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STATE OF MINNESOTA

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Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices	Issue Date
SCHEDULE FOR VOLUME 6			
34	Monday Feb 8	Friday Feb 12	Monday Feb 22
35	Monday Feb 15	Monday Feb 22	Monday March 1
36	Monday Feb 22	Monday March 1	Monday March 8
37	Monday March 1	Monday March 8	Monday March 15

*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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NOTICE

How to Follow State Agency Rulemaking Action in the State Register

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

The PROPOSED RULES section contains:

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

The ADOPTED RULES section contains:

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

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

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

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

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

[Note: Listings of rule actions published in this issue of the State Register appear in the Official Notices section, p. 1453.]

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EXECUTIVE ORDERS

Executive Order No. 82-1

Directing State Departments and Agencies to Recognize Importance of Mining to Minnesota

I, Albert H. Quie, Governor of the State of Minnesota, by virtue of the authority vested in me by the Constitution of the State of Minnesota and applicable statutes, do hereby issue this Executive Order:

WHEREAS, Minnesota ranks first among all states in the value of iron ore produced and ranks in the top three states in total nonfuel mineral production; and

WHEREAS, the iron ore and taconite industry has been an important industry to Minnesota throughout this century; and

WHEREAS, there is tremendous potential for other mineral industries in Minnesota, especially base metal mining; and

WHEREAS, Minnesota has developed a large and comprehensive body of laws relating to the development of minerals in the state; and

WHEREAS, the laws of Minnesota encourage the development of mining, with due consideration and concern about the effects of mining on the environment; and

WHEREAS, the United States Congress has restated in similar terms in the National Materials and Minerals Policy, Research and Development Act of 1980, that the ongoing mineral policy of the United States is to “promote an adequate and stable supply of materials necessary to maintain national security, economic well-being and industrial production with appropriate attention to a long-term balance between resource production, energy use, a healthy environment, natural resources conservation and social needs”; and

EXECUTIVE ORDERS

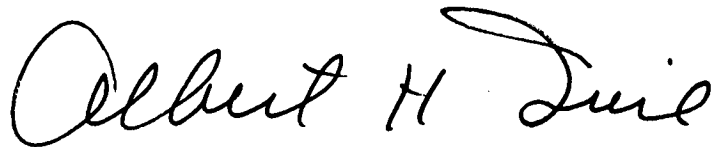
WHEREAS, it is desirable at this point in Minnesota's history to reaffirm the importance of mining to the state and the significance of the body of law which authorizes and guides mineral development in the state;

NOW, THEREFORE, I ORDER:

The responsible departments and agencies of the State of Minnesota are directed to recognize the importance of mining to Minnesota, the tremendous potential for future mineral development, and the impact of their programs on mining; and further, these responsible Departments and agencies are directed to encourage the development of mining in this state, with due concern for the effects of mining on the environment.

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

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



PROPOSED RULES

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

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

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

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Administration Board of Electricity

Proposed Amendment of Rules Governing Inspection Fees and Handling Fee for Request for Inspection Form

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the State Board of Electricity ("board") proposes to amend the above-entitled rules without a public hearing. The board has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. § 15.0412, subd. 4h.

Persons interested in these rules shall have 30 days to submit comments on the proposed rules. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed rules within the 30-day comment period, a public hearing will not be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minn. Stat. § 15.0412, subds. 4-4f. If a public hearing is requested, identification of the particular objection, the suggested modifications to the proposed language, and the reasons or data relied on to support the suggested modifications is desired.

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

John Quinn
Executive Secretary
State Board of Electricity
Room N-191, Griggs Midway Building
1821 University Avenue
Saint Paul, Minnesota 55104
Telephone: (612) 297-2111

Authority for the adoption of these rules is contained in Minn. Stat. §§ 214.06 and 326.241 subd. 2(6) (1980). Additionally, a statement of need and reasonableness that describes the need for and identifies the data and information relied upon to support the proposed rules, has been prepared and is available from Mr. Quinn upon request.

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

A copy of the proposed rules is attached to this Notice. Additional copies may be obtained by contacting Mr. Quinn.

Please be advised that Minn. Stat. ch. 10A requires each lobbyist to register with the State Ethical Practices Board within five (5) days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1980) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$25.00, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than \$25.00, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 40 State Office Building, Saint Paul, Minnesota 55155, telephone (612) 296-5615.

John Quinn, Executive Secretary
State Board of Electricity

Rule as Proposed

4 MCAR § 11.004 Inspection fees.

A. Payment of fees. Except as provided in Elec I(b), all state electrical inspection fees are due and payable to the board at or before commencement of the installation and shall be forwarded with the request for inspection.

B. Fee schedule. State electrical inspection fees shall be paid according to the following schedule.

1. The minimum fee for each separate inspection of an installation, replacement, alteration, or repair limited to one inspection only \$6.00 is \$8.

2. Services, changes of services, temporary services, additions, alterations, or repairs on either primary or secondary services shall be computed separately.

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

~~0 to 100 ampere capacity - - - - \$7.00~~

The inspection fee for electrical services shall be:

- a. ~~101 0~~ to and including 200 ampere capacity ~~\$8.50~~ \$10;
- b. For each additional 100 ampere capacity or fraction thereof ~~\$3.50~~ \$4.

3. Circuit, installations of, additions, alterations or repairs of each circuit or subfeeder shall be computed separately including circuits fed from sub-feeders and including the equipment served, except as provided for in items a. through-k. The inspection fee for electrical circuits shall be:

0 to and including 30 ampere capacity \$2.25 \$3. (The maximum number of 0 to 30 ampere circuits to be paid on for which a fee is charged is 30 in any one cabinet);

31 to and including 100 ampere capacity ~~\$3.50~~ \$4;

For each additional 100 ampere capacity or fraction thereof \$1.

a. ~~The maximum fee on a farmstead (farm buildings, including residence) which is limited to 100 ampere capacity - - - \$23.00~~

~~This includes all services, feeders, circuits, fixtures and equipment as per 4 MCAR § 11.004 B. Fee schedule. This maximum applies when the farmstead is wired as a single installation. Pole top current metering and disconnecting means of the farm yard pole are exempt from inspection and determination of inspection fees.~~

b. ~~The maximum fee on a farmstead (farm buildings, including residence) which is limited to 200 ampere capacity - - - \$37.00~~

~~This includes all services, feeders, circuits, fixtures and equipment as per 4 MCAR § 11.004 B. Fee schedule. Pole top current metering and disconnecting means on the farm yard pole are exempt from inspection and determination of inspection fees.~~

c. ~~Maximum fee on a single family dwelling shall not exceed \$23.00 if not over 100 ampere capacity. This includes service, feeders, circuits, fixtures and equipment as per 4 MCAR § 11.004 B. Fee schedule.~~

~~This maximum fee provides for not more than one rough-in inspection and one final inspection per dwelling; additional inspections would be at the re-inspection rate of 4 MCAR § 11.004 B-5.~~

d. ~~Maximum fee on a single family dwelling shall not exceed \$37.00 if not over 200 ampere capacity. This includes service, feeders, circuits, fixtures and equipment as per 4 MCAR § 11.004 B. Fee schedule.~~

~~The maximum provides for not more than three rough-in inspections and one final inspection per dwelling; additional inspections at the re-inspection rate of 4 MCAR § 11.004 B-5.~~

e. ~~Maximum fee on an apartment building shall not exceed \$16.00 per dwelling unit for the first 20 units and \$11.50 per dwelling unit for the balance of units. A 2-unit dwelling (duplex) maximum fee per unit as per single family dwelling.~~

a. The maximum fee on a farmstead wired as a single installation, or on a single family dwelling, shall not exceed \$40 if the electrical services are not over 200 ampere capacity. The fee includes service, feeders, circuits, fixtures, and equipment. This maximum fee includes not more than three inspections. Additional inspections shall be charged the reinspection fee specified in 5. Pole top current metering and pole top disconnecting means on the farm yard pole are exempt from inspection and inspection fees.

