

81 July 20

# STATE REGISTER

STATE OF MINNESOTA

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**VOLUME 6, NUMBER 3**

**July 20, 1981**

**Pages 65-96**



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**Printing Schedule for Agencies**

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
<b>SCHEDULE FOR VOLUME 6</b>			
4	Monday July 13	Monday July 20	Monday July 27
5	Monday July 20	Monday July 27	Monday Aug 3
6	Monday July 27	Monday Aug 3	Monday Aug 10
7	Monday Aug 3	Monday Aug 10	Monday Aug 17

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

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

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

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

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# CONTENTS

## MCAR AMENDMENTS AND ADDITIONS

Inclusive listing for Issues 1-3. . . . . 68

## PROPOSED RULES

### Minnesota Housing Finance Agency

Income Limits for Limited Unit Developments and Eligibility for Home Ownership Assistance Fund [proposed temporary rules and request for public comment] . . . . . 69

### Office of the Secretary of State

Electronic or Automatic Data Processing System of Maintaining Duplicate Voter Registration Records [proposed temporary rule and request for public comment] . . . . . 71

## TAX COURT

### State of Minnesota, Tax Court

James R. and Naomi Davey, Appellants, v. The Commissioner of Taxation, Appellee. In the Matter of an Appeal from the Commissioner's Order dated 8/23/76 Relating to Income Tax Liability of Appellants for the (Calendar) (Fiscal) Years Ended 12/31/68 and 12/31/69. Account Numbers 4312592-1968, 4445386-1969. Docket No. 2656. Order Dated June 25, 1981 . . . . . 73

State of Minnesota Tax Court. Hennepin County, Regular Division. MSA Services Corporation, Appellant, v. The Commissioner of Revenue, Appellee. Appeal from the Commissioner's Order dated April 13, 1978 Relating to Application by the Corporation for Certificate of Exempt Status under Minnesota Sales and Use Tax Law. Docket No. 2656. Order Dated June 26, 1981 . . . . . 74

## SUPREME COURT

### Decisions Filed Friday, July 10, 1981

51129/Sp. First Construction Company, a Minnesota corporation, Metro Office Parks Company, a Minnesota limited partnership, and John R. Neumeier, an individual, Appellants, v. Tri-South Mortgage Investors, a Massachusetts voluntary association (known as a business trust). Hennepin County . . . . . 79

51648/Sp. Northwestern National Bank of Minneapolis, Appellant, v. Joseph M. Shuster. Scott County . . . . . 79

51540/Sp. Steven Wade Feick, a minor child by Robert E. Feick, his father and natural guardian,

v. State Farm Mutual Automobile Insurance Company, Appellant. Hennepin County . . . . . 80

51472/Sp. Kimberly Anne Ulmer v. Jack O'Malley, Jr., Appellant, Blue Earth County . . . . . 80

51563/Sp. State of Minnesota v. Larry K. Bowser, Appellant. Hennepin County . . . . . 80

## STATE CONTRACTS

### Administration Department

#### Real Estate Management Division

Office Space Wanted . . . . . 80

### Minnesota Waste Management Board

Request for Submission of Qualifications for Subsurface Exploration . . . . . 80

### Transportation Department

#### Operations Division

Supportive Services Contract . . . . . 81

## OFFICIAL NOTICES

### State Board of Education

#### (State Board for Vocational Education)

#### Department of Education

##### Vocational-Technical Division

Outside Opinion Sought on Proposed Rules Governing Granting of Accredited Status and Withdrawal of Accredited Status . . . . . 82

### Education Department

#### Vocational-Technical Education Division

Outside Opinion Sought on Rules Governing Criteria for Adult Program Funding. . . . . 82

### Board of Nursing

Outside Opinion Sought on Amendment of Rules Pertaining to Continuing Education for Registered Nurses . . . . . 83

### Minnesota Pollution Control Agency

Recommendation by the Director to Certify Proposed Solid Waste Disposal Sites in Dakota, Ramsey, Scott and Washington Counties as Intrinsically Suitable . . . . . 83

### Public Utilities Commission

Outside Opinion Sought on Cogeneration and Small Power Production Rules. . . . . 88

Errata . . . . . 89

**NOTICE**

**How to Follow State Agency Rulemaking Action in the *State Register***

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

**The PROPOSED RULES section contains:**

- Calendar of Public Hearings on Proposed Rules.
- Proposed new rules (including Notice of Hearing and/or Notice of Intent to Adopt Rules without A Hearing).
- Proposed amendments to rules already in existence in the Minnesota Code of Agency Rules (MCAR).
- Proposed temporary rules.

**The ADOPTED RULES section contains:**

- Notice of adoption of new rules and rule amendments (those which were adopted without change from the proposed version previously published).
- Adopted amendments to new rules or rule amendments (changes made since the proposed version was published).
- Notice of adoption of temporary rules.
- Adopted amendments to temporary rules (changes made since the proposed version was published).

All ADOPTED RULES and ADOPTED AMENDMENTS TO EXISTING RULES published in the *State Register* will be published in the Minnesota Code of Agency Rules (MCAR). Proposed and adopted TEMPORARY RULES appear in the *State Register* but are not published in the MCAR due to the short-term nature of their legal effectiveness.

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

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

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

# MCAR AMENDMENTS AND ADDITIONS

**TITLE 1 CONSTITUTIONAL OFFICES**

**Part 2 Secretary of State**

1 MCAR § 2.001 (proposed temporary) ..... 71

**TITLE 4 COMMERCE**

**Part 3 Public Service Department**

4 MCAR § 3.0600 (proposed) ..... 37

**TITLE 6 ENVIRONMENT**

**Part 8 Waste Management Board**

6 MCAR §§ 8.001, 8.002, 8.005, 8.009, 8.010, 8.011, 8.014 (adopted) ..... 49

**TITLE 7 HEALTH**

**Part 6 Nursing Home Administrators Board**

7 MCAR §§ 6.010, 6.013 (adopted) ..... 21  
NH 22-23 (proposed repeal withdrawn) ..... 21

**TITLE 8 LABOR**

**Part 4 Economic Security Department**

8 MCAR § 4.0012 (proposed) ..... 5

**TITLE 12 SOCIAL SERVICE**

**Part 2 Public Welfare Department**

12 MCAR § 2.079 (proposed) ..... 13

**Part 3 Housing Finance Agency**

12 MCAR §§ 3.002, 3.133 (proposed temporary) ..... 69

**TITLE 14 TRANSPORTATION**

**Part 1 Transportation Department**

14 MCAR § 1.5050 (withdrawn) ..... 38

# PROPOSED RULES

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

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

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

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

## Minnesota Housing Finance Agency

### Proposed Temporary Rules Governing Income Limits for Limited Unit Developments and Eligibility for Home Ownership Assistance Fund.

#### Request for Public Comment.

Notice is hereby given that the Minnesota Housing Finance Agency has proposed the following temporary rules for the purpose of setting income limits for the Limited Unit Developments and to establish eligibility for the Home Ownership Assistance Fund, pursuant to Laws 1981, Chapter 306, Section 3.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rule for 20 days immediately following publication of this material in the *State Register* by writing to Monte Aaker, Research Coordinator, Minnesota Housing Finance Agency, Suite 200—Nalpak Building, 333 Sibley Street, St. Paul, Minnesota 55101. The temporary rule may be revised on the basis of comments received. Any written material received shall become part of the record in the final adoption of the temporary rule.

June 26, 1981

James J. Solem, Executive Director

#### Temporary Rules as Proposed

12 MCAR § 3.002 O.1. with respect to limited-unit mortgage loans pursuant to Chapter Four of these rules, development cost loans pursuant to Chapter Three of these rules, planning grants pursuant to Chapter Five of these rules, and American Indian housing loans pursuant to Chapter Eight of these rules, which loans and grants are intended for a limited-unit development, or a dwelling unit in a planned unit development or a condominium, those persons and families whose adjusted income does not exceed \$19,000 in the metropolitan area as defined in Minn. Stat. § 473.121, subd. 2 and \$17,500 in the remainder of the state the amounts set forth in exhibit 1 below or such lower amount as shall be required to assure that the interest on obligations of the agency will be exempt from federal income taxation:

<u>Mortgage Interest Rate</u>	<u>Exhibit 1</u>	<u>Region 11</u>
	<u>Regions 1-10</u>	<u>Maximum Adjusted Income</u>
	<u>Maximum Adjusted Income</u>	
<u>0-10.59%</u>	<u>\$19,000</u>	<u>\$24,000</u>
<u>10.60-11.00%</u>	<u>\$20,000</u>	<u>\$25,000</u>
<u>11.10-11.50%</u>	<u>\$21,000</u>	<u>\$26,000</u>
<u>11.60-12.00%</u>	<u>\$22,000</u>	<u>\$27,000</u>

