge. Costs associated with cases settled before hearing may be recovered by agreement in a stipulation or retainer agreement.

Subp. 2. Informal request. Before submitting a formal request for payment or reimbursement of costs and disbursements, an informal request should be made by the taxing party on the party from whom reimbursement is sought. If agreement cannot be reached on all items, the taxing party may then proceed formally, including in the formal request an indication of those costs agreed upon.

Subp. 3. Service of formal request. Service of the request for taxation of costs and disbursements must be made upon the parties, or their attorneys, by the taxing party.

Subp. 4. Service of objection. An opposing party has ten working days from the date of service upon him or her in which to serve and file a formal objection to taxation or allowance, with admission or proof of service upon the other parties.

Subp. 5. Hearing. If requested, a time for hearing before the compensation judge to whom the matter has been assigned must be fixed. A notice of hearing must be given to the parties by the compensation judge.

1415.3400 OTHER HEARINGS.

Under Minnesota Statutes, section 14.50, all hearings not discussed in this chapter but required to be conducted by a compensation judge must be conducted in substantial compliance with this chapter. In a dispute in which an immediate hearing is necessary in order to carry out the purpose and intent of the Minnesota workers' compensation law, the notice of hearing must be given not less than five working days before the hearing. Expedited assignment of judges to these hearings must be in a manner which will allow the compensation judge's decision to be issued immediately upon conclusion of the hearing or as soon after the hearing as is reasonable and practical.

1415.3500 EXHIBITS; REMOVAL AND RETURN.

Subpart 1. Requests for removal. All requests for permission to remove an exhibit or document from the official file must be made to the compensation or settlement judge to whom the file has been assigned or to the supervisor of the docket section of either the office or the division.

Subp. 2. Return without consent or notice. Upon the expiration of the time in which to appeal, all exhibits or other documentary evidence may be returned to their source of origin without the consent of the parties or notice to them. A copy of the letter of transmittal of the exhibits or documents must remain in the file as part of the record of the case.

Subp. 3. Request for return. Upon expiration of the time in which to appeal, exhibits or other documentary evidence must be returned to their source upon the request of the party which produced or introduced the exhibit or evidence at the hearing. A request for return of exhibits or documents must be made in writing to the compensation judge or the division, include the title and appropriate identification number of the case, and identify the exhibits or documents requested. A telephone number of the person making the request must be included with the request.

1415.3600 SEVERABILITY.

If any provision of parts 1415.0100 to 1415.3500 is held to conflict with a governing statute, applicable provisions of the

Minnesota Administrative Procedure Act, or other relevant law; to exceed the statutory authority conferred; to lack a reasonable relationship to statutory purposes or to be unconstitutional, arbitrary, or unreasonable; or to be invalid or unenforceable for any other reason; the validity and enforceability of the remaining provisions of the rule shall in no manner be affected.

REPEALER. Minnesota Rules, parts 1410.0100, 1410.0200, 1410.0300, 1410.0400, 1410.0500, 1410.0600, 1410.0700, 1410.0800, 1410.0900, 1410.1000, 1410.1100, 1410.1200, 1410.1300, 1410.1400, 1410.1500, 1410.1600, 1410.1700, 1410.2000, 1410.2100, 1410.2200, 1410.2300, 1410.2400, 1410.2500, 1410.2600, 1410.3000, 1410.3100, 1410.3200, 1410.3300, 1410.3400, 1410.3500, 1410.3600, 1410.3700, 1410.3800, 1410.3900, 1410.4000, 1410.4100, 1410.4200, 1410.4400, 1410.4500, 1410.4600, 1410.4700, 1410.4800, 1410.4900, 1410.5000, 1410.5100, 1410.5200, 1410.5300, 1410.5400, 1410.5500, 1410.5600, 1410.5700, 1410.5800, 1410.5900, 1410.6000, 1410.6100, 1410.6200, 1410.6300, 1410.6400, 1410.6500, 1410.6600, 1410.6700, 1410.6800, 1410.6900, 5220.3100, 5220.3300, 5220.3400, 5220.3500, 5220.3700, 5220.3800, 5220.3900, 5220.4000, 5220.4100, 5220.4200, 5220.4300, 5220.4301, 5220.4302, 5220.4303, 5220.4304, 5220.4305, 5220.4800, 5220.4900, 5220.5100, 5220.5200, 5220.5300, 5220.5400, 5220.5500, 5220.5600, 5220.5700, 5220.6500, 5220.6600, 5220.6700, 5220.6800, 5220.6900, 5220.7000, 5220.7100, and 5220.7200 are repealed.

Pollution Control Agency

Proposed Rules Governing Hazardous Waste Priority Assessment Criteria

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) intends, without a public hearing, to adopt the above-referenced proposed rules. The Agency has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. §§ 14.21-14.28 (Supp. 1983).

The proposed rules are authorized by Minn. Stat. § 115B.17, subd. 13 (Supp. 1983). One free copy of the rules is available on request from the Agency. Please contact the person whose name and address appears below.

The Agency has prepared 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 by the Agency to support the proposed rules. Copies of the Statement of Need and Reasonableness and of the proposed rules are available and may be obtained by contacting:

Dale Tripler
Minnesota Pollution Control Agency
Division of Solid and Hazardous Waste
1935 West County Road B2
Roseville, MN 55113
Telephone: (612) 296-7774

Interested persons have until 4:30 p.m. on May 15, 1984, to submit comments on the proposed rules. The proposed rules may be modified if the data and views received by the Agency before the end of the comment period warrant modification and the modification does not result in a substantial change in the proposed rules.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the comment period, a public hearing will not be held. In the event that a public hearing is required, the Agency will proceed according to the provisions of Minn. Stat. §§ 14.11-14.20 (Supp. 1983).

Persons who wish to submit oral or written comments or a written request for a public hearing should submit such comments or request to Dale Tripler at the Agency address previously stated (telephone: (612) 296-7774), no later than 4:30 p.m. on May 15, 1984. If a person desires to request a public hearing, the Agency requests that the person identify the particular provisions objected to, the suggested modifications to the proposed language, and the reasons and data relied on to support the suggested modifications.

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

Upon adoption of the rules by the Agency Board, the rules as proposed, this notice, the Statement of Need and Reasonableness, all written comments received, and the final rule as adopted will be sent 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 adopted, should submit a written statement of such request to Dale Trippler at the address previously stated.

You are hereby advised, pursuant to Minn. Stat. § 14.115 (Supp. 1983), "Small business considerations in rulemaking," that the Agency has determined that the proposed rules will not have an impact on small businesses in Minnesota since the rules solely govern internal Agency decisions as to how it will spend funds available to it under the Environmental Response and Liability Act.

The rule proposed for adoption establishes procedures for establishing a permanent list of releases or threatened releases of hazardous substances, pollutants, or contaminants including (1) classifications for sites with releases or threatened releases, (2) procedures for adding sites to and deleting sites from the list, (3) an annual review and update of the permanent list, (4) funding priorities among classifications and within classifications, (5) an annual project list, and (6) a ranking system to be used in scoring sites.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Dale Trippler at the address previously stated.

Sandra S. Gardebring
Executive Director
Minnesota Pollution Control Agency

Rules as Proposed (all new material)

7044.0100 SCOPE.

Chapter 7044 governs the procedures for establishing a permanent list of releases or threatened releases of hazardous substances, pollutants, or contaminants required by Minnesota Statutes, section 115B.17. This chapter establishes various classifications for sites with releases or threatened releases, describes the procedures for adding sites with releases or threatened releases to or deleting sites from the permanent list, provides for an annual review and update of the permanent list, establishes the funding priority among classifications and the funding priority within classifications, creates an annual project list, and specifies a ranking system to be used in scoring sites.

7044.0200 DEFINITIONS.

Subpart 1. Scope. As used in this chapter, the following terms have the meanings given them, unless the context requires otherwise.

Subp. 2. Miscellaneous terms. The following terms have the meanings given them in the Environmental Response and Liability Act (ERLA), Minnesota Statutes, chapter 115B: agency, director, Federal Superfund Act, fund, hazardous substance, hazardous waste, natural resources, owner of real property, person, pollutant or contaminant, release, remedy or remedial action, remove or removal, respond or response, and water.

Subp. 3. Advisory. "Advisory" means a warning by the director, Minnesota Department of Health, Minnesota Department of Natural Resources, or the Minnesota Department of Agriculture issued to the public concerning a hazardous substance, pollution, or contamination at or near a facility.