b. The maximum fee on a farmstead wired as a single installation, or on a single family dwelling, shall not exceed \$80 if the electrical services are not over 400 ampere capacity. If more than one service entrance is installed on a single family dwelling, the maximum fee for each service shall not exceed \$40. This fee includes services, feeders, circuits, fixtures, and equipment. This maximum fee includes not more than four inspections. Additional inspections shall be charged the reinspection fee specified in 5. Pole top current metering and pole top disconnecting means on the farm yard pole are exempt from inspection and inspection fees.

c. The maximum fee on an apartment building shall not exceed \$18 per dwelling unit for the first 20 units and \$14 per dwelling unit for each unit in excess of 20. This maximum fee does not include any circuits other than those in the individual dwelling units. All other circuits shall be calculated as specified in this rule. The maximum fee for each house panel shall not exceed \$40. The maximum fee for a two-unit dwelling or duplex shall be the same as for two single family dwellings.

f. d. The maximum number of 0 to 30 ampere circuits to be paid for which a fee is charged on any one athletic field lighting standard is ten.

~~g. e.~~ The maximum fee on mobile home park stalls shall not exceed ~~\$3.50~~ \$6 per unit stall for the first ~~40~~ 20 stalls and ~~\$2.00~~ \$3 per each additional stall.

~~h. f.~~ In addition to the above fees:

(1) a charge of ~~\$.50~~ \$1 will be made for each street lighting standard, and

(2) a charge of ~~\$1.00~~ \$2 will be made for each traffic signal standard. Circuits originating within the standard will not be used when computing the fee.

~~h. g.~~ In addition to the above fees the fees for all transformers and generators for light, heat, and power shall be computed separately at ~~\$2.00~~ \$3 per unit plus ~~10 cents~~ 20 cents per ~~KVA~~ kilovolt-ampere up to and including 100 ~~KVA~~ kilovolt-amperes, 101 ~~KVA~~ kilovolt-amperes and over at ~~5 cents~~ ten cents per ~~KVA~~ kilovolt-ampere. The maximum fee for any transformer or generator in this category is ~~\$23.00~~ \$25.

~~j. h.~~ In addition to the above fees the inspection fees for all transformers for signs and outline lighting shall be computed at ~~\$2.00~~ \$3 for the first 500 ~~VA~~ volt amperes or fraction thereof per unit, plus ~~\$.20~~ 30 cents for each additional 100 ~~VA~~ volt amperes or fraction thereof.

~~k. i.~~ In addition to the above fees (unless included in the maximum fee filed by the initial installer) the inspection fee for remote control, signal circuits, and circuits of less than 50 volts shall be computed at ~~\$2.00~~ \$3 per each ten openings or devices of each system plus ~~\$.50~~ \$1 for each additional ten or fraction thereof.

~~j.~~ In addition to the above fees, the inspection fee for each separate inspection of a swimming pool shall be computed at \$13. Reinforcing steel for swimming pools requires a rough-in inspection.

~~k.~~ In addition to the above fees, the fees for all wiring on center pivot irrigation booms shall be computed at \$25. The fees for all other wiring shall be computed separately as specified in this rule.

4. For the review of plans and specifications of proposed installations, there shall be a minimum fee of ~~\$100.00~~, up to and including \$30,000 of electrical estimate, plus ~~1/10 of 1%~~ one-tenth of one percent on any amount in excess of \$30,000 to be paid by persons or ~~firm~~ firms requesting the review.

5. When reinspection is necessary to determine whether unsafe conditions have been corrected and such conditions are not the subject of an appeal pending before the board or any court, a reinspection fee of not to exceed the original unit fee, or ~~\$6.00~~ \$8, whichever is less, may be assessed in writing by the inspector.

6. For inspections not covered herein, or for requested special inspections or services, the fee shall be ~~\$14.00~~ \$17 per man hour, including travel time, plus ~~16¢~~ 24 cents per mile traveled, plus the reasonable cost of equipment or material consumed. This ~~section~~ provision is also applicable to inspection of empty conduits and such other jobs as determined by the board.

7. For inspection of transient projects, including but not limited to carnivals and circuses, the inspection fees shall be computed as follows:

The fee for inspection of power supply units according to 4 MCAR § 11.004 B, shall be that fee specified in 2 of the fee schedule. A like fee will be required on power supply units at each engagement during the season, except that a fee of ~~\$14.00~~ \$17 per hour will be charged for additional time spent by the inspector, if the power supply is not ready for inspection at the time and date specified on the request for inspection as required by law.

Rides, devices, or concessions shall be inspected at their first appearance of the season, and the inspection fee shall be ~~\$6.00~~ \$8 per unit.

8. The handling fee to pay the cost of printing and handling the form requesting an inspection shall be \$1.

9. For purposes of interpretation of the provisions of this chapter the most recently published edition of the National Electrical Code shall be prima facie evidence of the definitions, interpretations and scope of words and terms used in this chapter.

Effective date. This rule is effective May 1, 1982.

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ADOPTED RULES

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

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

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

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

Office of Administrative Hearings

Adopted Rules Relating to Workers' Compensation

Notice is hereby given that the rules of the Office of Administrative Hearings relating to the procedural conduct of hearings conducted under the provisions of Minn. Stat. ch. 176, the Minnesota Workers' Compensation Law, as published at 6 S.R. 553, October 5, 1981, have been adopted, approved by the Attorney General and the Revisor of Statutes and filed with the Secretary of State as amended. The rules become effective five working days after publication in the *State Register*. The rules, as amended and adopted, are as follows:

Rules as Adopted

9 MCAR § 2.301 **Scope and purpose.** The procedures contained in 9 MCAR §§ 2.301-2.326 shall govern all hearings required to be conducted pursuant to the provisions of the Minnesota workers' compensation laws, Minn. Stat. ch. ~~82~~ 176 and the Minnesota Administrative Procedure Act, Minn. Stat. §§ 15.0411-15.052, as those provisions might apply.

9 MCAR § 2.302 **General authority and definitions.**

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

B. Authority of compensation judges. In any case which has been regularly assigned to him or her for trial, a compensation judge shall have full power, jurisdiction and authority to hear and determine all issues of fact and law presented to him or her and to issue such interlocutory and final orders, findings, decisions and awards as may be necessary to the full adjudication of the case.

C. Definitions. For the purposes of 9 MCAR §§ 2.301-2.326, the following terms have meanings given them.

1. "Calendar judge" means a workers' compensation judge from the Office of Administrative Hearings.
2. "Chief hearing examiner" means the Chief Hearing Examiner of the Office of Administrative Hearings.
3. "Commissioner" means the Commissioner of the Department of Labor and Industry.
4. "Compensation judge" means a workers' compensation judge from the Office of Administrative Hearings.
5. "Division" means the Workers' Compensation Division of the Department of Labor and Industry.
6. "Office" means the Office of Administrative Hearings.

~~6- 7.~~ 7. "Petition" means a claim filed by or on behalf of an injured or deceased employee, employer or insurer which initiates a contested workers' compensation case requiring assignment for hearing.

~~7- 8.~~ 8. "Petitioner" means the injured employee, an heir or dependent of a deceased employee or a party filing on their behalf or an employer or insurer.

~~8- 9.~~ 9. "Settlement judge" means a workers' compensation judge from the Department of Labor and Industry.