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

12 MCAR § 3.133 Homeownership assistance fund—monthly assistance. The agency may provide eligible recipients with interest-free monthly assistance loans in the form of monthly payments of a portion of the principal and interest installment due on the limited-unit development mortgage on qualifying property. Such payments shall not exceed ~~\$75~~ \$100 per month and shall decrease by ~~\$5~~ \$10 per month (or ~~\$60~~ \$120 per year) each year. The maximum amount of monthly assistance to which a recipient is originally entitled shall be determined by the agency from time to time on the basis of the percentage of income which may reasonably be spent on mortgage payments, the interest rate charged for limited-unit development mortgage loans, and general housing and construction costs in the State of Minnesota, provided however, that the initial maximum monthly assistance which the agency shall determine to be available shall not exceed the following amounts for persons and families within the following annual adjusted income ranges as set forth in exhibit I below for various potential interest rates to be charged by the agency on its limited-unit development mortgage loans:

Annual Adjusted Income Between	Initial Maximum Monthly Assistance
<del>11,500</del>	75
<del>10,000-12,000</del>	65
<del>10,500-12,500</del>	55
<del>11,000-13,000</del>	45
<del>11,500-13,500</del>	35
<del>12,000-14,000</del>	25
<del>12,500-16,000</del>	15

### Exhibit 1 Region 11 Initial Maximum Monthly Assistance

#### Mortgage Interest Rate

	\$100	\$80	\$60	\$40	\$20
0.59% Adjusted Income	\$0-\$15,000	\$15,001-\$16,000	\$16,001-\$17,000	\$17,001-\$18,000	\$18,001-\$19,000
0.60-1.00% Adjusted Income	\$0-\$16,000	\$16,001-\$17,000	\$17,001-\$18,000	\$18,001-\$19,000	\$19,001-\$20,000
1.10-1.50% Adjusted Income	\$0-\$17,000	\$17,001-\$18,000	\$18,001-\$19,000	\$19,001-\$20,000	\$20,001-\$21,000
1.60-2.00% Adjusted Income	\$0-\$18,000	\$18,001-\$19,000	\$19,001-\$20,000	\$20,001-\$21,000	\$21,001-\$22,000

### Regions 1-10 Initial Maximum Monthly Assistance

#### Mortgage Interest Rate

	\$100	\$80	\$60	\$40	\$20
0.59% Adjusted Income	\$0-\$10,000	\$10,001-\$11,000	\$11,001-\$12,000	\$12,001-\$13,000	\$13,001-\$14,000
0.60-1.00% Adjusted Income	\$0-\$11,000	\$11,001-\$12,000	\$12,001-\$13,000	\$13,001-\$14,000	\$14,001-\$15,000
1.10-1.50% Adjusted Income	\$0-\$12,000	\$12,001-\$13,000	\$13,001-\$14,000	\$14,001-\$15,000	\$15,001-\$16,000
1.60-2.00% Adjusted Income	\$0-\$13,000	\$13,001-\$14,000	\$14,001-\$15,000	\$15,001-\$16,000	\$16,001-\$17,000

## Office of the Secretary of State

### Proposed Temporary Rule Governing Electronic or Automatic Data Processing System of Maintaining Duplicate Voter Registration Records

#### Request for Public Comment

Notice is hereby given that the Office of the Secretary of State has proposed the following temporary rule pursuant to Laws of 1981, ch. 92.

All interested persons are afforded the opportunity to submit their comments on the proposed rule for 20 days immediately following publication of this material in the *State Register* by writing to Election Division, Office of the Secretary of State, 180 State Office Building, Saint Paul, Minnesota 55155. The temporary rule may be revised on the basis of comments received. Any written material received shall become part of the record in the final adoption of the temporary rule.

July 20, 1981.

Joan Anderson Growe  
Secretary of State

#### Temporary Rule as Proposed (all new material)

1 MCAR § 2.001 (Temporary) Electronic or automatic data processing system of maintaining duplicate voter registration records.

A. Notification. The auditor of the county or clerk of a city electing to use an electronic or automatic data processing system in place of duplicate voter registration cards shall notify the Secretary of State of that election no later than 90 days before the first election at which the system will be used.

Notification may be made simultaneously with a request for approval, pursuant to 1 MCAR § 2.1001, of an electronic or automatic data processing system for maintaining voter registration records, but no system shall be used in place of duplicate voter registration cards unless the system has been approved for maintenance of voter registration records.

The notification shall be in writing and shall include:

1. A sample of no less than three pages of the form of the duplicate registration file to be used at the polling place;
2. A sample of no less than three pages of the duplicate registration list to be made available for examination or purchase;
3. A plan to be implemented for obtaining day and month of birth for previously registered voters;
4. A copy of an agreement providing for back-up records and emergency service; and
5. A certification that the system conforms to all requirements of Laws of 1981, ch. 92, and this rule.

The county auditor or city clerk shall file amendments with the Secretary of State whenever alterations to the original notification are made.

B. Back-up records and emergency service. A county or city using an electronic or automatic data processing system in place of duplicate voter registration cards shall execute an agreement with an agency having compatible equipment to provide back-up and emergency service. Prior to each election, the county or city shall deposit a duplicate program and all necessary data records with the emergency service agency. No election jurisdiction may serve as an emergency service agency if that service would prevent the jurisdiction from fulfilling its own election responsibilities.

C. Voting records. When a county or city elects to use an electronic or automatic data processing system in place of duplicate voter registration cards, information required to be kept on duplicate cards shall be retrievable from the equipment. The address of previous registration may be deleted from the duplicate file after proper notification of registration has been made to the county or city of previous registration. Each voter's voting history for all elections in the previous four years shall be retrievable and shall indicate whether the voter voted in person or by absentee ballot.

D. Duplicate registration file. The duplicate registration file to be used on election day in the polling place shall be in the form of a precinct election list. The list shall be arranged alphabetically by voter's last name or in order of street address. Whichever arrangement is used shall be used consistently in all the precincts of the political subdivision.

**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

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Conspicuously at the top of each page of the precinct election list shall be printed precinct identifying information and the words:

### \* OATH

I certify that I am at least 18 years of age, and a citizen of the United States; that I reside at the address shown and have resided in Minnesota for 20 days immediately preceding this election; that I am not under guardianship of the person, have not been adjudicated insane, or been convicted of a felony without having my civil rights restored; and that I am registered and will be voting only in this precinct.

The precinct election list shall contain the following information for each registered voter:

1. Registrant's name as it appears on the original registration card;
2. Registrant's address;
3. Month and day of registrant's birth;
4. Notations about challenges, notices of guardianship, or other special information required to be affixed to the original or duplicate voter registration card.

Directly underneath or next to the voter's name shall be printed \* OATH and a line indicating the place for the voter to sign the list. Sufficient space shall be provided so that the voter's signature will not obscure any voter's name. In no case shall the space be smaller than 1/2 by 3-1/2 inches.

If any computer identification numbers or other information not required by this rule is printed on the precinct election list, it shall not obscure required information or be printed in a manner to cause confusion for voters or election judges.

A separate precinct list in the same format shall be prepared for use by voters who register on election day. The newly registered voter shall print on the list the voter's name, address, and month and day of birth and shall sign the precinct election list.

In a split precinct, separate lists shall be prepared for each part of the precinct with specific information differentiating the split printed at the top of each list.

The precinct election list shall be ready no later than three days prior to any election.

E. Voter registration cards. Any voter registration accepted by a county or municipality after the date of its notification to the Secretary of State of the election authorized by Laws of 1981, ch. 92, and this rule shall be defective if it does not contain the day and month of birth of the registrant. Voter registration cards shall conform to the specifications of 1 MCAR § 2.0301, except that the card and instructions shall be modified to indicate that the day and month of birth are not optional.

F. Notice of ineffective registration. The county or municipality may modify the notice of ineffective registration in 1 MCAR § 2.0506 by adding the following additional statement:

"5. Month and day of birth are required."

or

"5. Month and day of birth are required on all registrations accepted in (name of county or municipality) after (date of notification of election)."

G. Request for birthdate. Prior to the first election at which electronic or automatic data processing equipment is used in place of the duplicate registration file, and prior to each subsequent statewide general election, the county or municipality shall send a request for the voter's birthdate to each previously registered voter whose month and day of birth is not included in the duplicate registration file.

The request for a voter's birthdate shall be in the form of a nonforwardable mailed notice with a return form. The notice shall include the following information:

1. At the next election in (name of political subdivision) the duplicate registration file for use at the polling place will be prepared by automatic data processing equipment. The month and day of each registered voter's birth will be used as an additional identifier and precaution against fraud.

2. Please fill in your month and day of birth on the enclosed return form, sign the form, and mail it in the postage-paid envelope to (name of political subdivision). Only the month and day of your birth are requested; the year of your birth is not needed.

3. You will not lose your registration if you do not provide this information or return this form, but your cooperation will be appreciated and helpful to election officials.

The return form shall include the following material:



The voter's name and address, pre-printed as they appear in the duplicate registration file.

\_\_\_\_\_  
month of birth

\_\_\_\_\_  
day of birth

\_\_\_\_\_  
voter's signature

The auditor or clerk shall include with the return form a postage-paid return envelope printed with the complete return mailing address of the political subdivision.