Subp. 4. Emergency. "Emergency" means that there is an imminent risk of fire or explosion, that a temporary water supply is needed where an advisory has been issued, or that immediate adverse human health effects may be anticipated due to direct contact or inhalation and an advisory has been issued.

Subp. 5. Ground water or underground water. "Ground water" or "underground water" has the meaning given in chapter 7060.

Subp. 6. Rater. "Rater" means a member of the agency staff designated by the director to evaluate releases or threatened releases.

Subp. 7. Site. "Site" means any place or area where a hazardous substance, or a pollutant or contaminant, has been deposited, stored, disposed of, placed, or otherwise come to be located including:

A. a building, structure, installation, equipment, pipe or pipeline (including a pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

B. a watercraft of any description, or other artificial contrivance used or capable of being used as a means of transportation on water.

Site does not include a consumer product in consumer use.

Subp. 8. Target. "Target" means affected populations or sensitive environments exposed or threatened with exposure due to a release or a threatened release.

7044.0300 CLASSIFICATION OF SITES.

The agency shall assign a site with a release or a threatened release to the following response action classes:

- A. a declared emergency by the director;
- B. the operation and maintenance at a site that has undergone previous response actions;
- C. other response actions which may include the first year costs associated with operation and maintenance at a site; and
- D. remedial investigations and feasibility studies (RI/FS).

A site with a release or a threatened release may be assigned to more than one response action class and may be assigned more than once within a response action class if conditions at the site of the release or the threatened release or the diversity of hazardous substances, pollutants, or contaminants require multiple response actions. Assignment of a site with a release or a threatened release to a response action class must be based on the response action necessary to abate the known or suspected dangers associated with hazardous substances, pollutants, or contaminants at the site of the release or the threatened release. A site may be reclassified based on the findings and recommendations of a remedial investigation and feasibility study (RI/FS).

7044.0400 ADDITION OF SITES WITH RELEASES OR THREATENED RELEASES TO THE PERMANENT LIST OF PRIORITIES.

The agency shall rate sites with a release or a threatened release using the Hazard Ranking System (HRS) in the Federal Register, volume 47, pages 31219 to 31243 (July 16, 1982), as amended by part 7044.1000. All sites must be evaluated using part 7044.1200. A site disqualified by part 7044.1200 is not eligible for placement on the permanent list of priorities. All eligible sites must be assigned to a response action class based on the criteria in part 7044.0300. The site of the release or the threatened release must be added to the permanent list of priorities during the next annual update as specified in part 7044.0600.

7044.0500 DELETION OF SITES FROM THE PERMANENT LIST OF PRIORITIES.

Subpart 1. Requirement. The agency shall delete a site from the permanent list of priorities at the next annual update following the completion of all response actions required at the site, or if the agency determines that the site no longer poses a threat to public health or welfare or the environment from a release or a threatened release of a hazardous substance, pollutant, or contaminant.

Subp. 2. Deletion from a response action class. The agency shall delete a site from a response action class on the permanent list of priorities at the next annual update following the completion of response actions for that class at the site, or if the agency determines that portion of the site no longer poses a threat to public health or welfare or the environment from a release or a threatened release of a hazardous substance, pollutant, or contaminant.

7044.0600 ANNUAL UPDATE OF THE PERMANENT LIST OF PRIORITIES.

The agency shall annually update the permanent list of priorities. Notice of the annual update of the permanent list of priorities together with a proposed updated list must be published in the *State Register* to solicit public comments at least 30 days prior to agency action. A site may be reclassified or rescored based on information obtained during the 30-day comment period or based on information from a completed RI/FS if the director determines the new or additional facts warrant a reclassification or rescoring. A site may not be reclassified or rescored based on prior remedial, removal, or response actions.

7044.0700 FUNDING PRIORITY OF CLASSES.

The agency shall allocate Environmental Response and Liability Act (ERLA) funds to classes in the following order:

A. All sites classified as part 7044.0300, item A (Class A) receive first priority over all other classes for agency action. The agency shall also allocate ERLA funds to be held in reserve during the next year to fund emergencies that may be declared during the year. The amount of the contingency fund must be estimated based on the funds expended on declared emergencies in previous years. If the contingency fund is depleted before the end of the year, funds allocated for Class C or D projects that are not yet committed are available for response actions that must be taken in connection with a declared emergency.

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

B. After all Class A sites have ERLA funds allocated and a Class A contingency fund has been established, all sites classified as part 7044.0300, item B (Class B) receive next priority for ERLA funding. ERLA funds may not be spent for the purpose of operation or maintenance of a community water supply system with the exception of start-up operational and maintenance expenditures deemed necessary by the agency during the first year the system is in operation.

C. After all Class A sites have ERLA funds allocated and a Class A contingency fund has been established, and all Class B sites have ERLA funds allocated, the agency shall allocate ERLA funds to part 7044.0300, item C (Class C) and to part 7044.0300, item D (Class D) sites.

D. The director may reallocate excess ERLA funds from one class to another if the funding priorities in parts 7044.0700 to 7044.0900 are complied with, and the director determines that a site on the permanent list of priorities is ready for the agency to proceed with a response action or RI/FS prior to the next annual update.

Class A contingency funds may not be transferred to another class.

7044.0800 FUNDING PRIORITY WITHIN CLASSIFICATIONS C AND D.

Sites listed in classifications C and D must be ranked according to their HRS scores. The director may allocate funds within each of the two classes to any site with a release or a threatened release that is within ten HRS points of the highest rated site within the class, based upon the cost of the necessary response actions; the effect of the release or the threatened release on public health, welfare, or the environment; and the administrative capabilities of the agency.

7044.0900 ANNUAL PROJECT LIST.

The agency shall establish a project list based on the amount of ERLA funds allocated by the agency for each class. The project list is a subset of the permanent list of priorities. The project list must contain the names of those projects to which ERLA funding will be allocated and for which the response action or RI/FS is scheduled to begin during the year. Sites on the permanent list of priorities may be added to the project list and funded when the director determines the excess ERLA funds allocated by the agency are available as a result of, for example, a party assuming responsibility for work at a site or a cost saving in the response actions taken at a site. Class A sites not on the project list that develop or are brought to the attention of the director must be funded with Class A contingency funds as directed in part 7044.0700, item A. Before taking any removal and remedial action for a release or a threatened release of a hazardous substance, pollutant, or contaminant, the agency shall follow the procedures specified in Minnesota Statutes, section 115B.17. The project list must be revised annually. Funding for projects on the project list must remain in effect until the next project list is adopted or until the work for which the site was placed on the list is completed, whichever date is later.

7044.1000 HRS SCORING SYSTEM ADOPTED BY REFERENCE.

The agency shall rank sites utilizing the EPA's "Uncontrolled Hazardous Waste Ranking System" (commonly referred to as the HRS) published in the Federal Register, volume 47, pages 31219 to 31243 (July 16, 1982) with the following modifications:

A. Substitute the words "ground water" for the word "aquifer" wherever the word "aquifer" appears in the Hazard Ranking System.

B. Substitute Figure 8-3 from the Minnesota Hydrologic Guide, United States Department of Agriculture, Soil Conservation Service, St. Paul, Minnesota, circa 1976, for Figure 4 of the Hazard Ranking System.

C. Substitute Figure 1-1 from the Minnesota Hydrologic Guide for Figure 5 of the Hazard Ranking System.

D. Substitute Figure 1-2 from the Minnesota Hydrologic Guide for Figure 8 of the Hazard Ranking System.

7044.1100 REIMBURSEMENT FOR PAST RESPONSE ACTIONS.

Reimbursement claims, by a private person for expenditures made before July 1, 1983, to provide alternative water supplies deemed necessary by the agency and the Department of Health to protect the public health from contamination resulting from the release of a hazardous substance, must be filed with the agency within 12 months after the date parts 7044.0100 to 7044.1200 become effective. A reimbursement claim filed after the 12-month deadline is invalid. The agency shall consider reimbursement of only the reasonable expenses for the types of costs which would have been incurred by the agency. The agency shall determine the amount of ERLA funds to be allocated to reimbursement claims during the annual update.

7044.1200 PRESCREENING OF POTENTIAL HAZARDOUS WASTE SITES.

Prescreening of Potential Hazardous Waste Sites

Yes

No

Ground Water Route

1. If there is no observed release, is the containment score equal to zero?

2. Is the toxicity/persistence score equal to zero? _____

Surface Water Route

1. If there is no observed release, is the containment score equal to zero? _____

2. Is the toxicity/persistence score equal to zero? _____

Air Route

1. Does the observed release score equal zero? _____

2. Are the reactivity/incompatibility and toxicity scores equal to zero? _____

Fire and Explosion

1. Are the ignitability, reactivity, and incompatibility scores equal to zero? _____

Direct Contact

1. Are the observed incident, accessibility, containment, or toxicity scores equal to zero? _____

A site is not eligible for ERLA funding or inclusion on the permanent list of priorities, as defined in part 7044.0400, if one or more questions in each of the five routes is answered "yes."