9 MCAR § 2.303 **Joinder of parties.**

A. Request. Upon a motion of any party or upon his or her own motion, a ~~settlement or calendar~~ compensation judge may order the joinder of additional parties necessary for the full adjudication of the case. A party not present or represented at the time of joinder shall forthwith be served by the party requesting joinder with copies of the order of joinder and all pleadings in the case.

B. Service. Any party requesting joinder of additional parties shall serve a copy of the request on all existing parties, and the party to be joined, and file the original with proof of service with the ~~settlement of calendar~~ compensation judge no later than ten days prior to the pretrial or settlement conference, or within 15 days after receipt of a pretrial order, unless the judge allows a shorter time when the moving party has shown that the party is a necessary party, that the moving party was unable, through due diligence, to previously ascertain the name of or necessity of joining the party, and that the joinder is necessary to a full and final determination of the rights or liabilities of all persons. When this request is served on the party to be joined, it shall be accompanied by copies of all pleadings and the notice of the date, time and place set for a settlement conference or ~~prehearing~~ pretrial conference.

C. Affidavit. When a party requests joinder less than ten days prior to the pretrial or settlement conference date or more than 15 days after receipt of a pretrial order, the request shall include an affidavit of the requesting party stating the facts necessary to show cause why the lesser time should be allowed.

D. Delay. In cases where the ~~settlement of calendar~~ compensation judge has denied the joinder because of the requesting party's failure to meet the ~~ten-day~~ time requirement requirements, the case shall not be stricken, continued or otherwise delayed for the purposes of joinder, unless the attorney for the ~~employee or dependent~~ petitioner consents to it.

E. Contents of motion. All motions for joinder shall contain at least the following:

1. The party to be joined and its insurer, if any;
2. The date and nature of the claimed personal injury or impairment;
3. The detailed circumstances, in affidavit form, showing that the party to be joined is a necessary party;
4. The supporting medical opinions relied upon, if applicable;

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

F. Objection. A party contesting joinder under 9 MCAR § 2.303 may do so by objection filed with the ~~settlement of calendar~~ compensation judge within ten days of service, requesting a hearing thereon; otherwise, an ex parte order may be issued granting or denying this joinder.

9 MCAR § 2.304 Commencement of proceedings; petitions; responsibilities of attorneys; notice to third parties.

A. Commencement of proceedings. Original proceedings for the adjudication of compensation rights and liabilities are commenced by the service of a petition as provided by Minn. Stat. § 176.305. ~~Any petition filed on behalf of an employee or his or her dependents shall certify that prior notice of intention to initiate proceedings has been sent to the adverse party, pursuant to Minn. Stat. § 176.271, subd. 2, and the date of that notice. Supporting medical reports shall be attached to the petition.~~

B. Consolidation of claims. Claims by several employees arising out of the same accident may be consolidated in one proceeding only by consent of all parties or by order on appropriate motion.

~~C. Contents of petitions. A petition shall contain the following information which shall be in the sequence listed in 1-21.~~

~~1. Title. The title of the case shall include the petitioner's name, the employer's name and address, the insurer's name and address, the division's record number and the employee's social security number;~~

~~2. The petitioner's address;~~

~~3. The date of the alleged personal injury or onset of occupational disease;~~

~~4. The place of employment on the date of the alleged injury or disease;~~

~~5. The employee's weekly wage at the time of the alleged injury or disease;~~

~~6. A statement that the injury or disease arose out of and in the course of the employment;~~

~~7. A statement which specifies the nature and extent of the alleged injury or disease, including the percentage of disability, if known, attaching a copy of all medical reports;~~

~~8. The date on which the employer was first given notice of the alleged injury or disease and the manner in which the notice was given;~~

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9. The name and address of the employer's insurer on the date of the alleged injury or disease or if the employer was self-insured; a statement to that effect;

10. A detailed listing of the dates of the alleged disability, stating whether each date was for temporary total, temporary partial, permanent total, or permanent partial disability;

11. A detailed list of the medical benefits alleged to be owing, giving the names, addresses, dates of treatment or purchase of drugs, or other compensable items;

12. The names and addresses of any third parties who have paid disability, medical or other benefits to the employee as a result of the alleged injury or disease, listing the dates and amounts of the payments, and the relevant claim number or policy number;

13. A statement that attorney's fees are or are not requested;

14. A statement that the employer and insurer were notified, as required by Minn. Stat. § 176.271, subd. 2, that a proceeding would be instituted and stating the relief sought, giving the date of the notice and attaching a copy of the notice;

15. A signature and attestation by the employee;

16. The name, address and telephone number of the employee's attorney unless the employee is representing himself or herself;

17. A statement that a settlement or prehearing conference is or is not requested and, if so, the requested location for the conference;

18. A statement indicating the number of lay and medical witnesses expected to be called as witnesses and the anticipated length of their testimony;

19. A statement specifying the principal issues to be resolved at hearing;

20. A statement that the employee is or is not presently receiving workers' compensation benefits and, if the employee is, the amounts and the name and address of the paying party; and

21. The requested location for the regular hearing.

~~D. C.~~ C. Heading of petition. Unless otherwise provided by law, all requests for action by the commissioner, a settlement, calendar or a compensation judge after the filing of a petition shall contain the title caption, the employee's social security number, and appropriate identification number of the case and shall indicate the type of action requested.

~~E. D.~~ D. Responsibilities of attorneys; notice to third parties. All attorneys representing employees, employers, or any other parties to a workers' compensation proceeding shall inquire of their clients ~~at the time the proceeding is commenced, and again~~ within five days of receipt of a notice of ~~prehearing a pretrial order or pretrial~~ conference, as to whether any third party, other than the workers' compensation insurer, has paid wage loss benefits or treatment expense to the employee or in the employee's behalf.

If inquiry discloses that any third party, such as an insurer or a welfare department, has made any such payments, the attorney discovering that fact shall then have the duty to place the third party on written notice, ~~within five days,~~ of its right to petition for intervention and reimbursement. The written notice shall have attached to it a copy of 9 MCAR § 2.310 and also a copy of all pleadings in the case and a copy of all notices and all orders of the ~~workers' compensation division of the department of labor and industry~~ and of the office of ~~administrative hearings~~ served in the case to date, and shall specifically advise that:

1. The employee petitioner has commenced a proceeding to recover workers' compensation benefits, and that under Minn. Stat. § 176.361 and 9 MCAR § 2.310 the third party has the right to petition for intervention and reimbursement of payments made for treatment and wage loss;

2. The name and address of all parties to the proceeding and the names and addresses of their attorneys;

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

4. Any failure of the third party to comply with any provisions of 9 MCAR § 2.310 shall result in a denial of the claim for reimbursement unless the compensation judge determines that the error or omission is merely technical.

Failure of ~~an employee's~~ a petitioner's attorney to comply in a timely manner with this rule shall be taken into consideration as an additional significant factor in determining the attorney's fee under Minn. Stat. § 176.081.

Failure of an attorney representing an employer and insurer to comply in a timely manner with this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer and insurer under Minn. Stat. § 176.225 for unreasonable or vexatious delay.

Where inquiry by the attorney for the injured employee at the time a proceeding is commenced discloses information that a third party has made payments, the employee's claim petition shall not be accepted for filing and the proceeding shall not be considered commenced unless the claim petition is accompanied by a proof of service of written notice upon the third party, unless the time for commencing an action under the statute of limitations in Minn. Stat. § 176.151 has run. The written notice shall be in the form prescribed by 1.4.