H. Challenges and other notices. A record of any challenge to a voter registration shall be made part of the duplicate registration file and remain until removed according to law. The word "challenged" shall appear on the same line as or directly above the name of a challenged voter on the precinct election list. A record of any notice affixed to an original voter registration card pursuant to Minn. Stat. § 201.15 shall be made part of the duplicate registration file and remain part of the file until removed according to law. The word "guardianship" shall appear on the same line as or directly above the name of the voter on the precinct election list. If any other special notice or information is affixed to a voter registration card, a record of that notice shall be part of the duplicate registration file and an indication of the notice shall be printed on the precinct election list.

I. Absentee voting. Upon verification, as required by Minn. Stat. § 207.03, subd. 3, that an applicant for an absentee ballot is a registered voter, the auditor or clerk shall verify the signature on the application by comparing it with the signature on the original voter registration card. When an absentee ballot envelope is marked "Accepted" pursuant to Laws of 1981, ch. 29, art. III, § 12, subd. 3, the election judge shall place the letters A.B. in the space for the voter's signature on the precinct election list followed by the judge's initials.

When a ballot envelope is accepted from a voter who registers on election day by including a registration card with the absentee ballot, the election judge shall print the voter's name, address, and month and day of birth in the appropriate places on the precinct election list.

J. Security. The auditor or clerk shall be responsible for maintaining the integrity of the duplicate registration file and for restricting access to the electronic or data processing equipment to properly authorized persons. The auditor or clerk may make available lists of registered voters in forms other than paper copies, but in whatever form, no list made available for examination or purchase shall include the birth dates of registered voters. The auditor or clerk shall provide for the transport and security of the precinct election lists in accordance with 1 MCAR § 2.0202.

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**TAX COURT**

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

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**State of Minnesota**

James R. and Naomi Davey,

Appellants,

v.

The Commissioner of Taxation,

Appellee.

**Tax Court**

In the Matter of an Appeal from the Commissioner's Order dated 8/23/76 Relating to Income Tax Liability of Appellants for the (Calendar) (Fiscal) Years Ended 12/31/68 and 12/31/69.

Account Numbers 4312952-1968  
4445386-1969

Docket No. 2656

Order Dated June 25, 1981.

The above-entitled matter came on for trial before the Honorable Earl B. Gustafson, Judge of the Minnesota Tax Court, in the Court's hearing room, 5th Floor Space Center Building, 444 Lafayette Road, Saint Paul, Minnesota 55101, on June 17, 1981.

Dr. James R. Davey appeared pro se on behalf of appellants. James W. Neher, Special Assistant Attorney General, appeared for appellee.

# TAX COURT

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The issue in this case involves appellants' challenge to the correctness of a Commissioner's order assessing additional income tax for the calendar years 1968 and 1969, the order having been issued in accordance with similar federal adjustments for those years.

## Decision

Upon motion by the Commissioner of Revenue, the appeal herein is dismissed on the merits, and the commissioner's order is affirmed in its entirety.

From the evidence adduced at the trial, and from the files and records herein, the Court makes the following:

### Findings of Fact

1. Appellants are residents of Bemidji, Minnesota, and cash basis taxpayers.
2. On February 2, 1973, the Internal Revenue Service assessed additional federal income tax against appellants for the calendar years 1968 and 1969, on the basis of increased capital gains, increased net business profit, and disallowance of itemized deductions.
3. In conformity with the federal changes, the Commissioner of Revenue, by order dated August 23, 1976, assessed additional Minnesota income taxes against appellants for those years. No part of these additional taxes has been paid. Appellants timely filed their notice of appeal from the commissioner's order on September 16, 1976.
4. Appellants also contested the federal assessment, but subsequently dropped their appeal prior to trial. No part of the federal assessment was resolved in appellants' favor.
5. Appellants presented no evidence at trial to show that either the federal or the state assessment was incorrect.

### Conclusions of Law

1. The additional taxes and interest assessed by the Commissioner's order herein are correct, with statutory interest to accrue to date of payment.

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

DATED: June 25, 1981.

BY THE COURT  
EARL B. GUSTAFSON, JUDGE

### Memorandum

The commissioner's assessment of additional taxes in this case was based on a similar federal adjustment. Appellants' appeal from the federal adjustment was subsequently dropped, and no part of this adjustment was resolved in appellants' favor. In addition, appellants presented no evidence at the trial to show that either the federal or the state adjustment was incorrect in any particular. Accordingly, the commissioner's order must be affirmed.

E.B.G.

## State of Minnesota Hennepin County

MSA Services Corporation,

Appellant,

v.

The Commissioner of Revenue,

Appellee.

## Tax Court Regular Division

Appeal from the Commissioner's Order dated April 13, 1978 Relating to Application by the Corporation for Certificate of Exempt Status under Minnesota Sales and Use Tax Law.

Docket No. 2656

Order Dated June 25, 1981.

This is an appeal from an Order of the Commissioner of Revenue denying appellant's application for exemption from the Minnesota sales and use tax as a corporation organized and operated exclusively for charitable or educational purposes.

The parties agreed to a written Stipulation of Facts and also stipulated certain documents into the record. The case was submitted to the Honorable Earl B. Gustafson, Judge, for decision on written briefs on May 19, 1981.

Mr. Larry B. Leventhal, Attorney at Law, appeared on behalf of appellant.

Mr. James W. Neher, Special Assistant Attorney General, appeared on behalf of appellee.

**Issue**

The issue is whether appellant, a student-controlled corporation operating two stores and providing additional services to students on the Minneapolis Campus of the University of Minnesota, is exempt from the sales and use tax under Minn. Stat. § 297A.25, subd. 1 (p) as a corporation organized and operated exclusively for charitable or educational purposes.

**Decision**

The appellant is exempt from the sales and use tax as an educational corporation or organization under Minn. Stat. § 297A.25, subd. 1 (p). The Commissioner's Order is reversed.

**Findings of Fact**

The Stipulation of Facts filed with the Court on February 26, 1980 is adopted in its entirety as follows:

1. The MSA Services Corporation (hereinafter "MSA") was conceived and created by Student Government at the University of Minnesota as an outgrowth of the Student Store it operated and a Student Services Task Force it developed.

2. The purposes of MSA are:

(1) The development and operation of student-controlled enterprises on the Twin Cities Campus of the University of Minnesota to provide goods and services for the convenience of students; and

(2) The provision of opportunities for University students to obtain experience and training in business, business administration and merchandising, public relations and within the various fields associated with the conduct of the affairs of the corporation and its respective enterprises and activities.

3. The activities of MSA have been directed to the operation of the MSA Student Store and MSA Too, two shops serving University of Minnesota students located adjacent to each other in the basement of Coffman Memorial Union on the University's Twin Cities Campus. These stores provide students with books, educational materials, toiletries, crafts, records, art wares and other related merchandise, all on a convenience basis. MSA has also produced educational materials such as class notes for various courses and teaching evaluation studies, and has sponsored concerts and educationally related programs for the University of Minnesota community.

4. The MSA Student Store was opened on August 1, 1971 on the second floor of Coffman Memorial Union. It moved to the ground floor when space became available in January of 1972. At the time MSA was formed, the Student Store was placed under its auspices. MSA is an independent non-profit corporation whose purpose is to provide continuity of management with maximum possible student participation. Inventory, together with specified funds derived from students fees collected in connection with tuition, were transferred to MSA.

5. The location of the MSA stores in Coffman Memorial Union on the Minneapolis Campus of the University of Minnesota, while conveniently located for students attending classes, is not easily accessible to the general public. The general public may, however, purchase items from the stores. The University's policy on business enterprises (adopted by the University Board of Regents, July 14, 1972) does not allow commercial businesses on campus.

6. MSA has as its motto, "student control over student concerns." It seeks to provide an outlet through which the students can pursue the kinds of services and enterprises which they feel appropriate.

7. The membership of MSA is the Twin Cities Student Assembly, a broad-based branch of student government at the University. Its members, who are elected to represent various sectors of the student body, constitute the membership of MSA. The MSA Board of Directors consists of ten students elected by the membership of the Twin Cities Student Assembly. Also serving on the board is the President of the Student Body or an appointee of the President, the President of the University of Minnesota (or an appointee), a faculty representative and a community representative, each appointed by the board, and two representatives selected by the employees of MSA.

8. MSA has worked with several of the academic departments of the University in establishing internship programs for credit centering around student work in connection with the MSA Student Store and MSA Too. Practical experience is offered students in such fields as marketing, business, administration, purchasing, general management, advertising, and accounting. Academic research is required in addition to on-the-job training in order to receive academic credit. Each student receiving credit for his or her store work through an internship program must compile educational objectives with the professor supervising his or her internship program. Further, participating students must submit specified research and comprehensive evaluations of their respective on-the-job duties.

9. Among students who have earned academic credit from their respective departments through their work at MSA are the following:

Michael Rodeck  
Liz Pawlak

(General College)  
(Business)

## TAX COURT

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Michael Thienes	(Marketing)
Ramon Devora	(Advertising)
Jeff Thompson	(Marketing)
Robert Sakai	(Marketing)

Currently the following are completing an internship at MSA which will result in academic credit:

Diana Gulak	(Inter-Departmental Studies — Art)
Pat Stevens	(Design—Art)

10. The various departments of the University which have worked with MSA in establishing such internship programs are as follows:

*School of Business Administration*

MSA is the only retailer with whom the School of Business Administration has worked on an internship program. The school has, however, worked with several business corporations in establishing summer internship programs in corporate offices. It has also worked with several non-profit organizations, such as the Boy Scouts of America, in establishing intership placement at other times of the year.