ADOPTED RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 14.13-14.28 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. § 14.33 and upon the approval of the Revisor of Statutes as specified in § 14.36. Notice of approval by the Attorney General will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under § 14.18.

Department of Commerce

Adopted Amendments to Rules Relating to Workers' Compensation Competitive Rating

The rules proposed and published at *State Register*, Volume 8, Number 30, pages 1711-1715, January 23, 1984 (8 S.R. 1711) are adopted as proposed.

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

Department of Labor and Industry Prevailing Wage Division

Adopted Amendments to Rules Relating to the Establishment of Prevailing Wages

The rules proposed and published at *State Register*, Volume 8, Number 17, pages 724-730, October 24, 1983 (8 S.R. 724) are adopted with the following modifications:

8 MCAR § 1.8003 Prevailing wage determinations.

C. Information required for certification request. Minnesota Statutes, section 177.43, subdivision 4, provides that the prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay for all trades and occupations required in any contemplated project shall be ascertained before the state asks for bids. A request to establish prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay for all trades and occupations required in the contemplated project must be sent to the department and shall include the:

1. Popular or descriptive name of project;
2. Project number;
3. Exact location of project by county and city, village, or township;
4. Estimated costs of the total construction contracts to be awarded;
5. Anticipated date for soliciting or advertising for bids;
6. Anticipated date for awarding of contracts;
7. Proposed date for commencement of work on project;
8. Estimated date of completion of project;
9. General description of the type of facility and facilities which will constitute the completed contracts. For example, two-story brick and concrete building about 200 feet by 400 feet with concrete floor, wood roof deck on wood laminated beams, and includes plumbing, heating, and electrical work. Outside work includes excavating, blacktopping, grading, sidewalks, fencing, driveways, parking areas, and miscellaneous areas;
10. Desired date of receipt of prevailing wage rate schedule; and
11. Statement as to whether the federal government or any of its agencies will furnish by loan or grant any part of the funds used in this contract or prescribe a schedule of prevailing wage rates.

The department must be notified about ensuing projects as far in advance as possible. A request to determine or ascertain prevailing wage rates, prevailing hours of labor, and hourly basic rates of pay for all trades and occupations required on any contemplated project must be made ~~between 50 and~~ not less than 60 days before soliciting bids.

8 MCAR § 1.8006 Survey procedures.

B. Wage reports. The department shall regularly request from contractors, contractor organizations, labor organizations, and any other interested person, on forms available from or approved by the department, reports of construction wage rates paid by contractors on various types of projects. The reports must be kept on file by the department according to the county in which the project for which the report is received was performed. The reports must list the name and address of the contractor, the name of the project, the location of the project, a description of the project, a description of the work performed on the project, the approximate dollar cost of the project, the names of employees who worked on the project, together with the class of labor for each employee, the wage rate paid each employee on the project, and the hourly cost of fringe benefits for health and welfare, pension, vacation, ~~and~~ apprenticeship or training, and any other economic benefits paid for each employee. The forms shall be signed and dated by the organization or individual providing the information attesting that the information provided is true and correct.

E. Notification of survey. Upon initiation of a wage survey, the department must notify the county engineer and all city engineers, city clerks, administrators, and zoning officials in the county to be surveyed, ~~and all~~. The notice will request local officials to submit reports of construction in the county in the preceding 12 months. The report shall include the names of the contractors and their addresses. The department must also notify all contractors, contractor associations, labor organizations, and other individuals who have requested to be notified when a survey for any county is about to be taken. The That notice will request that interested individuals submit reports on forms available from or approved by the department concerning construction performed in the county during the preceding 12 months. The notice shall state that all reports of construction in the county must be returned to the department no later than 33 days following the date upon which the notice of the survey is

mailed by the department. Information not timely received by the department shall not be used in establishing the prevailing wage rate for any class of labor. ~~All reports of construction in a county which do not report the names of workers, classes of labor, wage rates and fringe benefits paid, description of the project, type of construction and location of the project must not be used in making wage determinations.~~ Any unsigned or incomplete forms received prior to the final date for receipt of the forms shall be returned to the individual, contractor, or labor organization, to the extent the individual, contractor, or labor organization can be identified, with a request that the form be properly completed. The department may use incomplete reports where the entity completing the form has provided all the information it has. If that form is not received by the department within 15 days from the date it is returned by mail to the individual, contractor, or labor organization, it shall be excluded from the survey. In no event shall information on unsigned reports of construction in the county be utilized in making wage determinations. All reports must be signed and dated by the organization or individual making the report attesting that the information provided is true and correct.

Pollution Control Agency

Adopted Rule APC 2, Definitions, Abbreviations, Applicability of Standards, Access to Premises, Variances, Circumvention, Severability, to be Retitled Definitions, Abbreviations, Applicability of Standards, Opacity Standard Adjustment, and Circumvention

The rule proposed and published at *State Register*, Volume 8, Number 16, pages 682-691, October 17, 1983 (8 S.R. 682) is adopted with the following modifications:

Rule as Adopted

6 MCAR § 4.0002 Definitions, abbreviations, applicability of standards, opacity standard adjustment, and circumvention.

D. Opacity standard adjustment.

1. Application for permit modification. An owner or operator of an emission facility may file an application for a permit modification under Minnesota rule APC 3 for adjustment of the opacity standard applicable to an emission source. In addition to the items required under Minnesota rule APC 3, the application must contain data that demonstrates that:

b. the total emission facility is in compliance with all applicable standards of performance except the opacity standard at the emission source for which adjustment is being sought ~~sources for which adjustments are being sought or have already been permitted by the agency;~~ and

3. Opacity adjustment determination and permit modification. The agency shall set an adjusted opacity standard at the most restrictive level which the performance tests conducted under 1.a. and c. demonstrate the emission source is capable of meeting and shall modify the permit to establish the adjusted opacity standard, if the requirements of 1. and 2. are met and the total emission facility, with the adjusted opacity standard, would meet any of the following:

c. contribute less than one $\mu\text{g}/\text{m}^3$ to an annual ambient particulate matter standard violation ~~or~~ and less than five $\mu\text{g}/\text{m}^3$ to a 24-hour ambient particulate matter standard violation.

E. Circumvention.

~~1. Concealment or dilution.~~ No owner or operator may install or use a device or means that conceals or dilutes emissions, which would otherwise violate a federal or state air pollution control rule, without reducing the total amount of pollutant emitted.

~~2. Dispersion techniques.~~ An owner or operator may only use dispersion techniques allowed under the Clean Air Act, United States Code, title 42, section 7423, as amended, and implemented in Code of Federal Regulations, title 40, part 52.21 40, parts 51.1 (ii) and 51.12 (j) (1) (1982) to calculate complications with the ambient air quality standards set out in 6 MCAR § 4.0001 or with the regulations regarding prevention of significant deterioration (PSD) set out in Code of Federal Regulations, title 40, part 52.21 (1982).

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

Pollution Control Agency

Adopted Rules Relating to Air Emission Facility Permits

The rules proposed and published at *State Register*, Volume 8, Number 25, pages 1419-1479, December 19, 1983 (8 S.R. 1419) are adopted as proposed.

Pollution Control Agency

Adopted Rules Relating to Hazardous Waste Facility Permits

The rules proposed and published at *State Register*, Volume 8, Number 25, pages 1419-1479, December 9, 1983 (8 S.R. 1419) are adopted with the following modifications:

Rules as Adopted

6 MCAR § 4.4203 Permit requirements.

B. Exclusions. A person who conducts any of the following activities is not required to obtain a hazardous waste facility permit for that activity:

7. The ownership or operation of a facility that is used to manage hazardous waste described in 6 MCAR § 4.9129 B.1. or 2. that is to be beneficially used, reused, recycled, or reclaimed, unless 6 MCAR § 4.9129 B.1.+j. provides otherwise.