9 MCAR § 2.305 Settlement ~~judge review and settlement~~ conferences.

~~A. Referral. Upon the filing of a petition, the commissioner, within ten days, shall refer the matter to a settlement judge who shall review the filing to determine whether a settlement conference is appropriate.~~

~~B. Disposition. If a settlement conference has been requested or is deemed appropriate by the settlement judge, he or she shall notify all parties of the date, time and place where the settlement conference will be conducted. The settlement conference shall be completed within 60 days of the date of referral of the petition by the commissioner. If a settlement conference has not been requested or is deemed to be inappropriate, the settlement judge shall certify the matter to the chief hearing examiner.~~

~~C. Retention of jurisdiction. If the settlement conference cannot be concluded within 60 days, the settlement judge shall certify the matter to the chief hearing examiner, provided, however, that with the consent of the petitioner or his or her representative, the settlement judge may retain jurisdiction for an additional 60 days for purposes of receiving a full settlement of all issues.~~

~~D. A. Settlement alternatives not precluded. Nothing contained in this rule ~~these rules~~ shall preclude any party from requesting that a settlement conference be scheduled at any time prior to a hearing by a compensation judge, nor shall ~~it~~ they prohibit the chief hearing examiner or ~~calendar~~ compensation judge from setting a settlement conference on his or her own motion once the matter has been received from the commissioner.~~

~~E. B. Attendance. At any settlement conference conducted before a ~~settlement~~, calendar or compensation judge, all parties shall attend and shall, if they are a representative of a party, be authorized to reach a full settlement on all or any issues in the case.~~

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

9 MCAR § 2.306 Notice of intention to discontinue compensation payments.

~~A. Contents. A notice of intention to discontinue compensation filed pursuant to Minn. Stat. § 176.241, shall contain the following information:~~

- ~~1. The name and home address of the person whose compensation would be discontinued;~~
- ~~2. The file number previously assigned by the division and the office of administrative hearings;~~
- ~~3. The name and address of the attorney, if any, who represented the employee during previous proceedings;~~
- ~~4. A description of the prior order, if any, under which compensation was being paid and the name of the person issuing the order;~~
- ~~5. The date the compensation is proposed to be discontinued;~~
- ~~6. A complete list of facts supporting the discontinuance which shall be prepared with sufficient specificity to allow the employee to prepare an objection without the necessity of requesting additional information;~~
- ~~7. If the proposed discontinuance is based on medical evidence, copies of all medical reports bearing on the employee's physical condition at the time of the proposed discontinuance;~~
- ~~8. A statement which shall read as follows:~~

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NOTICE

You have the right to object to this proposed discontinuance. If you intend to object, you must prepare a written objection and file it with the Commissioner of the Minnesota Department of Labor and Industry, Fifth Floor, Space Center Building, 444 Lafayette Road, St. Paul, Minnesota 55101. You may contact (employer) or (insurer) regarding the discontinuance and the procedure related to the filing of an objection. If you file an exemption, it may be mailed or personally delivered to the Department of Labor and Industry at the address listed above. An objection must contain your full name, address and telephone number, the name of the employer and insurer, the date of this notice and the file number listed on this notice.

9. The name and address of the employer and insurer;
10. The name, address and telephone number of the attorney representing the employer or insurer; and
11. The name, address and telephone number of the person filing the notice.

B. Objections.

1. Any objection to the proposed discontinuance shall be in writing, shall be filed with the commissioner, and shall contain the following information:

- a. The name, address and telephone number of the employee;
- b. The name, address and telephone number of the person filing the objection, if it is not the employee;
- c. The name of the employer and insurer;
- d. The date of the notice of discontinuance; and
- e. The file numbers which were listed on the notice of discontinuance.

2. A. Hearing. When an objection to a notice of intention to discontinue compensation payments has been filed or where it appears to the commissioner that the right to compensation may not have terminated, and the matter shall be has been referred to the chief hearing examiner ~~who~~, it shall be set ~~the matter~~ for hearing on a priority basis not less than 30 nor more than 75 days from the date of the receipt of the matter from the commissioner.

3. B. Objection as claim petition. Any objection filed more than 120 days after service of a notice to discontinue shall be treated as a claim petition for purposes of scheduling a hearing and shall not be heard on a priority basis.

C. Petitions for discontinuance. When an employer or insurer petitions the commissioner for an order allowing discontinuance of benefits but has chosen not to discontinue payments until after a final determination and the matter has been referred to the chief hearing examiner, the petitioner shall be entitled to a hearing on the same priority basis as set forth in B.2. Petitions filed under this provision shall contain the same information as required for a notice of discontinuance A.

~~9~~ MCAR § 2.307 Answers.

A. Service and filing. An answer to each petition shall be served and filed within 20 days after service of the application unless a waiver has been obtained pursuant to Minn. Stat. § 176.321, subd. 3.

B. Proof of service. The answer shall be accompanied by proof of service upon the opposing parties.

C. Contents. The answer shall contain the following:

1. Specific responses to allegations regarding the date and nature of the injury, the employment status, notice, wage, relationship of the injury to employment, insurance, benefits paid, matters in dispute, affirmative defenses and additional matters as deemed necessary by the answering party.

2. Any medical report upon which the answer is based, if available.

3. If a medical examination by a doctor chosen by the employer or insurer has not already been completed, the date, time and place for the exam which shall be scheduled to take place within 75 days from the date of service of the notice of intention to initiate proceedings. Any request for an extension of time for scheduling the examination shall be subject to the approval of the calendar or settlement judge, whichever has jurisdiction of the matter at the time the request is made.

9 MCAR § ~~2.308~~ 2.307 Service.

A. Service by state. The commissioner, the chief hearing examiner, and settlement, calendar or compensation judges shall serve all notices, findings, orders, decisions or awards upon the parties or their attorneys or agents of record by first class mail at their addresses of record or by personal service.

B. Service by parties. A party may accomplish service of any document either by first class mail or by personal service. Service of any document required to be served by or on a party may be served by or on the party's attorney or authorized agent.

Upon filing of the document served, it shall be accompanied by an affidavit or proof of service which shall be in the form acceptable to the district courts.

C. Service by mail. Service of all documents and pleadings may be made by first class United States mail upon all parties to a proceeding whether residents of the same city, town or otherwise. Computation of time in such instances shall be in accordance with the provisions of Minn. Stat. § 645.15.

9 MCAR § ~~2.309~~ 2.308 Hearings.

A. Definition of hearing. For the purposes of 9 MCAR §§ 2.301-2.326, a hearing may be called a settlement conference, a ~~prehearing~~ pretrial conference, or a regular hearing. Nothing contained herein is intended to change the statutory requirement that hearings, as defined by statute, be conducted by compensation judges from the office of administrative hearings.

1. A settlement conference is a hearing proceeding conducted by a settlement compensation judge. It is for the primary purpose of providing assistance to the parties in resolving disputes and securing a settlement of all issues and for the secondary purpose of assisting the parties in narrowing the issues and of expediting preparation and trial of the matter. ~~The conference may be conducted by telephone and in the cases where the location of the settlement conference would require any party to travel more than 50 miles to attend, it shall be conducted by telephone unless all parties agree otherwise. Written notice of this hearing shall be given at least 20 days prior to the date of the hearing.~~

2. A ~~prehearing~~ pretrial conference may be required whether or not a settlement conference has been held and may be conducted by telephone. The purposes of a ~~prehearing~~ pretrial conference are to ascertain if there are genuine disputes requiring resolution by a calendar or compensation judge, to provide assistance to the parties in resolving disputes, to narrow the issues, and to expedite preparation and trial if a regular hearing is necessary. A ~~prehearing~~ pretrial conference is conducted by a calendar or compensation judge. It shall be conducted by telephone if the location set for the ~~prehearing~~ pretrial conference would require any party to travel more than 50 miles to attend. Written notice of this hearing shall be given at least 20 days prior to the date of the hearing.