*Department of Art*

This department conducts no internship programs with organizations other than MSA.

*Department of Home Economics*

This department has a program of internship placement with other retailers in the metropolitan area, in addition to MSA.

*General College*

General College has in the past had internship programs with Donaldsons, Sears and Dayton's, in addition to MSA.

*Department of Journalism*

This department has arranged no internship programs with organizations other than MSA.

11. The MSA Student Store features for sale: school supplies (accounting for the greatest number of sales), books (both paperback and hard bound for use in classes and personal use), health and beauty aids, vitamins, film, picture processing, calculators, lecture notes, plants, keys, and miscellaneous items. School supplies are utilized primarily in connection with classes at the University. A small percentage of the books sold are used as text books. More commonly, books are utilized for supplementary reading, source material and references for research projects. Other books are sold for personal use. Lecture notes are utilized by students in connection with designated classes. Calculators are utilized and required in many classes at the University of Minnesota. Photography plays an important role in some classes at the University.

12. MSA Too offers for sale: records, blank tapes and accessories, imprinted and plain clothing, paraphernalia, greeting cards, magazines, gift items, nylons, and sewing and shoe supplies. The records receive some usage in University classrooms. They are purchased, however, mainly for personal use. Tapes and accessories are extensively utilized for recording class lectures and class projects. Much of the clothing is imprinted with emblems of the University of Minnesota.

13. In addition to the store operations, MSA currently offers the following:

(1) The "Created Market"—Periodic student craft and art shows are held at various campus locations in large areas accessible to students; certain "Created Market" art and craft items are also offered for sale on a continuing basis at the MSA Student Store.

(2) Check cashing service—both the MSA Student Store and MSA Too cash checks for students up to \$5 with no questions asked nor purchase necessary.

(3) Tickets to concerts and other performances are made available for purchase by students. Unlike commercial outlets, MSA imposes no service charge for this service, and generally does not receive a commission from the event's sponsor. MSA provides an important outlet for student groups who wish to make tickets available for events they sponsor.

(4) Sponsorship of events—MSA occasionally sponsors educational and concert programs of particular interest to the University community.

14. MSA currently is developing several new services which it hopes to make regularly available in the near future. These include:

(1) a typing service which will specialize in student class papers at modest prices;

(2) a moving service to assist a mobile student population in frequent residence changes; and

(3) book swaps to be offered quarterly in which students will be able to trade books with other students.

These services are being developed in response to student demand and needs as perceived by MSA.

15. Currently serving as President of the Board of Directors of MSA is Mike Mueller, whose term commenced January, 1979. Also effective January, 1979, Kerry Ashmore became the Executive Director of MSA.

16. Currently MSA employs three (3) full time individuals and thirty-five (35) part-time employees. All of these persons are students at the University. Thirty-three (33) of the thirty-five (35) part-time employees are participating in the Work-Study Program at the University of Minnesota. To participate in this program, the student must demonstrate eligibility and financial need to the University Financial Aid Office. University of Minnesota Financial Aid funds pay 80% of each Work-Study employee's salary. Academic standards must be maintained by the student. Employment placements are made by the Financial Aid Office, when possible, to co-ordinate with a student's academic program.

17. On April 18, 1975, MSA was found to be exempt from federal income tax as an organization described in Section 501(c) (3) of the I.R.C. of 1954, which is "organized and operated exclusively for . . . charitable . . . or educational purposes." On June 11, 1975, it was further found that the organization was exempt from Minnesota State income taxes under Section 290.05, Subd. 1 (i), and employer's excise tax under Section 290.031.

18. This appeal arises from the denial by the Director of the Sales and Use Tax Division of the Department of Revenue of the Application by MSA for recognition as an organization exempt from the state sales and use tax under Section 25, Subd. 1 (p) of the Minnesota Sales and Use Tax Law.

#### Conclusions of Law

1. Appellant is exempt from sales and use tax under Minn. Stat. § 297A.25, subd. 1 (p), as a corporation organized and operated exclusively for educational purposes.

2. The Commissioner's Order dated April 13, 1978 should be reversed.

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

MINNESOTA TAX COURT  
Earl B. Gustafson, Judge

#### Memorandum

The issue in this case is whether MSA Services Corporation, a student-controlled non-profit corporation operating two retail stores and providing additional services to students at the University of Minnesota, Minneapolis, is exempt from paying the sales and use tax on items it buys. The sales tax it collects from customers is not at issue.

Appellant claims it is exempt under Minn. Stat. § 297A.25, subd. 1 (p) as a corporation "organized and operated exclusively for charitable or educational purposes." It is difficult to find it exempt as a charitable organization but under present case law we find it to be exempt as an educational organization.

The commissioner forcefully argues that appellant is not exempt as a corporation organized and operated exclusively for either charitable or educational purposes and stresses the word "exclusively."

The pertinent language of the exemption statute, Minn. Stat. § 297A.25, subd. 1 (p) reads as follows:

297A.25 EXEMPTIONS. Subdivision 1. The following are specifically exempted from the taxes imposed by sections 297A.01 to 297A.44:

(p) The gross receipts from the sale of tangible personal property to, and the storage, use or other consumption of such property by, any corporation . . . organized and operated exclusively for charitable . . . or educational purposes if the property purchased is to be used in the performance of charitable . . . or educational functions. . . .

The Department of Revenue's argument loses some of its persuasiveness when it is noted that it has already granted the appellant an exemption from the state income tax as an organization "organized for exclusively charitable or educational purposes" under Minn. Stat. § 290.05, subd. 1 (i).

Admittedly, a determination of tax exemption for federal or state income tax purposes does not control the tax exemption from sales and use taxes because the income tax exemption statute, § 290.05, subd. 1 (i), has broader language, i.e., "scientific, literary, artistic purposes", not contained in § 297A.24, subd. 1 (p). Nevertheless, the same statutory standard is applied to "charitable" or "educational" organizations.

Section 290.05, subd. 1 (i) exempts corporations "organized for exclusively charitable (or) educational purposes". This is the income tax exemption. Section 297A.25, subd. 1 (p), the sales and use tax exemption, applies to corporations "organized and operated exclusively for charitable or educational purposes."

To say, as we did in *Town View Villas South, Inc. v. Commissioner*, Order dated October 6, 1977, Tax Ct. Dkt. No. 2173, that, "(t)he income tax statute is couched in much broader language than the sales and use tax statute," is somewhat misleading when applying the two statutes to the same organization. The only difference between the two statutes is that the income tax

statute exempts corporations "organized" for educational purposes while the sales tax statute exempts corporations "organized and operated" for educational purposes. This appears to be a surface difference of no substance. It could not be seriously argued that if a corporation "organized" for an exempt purpose later "operated" in a non-exempt manner the Commissioner would have no power to revoke its income tax exemption. Both income and sales and use tax exemptions require an exempt corporation to continue to operate as a "charitable" or "educational" organization if it is to maintain its exemption.

Before passing on to a discussion of pertinent cases one further comment seems appropriate. The seemingly inconsistent positions the Department of Revenue has taken in this case in applying essentially the same standard to two different taxes obviously arises from different views taken by the Income Tax Division and the Sales and Use Tax division. The Income Tax Division appears to be more willing to grant a tax exemption once it has determined the organization is a non-profit organization while the Sales and Use Tax Division requires greater proof that, in practice, charitable or educational purposes are being pursued. The sales and use tax regulation, S&U 415, Sec. E.1.b. says, in part,

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

Cases where the Commissioner had granted an income tax exemption but denied a sales and use tax exemption are, *Mayo Foundation v. Commissioner*, 236 N.W. 2d 767 (Minn. 1975); *Worthington Dormitory, Inc. v. Commissioner*, 292 N.W. 2d 276 (Minn. 1980); *Town View Villas South, Inc. v. Commissioner* Minn. T.C. No. 2173 (1977); *American Water Resources Association v. Commissioner*, Minn. T.C. No. 2828 (1981).

Cases where the commissioner had granted an income tax exemption but local authorities denied a property tax exemption are, *Camping and Education Foundation v. State*, 164 N.W. 2d 369 (Minn. 1969); *Rio Vista Non-Profit Housing Corp. v. Ramsey County*, 277 N.W. 2d 187 (Minn. 1979).

The Minnesota Supreme Court has said in *Worthington Dormitory, Inc. v. Commissioner*, 292 N.W. 2d 276 (Minn. 1980), "We recognize that the identical test is used for exemption from sales and use tax as is used for exemption from real estate tax." 292 N.W. 2d 276, 282. No case has yet held that the test for income tax exemption and sales and use tax exemption are identical although, as we have explained, the pertinent statutory language is essentially the same in this case. We are not prepared to rule, however, that one administrative determination will control another or be grounds for estoppel.

Returning now to the question at hand, the issue is whether purchases made by appellant, a non-profit corporation, are exempt from the sales and use tax under Minn. Stat. § 297A.25, subd. 1 (p), as a "corporation . . . organized and operated exclusively for (either) charitable . . . or education purposes." In other words, is a student-controlled enterprise such as this "organized and operated exclusively for educational purposes."? The federal I.R.S. has said it is.