6 MCAR § 4.4214 Part B information and special procedural requirements for thermal treatment facilities.

C. The applicant shall perform an analysis of each waste or mixture of waste to be treated by using the analytical techniques set forth in the Environmental Protection Agency document SW 846 as referenced in 6 MCAR § 4.9102, or by using techniques found by the director to be equivalent to them. The applicant shall submit all of the following information:

6. A description of the operating procedures proposed by the applicant, in sufficient detail to allow the director to determine whether the proposed thermal treatment unit will meet the performance and operating standards of 6 MCAR § 4.9321 D. and F., including:

a. expected carbon monoxide level, oxygen, and carbon dioxide levels in the stack exhaust gas;

6 MCAR § 4.4221 Hazardous waste thermal treatment facility permits.

C. Trial burn plan. An applicant shall submit to the director a trial burn plan with Part B of the permit application. The trial burn plan must include the following information:

1. the results of an analysis of each waste or mixture of wastes to be burned, that uses the analytical techniques set forth in ~~Test Methods for the Evaluation of Solid Waste, Physical/Chemical Methods, publication number SW 846, 1980, of the Office of Solid Waste, the United States Environmental Protection Agency document SW-846 as referenced in 6 MCAR § 4.9102~~ or that uses analytical techniques found by the director to be equivalent to them. This analysis must include:

F. Conduct of trial burn. The owner or operator shall conduct the trial burn in accordance with the trial burn plan approved by the agency. The owner or operator shall perform the following analyses or make the following determinations:

9. a continuous measurement of carbon monoxide, oxygen, and carbon dioxide in the exhaust gas; and

G: Submission of certification, results, and data. The owner or operator shall submit to the director a certification that the trial burn has been carried out in accordance with the approved trial burn plan and shall submit the results of all the analyses and determinations required by F. along with all underlying data of the results. The owner or operator shall make these submissions within 90 days after the completion of the trial burn, or later if approved by the director upon a finding by the director that good cause exists for granting a time extension.

6 MCAR § 4.4223 Terms and conditions of hazardous waste facility permits.

C. Additional condition for surface impoundments. Each draft and final hazardous waste facility permit issued by the agency for a surface impoundment must contain the following condition: The permittee shall not commence treatment, storage, or disposal of hazardous waste in a surface impoundment which has been repaired under 6 MCAR § 4.9317 F.4. until:

1. the permittee has submitted to the director by certified mail or hand delivery a letter signed by the permittee and by a registered professional engineer stating that the surface impoundment has been repaired in compliance with the conditions of the permit; and

2. the director has inspected the repaired surface impoundment and has provided the permittee with a letter stating that, based on information available to the director, the surface impoundment appears to have been repaired in compliance with the conditions of the permit.

6 MCAR § 4.4224 Modification of permits; revocation and reissuance of permits.

B. Additional justification for modification of permits or revocation and reissuance of permits. In addition to the justifications listed in 6 MCAR § 4.4017, the following constitute justification for the director to commence proceedings to modify a permit or to revoke and reissue a permit:

1. the director discovers that modification of a closure plan or post-closure plan is required by 6 MCAR § 4.9298 D. or 4.9300 C.;

12. to include conditions applicable to units at a facility that were not previously included in the facility's permit; ~~or~~

13. a land treatment unit is not achieving complete treatment of hazardous constituents under its current permit conditions; or

14. to change the operating requirements set in the permit to reflect the results of the trial burn.

D. Minor modifications of permits. In addition to the corrections or allowances listed in 6 MCAR § 4.4019 B. and C., if the permittee consents, the director may modify a permit to make the corrections or allowances listed below without following the procedures in 6 MCAR §§ ~~4.4010-4.4019~~ 4.4010-4.4013:

Pollution Control Agency

Adopted Rules Relating to Indirect Source Permits

The rules proposed and published at *State Register*, Volume 8, Number 25, pages 1419-1479, December 19, 1983 (8 S.R. 1419) are adopted with the following modifications:

Rules as Adopted

6 MCAR § 4.4320 Permit conditions.

A. Special conditions. An indirect source permit issued by the agency must contain conditions necessary for the permittee to achieve compliance with all applicable Minnesota or federal statutes or rules. These conditions may include, but are not limited to:

3. binding commitments by the owner or operator to construct, modify, or operate the indirect source ~~in a manner necessary~~ to achieve the traffic flow characteristics determined by the director to be appropriate necessary to prevent violations of carbon monoxide ambient air quality standards.

6 MCAR § 4.4321 Minor modification of permit.

In addition to the corrections or allowances listed in 6 MCAR § 4.4019 C., the director upon obtaining the consent of the permittee may modify an indirect source permit without following the procedures in 6 MCAR §§ ~~4.4010-4.4019~~ 4.4013 if the director determines that the modification would not result in an increase in carbon monoxide of greater than one part per million ~~or with respect to the eight-hour carbon monoxide standard, and that the modification would not result in an increase in carbon monoxide of greater than three parts per million with respect to the one-hour carbon monoxide standard, and that the modification would not result in a violation of the carbon monoxide standard established in 6 MCAR § 4.0001, and that the modification would not subject the permittee to the requirement to obtain a permit modification set forth in 6 MCAR § 4.4313.~~

Pollution Control Agency

Adopted Rules Relating to National Discharge Elimination System Permits

The rules proposed and published at *State Register*, Volume 8, Number 25, pages 1419-1479, December 19, 1983 (8 S.R. 1419) are adopted with the following modifications:

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

Rules as Adopted

6 MCAR § 4.4107 Effluent analysis by existing manufacturing, commercial, mining, and silvicultural dischargers.

C. Parameters. The applicant shall analyze for the following parameters:

5. The applicant shall analyze, using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin if:

a. the applicant uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP); 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon); 0,0-dimethyl 0-(2,4,5-trichlorophenyl) ~~phosphorothiate~~ phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

b. the applicant knows or has reason to believe that 2,3,7,8-tetrachlorodibenzo-p-dioxin is or may be present in an effluent.

6 MCAR § 4.4110 General conditions of National Pollutant Discharge Elimination System permits.

A. Conditions for all permits. National Pollutant Discharge Elimination System ~~permit~~ permits issued by the agency must contain the general conditions set forth in 6 MCAR § 4.4015 and the general conditions as follows:

Pollution Control Agency

Adopted Rules Relating to Permits

The rules proposed and published at *State Register*, Volume 8, Number 25, pages 1419-1479, December 19, 1983 (8 S.R. 1419) are adopted with the following modifications:

Rules as Adopted

6 MCAR § 4.4002 Scope of rules.

Except as otherwise specifically provided, 6 MCAR §§ 4.4001-4.4021 apply to the following:

I. An agency permit required for the construction, modification, reconstruction, or operation of an air emission facility except those activities permitted under APC 8. Rules 6 MCAR §§ 4.4010 D. and E. and 4.4011 do not apply to permits for construction, modification, or reconstruction of a facility with a potential controlled net increase of a single criteria pollutant of less than 100 tons per year or to permits for operation of a facility with an actual emission rate of a single criteria pollutant of less than 500 tons per year. Rule 6 MCAR § 4.4010 E.3. does not apply to permits for construction, modification, or reconstruction of a facility with a potential controlled net increase of a single criteria pollutant of 100 tons per year to 250 tons per year or to permits for operation of a facility with an actual emission rate of a single criteria pollutant of 500 tons per year to 5,000 tons per year. Rule 6 MCAR § 4.4004 A. applies to permits for air emission facilities, except that for a permit not subject to a Minnesota or federal public notice requirement, the time period referenced in that rule shall be 90 days.

6 MCAR § 4.4004 Application deadlines.

B. Modification or revocation and reissuance of existing permits. If a permit has been issued by the agency, the person holding the permit may file with the agency, at any time, a written application for modification of the permit or for revocation and reissuance of the permit; except that if the reason for the application is the adoption by a federal agency of a new or amended pollution standard, limitation, or effluent guideline the permittee shall file an application within the time for filing specified by the federal agency as a part of the notice of adoption published in the Federal Register.

6 MCAR § 4.4010 Preliminary determination and draft permit.

C. Fact sheet. The director shall prepare a fact sheet for each draft permit described in 6 MCAR § 4.4108 B. for each draft permit proposed to be issued under 6 MCAR §§ 4.4021 and 4.4217 A., and for each draft permit that the director finds is the subject of widespread public interest or involves issues of major importance to the agency or the public. The director shall send a copy of this fact sheet to the applicant and upon request to any other person. The fact sheet must set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The fact sheet must include, if applicable:

6 MCAR § 4.4013 Contested case hearing.

B. Public informational meeting. If the agency finds that the holding of a contested case hearing is not justified under A., the agency shall nevertheless hold a public informational meeting if the agency determines that a public informational meeting would help clarify or resolve issues regarding the terms of the draft permit.