3. A regular hearing is a hearing set for the purpose of receiving evidence and is conducted by a compensation judge.

B. Notice of hearing. Notice of the time and place for hearing shall be provided to all parties to a case as required by 9 MCAR § ~~2.308~~ 2.307 A., except that oral or written notification of the date, time and place for a regular hearing which is given to the parties by a ~~settlement~~, calendar or compensation judge at the time of a settlement or ~~prehearing~~ pretrial conference shall be sufficient notice. Each attorney receiving notice of the hearing date at a settlement or ~~prehearing~~ pretrial conference shall be responsible for notifying each party the attorney represents of the hearing date. When a written notice is required, it shall be given at least ~~five~~ 30 days prior to the date of hearing, except:

1. When notice is waived by all parties;
2. When a different time is expressly agreed to by all parties; or
3. When the notice is governed by contrary law or rule.

~~9 MCAR § 2.309~~ **Continuances.**

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

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

~~3. C. Motion.~~ If all parties have not agreed to a continuance, requests for continuances shall be made to the ~~compensation, or calendar or settlement~~ judge before whom the matter is pending. When made more than ten working days prior to the hearing

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date, the request shall be in writing in the form of a motion for continuance and shall be served on all parties. If less than ten working days remain prior to the hearing date, notice of the motion may be made orally. A hearing on the motion shall be conducted only if ordered by the ~~settlement~~, compensation or calendar judge to whom the motion is made.

4. D. Good cause. Good cause shall not include:

~~a-~~ 1. When an insurer retains more than one counsel on its own payroll who practice in the field of workers' compensation law, unavailability of the counsel assigned to the case because of engagement in another court or otherwise unless all such counsel are committed elsewhere;

~~b-~~ 2. When a law firm consists of more than one member who practice in the field of workers' compensation law, unavailability of the counsel assigned to the case because of engagement in another court or otherwise unless all such counsel are committed elsewhere;

~~c-~~ 3. Unavailability of an individual law practitioner because of engagement in another court, if he has failed to notify the judge in charge of the trial court calendar of that court that he has been assigned to a date and time certain in a workers' compensation case;

~~d-~~ 4. Unavailability of a medical or other witness if the witness' deposition could have been taken between the time of receipt of the notice of the hearing date and the date of the hearing.

9 MCAR § 2.310 Intervention.

A. Motion. Any person desiring to intervene in a workers' compensation case as a party shall submit a timely motion to intervene to the ~~settlement judge unless the matter has been referred to the chief hearing examiner for assignment, in which case the motion shall be submitted to the~~ compensation judge to whom the case has been assigned or to the a calendar judge if the case has not yet been assigned. The motion shall be served on all parties either personally or by first class mail. A motion to intervene shall be served and filed within 30 days after a person has received notice that a claim petition has been filed as provided in 9 MCAR § 2.304 D. In any other situation, timeliness will be determined by the settlement, calendar or compensation judge in each case based on circumstances at the time of filing. The motion shall show how the moving party's legal rights, duties or privileges may be determined or affected by the case, shall set forth the grounds and purposes for which intervention is sought and shall indicate the moving party's statutory right to intervene if one should exist. The motion shall be accompanied by the following, if applicable:

1. An itemization of disability payments showing the period during which the payments were or are being made, the weekly or monthly rate of the payments and the amount of reimbursement claimed;

2. A summary of the medical or treatment payments, broken down by medical or treatment creditor, showing the total bill submitted, the period of treatment covered by that bill, the amount of payment on that bill, and to whom the payment was made;

3. Copies of all medical or treatment bills on which some payment was made;

4. Copies of the worksheets or other information setting forth how the payments on medical or treatment bills were calculated;

5. A copy of the relevant policy or contract provisions upon which the claim for reimbursement is based;

6. A proposed order allowing intervention with sufficient copies to serve on all parties;

7. A proof of service;

8. At the option of the intervenor, a proposed stipulation which states that all of the payments for which reimbursement is claimed are related to the injury or condition in dispute in the case and that, if the petitioner is successful in proving the compensability of the claim, it is agreed that the sum be reimbursed to the intervenor.

B. Stipulation. When the person serving the motion for intervention has included a proposed stipulation, all parties shall either execute and return the signed stipulation to the intervenor or serve upon the intervenor and all other parties specific and detailed objections to any payments made by the intervenor which are not conceded to be correct and related to the injury or condition the employee petitioner has asserted is compensable. If a party has not returned the signed stipulation or filed objections within ~~20~~ 30 days of service of the motion, the intervenor's right to reimbursement for the amount sought shall be deemed to have been established ~~without the necessity of the intervenor participating further in the proceedings~~ provided that the petitioner's claim is determined to be compensable.

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

D. Order. If an objection to intervention remains following settlement ~~and prehearing~~ or pretrial conferences, the calendar judge shall enter an order ruling on the intervention which order shall be binding on the compensation judge to whom the case is assigned for a regular hearing.

E. Presentation of evidence by intervenor. Unless a stipulation has been signed and filed or the intervenor's right to reimbursement has otherwise been established, at the regular hearing on the claim petition where intervention has been granted, the intervenor shall present evidence in support of his or her claim ~~after the petitioner has rested,~~ unless otherwise ordered by the compensation judge; ~~in order that the issue of intervention may be promptly determined with no undue delay that may prejudice the rights of the original parties.~~

F. Effects of noncompliance with rule. Failure to comply with any provision of this rule shall result in a denial of the claim for reimbursement unless the compensation judge determines that the error or mistake is merely technical.

G. Failure of attorney to respond. Failure by the ~~employee's~~ petitioner's attorney to submit a timely response which also complies otherwise with this rule shall be a significant additional factor to be taken into consideration under Minn. Stat. § 176.081 in determining the amount of the attorney's fees. Failure by an attorney representing an employer or insurer to submit a timely response which also complies otherwise with the requirements of this rule shall be taken into consideration for purposes of determining whether a penalty shall be assessed against the employer or insurer under Minn. Stat. § 176.225 for unreasonable or vexatious delay.

9 MCAR § 2.311 Consolidation.

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

1. That separate cases present substantially the same issues of fact and law;
2. That a holding in one case would affect the rights of the parties in the other case; and
3. That the consolidation would not substantially prejudice the rights of any party.

Notwithstanding the requirements of this rule, the parties may stipulate and agree to such consolidation.

B. Receipt of evidence. Under consolidation, all documentary evidence previously received in an individual case shall be reintroduced in the consolidated proceedings under a master file if the compensation judge assigned to try the case designates one file as a master file. When so adduced, the evidence shall be deemed part of the record of each of the several consolidated cases. Evidence received subsequent to the order of consolidation shall be similarly received with like force and effect.

C. Notice of order. Following the granting of an order for consolidation, the calendar or compensation judge shall forthwith serve on all parties and the commissioner a copy of the order for consolidation. The order shall contain, among other things:

1. A description of the cases for consolidation;
2. The reasons for consolidation;
3. Notification of a consolidated ~~prehearing~~ pretrial conference if one has been requested.

D. Objection to consolidation.

1. Motion for severance. Any party may object to consolidation by filing with the appropriate judge, and serving upon all parties at least seven days prior to the regular hearing in the case, a motion for severance from consolidation, setting forth the ~~petitioner's name and address, the title of his case prior to consolidation, and the reasons for his petition~~ the motion.

2. Determination. If the ~~appropriate~~ judge finds that consolidation would prejudice the rights of the party moving for severance, the judge shall order such severance or other relief as he or she deems necessary.