The Internal Revenue Service has ruled that a corporation organized for the purpose of operating a book and supply store on the campus of a state university primarily for the convenience of its student body and the members of the faculty, no part of the earnings of which inure to the benefit of any private shareholder or individual, *may be considered to be operated exclusively for educational purposes*. Rev. Rul. 58-194, C.B. 1958-1, 240. A similar ruling is found in Rev. Rul. 64-141, C.B. 1964-1, 391.

In the case of *Squire v. Students' Book Corporation*, 191 F. 2d 1018 (9th Cir. 1951), the Corporation whose IRS income tax exemption was at issue was organized for the purpose of operating a store and restaurant on the campus of a state college. In addition to books and supplies, the student store sold stationery, sporting goods, and other items of general merchandise. In *Squire*, supra, the Court found that no earnings inured to anyone's private benefit and the business enterprises bore such a close relationship to the functioning of the college that it was exempt.

In the earlier case of *Stanford University Book Store v. Helvering*, 83 F. 2d 710 (D.C. 1936) a co-op bookstore was denied tax exemption because the Court found that selling books and general merchandise to students did not connote an "educational purpose" and because part of the profits inured to the benefit of private individuals.

A sales tax exemption to a university operated golf course and driving range was upheld in *Regents of University of New Mexico v. Bureau of Revenue*, 304 P 2d 878, 62 N.M. 76 (1956).

In Minnesota, college owned student dormitories and faculty housing have long been exempt from property taxes as being "reasonably necessary" for accomplishing the institution's educational purposes. *State v. Carleton College*, 154 Minn. 280, 191 N.W. 400 (1923); *Ramsey County v. Macalester College*, 51 Minn. 437, 53 N.W. 704 (1892).

In *Worthington Dormitory, Inc. v. Commissioner of Revenue*, 292 N.W. 2d 276 (Minn. 1980), our Supreme Court extended the sales and use tax exemption to a community based non-profit corporation that owned and operated low cost housing facilities for community college students. The project was not owned or controlled by either the college or the students but the Court found that both benefited to such an extent that it had "met its burden of proof by showing that it has elements of both a charitable and an educational institution." 292 N.W. 2d 276, 281. In citing with approval the *Carleton College* case the Court said:

Here, the Foundation's dormitory is not significantly different from dormitories at state and private educational

institutions. It is well-settled law that such dormitories are exempt from taxation. *State v. Carleton College*, 154 Minn. 280, 191 N.W. 400 (1923). Speaking about private colleges, the court said: "That dormitories for students are reasonably necessary for institutions like defendant is beyond doubt." *Id.*, 154 Minn. at 286, 191 N.W. at 403. The Foundation's dormitory similarly bears a direct relationship to education . . . 154 Minn. 280, 282.

As the *Worthington Dormitory*, *supra*, case illustrates, the Minnesota Supreme Court has taken a liberal view of what are "exclusively educational purposes." Commercial enterprises can be exempt if they are non-profit in the sense that no private individuals receive profits beyond pay for services rendered. "Educational purposes" have been extended to "reasonably necessary" services rendered to students such as dormitories.

If these two campus convenience stores, providing service primarily to students, were owned and operated by the University they unquestionably would be exempt from the sales and use tax under Minnesota statutory and case law primarily as a state agency and secondarily as an educational organization. Here these enterprises are student controlled under University guidelines. In addition to the two shops, appellant offers other services such as check cashing, typewriting and ticket services. (It has wisely discontinued the sale of paraphernalia.)

There are also some direct educational benefits to some students. All employees are University students and 33 out of 35 part-time employees receive aid by participating in the Work-Study Program at the University. Students have also received academic credit for work related projects in General College, Business, Marketing, Advertising and Art.

Although student operated, the University retains ultimate control over all business enterprises on campus through the Board of Regents policy on business enterprises adopted July 14, 1972. The President of the University (or an appointee) serves on the MSA Board of Directors. No profits inure to the benefit of any private individuals.

Based upon the facts as stipulated, and the current state of the law, we find the appellant qualifies for exemption from the sales and use tax as a corporation organized and operated exclusively for educational purposes.

E.B.G.

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**SUPREME COURT****Decisions Filed Friday, July 10, 1981****Compiled by John McCarthy, Clerk**

51129/Sp. *First Construction Company*, a Minnesota corporation, *Metro Office Parks Company*, a Minnesota limited partnership, and *John R. Neumeier*, an individual, Appellants, v. *Tri-South Mortgage Investors*, a Massachusetts voluntary association (known as a business trust). Hennepin County.

Under the facts and circumstances of this case, the trial court did not abuse its discretion in approving an indemnification bond, on an unrepresented promissory note, which insures indemnity up to the maximum liability on the note.

It was error to limit the indemnification bond to a time period shorter than that contemplated by the applicable statute of limitations.

Where interest accrues on a court-supervised deposit, the interest becomes part of the deposit and is awarded with the deposit.

Affirmed in part, reversed in part, and remanded for reformation of the indemnification bond in a manner consistent with this opinion. Wahl, J. Took no part, Sheran, C. J.

51648/Sp. *Northwestern National Bank of Minneapolis*, Appellant, v. *Joseph M. Shuster*. Scott County.

Appellant, as a secured party, may collect the unpaid balance of a note held as collateral for a loan in default because the maker of the note, who made the note payable to the order of the general partner of a limited partnership and who knew that the note would be used as collateral for loans acquired by the general partner, is estopped from asserting that the secured party bears the risk of any improper use of the funds for other than partnership purposes.

Appellant, as a holder or as a secured party, may not collect on a second note held under similar circumstances because respondent has successfully proved the defense of want of consideration.

Appellant is not a holder in due course of a second note because it did not take without notice of a defense.

Attorneys' fees were improperly awarded in the absence of bad faith in litigation.

Affirmed in part and reversed in part. Wahl, J. Took no part, Otis, J.

## SUPREME COURT

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51540/Sp. Steven Wade Feick, a minor child by Robert E. Feick, his father and natural guardian, v. State Farm Mutual Automobile Insurance Company, Appellant. Hennepin County.

A bicyclist injured in a collision with a motorcycle is not entitled to basic economic loss benefits under Minn. Stat. § 65B.46, subd. 1 (1980) of the Minnesota No-Fault Automobile Insurance Act.

In the absence of any ambiguity in the express language of a statute, resort to extrinsic aide to determine legislative intent is unnecessary and improper.

Reversed. Amdahl, J.

51472/Sp. Kimberly Anne Ulmer v. Jack O'Malley, Jr., Appellant, Blue Earth County.

Where a paternity action defendant's only contacts with this state consisted of his attorney's responses to an adoption agency's requests for cooperation, exercise of personal jurisdiction offends principles of due process.

Reversed. Simonett, J. Took no part, Sheran, C. J.

51563/Sp. State of Minnesota v. Larry K. Bowser, Appellant. Hennepin County.

Evidence was sufficient to establish criminal sexual conduct in the first degree in violation of Minn. Stat. § 609.342 (e)(i) (1980); other conviction of criminal sexual conduct in the first degree under subsection (c) of the same statute, which was based on the same criminal act, is vacated pursuant to section 609.04, which forbids two convictions of the same offense (or of one offense and a lesser necessarily included offense) on the basis of the same criminal act.

Trial court did not prejudicially err in denying defense motion to prohibit use of prior conviction to impeach defendant when he testified.

One conviction affirmed; one vacated. Simonett, J.

## STATE CONTRACTS

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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.

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### Department of Administration Real Estate Management Division

#### Office Space Wanted

Approximately 18,000 square feet of office space for the Office of Administrative Hearings in the Midway Area. For information contact:

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

### Minnesota Waste Management Board

#### Request for Submission of Qualifications for Subsurface Exploration

The State of Minnesota Waste Management Board has identified approximately 2,750 square miles as study areas for hazardous waste disposal. On 8/27/81 the Waste Management Board will reduce these to 15-20 one-square-mile preliminary sites. Subsurface investigation and related testing will be carried out in these sites in order to establish their intrinsic suitability.



The drilling of these sites will commence on September 1, 1981 and shall be completed by October 23, 1981. The results of the investigation, including lab testing, must be forwarded to the Waste Management Board by November 1, 1981.

This work will include drilling at every site an average of five (5) bore-holes. Four of these will reach an average depth of approximately 100 feet and will involve sampling; the fifth will be advanced into bedrock (5 feet penetration) without soil sampling. The straight rotary drilling method will be employed. The drilling conditions will be those normally associated with clay-rich surficial glacial deposits in this state.

A maximum of 5 samples (four disturbed/one undisturbed) will be collected from each bore-hole, mainly within the upper 75 feet. Cuttings samples will be collected by the state. Field identification of the material encountered during drilling, groundwater levels, and, where appropriate, standard penetration test will be also carried out. The laboratory testing done by the contractor will consist of determination for each sample of: water content, wet and dry unit weights, particle size characteristics, liquid and plastic limits. About one sample from each bore-hole will be tested for permeability.