6 MCAR § 4.4014 Final determination.

A. Agency action. Except as provided in B., the agency shall issue, reissue, revoke and reissue, or modify a permit if the agency determines that the proposed permittee or permittees will, with respect to the facility or activity to be permitted, comply or will undertake a schedule of compliance to achieve compliance with all applicable state and federal pollution control statutes and rules administered by the agency, and conditions of the permit and that all applicable requirements of Minnesota Statutes, chapter 116D and the rules promulgated under chapter 116D have been fulfilled.

B. Agency findings. The following findings by the agency constitute justification for the agency to refuse to issue a new or modified permit, to refuse permit reissuance, or to revoke a permit without reissuance:

1. that with respect to the facility or activity to be permitted, the proposed permittee or permittees will not comply with all applicable state and federal pollution control statutes and rules administered by the agency, or conditions of the permit;

2. that there exists at the facility to be permitted unresolved noncompliance with applicable state and federal pollution control statutes and rules or permit conditions administered by the agency, or conditions of the permit and that the permittee will not undertake a schedule of compliance to resolve the noncompliance;

6 MCAR § 4.4015 Terms and conditions of permits.

B. Special conditions. Each draft and final permit must contain conditions necessary for the permittee to achieve compliance with applicable Minnesota or federal statutes or rules. If applicable to the circumstances, the conditions must include:

2. Requirements for monitoring and testing and reporting of monitoring and testing results. Monitoring and testing requirements must specify the type, interval, and frequency of monitoring and testing activities that are sufficient to yield data representative of the pollutant or situation monitored or tested data to determine whether there is compliance with the terms and conditions of the permit or compliance with Minnesota and federal pollution control statutes and rules. As appropriate, the permit must contain requirements for the proper use, maintenance, and installation of monitoring and testing equipment and methods. The permit must require the permittee to keep accurate records of monitoring and testing activities and to submit to the director periodic reports of monitoring results required by the permit and, as requested by the director, the results of other monitoring and testing undertaken by the permittee that are related to compliance with the terms and conditions of the permit or compliance with Minnesota and federal pollution control statutes and rules. Reporting of monitoring results must contain the certification in 6 MCAR § 4.4007.

6 MCAR § 4.4017 Justification to commence modification of permit or revocation and reissuance of permit.

The following constitute justification for the director to commence proceedings to modify a permit or to revoke and reissue a permit:

C. the agency or the federal government promulgates a new or amended pollution standard, limitation, or effluent guideline that is applicable to the permitted facility or activity;

G. the director receives a request for transfer of the permit; and or

6 MCAR § 4.4019 Procedure for modification; revocation and reissuance; and revocation without reissuance of permits.

B. Modification solely as to ownership or control. Upon obtaining the consent of the permittee, the agency ~~may~~ shall consider a request to modify a permit as to the ownership or control of a permitted facility or activity without following the procedures in 6 MCAR §§ 4.4010-4.4013 if the agency finds that no other change in the permit is necessary and. If the permit is a permit described in 6 MCAR § 4.4002 A. or B., the agency shall also find that the agency has received a binding written agreement between the permittee and the proposed transferee containing a specific date for transfer of permit responsibilities and allocation of liabilities between the permittee and the proposed transferee. Within 60 days of receipt of a complete written application for modification as to ownership and control, the director shall place the matter on the agenda for consideration by the agency. The agency shall not unreasonably withhold or unreasonably delay approval of the proposed permit modification.

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.

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.

Office of the Secretary of State

Notice of Vacancies in Multi-Member State Agencies

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of the Secretary of State, 180 State Office Building, St. Paul, 55155-1299; (612)296-2805. Application deadline is May 8, 1984.

METROPOLITAN COUNCIL has 1 vacancy open immediately for a public member, (must be a resident of council district 8). The council coordinates planning and development of the 7 county Twin Cities metropolitan area; establishes a long range development plan containing regional plans for aging, the arts, aviation, health, housing, law and justice, parks and open space, solid waste, transportation, wastewater management and water resources; reviews the long range plans for local governments, and can require them to be consistent with the regional plans. Members are appointed by the Governor and confirmed by the Senate. Each council member shall reside in the council district he represents; members serve staggered four-year terms; must file with EPB. Meetings twice a month, Metro Square Bldg., St. Paul; members receive \$50 per diem plus expenses. For specific information contact the Metropolitan Council, 300 Metro Square Bldg., St. Paul 55101; (612) 291-6359.

ADVISORY COUNCIL ON WORKERS' COMPENSATION has 1 vacancy open immediately for an employer member. The council studies workers compensation law and its administration and recommends changes where appropriate. Members are appointed by the Commissioner of Labor and Industry. Monthly meetings, at Space Center. Members receive \$35 per diem plus expenses. For specific information contact the Advisory Council on Worker's Compensation, Space Center, 444 Lafayette Road, St. Paul 55101; (612) 296-6490.

TASK FORCE ON INSURANCE CONTINUING EDUCATION has 1 vacancy open immediately for a member employed with an insurance company but not licensed. The task force provides suggestions for rules relating to mandatory continuing education for insurance licensees. All members must be residents of Minnesota. Members are compensated for expenses. Members are appointed by the Commissioner of Commerce. For specific information contact the Task Force on Insurance Continuing Education, Dept. of Commerce, Barbara M. Kivisto, 500 Metro Square Bldg., St. Paul 55101; (612) 296-6319.

ADVISORY TASK FORCE FOR THE MENTALLY RETARDED AND PHYSICALLY HANDICAPPED has 17 vacancies open immediately for persons who are providers or consumers of service for the mentally retarded or developmentally disabled or who are interested citizens, or represent organizations with an interest in mental retardation and developmental disabilities or persons who have experience or expertise in this field, persons who are skilled in the legal advocacy for the mentally retarded or developmentally disabled. The task force shall advise the Commissioner of Public Welfare relative to those laws for which the commissioner is responsible to administer and enforce relating to mental retardation and developmental disabilities. Members are appointed by the Commissioner of Public Welfare and receive no compensation or per diem. For specific information contact the Advisory Task Force for the Mentally Retarded and Physically Handicapped, Julie Greenberg, Mental Health Bureau, 4th Floor, Centennial Bldg., St. Paul 55155; (612) 297-1239.

Department of Agriculture Planning Division

Outside Opinion Sought Regarding Proposed Rules Governing Licensing, Bonding and Auditing of Grain Buyers as Authorized by Minnesota Statute § 223, et al.

Notice is hereby given that the Minnesota Department of Agriculture is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing licensing, bonding and auditing of grain buyers. The promulgation of these rules is authorized by Minnesota Statutes, section 223.19, which permits the department to adopt and enforce such rules as are necessary to carry out the provisions of Minnesota Statutes sections 223.15-223.19.

The Department 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 of information and comment may be addressed to:

Mr. Gerald Heil
Minnesota Department of Agriculture
90 West Plato Boulevard
St. Paul, MN 55107

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-1486, and in person at the above address.

All statements of information and comment must be received by May 4, 1984. Any written material received by the Department shall become part of the hearing record.

April 9, 1984

Jim Nichols
Commissioner

Governor's Commission on Education for Economic Growth

Notice of Meetings

The Governor's Commission on Education for Economic Growth will meet on April 17, July 10, and September 18, 1984. Each meeting will be open for observation beginning at 12:30 p.m. and held in the Guest Dining Room at Gelco Corporation in Eden Prairie, Minnesota. The commissioner is co-chaired by Wendell R. Anderson and N. Bud Grossman.

The work of the commission will be accomplished by subcommittees as follows:

- 1) Public/Private Partnerships
- 2) Use of Resources and Management of Schools
- 3) Requirements for Effective Schooling of Students and Improved Service to the Underserved
- 4) Competency Testing, Certification, and Identification of Minimum Skills
- 5) Promotion of the Teaching Profession.

The groups will each develop a schedule of meetings and would be pleased to hear from interested parties who have information pertinent to their topic(s).

For more information related to the work of the commission or its subcommittees, please contact Rose Lundequam at 828-2637.

Department of Health

Outside Opinion Sought Concerning an Amendment to 7 MCAR § 1.601-1.630 to Permit Intermediate Care Emergency Medical Technicians to Administer Cardiac Drugs

Notice is hereby given that the Minnesota Department of Health is considering amending the rules governing Life Support Transportation Services (7 MCAR § 1.601-1.630) to permit Intermediate Care Emergency Medical Technicians to administer cardiac drugs as part of investigational studies of new emergency care therapeutic modalities.