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

9 MCAR § 2.312 Disqualification.

~~A. Procedures.~~ A compensation judge shall withdraw from participation in a case at any time if the judge deems himself or

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ADOPTED RULES

herself disqualified, prejudiced or biased for any reason. Proceedings to disqualify a compensation judge shall be initiated by the service on all parties and the filing of a motion for disqualification supported by affidavit or declaration under penalty of perjury stating in detail facts establishing grounds for disqualification of the compensation judge to whom a case or proceeding has been assigned. ~~If the compensation judge assigned to hear the matter and the grounds for disqualification are known,~~ The motion for disqualification shall be filed with the chief hearing examiner not more than ten days after the moving party has received notice of the assignment of the judge to the hearing or has knowledge of the grounds for disqualification, whichever occurs last. ~~In no event shall any such motion be entertained after the swearing of the first witness.~~ The motion shall be determined by the chief hearing examiner or his designee. The fact that a compensation judge has previously determined a similar case contrary to the interests of the moving party in the pending case shall not be grounds for disqualification.

B. Affidavit for reassignment. The petitioner and parties responding to a petition shall be entitled to reassignment of a regular hearing to another compensation judge in accordance with the provisions of this section. ~~Proceedings for a reassignment shall be instituted by the filing of an affidavit under penalty of perjury in substantially the following form:~~

State of Minnesota

ss

County of

....., being duly sworn, deposes and says: That (s)he is (a party) (attorney for a party) to the above entitled case; that affiant believes that (s)he cannot have a (fair) (expeditious) (inexpensive) (unencumbered) (impartial) trial before the workers' compensation judge (before whom the case is pending) (to whom the case is assigned).

Subscribed and sworn to before me

this day of, 19.....

Notary Public

My commission expires

If the compensation judge assigned to hear the case is known, the affidavit shall be filed not more than five working days after receipt of the notice of regular hearing and be directed to the attention of the chief hearing examiner. A copy of the affidavit shall be served on all other parties or their attorneys at the same time the affidavit is filed. ~~In no event shall any such affidavit be entertained after the swearing of the first witness at a regular hearing.~~

Upon the filing of an affidavit for reassignment in accordance with the provisions of this section, ~~without any further act or proof,~~ the chief hearing examiner shall assign the case or proceeding to another compensation judge. Upon reassignment a new notice of regular hearing shall be served. Under no circumstances shall more than one such reassignment be made in any one case or proceeding pursuant to the affidavit of any one party; provided, however, that one additional reassignment may be made upon petition of a party on the other side. The petition by the other party shall be filed in the manner and time hereinbefore provided.

Unless required because of the unavailability of a compensation judge to hear the case, no continuance shall be granted by reason of ~~an affidavit filed a disqualification~~ under this section. If a continuance is necessary, another regular hearing will be scheduled as early as possible.

Consolidated cases are to be considered as one case within the meaning of this section. This section is not applicable to settlement or pretrial conferences.

9 MCAR § 2.313 ~~Prehearing~~ Pretrial procedures.

A. Requirement. All cases shall be subject to a settlement conference or a ~~prehearing~~ pretrial conference ~~whenever possible,~~ at which all parties shall attend or be represented, unless a ~~settlement judge or calendar or compensation judge~~ orders otherwise. A compensation judge shall order that a pretrial or settlement conference be conducted if any party requests that one be conducted. If parties are represented by attorneys, the attorneys shall bring with them their appointment calendars. If a party is not represented by an attorney, the party shall appear personally and shall be prepared to arrange agreeable dates for the regular hearing. Parties or their attorneys attending a settlement or ~~prehearing~~ pretrial conference must have authority to settle their respective claims.

B. Settlement discussions. Prior to any settlement or ~~prehearing~~ pretrial conference, the parties shall discuss the possibility of settlement if they deem that a reasonable basis for settlement exists. Parties or attorneys appearing at settlement or ~~prehearing conference~~ pretrial conferences shall be prepared to participate in settlement discussions.

C. Conference procedures. At the settlement or prehearing pretrial conference:

1. All parties shall be prepared to state the issues;
2. All parties shall state the names, and addresses if known, of all witnesses they intend to call;
3. All parties shall give notice of any amendments to pleadings that may still be necessary;
4. All parties shall file copies of all medical reports not already on file. Reports of medical examinations completed after any settlement conference or prehearing pretrial conference shall be filed as soon as available prior to the regular hearing;
5. Each party shall state what exhibits, including photographs, motion picture films, video tapes and documentary evidence, are intended to be used at the hearing, and copies of these exhibits shall be made available to opposing counsel no later than ten days prior to the date of the regular hearing; provided, however, that if any party requests showing of motion picture films or video tapes prior to the regular hearing, it shall pay the expense for the showing and may tax this expense in the same manner as other disbursements;
6. If the employee petitioner plans to introduce hospital records into evidence, the employee petitioner or his attorney shall bring to the settlement or prehearing pretrial conference written authorizations for opposing counsel to examine those records if the authorizations have not previously been provided;
7. If the employee petitioner is claiming medical or other treatment expenses, the employee petitioner or the attorney shall state those expenses at the time of the settlement or prehearing pretrial conference, and shall furnish opposing counsel with copies of itemized bills for such expenses at least ten days prior to the settlement or prehearing pretrial conference;
8. If the employee petitioner is claiming temporary total disability, the employee petitioner or attorney shall state at the settlement or prehearing pretrial conference the dates of time lost from work;
9. If the employee petitioner is claiming temporary partial disability, the employee petitioner or attorney shall state the dates of the claim, the approximate amount of the claim, and the names and addresses of the employers for whom the employee worked during the period of the claim; authorizations to permit opposing counsel to confirm wages earned in those employments shall have been furnished at least ten days prior to the scheduled settlement or prehearing pretrial conference; and, an itemized breakdown of the claim for temporary partial disability shall be submitted to the compensation judge and opposing counsel at least ten days prior to the time of the regular hearing;
10. The parties or their attorneys shall state whether payment for disability benefits, on medical or treatment expenses, or on funeral expenses has been made by any party other than the workers' compensation carrier. If payment has been made, the name and address of the party making payment shall be furnished to the settlement or calendar or compensation judge, together with any identifying policy or claim numbers;
11. If a dispute exists on the wage rate at the time of the injury, the attorney for the employer and insurer shall furnish to opposing counsel at least ten days prior to the settlement or prehearing pretrial conference, copies of the relevant wage records of the employee petitioner;
12. The attorney for the employee or dependents petitioner shall furnish to the settlement or calendar or compensation judge a copy of his retainer agreement with the employee or dependents petitioner and shall state the amount of retainer fee paid. He shall be prepared at the time of hearing or settlement to show the reasonableness of any attorney's fees or costs, in accordance with Minn. Stat. § 176.081.

D. Prehearing Pretrial statement. At the time a case is first set for a settlement or prehearing pretrial conference or prior to setting the date for a regular hearing, if the information is not already on file, the settlement judge or calendar or compensation judge may order the parties to complete, serve on each other and file a prehearing pretrial statement which shall contain any of the items in C. which the settlement or calendar judge deems appropriate. In making a determination on the requirement of the preparation of prehearing pretrial statements, the settlement or calendar judge shall take into consideration the number of parties involved in the case, the nature and extent of the medical issues, and the nature, extent and type of disability claimed. When a pretrial statement has been ordered, the petitioner shall serve and file a statement within 20 days of the date of the order. The responding parties shall serve and file their statement within 30 days of the date of the order. Thereafter, a petitioner may serve and file an amended pretrial statement based solely on information presented in the responding parties' statements and not on new issues, which amended statement shall be filed within 40 days of the date of the order.