After the drilling is complete, the state will carry out, on its own, downhole geophysical exploration, at the conclusion of which the prospective contractor will be required to permanently backfill the bore-hole in accordance with the requirements of the Minnesota Department of Health.

The drilling work on-site supervision and inspection will be carried out by state personnel.

For bidding purposes **only** the Waste Management Board has agglomerated the present study areas in 6 groups. For bidding purposes **only**, the prospective contractor may assume that each conglomerate will contain 3 sites. Prospective contractors may bid on all or part of the 6 conglomerates, A through F, as per attached.

The prospective contractor(s) will be selected on the basis of qualifications regarding:

- availability of a number of rotary drill rigs and equipment during the said period,
- availability and experience in field sampling and lab testing of disturbed/undisturbed samples,
- adequate liability coverage.

The deadline for submission of qualifications is July 31, 1981. For more information call Memos Katsoulis at 536-0816.

## **Department of Transportation Operations Division**

### **Notice of Request for Proposals for Supportive Services Contractor**

The Minnesota Department of Transportation (Mn/DOT) is seeking qualified individuals or organizations to provide supportive services support to the on-job-training program, sponsored by the Federal Highway Administration (FHWA). This contractor would be responsible for locating, recruiting and monitoring the hiring and training of unskilled and untrained people in the construction field, with particular emphasis on minorities and females. The contractor would be responsible for providing quarterly and annual reports as to the accomplishments under the contract conditions, as prescribed in the Federal Highway Program Manual 6-4-1-2. A formal Request for Proposals (RFP) be requested and inquiries should be directed to:

EEO Contract Compliance Unit  
Office of Construction  
G20 State Transportation Building  
St. Paul, Minnesota 55155  
Telephone: 612/296-3054

The cost for providing supportive services will not exceed a total cost of \$65,000. The services under this annual contract must be completed between October, 1981, and September, 1982.

The deadline for the submission of completed proposals will be the close of the working day, August 31, 1981.

# OFFICIAL NOTICES

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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.

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

### **Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Granting of Accredited Status and Withdrawal of Accredited Status**

Notice is hereby given that the State Department of Education is seeking information or opinions from sources outside the agency in preparing to promulgate new rules governing accreditation. The promulgation of these rules is authorized by Minnesota Statutes, § 121.11, subd. 12 which permits the agency to promulgate rules governing procedures by which the State Department of Education shall address the conditions for granting or withdrawing accredited status from public post secondary institutions under the terms of a franchise with the U.S. Department of Education.

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

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

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

All statements of information and comment shall be accepted until August 17, 1981. Any written material received by the State Department of Education shall become part of the record in the event the Rules are promulgated.

June 30, 1981

Melvin E. Johnson, Manager  
Operational Services Section

## **Department of Education Vocational-Technical Education Division**

### **Notice of Intent to Solicit Outside Opinion Regarding Rules Governing Criteria for Adult Program Funding**

Notice is hereby given that the State Department of Education, Vocational-Technical Education Division is seeking information or opinions from sources outside the agency in preparing to promulgate rules governing the criteria to be applied by the commissioner in approving funding of Adult Vocational Education programs. The promulgation of these rules is authorized by Minnesota Statutes, section 124.572, subdivision 3, which requires the state board to adopt criteria for program approval.

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

Ms. Sharon Grossbach  
Division of Vocational-Technical Education  
524 Capitol Square Building  
550 Cedar Street  
St. Paul, MN 55101

Oral statements will be received during regular business hours over the telephone at (612) 296-6516 and in person at the above address.

All statements of information and comment shall be accepted until August 21, 1981. Any written material received by the State Department of Education, Vocational-Technical Division shall become part of the record in the event that the rules are promulgated.

## **Board of Nursing**

### **Notice of Intent to Solicit Outside Opinion Concerning Amendment of 7 MCAR § 5.1031 A.4. Pertaining to Continuing Education for Registered Nurses**

Notice is hereby given that the Board of Nursing is considering amendment of a rule relating to continuing education required on or after August 1, 1986. The amendment would provide the detail necessary for the application of the rule.

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

Joyce M. Schowalter, RN  
Executive Secretary  
Minnesota Board of Nursing  
717 Delaware St. SE  
Minneapolis, MN 55414  
Phone: 612/296-5493

Any written materials received will become part of the record.

July 6, 1981

Joyce M. Schowalter, RN  
Executive Secretary

## **Minnesota Pollution Control Agency**

### **Recommendation by the Director to Certify Proposed Solid Waste Disposal Sites in Dakota County as Intrinsically Suitable**

#### **Notice of and Order for Hearing**

It is hereby ordered and notice is hereby given that an information gathering hearing concerning the intrinsic suitability of the proposed solid waste disposal sites in Dakota County will be held by the Minnesota Pollution Control Agency (MPCA) pursuant to Minnesota Laws of 1981, Chapter 352, § 41 on Wednesday, August 5, 1981, at the Farmington High School, 800 Denmark, Farmington, Minnesota, commencing at 10:00 a.m. An evening session will be held at 7:00 p.m., also on August 5, 1981, at the same location in order to provide an opportunity to participate to those who cannot attend the day session. If necessary, the hearing will be continued at 10:00 a.m. on August 6, 1981, at the same location and thereafter until adjournment.

The hearing will be held before Kent Roberts, 1745 University Avenue, St. Paul, Minnesota 55104 (telephone (612) 296-8112), a hearing examiner appointed by the chief hearing examiner of the State of Minnesota.

The procedures to be followed at this hearing will be published in the *State Register* on July 13, 1981. A copy of these procedures may also be obtained by contacting the MPCA at the address noted below.

Dakota County has provided to the MPCA data relating to the intrinsic suitability of five sites proposed for its solid waste disposal site inventory. The director of the MPCA has made a preliminary recommendation that these five sites be certified by the MPCA board as intrinsically suitable for their intended uses because they can reasonably be expected to qualify for MPCA permits assuming certain conditions are met.

## OFFICIAL NOTICES

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One site, described below, has been proposed as a demolition landfill site:

Site A is located in the City of Lakeville, in west-central Dakota County. The northern border of the site is formed by 160th Street West (County Road 46); the western border is approximately 750 feet east of Pilot Knob Road (County Road 31). The southern border lies 200 feet above the half-section line of T114N, R20W, Section 1; the eastern border is approximately 1500 feet west of the section line separating Sections 1 and 6. This site can reasonably be expected to qualify for a MPCA permit if a five foot separation is maintained between fill material and ground water.

The following four sites are proposed as sanitary landfill sites:

1. Site B is located in Empire Township and the City of Rosemount, in north-central Dakota County. The eastern border of the site is defined by County Road 71 (Blaine Avenue). It is bounded on the north by 156th Street, on the south by 164th Street, and on the west by Barbara Avenue. The site is bisected by 160th Street East into two areas, each approximately 130 acres north and south of 160th Street. This site can reasonably be expected to qualify for a MPCA permit if 1) the direction of groundwater flow is documented, 2) a liner and leachate collection system is provided, and 3) adequate screening is provided.

2. Site C is located in Empire Township, in central Dakota County. It is bounded on the west by Annette Avenue and on the east by Blaine Avenue. The northern border is roughly defined by an unnamed dirt road that appears to be an extension of 180th Street East. The southern border is defined by the half-section line of T11N, R29W, Section 14. This site can reasonably be expected to qualify for a MPCA permit if a liner and leachate collection system are provided for the landfill.

3. Site D is located in the City of Rosemount, in north-central Dakota County. The site is bordered on the northwest by a Chicago and Northwestern Railroad line, on the northeast by Minnesota Highway 55, and on the south by 140th Street East and Ehlers Path. This site can reasonably be expected to qualify for a MPCA permit if ground water between the site and the Mississippi River is not used as a water supply and if a liner and leachate collection system are provided for the landfill.

4. Site E is located in Hampton Township in southeastern Dakota County. The western border of the site is formed by County Road 85 (Hogan Avenue); the northern border is approximately 1300 feet south of 250th Street East. The eastern border of the site ranges from 1300 to 2700 feet west of Inga Avenue. The site is bounded to the south by the Dakhue Landfill. This site can reasonably be expected to qualify for a MPCA permit if 1) documentation is provided that there are no water supply wells in the glacial drift in the area, 2) at least a ten foot separation is maintained between refuse and ground water, and 3) a liner and leachate collection system are provided for the landfill.

The director's recommendations are based on the data submitted by Dakota County and applied against criteria contained in rule SW 6 and additional criteria adopted by the MPCA on June 23, 1981. The MPCA staff has not independently verified the data submitted by Dakota County. The director's recommendations may be revised based on information submitted at the hearing.

A copy of the MPCA criteria for determining intrinsic suitability, the director's recommendation, the data submitted by Dakota County and the procedures for this hearing are available for inspection at the following locations:

Minnesota Pollution Control Agency  
1935 W. County Road B-2  
Roseville, MN 55113  
Phone (612) 296-7373

Dakota County Highway Department  
1560 Highway 55  
Hastings, Minnesota 55033

Dakota County Soil and Water Conservation District  
Agricultural Service Center  
Townsend Shopping Center  
Farmington, Minnesota 55024

In addition, a report containing the basis for the director's recommendation will be available by July 29, 1981. To the extent feasible, such documents may be copied.