The current rules and proposed amendments are authorized by Minn. Stat. (1982) § 144.804, subd. 3, requiring the Commissioner of Health to promulgate rules governing standards for life support transportation services. The proposed amendments would change the rules prohibiting variances to basic life support licensees for administering drugs. The amendments will establish the conditions under which variances will be permitted for administering cardiac drugs as part of investigational studies.

All interested or affected persons or groups may submit information on this subject. Written or oral information and comment should be addressed to:

Wayne R. Carlson
Emergency Medical Services Section
717 Delaware St. S.E.
P.O. Box 9441
Minneapolis, Minnesota 55440

OFFICIAL NOTICES

Department of Health Bureau of Community Services

Public Hearing Regarding Fiscal Year 1985 Minnesota State Plan of Program Operations and Administration for the Special Supplemental Food Program for Women, Infants, and Children (WIC)

Pursuant to the requirement of regulations issued by the United States Department of Agriculture under Section 3 of Public Law 95-627 which amends Section 17 of the Child Nutrition Act of 1966, the Minnesota Department of Health will sponsor a public meeting to enable the general public to participate in the development of the Fiscal Year 1985 Minnesota State Plan of Program Operations and Administration for the Special Supplemental Food Program for Women, Infants, and Children (WIC). Copies of the draft Plan will be available for public inspection on request.

The meeting will be held Friday, May 18, 1984 at the Minnesota Department of Health, 717 Delaware Street Southeast, Minneapolis, Minnesota. The meeting will begin at 1:00 pm in Room 100 and will conclude upon the presentation of all testimony. Persons wishing to attend and/or present testimony are requested to register in advance by May 16, 1984.

Any citizen or group may submit either written or oral testimony at the meeting. Testimony will be given on a first come, first served basis.

For further information, contact:

Minnesota Department of Health
WIC Program
717 Delaware Street S.E.
P.O. Box 9441
Minneapolis, MN 55440
(612) 623-5115

Minnesota State Retirement System

Regular Meeting, Board of Directors

A meeting of the Board of Directors, Minnesota State Retirement System, will be held on Thursday, April 19, 1984, at 8:30 A.M. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

Pollution Control Agency Division of Water Quality

Behind-Schedule and Substandard Projects Lists

Minnesota Statute Section 115.83 (1982) requires the Minnesota Pollution Control Agency (MPCA) to issue an order incorporating lists of principal consulting engineers, contracting engineers, and principal contractors, who are responsible for behind-schedule or substandard municipal wastewater treatment projects, for publication in the *State Register*. A behind-schedule project is one which, due to failures of design or workmanship or other factors within the reasonable control of the contractor or engineer, the MPCA determines is more than 90 days behind schedule. A substandard project is one which, due to failures of design or workmanship or other factors within the reasonable control of the contractor or engineer, the MPCA determines does not accomplish the purpose for which it was designed or constructed.

In accordance with the statute, the MPCA has issued an order incorporating the following lists for the publication in the *State Register*.

March 29, 1984

Sandra S. Gardebring
Executive Director

**BEHIND SCHEDULE PROJECTS
1983 FINAL LIST
March 27, 1984**

<u>Firm</u>	<u>Municipality</u>	<u>Nature of Deficiency Days Behind Schedule</u>	<u>Project Description</u>
1) Jones, Haugh & Smith, Inc.	Blooming Prairie	463	Facilities Plan
	Brownsdale	155	Facilities Plan
	Claremont	706	Plans & Specifications
	Conger	701	Facilities Plan
2) Widseth Smith Nolting & Associates, Inc.	Gonvick	874	Facilities Plan
	Williams	813	Facilities Plan

**SUBSTANDARD PROJECT
1983 FINAL LIST
March 27, 1984**

<u>Firm</u>	<u>Municipality</u>	<u>Nature of Deficiency Days Behind Schedule</u>	<u>Project Description</u>
		Entry withheld pending outcome of hearing	

Department of Transportation**Petition of the City of St. Paul for a Variance from State Aid Standards for Street Width**

Notice is hereby given that the City Council of the City of St. Paul made a written request to the Commissioner of Transportation for a variance from minimum street width standards for a resurfacing project on Lafayette Road (MSAS 113) from Ninth Street to Grove Street (0.07 mile).

The request is for a variance from 14 MCAR § 1.5032, G., i.e., Rules for State Aid Operations under Minnesota Statute, Chapters 161 and 162 (1978) as amended, so as to permit a street width of 59 feet with a 15-foot median instead of the required street width of 63 feet with a 14-foot median.

Any person may file a written objection to the variance request with the Commissioner of Transportation, Transportation Building, St. Paul, Minnesota 55155.

If a written objection is received within 20 days from the date of this notice in the *State Register*, the variance can be granted only after a contested case hearing has been held on the request.

April 9, 1984

Richard P. Braun
Commissioner of Transportation

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.

Commodities contracts with an estimated value of \$5,000 or more are listed under the Procurement Division, Department of Administration. All bids are open for 7-10 days before bidding deadline. For bid specifics, time lines, and other general information, contact the appropriate buyers by calling 296-2513. If the appropriate buyer is not available, contact Harvey Leach or Barbara Jolly at 296-3779.

Department of Administration Procurement Division

Commodities Contracts and Requisitions Currently Open for Bidding

Contract #	Item	Ordering Division	Delivery Point	Estimated Dollar Amount
04-251-22720	Caps, Tote bags, Aprons	Agriculture	St. Paul	Contact buyer
22-400-00448-9	Printed envelopes	Mn Tourism Office	St. Paul	Contact buyer
776107	1984 Big Game Hunting Regulations w/map	Natural Resources	St. Paul	Contact buyer
29-000-35550	Purchase of Memory Boards	St. Cloud State Univ.	St. Cloud	Contact buyer
26-137-02764	Contract	Loose Leaf Binder Mechanisms	MN Correctional Facility	25,000-30,000
776728	Mn State Park Naturally	Natural Resources	Oak Park Heights	Contact buyer
29-000-35666	1984-85/1985-86 College Catalog	Mesabi Comm. College	St. Paul	Contact buyer
776540	Repair of Trane Centrifugal Chiller	St. Cloud State Univ.	Virginia	Contact buyer
27-150-40727	Lease of Mailing Equipment	St. Cloud State Univ.	St. Cloud	Contact buyer
26-073-00000	77-000-08130	Mn Racing Comm.	St. Paul	Contact buyer
99-720-25614-15	Uniform Clothing	Mn Zoo Garden	Apple Valley	Contact buyer
77-000-08130	Aluminum Mini Blinds	MN Correctional Facility	Lino Lakes	Contact buyer
78-550-04418	43-000-05028	Iron Range Resources & Rehabilitation Board (IRRRB)	Reclamation IRRR B Mineland	Contact buyer
43-000-05028	Buttress Mine Wall			Contact buyer
78-630-05710	Supply & Install Irrigation System		Oak Park Heights	Contact buyer

Department of Commerce

Request for Proposals for Investment Management and/or Trustee and Custodial Services of the Minnesota Worker's Compensation Assigned Risk Plan Funds

The Department of Commerce intends to contract with organizations to make investments, receive and disburse payments, and act as custodian on behalf of the Minnesota Worker's Compensation Assigned Risk Plan. The contract period will be from June 1, 1984 through December 31, 1986. Interested parties should obtain the formal Request for Proposals from:

Rose M. Ortiz
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101
(612) 297-4017

Proposals must be submitted by May 11, 1984.

Department of Health Division of Services for Children with Handicaps

Availability of Contracts for Medical and Related Services for Handicapped Children

Openings exist for:

- 1) Board certified or approved physicians to provide medical examinations;
- 2) Certified audiologists to provide audiological examinations;
- 3) Registered public health or pediatric nurses to provide nursing services;
- 4) Certified speech pathologists to provide speech assessments;

Qualified, interested persons should contact Nancy Okinow, Services for Children With Handicaps, 717 Delaware Street SE, Minneapolis, Minnesota, 55440. Phone (612) 623-5168 by May 4, 1984.

Metropolitan Council

Request for Proposals (RFP) for Soil Borings and Testings for Environmental Impact Statement on Sludge Ash Landfill Site

The Metropolitan Council solicits a proposal for entering into a contract for the preparation of a report on the hydrogeology including soil borings and soil testing on the three candidate sludge ash landfill sites. Four copies of the proposal should be submitted to the Metropolitan Council, Suite 300, Seventh and Robert Sts. St. Paul, MN 55101. Attention: James Frost.

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 requirements, to investigate the qualifications and experiences of any proposer to reject any provision in any proposal, to obtain new proposals, or to proceed to do the work otherwise.