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ADOPTED RULES

E. Evidence not disclosed at conference. Evidence, or other matters listed in C. which have not been disclosed at the ~~prehearing settlement or pretrial conference or in a pretrial statement~~ shall not be allowed to be presented at the regular hearing unless it can be shown to the compensation judge that the evidence or other matters offered were discovered subsequent to the ~~prehearing~~ filing of a pretrial statement or pretrial conference, whichever occurs last, were not discoverable through the exercise of due diligence prior to that time, and that the other parties have been advised of the evidence or other matters prior to the trial and have had an opportunity for review.

F. Temporary orders. Any insurer or self-insurer voluntarily agreeing to pay benefits pursuant to Minn. Stat. § ~~176.91~~ 176.191, subd. 1, while the case is pending before the office, shall file a formal petition for temporary order.

1. The petition shall contain the following:

a. Name of the employer and its insurer (or self-insured) consenting to payment of compensation benefits and medical expenses;

b. The dispute involved, including the name and address of other employer and its workers' compensation insurer, if known, that may be liable for workers' compensation benefits and the date of the alleged injury while working for the employer;

c. The beginning date of the employee's present disability, and the compensation rate that the insurer or self-insurer will voluntarily pay;

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

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. § 176.191, subd. 1;

NOW, THEREFORE, IT IS HEREBY ORDERED, that (name of insurer or self-insured) having consented to payment of compensation benefits pursuant to Minn. Stat. § 176.191 shall pay to (name), ~~employee~~ petitioner, compensation at the weekly rate of \$ (amount), during the period of ~~employee's~~ petitioner's disability, beginning (date), and shall also pay reasonable medical expenses related to ~~employee's~~ petitioner's said disability.

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

Dated at Minnesota
this day of

(WORKERS' COMPENSATION DIVISION)

(COMPENSATION JUDGE)

(COURT OF APPEALS)

By

The original and sufficient copies of the order to make service upon all necessary parties, and any attorneys representing them, shall be filed.

G. Payment of benefits by special compensation fund. ~~An employee~~ A petitioner seeking payment of benefits by the special compensation fund pursuant to Minn. Stat. § 176.191, subd. 2, when the case is pending before the office, shall file a formal petition for temporary order.

1. The petition shall contain the following:

a. A statement that written demand for payment pursuant to Minn. Stat. § 176.191, subd. 1, has been made against all employers and insurers party to the claim and that the payment demanded has been refused;

b. The names and addresses of all employers and insurers or self-insurers who are parties to the claim;

c. A statement as to the dispute involved and the dates of all alleged injuries while working for each employer;

d. The beginning date of the employee's petitioner's present disability, the compensation rate applicable for each injury date, the proposed compensation rate to be paid by the special compensation fund, and an itemization of all medical expenses requested to be paid pursuant to the temporary order;

e. Copies of all medical reports supporting the claimed period of disability and the causal relationship of that disability to the petitioner's employment.

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

3. The petition for temporary order shall be accompanied by a prepared formal order that should be substantially in the following form:

The undersigned having examined the foregoing petition for temporary order and the compensation files and records herein, and it appearing that a temporary order for payment of compensation benefits should be issued pending a final determination, as provided by Minn. Stat. § 176.191, subd. 2;

NOW, THEREFORE, IT IS HEREBY ORDERED that the State Treasurer, as custodian of the special compensation fund, shall, pursuant to Minn. Stat. § 176.191, subd. 2, pay to (name), employee petitioner, compensation at the weekly rate of \$ (amount), during the period of employee's petitioner's disability, beginning (date), and shall also pay reasonable medical expenses related to the employee's petitioner's said disability.

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

Dated at Minnesota
thisday of

~~(WORKERS' COMPENSATION DIVISION)
(COMPENSATION JUDGE)
(COURT OF APPEALS)~~

By

The original and sufficient copies of the order to make service upon all necessary parties, and any attorneys representing them, shall be filed.

H. Necessary parties. For the purpose of this rule, the following shall be deemed necessary parties:

1. The ~~employee or dependents~~ petitioner;
2. All insurers or self-insured named in the petition for temporary order;
3. Any employer who is uninsured or whose insurer for the date of the alleged injury in that employment is unknown;
4. The state treasurer, as custodian of the special compensation fund, if the petition is made pursuant to Minn. Stat. § 176.191, subd. 2.

I. Answer. Within ten days after being served with a copy of the petition for temporary order and order hereunder, employers or their insurers, other than paying party, or the state treasurer, as custodian of the special compensation fund, may file a verified answer to the petition in accordance with the provisions of Minn. Stat. § 176.321.

J. Circumstances of nonapproval of temporary orders. Temporary orders, as a general rule, shall not be approved if made contingent upon the waiver by the employee petitioner of his rights to claim an additional award pursuant to Minn. Stat. § 176.225, or to have fees for his attorney assessed against the employer and insurer in addition to compensation pursuant to Minn. Stat. § 176.191 or 176.081, subd. 8.

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K. Effect of filing. The filing of a petition for temporary order shall not cause the matter to be placed on the trial calendar, unless accompanied by a petition for contribution or reimbursement.

9 MCAR § 2.314 Discovery.

A. Demand. Each party shall, within 30 days of a demand by another party, disclose or furnish the following:

1. The names and addresses of all witnesses that a party intends to call at the regular hearing. All witnesses unknown at the time of the disclosure shall be disclosed as soon as they become known if a prior demand has been made.

2. Any relevant written or recorded statements made by witnesses on behalf of a party. The demanding party shall be permitted to inspect and reproduce any such statements which reproduction shall be at the expense of the party requesting reproduction. Any party unreasonably failing upon demand to make the disclosure required by this rule, upon proper motion made to the compensation judge at the time of trial, may be foreclosed from presenting any evidence at the hearing through witnesses not disclosed or through witnesses whose statements are not disclosed.

3. Medical privilege shall be deemed waived as to the injuries or conditions alleged in the petition by the filing of the petition alleging injury or occupational disease. Medical authorizations shall be furnished, upon demand, to adverse parties. Likewise, any and all medical reports shall be provided, upon demand, to all adverse parties. Upon demand, the petitioner shall disclose the names and addresses of all persons who have treated the petitioner in the past for injuries or conditions identical or similar to those alleged in the petition, the dates of the treatment, and shall provide medical authorization for each.

B. Depositions. Pursuant to the provisions of Minn. Stat. § 176.411, subd. 2, depositions may be taken in the manner which the law provides for depositions in civil actions in the district courts for the state, except where a compensation judge orders otherwise. When a party has objected to the taking of a deposition, the party requesting the deposition shall bring a motion before the ~~settlement~~, compensation or calendar judge, before whom the case is pending at the time of the motion, who shall determine whether the deposition should go forward. The motion shall state, with specificity, the facts or other reasons supporting the need for the deposition. The ~~settlement~~, compensation or calendar judge shall order the deposition to proceed if the judge finds that the request for the taking of the deposition has been shown to be needed for the proper presentation of a party's case, is not for purposes of delay, that unusual or extraordinary circumstances exist which compel extensive discovery, or that the issues or amounts in controversy are significant enough to warrant extensive discovery.

Depositions for the purpose of preserving testimony or for presenting ~~medical~~ testimony due to the unavailability of the ~~doctor~~ witness shall be allowed. Unless, for good cause shown, the party taking the deposition has obtained the permission of the calendar judge, or compensation judge if the case has been assigned for hearing, to take the deposition subsequent to the hearing, it shall be taken sufficiently in advance of the hearing so that the deposition is filed prior to or at the commencement of the regular hearing or, at the latest, on the day of the regular hearing.