Questions concerning the procedures to be followed at the hearing may be directed to Special Assistant Attorney General Jocelyn F. Olson, 1935 West County Road B2, Roseville, Minnesota (telephone: (612) 296-7343). Questions concerning the director's recommendation may be directed to Dale Wikre at the Minnesota Pollution Control Agency at the address noted above (telephone: (612) 297-2735).

July 10, 1981

Louis J. Breimhurst  
Executive Director  
Minnesota Pollution Control Agency

## **Recommendation by the Director to Certify Proposed Solid Waste Disposal Sites in Ramsey County as Intrinsically Suitable**

### **Notice and Order for Hearing**

It is hereby ordered and notice is hereby given that an information gathering hearing concerning the intrinsic suitability of the proposed solid waste disposal sites in Ramsey County will be held by the Minnesota Pollution Control Agency (MPCA) pursuant to Minnesota Laws of 1981, Chapter 352, § 41 on Monday, August 3, 1981, at Lake Owasso School, 934 Wood Hill Drive (Co. Rd. C and Victoria), Roseville, Minnesota 55113, commencing at 9:00 a.m. An evening session will be held at 7:00 p.m., on August 3, 1981, at the same location in order to provide an opportunity to participate to those who cannot attend the day sessions. If necessary, the hearing will be continued at 9:00 a.m., August 4, 1981, at the same location and thereafter until adjournment.

The hearing will be held before Melvin B. Goldberg, William Mitchell College of Law, 875 Summit Avenue, St. Paul, Minnesota 55105, (612) 227-9171, a hearing examiner appointed by the chief hearing examiner of the State of Minnesota.

The procedures to be followed at this hearing will be published in the *State Register* on July 20, 1981. A copy of these procedures may also be obtained by contacting the MPCA at the address noted below.

Ramsey County has provided to the MPCA data relating to the intrinsic suitability of the following sites proposed for its solid waste disposal site:

**Site 2.** This site is proposed as a demolition debris disposal site. The site is located in northwestern Shoreview, Minnesota and is the old University of Minnesota Airport site. It is east of Interstate Highway 35W, south of County Road J (85th Avenue NE), southwest of and adjacent to Ramsey County's tree waste disposal site, and northwest of and adjacent to Ramsey County's open space along Rice Creek.

**Site 4.** This site is proposed as a sanitary landfill site. The site is located in Maplewood, Minnesota, and is the site of the Ramsey County Workhouse. It is adjacent to the south and east boundaries of Battle Creek Park, north of Lower Afton Road (County Road 39) and west of Century Avenue (Minnesota Highway 120).

The Director of the MPCA has made a preliminary recommendation that both sites be certified by the MPCA Board as intrinsically suitable for the type of facility proposed, because the sites can reasonably be expected to qualify for MPCA permits, assuming the following conditions are met:

**Site 2.** Adequate screening must be provided and a 5 foot minimum separation distance must be maintained between fill material and ground water.

**Site 4.** A liner and leachate collection system must be constructed and adequate screening must be provided.

The director's recommendations are based on the data submitted by Ramsey County and applied against criteria contained in rule SW 6 and additional criteria adopted by the MPCA on June 23, 1981. The MPCA staff has not independently verified the data submitted by Ramsey County. The director's recommendations may be revised based on information submitted at the hearing.

A copy of the MPCA criteria for determining intrinsic suitability, the director's recommendation, the data submitted by Ramsey County and the procedures for this hearing are available for inspection at the following locations:

Minnesota Pollution Control Agency  
1935 W. County Road B-2  
Roseville, MN 55113  
Phone (612) 296-7373

Ramsey County Library  
Maplewood Branch  
1460 Skillman Avenue East  
St. Paul, Minnesota.

In addition, a report containing the basis for the director's recommendation will be available by July 27, 1981. To the extent feasible, such documents may be copied.

Questions concerning the procedures to be followed at the hearing may be directed to Special Assistant Attorney General Marlene Senechal, at the address noted above, telephone (612) 296-7346. Questions concerning the director's recommendation may be directed to Dale Wikre, at the address noted above, telephone (612) 297-2735.

July 10, 1981

Louis J. Breimhurst  
Executive Director  
Minnesota Pollution Control Agency

## OFFICIAL NOTICES

### Recommendation by the Director to Certify Proposed Solid Waste Disposal Sites in Scott County as Intrinsically Suitable

#### Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that an information gathering hearing concerning the intrinsic suitability of the proposed solid waste disposal sites in Scott County will be held by the Minnesota Pollution Control Agency (MPCA) pursuant to Minnesota Laws of 1981, Chapter 352, § 41 on Monday, August 3, 1981, at Shakopee Senior High School, 10th Avenue and Lewis, Shakopee, Minnesota commencing at 10:00 a.m. An evening session will be held at 7:00 p.m., also on August 3, 1981, at the same location in order to provide an opportunity to participate to those who cannot attend the day session. If necessary, the hearing will be continued at 9:30 a.m. on August 4, 1981, at the same location and thereafter until adjournment.

The hearing will be held before Allan W. Klein, Room 300, 1745 University Avenue, St. Paul, Minnesota, 55104, (612) 296-8104, a hearing examiner appointed by the chief hearing examiner of the State of Minnesota.

The procedures to be followed at this hearing will be published in the *State Register* on July 13, 1981. A copy of these procedures may also be obtained by contacting the MPCA at the address noted below.

Scott County has provided to the MPCA data relating to the intrinsic suitability of six sites proposed for its solid waste disposal site inventory. The director of the MPCA has made a preliminary recommendation that these six sites be certified by the MPCA board as intrinsically suitable for the type of facility proposed because they can reasonably be expected to qualify for MPCA permits assuming certain conditions are met. The following five sites are proposed as sanitary landfill sites:

1. **Credit River Site.** This site is located in Sections 27, 28 and 33, T114N, R21W, in Credit River Township and is bounded by County State Aid Highway (C.S.A.H.) 8 on the south, C.S.A.H. 12 on the north, and C.S.A.H. 91 on the west. This site can reasonably be expected to qualify for MPCA permits assuming a liner and adequate screening are provided.

2. **Louisville Site.** This site is located in Sections 16 and 21, T115N, R23W, in Louisville Township adjacent to the existing Louisville Sanitary Landfill. The site is bounded by the Chicago & Northwestern R.R. on the west and U.S. Highway 169 on the east. This site can reasonably be expected to qualify for MPCA permits assuming a liner is provided.

3. **Savage Site.** This site is located in Section 19, T115N, R21W, within the corporate boundaries of Savage and is bounded by Minnesota Highway 13 on the east, C.S.A.H. 16 on the north, C.S.A.H. 42 on the south and is bisected from north to south by Boone Avenue. This site can reasonably be expected to qualify for MPCA permits assuming a liner and a leachate collection system are provided and surface water is diverted to prevent pollution of the wetland located between the eastern edge of the site and Minnesota Highway 13.

4. **New Market Site.** This site is located in Section 23, T113N, R21W, in New Market Township and is bounded by Interstate I-35W on the east and C.S.A.H. 2 on the south. This site can reasonably be expected to qualify for MPCA permits assuming a liner, leachate collection system and adequate screening are provided and surface water is diverted to prevent pollution of surface water.

5. **Spring Lake Site.** This site is located in the NE  $\frac{1}{4}$  of Section 23, T114N, R22W, in Spring Lake Township and is bounded by County Road 68 on the north and County Road 87 on the east. The site can reasonably be expected to qualify for MPCA permits assuming a liner and adequate screening are provided.

One site, described as follows, has been proposed as a demolition landfill site:

**Prior Lake Site.** This site is located in Section 31, T115N, R21W, within the corporate boundaries of Savage on the Prior Lake Aggregate, Inc. sand and gravel facility. This site is bounded on the south and east by C.S.A.H. 44. The site can reasonably be expected to qualify for MPCA permits assuming that a separation distance of five feet is maintained between the highest seasonal groundwater and demolition debris.

The director's recommendations are based on the data submitted by Scott County and applied against criteria contained in rule SW 6 and additional criteria adopted by the MPCA on June 23, 1981. The MPCA staff has not independently verified the data submitted by Scott County. The director's recommendations may be revised based on information submitted at the hearing.

A copy of the MPCA criteria for determining intrinsic suitability, the director's recommendation, the data submitted by Scott County and the procedure for this hearing are available for inspection at the following locations:

Minnesota Pollution Control Agency  
1935 W. County Road B-2  
Roseville, MN 55113  
Phone (612) 296-7373

Shakopee Community Library  
235 South Lewis Street  
Shakopee, Minnesota  
Phone (612) 445-3936

In addition, a report containing the basis for the director's recommendation will be available by July 27, 1981. To the extent feasible, such documents may be copied.

Questions concerning the procedures to be followed at the hearing may be directed to Special Assistant Attorney General Barbara Lindsey Sims at the MPCA address listed above, telephone: (612) 296-7770. Questions concerning the director's recommendation may be directed to Dale Wikre at the MPCA address listed above, telephone: (612) 297-2735.

July 10, 1981.