All proposals received on or before 4 p.m., May 4, 1984 will be considered by the Council. In the event a proposal is accepted, the Council will notify the successful proposer in writing within 14 days following its consideration of the proposal.

The Metropolitan Council hereby notifies all bidders that businesses owned and controlled by minorities or women will be afforded maximum feasible opportunity to submit bids and/or proposals and will not be subjected to discrimination on the basis of race, color, sex, age, religion, ancestry, handicap, public assistance status, marital status, national origin or political affiliation.

Copies of the RFP can be obtained by contacting James Frost (612) 291-6519.

Department of Natural Resources

Request for Proposals for Integration of Iron and/or Steel Production with Existing Taconite Operations

The Minnesota Department of Natural Resources is requesting proposals from individuals and organizations capable of assessing the possibilities for integration of iron and/or steel production with existing taconite operations. The work in this project will be aimed at exploring whether various direct reduction schemes can be integrated into existing taconite processing facilities. The goal is to find new products, which will make the existing facilities more competitive. These products could include:

STATE CONTRACTS

partially reduced pellets
metallized pellets
fluxed pellets
pig or granulated iron
semi-finished steel

The work will be divided into two phases. Phase I will consist of a preliminary exploration of the options, preliminary energy and material balances, preliminary estimates of the cost and value of plant modifications, estimates of the market size and the share of the market that could be obtained, and an assessment of whether further work is justified. It is expected that several options will be investigated as part of each Phase I award. Phase II will consist of more detailed examinations of promising options. It is expected that Phase II will result in data which can be used to decide whether or not to proceed to construction.

Respondents to this solicitation should be one of the following: a taconite mining company, an organization having a working agreement with one or more of the taconite mining companies, or one of the taconite plant owners. One of the goals of this study is to use actual plant data, such that the results will be immediately useful to the mining companies.

Each Phase I award will be limited to \$120,000. The Commissioner of the Department of Natural Resources will award contracts after internal review. The issuance of this Request for Proposals does not require the department to award a contract. All proposals must be received no later than 4:30 P.M. on May 15, 1984.

All proposals and inquiries should be directed to:

Ronald D. Visness
Minnesota Department of Natural Resources
Box 45 Centennial Office Bldg.
St. Paul, MN 55155
(612) 296-9562

Department of Public Welfare Faribault State Hospital

Request for Proposals for Medical Services to be Performed on a Contractual Basis

Notice is hereby given that Faribault State Hospital, Mental Health Division Department of Public Welfare, is seeking the following services for the period of July 1, 1984-June 30, 1985; these services as requested by the Chief Executive Officer of the Faribault State Hospital.

1. A radiological consultant group to provide services at the Faribault State Hospital upon the request of the Medical Director, at times mutually agreed upon by both parties. The duties shall involve radiological consultations for residents/patients of Faribault State Hospital, which consists of interpretation and diagnosis of x-ray films of chest, skull, skeleton, abdomen, gall bladder, kidneys, etc., performance of fluoroscopic examination of chest, stomach, intestines, colon, etc., as requested by staff physicians. In addition, supervision of the X-Ray Department in regard to equipment, methodology, safety, etc., will be included in this consultation service. The estimated amount of this contract will not exceed \$13,000.00.

2. The services of a physician or physician group to provide weekend coverage at Faribault State Hospital upon request of the Medical Director, by making rounds in the Medical Hospital and taking all emergency calls, the preceding service to be performed at the Faribault State Hospital. The estimated amount of this contract will not exceed \$16,500.00.

Response for the above services must be received by May 7, 1984. Direct inquiries to:

Richard Fick, Accounting Supervisor
Faribault State Hospital
Faribault, Minnesota 55021
(507) 332-3530

Department of Public Welfare Social Services Division

Request for Proposals (RFP) for Local Programs to Improve the Provision of Guardian *Ad Litem* Representation for Juveniles in Proceedings

The Social Services Division of the Department of Public Welfare is soliciting proposals for the development of local programs to improve the provision of guardian *ad litem* representation for juveniles in certain legal proceedings, as prescribed in Minnesota Statutes 260.155. A total of \$19,000 Federal Child Abuse and Neglect funds will be available on a competitive basis for the funding of these proposals.

These grant awards will be targeted for model programs which will improve the quality of guardian *ad litem* (GAL) representation through innovative service provision systems, improved expertise of those representing children, and a systematic approach to GAL representation. Programs funded will serve as models for communities wishing to implement similar improvements. Priority will be given to applications which are submitted directly by, or accompanied by written endorsement of local court services or judiciary.

All requests for further information or copies of the complete RFP should be addressed to Fern Sepler-King at 612/297-3634. Six copies of the proposals must be at Family and Children's Services Section, Division of Social Services, 4th Floor, Centennial Office Building, 658 Cedar, St. Paul, MN 55155, no later than 4:00 PM on May 7, 1984.

State Board of Vocational-Technical Education; and Department of Economic Security, Governor's Job Training Office

Request For Proposals For JTPA—Education Coordination Services For Special Needs Groups

The State Board of Vocational-Technical Education and the Governor's Job Training Office are seeking proposals to provide job training services to individuals having identified special needs. These individuals could include handicapped youth and/or adults, women, recovering chemically dependents, minority youth and/or adults, displaced homemakers, veterans and older workers (age 55 and over). All proposals should have been jointly developed by JTPA service delivery areas and local education agencies. The training services, which will be provided under contract, are outlined in the Request For Proposals (RFP). In addition, bidder's conferences will be held on May 2, 10, 11 and 15 as a part of the grant writing workshop sponsored by the Governor's Job Training Office. The purpose of these meetings will be to provide training in grant writing, to discuss the RFP process and to answer any questions. For further information on these meetings, contact Steve Frantz, (612/296-3597) or Kay Tracy (612/296-6064). The formal RFP should be requested from:

Art Vadnais
State Board of Vocational-Technical Education
552 Capitol Square Building
550 Cedar Street
St. Paul, Minnesota 55101
(612) 296-3753

A total of \$434,856 is available statewide for funding of these proposals. Proposals must be received by Art Vadnais at the above address by 4:30 on Friday, June 15, 1984.

SUPREME COURT

Decisions of the Court of Appeals Filed Wednesday, April 4, 1984

Compiled by Wayne O. Tschimperle, Clerk

C1-83-1270 Ali Mehralian, Appellant, v. State of Minnesota Hennepin County.

Denial of appellant's second motion for a continuance did not violate appellant's Sixth Amendment right to call witnesses on his behalf after appellant had already been granted one continuance and had seven months to prepare for trial.

Mere allegations of prosecutorial misconduct not supported by evidence in the record are insufficient to warrant reversal. The prosecutor's questions of appellant did not shift the state's burden of proof.

Affirmed. Popovich, C.J.

C5-83-1756 Harry A. Swicker, et al., v. Charles A. Ryan, Louis Yotter, Kermit Dicke, Appellant, Goodhue County.

Dismissed. Popovich, C.J.

CX-83-1302 Sherry L. Meyer, Appellant, v. Gregory A. Meyer, Winona County.

A request by a custodial parent to remove a child to another state is presumed to be in the best interests of the child. Permission to remove must be granted unless the non-custodial parent establishes by a preponderance of the evidence that the move is not in the best interests of the children.

Reversed and remanded. Foley, J.

C2-83-1374 State of Minnesota v. Charles Michael Suter, Appellant, Clearwater County.

Absent evidence of an accidental discharge from a gun, the killing of an antlerless deer without a proper permit subjects one to criminal liability.

Affirmed. Foley, J.

Dissenting, Wozniak, J.

C6-83-1832 Norwest Bank (N.A.)—Duluth, etc, Appellant, v. The Goodyear Tire & Rubber Company. St. Louis County.

Norwest Bank paid taxes that were not due and payable until 1983 although the Transportation Department had acquired the property in 1982. The bank cannot seek reimbursement from the lessee of the property for taxes paid, but not owed.

Affirmed. Wozniak, J.

C0-83-1843 State of Minnesota v. Anthony Allan Schnorr, Appellant, St. Louis County.

A search warrant, authorizing a search of defendant and premises described as 1218 North *First* Avenue East, provides a sufficiently particular description of the place to be searched where there is no 1218 First Avenue, and the executing officer found defendant at 1218 North *Second* Avenue East, only 1/5 block away.

Affirmed. Wozniak, J.

C0-83-1261 Mary E. Deliduka v. George E. Deliduka, Appellant, Wright County.

Military pensions are marital property as defined by Minn. Stat. § 518.54.

The Uniform Services Former Spouses' Protection Act grants states authority to treat all disposable retired pay as marital property, but limits direct government payments to former spouses to 50 percent of disposable retired pay.

The trial court properly refused to consider tax considerations not raised at trial in calculating the husband's net income available for maintenance and child support.

The trial court's award of minimal temporary maintenance was not an abuse of discretion considering the wife's earning potential and her share of the marital property.

The trial court's assignment of attorney fees was not an abuse of discretion.

Affirmed as modified. Sedgwick, J.

C7-83-1497 In Re the Marriage of: Sue Ann Clark, now known as Sue Ann Causey, Petitioner, v. Charles Lawrence Clark, Appellant. Olmsted County.

The trial court erred in reducing visitation privileges of a father by failing to make specific findings, pursuant to Minn. Stat. 518.175, subd. 5, that the child's health or emotional development required a restriction of visitation.

The trial court erred in ordering appellant to pay full airline transportation costs for half the trips the child made each year for visits, when respondent can provide airline passes, at little or no cost, but simply elected not to.

The trial court did not abuse its discretion in denying attorney fees to either party when there was no evidence of bad faith. Affirmed in part, reversed in part, and remanded. Sedgwick, J.

C2-83-1732 S. H. Braaten, et al., v. Roy I. Jarvi, et al, Appellant, Douglas County.

An agreement signed by the developers of a subdivision, respondents' and appellants' predecessors in title, which runs with the land and which grants respondents certain uses of appellants' lot and restricts appellants from making other uses of this lot, creates an easement appurtenant in behalf of respondents and restrictive covenants enforceable against appellants.

Minn. Stat. § 500.20 subd. 2 (1980, repealed 1982 c.500 s.5), does not void an agreement creating an easement and restrictive covenants where the agreement provides for automatic renewal prior to the expiration of the 30-year period covered in Minn. Stat. § 500.20, subd. 2 (1980).

Affirmed in part, reversed in part and remanded. Sedgwick, J.

C6-83-1510 State of Minnesota v. Sandra Jean Wallner, Appellant. Dakota County.

The trial court did not err in computing defendant's criminal history score by including five previous felony convictions that were in the process of appeal, and the trial court did not abuse its discretion by refusing to depart from the sentencing guidelines and by imposing sentence prior to the determination of the separate appeal.

Affirmed. Lansing, J.

C5-83-1580 Hibbing Education Association, Relator, v. Public Employment Relations Board Public Employment Relations Board.

The Public Employment Relations Board proceeded on an erroneous theory of law by not considering the actual job functions of the Hibbing School District's Title I paraprofessionals when it determined that the paraprofessionals were not "teachers" under Minn. Stat. § 179.63 subd. 17 (1982), and assigned them to a separate bargaining unit.

Reversed and remanded. Lansing, J.

Decisions of the Supreme Court Filed Friday, April 6, 1984

Compiled by Wayne O. Tschimperle, Clerk

C7-82-503, C9-82-650, CX-82-1449 State of Minnesota v. David Gutberlet, Appellant. Hennepin County. Kandiyohi County.

Defendant was fairly tried on charges arising from a series of robberies and was properly convicted of those charges.

Affirmed. Amdahl, C.J.

C5-82-631 State of Minnesota Appellant, v. Sandra Jean Wallner. Ramsey County.

Under Minnesota Sentencing Guidelines and Commentary, II.B.1. and B.101. (1980), trial court was not required to use so-called *Hernandez* method of computing the criminal history score of a defendant sentenced on one day for multiple convictions; since sentence imposed by trial court was within the range of permissible sentences then available to the court, the sentence was not a departure.

Affirmed. Amdahl, C.J.

C5-82-1326 State of Minnesota v. Stanley Ebert, Appellant. Crow Wing County.

Defendant received a fair trial and was properly found guilty of second-degree intentional murder.

Affirmed. Amdahl, C.J.

C6-82-1576 State of Minnesota v. John Michael LaForge, Appellant, Beltrami County.

Defendant who objected to one phrase of a particular jury instruction in a motion for judgment n.o.v. is not precluded from raising on appeal the issue of the constitutionality of another phrase in the same instruction.

Jury instruction that read "you may then find * * * a prima facie case of intent to violate the law * * * created the potential that a reasonable juror could have interpreted the instruction as a mandatory presumption of intent once basic facts were proven where judge did not define "prima facie" and did not state that the presumption need not be rebutted.

Phrase "unless you find evidence tending to show lack of such intention" may have impermissibly shifted burden of proof to the accused to prove lack of intent and was a denial of due process which cannot be deemed "harmless error."

Reversed. Amdahl, C.J.

SUPREME COURT

C9-82-1586 State of Minnesota v. Timothy McDonald, Appellant. Dakota County.

Although defendant, as a member of the general public, had consent to enter the public area of a drugstore during business hours, he did not have consent to enter areas that were not open to the public. Since he entered a nonpublic area of the store with intent to commit a crime therein, namely, the crime of theft of drugs from a locked area containing controlled substances, he was properly convicted of burglary.

Photographic identification procedures used by police did not create a "very substantial likelihood of irreparable misidentification" and therefore trial court properly denied defendant's motion to suppress eyewitness identification testimony.

Affirmed. Scott, J.

C9-83-593 Lynne E. Cybyske, Appellant, v. Independent School District No. 196, Rosemount-Apple Valley, Minnesota, et al., Dakota County.

A person who is not hired for a teaching position because of the pro-teacher views of her husband, a member of a neighboring school board, does not have a claim for marital status discrimination under the Minnesota Human Rights Act. She has, however, made a showing of a cause of action under 42 U.S.C. § 1983 for deprivation of her constitutional right of freedom of association sufficient to defeat a summary judgement motion.

The trial court did not err in disallowing plaintiff's motion to amend her complaint.

Affirmed in part and reversed in part. Simonett, J.

Dissenting in part and concurring in part, Wahl, J. and Yetka, J.

C5-82-1066 Richard E. Croatt and Violet M. Croatt, Appellants, v. Shaw-Lundquist Associates, Inc. and Sholom Homes, Inc, et al., v. Vickerman Construction Company, Third-Party Defendant, Hennepin County.

Affirmed. Per Curiam.

Coyne, J. took no part.

STATE OF MINNESOTA
State Register and Public Documents Division
117 University Avenue
St. Paul, Minnesota 55155
297-3000

ORDER FORM

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

- _____ Annual subscription \$130.00
- _____ Trial subscription (13 weeks) \$40.00
- _____ Single copies \$3.25 each

Minnesota Guidebook to State Agency Services 1982-83 A 750-page reference guide to services provided by Minnesota agencies.

- _____ Single copy now \$4.50 + \$.27 sales tax = \$4.77* each

Minnesota Statutes Supplement—1983. Pocket inserts for Minnesota Statutes 1982 10-volume set. \$23.00 + \$1.38 sales tax = \$24.38. No handling charge.

Session Laws of Minnesota—1983. Two volumes. Laws enacted during the 1982 legislative session. Inquire about back volumes. \$34 + \$2.04 (sales tax) = \$36.04.* No handling charge.

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

- _____ **State Register Binder** \$6.50 + \$.39 (sales tax) = \$6.89* each

State Register Index. Contains cumulative findings aids to Volume 7 of the *State Register*, including MCAR Amendments and Additions, Executive Orders List, Executive Orders Index, Agency Index, Subject Matter Index.

- _____ Single copy \$5.00

Worker's Compensation Decisions. Volume 36. Selected landmark decisions of the Worker's Compensation Court of Appeals. Available by annual subscription, with quarterly update service.

- _____ Annual subscription \$80.00

Minnesota Outdoors Catalog—1983. Complete listing of material on the Minnesota outdoor activities. Bikeways, canoeing, county, lake and other maps. Books, charts, rules, laws, posters and more.

- _____ FREE COPY

*To avoid Minnesota sales tax, please include your Certificate of Exempt Status issued by the Minnesota Department of Revenue. Please enclose full amount for items ordered. Make check or money order payable to "State of Minnesota." All orders must be paid in advance, either in person, by mail, or by phone. To order by phone, call 297-3000. Phone orders are taken only with a Mastercard or Visa charge number.

EACH ORDER MUST INCLUDE ADDITIONAL \$1.50 FOR POSTAGE AND HANDLING.

Name _____
Attention of: _____
Street _____
City _____ State _____ Zip _____
Telephone _____

FOR LEGISLATIVE NEWS

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

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

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

Session Monthly—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
and office