Louis J. Breimhurst  
Executive Director  
Minnesota Pollution Control Agency

## **Recommendation by the Director to Certify Proposed Solid Waste Disposal Sites in Washington County as Intrinsically Suitable**

### **Notice of and Order for Hearing**

It is hereby ordered and notice is hereby given that an information gathering hearing concerning the intrinsic suitability of the proposed solid waste disposal sites in Washington County will be held by the Minnesota Pollution Control Agency (MPCA) pursuant to Minnesota Laws 1981, Chapter 352, § 41 on Tuesday, August 11, 1981, at Stillwater Senior High School, 523 West Marsh Street, Stillwater, Minnesota, commencing at 9:30 a.m. An evening session will be held at 7:00 p.m., on Tuesday, August 11, 1981, at the same location in order to provide an opportunity to participate to those who cannot attend the day sessions. If necessary, the hearing will be continued at 9:30 a.m., August 12, 1981, at the same location and thereafter until adjournment.

The hearing will be held before David Kuduk, 1200 Soo Line Building, Minneapolis, Minnesota 55402, (612) 339-9242, a hearing examiner appointed by the chief hearing examiner of the State of Minnesota.

The procedures to be followed at this hearing will be published in the *State Register* on July 13, 1981. A copy of these procedures may also be obtained by contacting the MPCA at the address noted below.

Washington County has provided to the MPCA data relating to the intrinsic suitability of the following sites proposed for its sanitary landfill site inventory:

Site C. This site is located in Hugo, Minnesota. It is south of County Road 4 and east of Ingersoll Avenue in Section 11, T 31 N, R 21 W.

Site E. This site is located in Sections 28 and 31, T 31 N, R 21 W in Grant Township. It is bordered on the north by County Road 12 and is approximately ½ mile east of County Road 36. An abandoned Soo Line railroad track cuts through the southeast portion of the site.

Site F. This site is located in Section 6, T 30 N, R 20 W in Stillwater Township. The site is adjacent to the Washington County Highway Department, which is west of County Road 61, and is north of an abandoned Soo Line railroad track.

Site G. This site is located in Sections 21, 22 and 27, T 29 N, R 21 W in Lake Elmo. The site is bounded on the south by 15th Street, on the east by Eagle Point Lake and on the north by Washington County land.

Site H. This site is located in Section 15, T 29 N, R 20 W, in Baytown Township. The site is bounded on the east by Stage Coach Trail and on the south by 30th Street. The site is the location of an existing gravel pit and office for Miller Excavation, Inc.

The director of the MPCA has made a preliminary recommendation that sites C, F, G, and H be certified by the MPCA board as intrinsically suitable because the sites can reasonably be expected to qualify for MPCA permits, assuming the following conditions are met:

Sites C, G, and H.

A liner and leachate collection system must be constructed at the facility and adequate screening must be provided.

Site F.

A liner and leachate collection system must be constructed at the facility, adequate screening must be provided, and the perched water on the site must be drained or diverted.

## OFFICIAL NOTICES

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The director of the MPCA has also made a preliminary recommendation that site E *not* be certified by the MPCA as intrinsically suitable because the site cannot reasonably be expected to qualify for MPCA permits because of coarse textured soils and shallow depth to a potentially significant aquifer.

The director's recommendations are based on the data submitted by Washington County and applied against criteria contained in rule SW 6 and additional criteria adopted by the MPCA on June 23, 1981. The MPCA staff has not independently verified the data submitted by Washington County. The director's recommendations may be revised based on information submitted at the hearing.

A copy of the MPCA criteria for determining intrinsic suitability, the director's recommendation, the data submitted by Washington County and the procedures for this hearing are available for inspection at the following locations:

Minnesota Pollution Control Agency  
1935 W. County Road B-2  
Roseville, MN 55113  
Phone (612) 296-7373

Washington County Library  
Lake Elmo Branch  
3459 Lake Elmo Avenue North  
Lake Elmo, Minnesota

Stillwater Public Library  
223 North 4th Street  
Stillwater, Minnesota

In addition, a report containing the basis for the director's recommendation will be available by August 4, 1981. To the extent feasible, such documents may be copied.

Questions concerning the procedures to be followed at the hearing may be directed to Special Assistant Attorney General Marlene Senechal, at the address noted above, telephone (612) 296-7346. Questions concerning the director's recommendation may be directed to Dale Wikre, at the address noted above, telephone (612) 297-2735.

July 10, 1981

Louis J. Breimhurst  
Executive Director  
Minnesota Pollution Control Agency

## Public Utilities Commission

### Notice of Intent to Solicit Outside Opinion Concerning Cogeneration and Small Power Production Rules

Docket No. E-999/R-80-560

Notice is hereby given that the Minnesota Public Utilities Commission is seeking information or opinions from outside the commission on certain elements of a rule to implement the Federal Energy Regulatory Commission (FERC) regulations governing arrangements between electric utilities and qualifying cogeneration and small power production facilities in a manner consistent with Minnesota law.

Since the FERC regulations were promulgated in February of 1980, the commission has published three solicitations of comment and sponsored two public meetings on this topic. As a result of the comment received, and lengthy deliberations, the commission completed a proposed rule in February 1981.

A bill on cogeneration and small power production was introduced in the Minnesota Legislature at almost the exact date on which the commission completed its proposed rule. Upon reviewing the bill, House File 473, the commission determined it could significantly alter what ought to be the content of the proposed rule. Accordingly, the commission suspended its rulemaking pending completion of legislative action. House File 473 was passed as amended, and signed into law by Governor Al Quie on May 17, 1981. It has been codified in Chapter 237, Laws of Minnesota, 1981.

The principal effects of the bill are these: 1) municipal and cooperative utilities become subject to the commission's rules in this area; 2) the net flow of energy during a billing period is to be the basis for billing for qualifying facilities of less than 40 kilowatts; 3) a utility must wheel power if requested by the qualifying facility; and 4) a requirement is established for the commission to report to the Legislature.



The commission is seeking comment primarily on how to accommodate these requirements within its proposed rule. Specifically:

1. What special provisions (if any) are necessary to construct a rule which applies fairly and equally to investor-owned, cooperative, and municipal utilities? (H.F. 473, subd. 2)
2. What metering arrangements should be required? (subd. 3, subd. 7)
3. How should this sentence be interpreted: "In setting these rates, the commission shall consider the fixed distribution costs to the utility not otherwise accounted for in the basic monthly charge and shall ensure that the costs charged to the qualifying facility are not discriminatory in relation to the costs charged to other customers of the utility." What provisions (if any) should be in the rule to accomplish this requirement? (subd. 3)
4. How shall the commission determine wheeling charges and line losses? (subd. 4)
5. What provisions of a rule are required by subd. 4?
6. What reporting requirements should the commission establish to meet its obligations to report to the Legislature in accordance with subdiv. 7?

The Commission is also seeking comment on a recommendation it has received for determining the capacity to be credited to hydroelectric facilities. The recommendation is that the capacity for which the facility is paid be the sum of that capacity available 85% of the time (presumably 85% of the hours in the year), plus  $\frac{1}{2}$  the difference between capacity available 70% of the time and that available 85% of the time, plus  $\frac{1}{4}$  the difference between capacity available 50% of the time and that available 70% of the time (Capacity Credit =  $C_{85} + \frac{1}{2} (C_{70} - C_{85}) + \frac{1}{4} (C_{50} - C_{70})$ ).

1. Should such a provision be part of the rule?
2. Is this an appropriate calculation?
3. Should a similar provision apply to other types of qualifying facilities?

All interested or affected parties are invited to submit written statements or comments addressed to:

Randall D. Young  
Executive Secretary  
Minnesota Public Utilities Commission  
7th Floor, American Center Building  
Kellogg and Robert Sts.  
St. Paul, MN 55101

Please reference the Commission's Docket No. E-999/R-80-560 on submitted materials. Responses received by August 31, 1981 will become part of the record of any rules hearing held on this subject.

## Errata

1. The rules of the Department of Revenue relating to individual income tax and property tax refund, published at 5 S.R. 2060 on Monday, June 22, 1981 contained an error. Rule 13 MCAR § 1.6004 A.3.d.(2) should read as follows:

A.3.d.(2) Business conducted within Minnesota and which has a nexus within Minnesota so that the business is subject to Minnesota income tax would include income or losses from sales within Minnesota and a business dealing in personal and professional services where such services were performed in this state. Trade or business income or loss assignable to Minnesota and earned by a nonresident individual as a proprietorship or partnership which was carried on partly within and partly without Minnesota is subject to the three-factor apportionment formula contained in § 290.19 or apportionment under § 290.20 except for construction business on which the three-factor formula is not permitted. A non-resident individual who has farm income from within Minnesota and from outside of Minnesota may also use the ~~three-factor apportionment formula~~ apportionment formulas contained in § 290.19 and 290.20.

2. At S.R. 2109 (Monday, June 29, 1981), the rule designations EDU 460 and EDU 461 should have been struck out as shown below:

5 MCAR § 1.0460 ~~EDU 460~~ Enrollment.

5 MCAR § 1.0461 ~~EDU 461~~ Credentials.



**RUDE AWAKENINGS, pencil drawing by Mark Schlesi, New Ulm Jr. High School, New Ulm, MN.**

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