The original copy of any deposition taken for purposes of presenting testimony in the case shall be filed with the ~~settlement judge if the case is still pending before the settlement judge or with the office of administrative hearings~~ if the matter has been referred to the chief hearing examiner for assignment. The original copy of any deposition taken solely for purposes of discovery shall be sealed and filed as in the case of evidentiary depositions but shall not be reviewed or utilized in any fashion by the compensation judge unless the deposition shall be formally entered as evidence in the case.

C. Motions for additional discovery. Upon the motion of any party, the ~~settlement~~, compensation or calendar judge having jurisdiction at the time of the motion may order discovery of any other relevant material or information, recognizing all privileges recognized at law. The judge may order any means of discovery available pursuant to the rules of civil procedure for the district courts of the state of Minnesota provided that the request for such discovery can be shown to be needed for the proper presentation of a party's case, is not for purposes of delay, and that the issues or amounts in controversy are significant enough to warrant extensive discovery.

D. Penalties. Upon the failure of a party to reasonably comply with 9 MCAR §§ 2.301-2.326 relating to discovery or with an order of a ~~settlement~~, compensation or calendar judge made pursuant to this rule, upon a motion properly made at the time of the hearing, the compensation judge assigned to the regular hearing may make a further order as follows:

1. An order that the subject matter of the order for discovery or any other relevant facts shall be taken as established for the purposes of the case in accordance with the claim of the party requesting the order; or

2. An order refusing to allow the party failing to comply to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence.

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

9 MCAR § 2.315 Petitions for contribution or reimbursement.

A. Contents. Petitions for contribution or reimbursement in cases pending before the office shall set forth in detail the allegations showing the basis of the claim for contribution or reimbursement against the additional employer or insurer named, therein, or of the claim for reimbursement against the state treasurer, custodian of the special compensation fund. The petition shall be supported by medical evidence, and shall be signed and verified. ~~The original petition shall be filed with the settlement judge if the matter is pending before the division or with the chief hearing examiner if the matter has been referred for assignment, together with proof of service upon the employee or his attorney and all additional parties named in it.~~

B. Filing. ~~In all cases where a claim petition or other form of action is pending,~~ A petition for contribution or reimbursement under this rule shall be filed no later than ten days prior to a ~~settlement or prehearing~~ pretrial conference or within 20 days of receipt of a pretrial order if a pretrial conference is not automatically set, and copies of all pleadings, including any notice of ~~settlement or prehearing~~ pretrial conference shall be served upon the additional employers or insurers by the party bringing the petition. ~~In cases where no action is pending, the filing of the petition for contribution or reimbursement with the division shall initiate proceedings.~~

C. Answer. Within 20 days after being served with a copy of a petition for contribution or reimbursement under this rule, employers or their insurers, other than the petitioning party, may file a verified answer to the petition in accordance with the provisions of Minn. Stat. § 176.321 and, if not already set for ~~settlement or prehearing~~ a pretrial conference, the matter ~~shall~~ may be set for a ~~settlement or prehearing~~ pretrial conference in accordance with these rules.

D. Notice to employee petitioner. The employee petitioner shall be notified of all of the proceedings and should be represented by an attorney of his or her choice. A copy of all motions or answers shall be duly served upon the employee petitioner, the employee's petitioner's attorney, or both in accordance with Minn. Stat. § 176.321.

9 MCAR § 2.316 Subpoenas. Subpoenas may be obtained without charge from the ~~workers' compensation division or the office of administrative hearings~~. The name and address and telephone number of the party or attorney requesting service of the subpoena shall be included on the subpoena before service is made. When service is made, service and witness fees shall be tendered in accordance with Minn. Stat. § 357.22.

Upon motion promptly made, and in any event at or before the time specified in the subpoena for compliance with it, the calendar judge or compensation judge, if the case has been assigned for regular hearing, may quash or modify the subpoena if the judge finds that it is unreasonable or oppressive.

9 MCAR § 2.317 The hearing.

A. Notice. A place, date and time certain will be assigned to each case. Notice of the regular hearing will be given as soon as the assigned date is known, but shall be given at least ~~five~~ 30 days in advance of the hearing. The notice will include the place of hearing and the amount of time allowed for the hearing and the name of the compensation judge assigned, if known. Cases will be set for one location only, which shall be that most convenient for the petitioner, and adequate time will be allowed so that the case may be completely heard in one setting. In the event that an additional hearing date is required, it shall be set by agreement of all parties and the compensation judge. If the parties cannot agree, the compensation judge shall set the hearing as provided herein.

B. Availability of medical witnesses. As soon as the parties are apprised of the date scheduled for hearing, they shall immediately notify all medical witnesses in writing and arrange for their presence or for the taking of their deposition pursuant to 9 MCAR § 2.314 B.

C. Medical reports. The production of medical evidence in the form of written reports, by stipulation of the parties, is encouraged. These reports should include:

1. The date of the examination;
2. The history of the injury;
3. The patient's complaints;
4. The source of all facts set forth in the history and complaints;
5. Findings on examination;
6. Opinion as to the extent of disability and work limitations, if any;

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7. The cause of the disability and, if applicable, whether the work injury was a substantial contributing factor toward the disability;

8. The medical treatment indicated;

9. If permanent partial disability is an issue, an opinion as to whether or not permanent disability has resulted from the injury and whether or not the condition has stabilized. If stabilized, a description of the disability with a complete evaluation; and

10. The reason or reasons for the opinion or opinions.

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

E. Witnesses. Any party may be a witness or may present witnesses on his behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation. At the request of a party or upon his own motion for good cause, the compensation judge may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

F. Rules of evidence.

1. Pursuant to Minn. Stat. § 176.411, subd. 1, the compensation judge is bound neither by the common law or statutory rules of evidence nor by technical or formal rules of pleading or procedure.

2. Evidence must be offered to be considered. All evidence to be considered in the case, including all records and documents in the possession of any party, or a true and correct photocopy thereof, shall be offered and made a part of the record in the case. ~~No other factual information or evidence shall be considered in the determination of the case.~~ Any independent investigation by the compensation judge pursuant to the provisions of Minn. Stat. § 176.391, subd. 1, shall be part of the record provided all parties are aware of the investigation and have had an opportunity to participate in it. No other factual information or evidence shall be considered in the determination of the case.

3. Documentary evidence. Documentary evidence in the form of copies of excerpts may be received or incorporated by reference upon agreement of the parties or if ordered by the compensation judge.

4. Notice of facts. The compensation judge may take notice of judicially cognizable facts but shall do so on the record and with the opportunity for any party to contest the facts so noticed.

5. Examination of adverse party. A party may call an adverse party or his managing agent or employees or an officer, director, managing agent or an employee of the state or any political subdivision thereof or of a public or private corporation or of a partnership or association or body politic which is an adverse party, and interrogate them by leading questions and contradict and impeach them on material matters in all respects as if they had been called by the adverse party. The adverse party may be examined by his counsel upon the subject matter of his or her examination in chief under the rules applicable to direct examination, and may be cross-examined, contradicted, and impeached by any other party adversely affected by the testimony.

G. The record.

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

2. The record in a compensation case shall contain:

a. All pleadings, motions and orders, including the judgment roll and the entire record from any previous hearing which is relevant to the issues under consideration;

b. Evidence received or considered unless, through agreement of the parties or by order of the compensation judge, custody of an exhibit is given to one of the parties;

c. Those parts of the official file on the matter at the division which the compensation judge incorporates;

d. Offers of proof, objections and rulings thereon;

e. The compensation judge's order;

f. All memoranda or data submitted by any party in connection with the case;

g. A transcript of the hearing, if one was prepared; and

h. The audio-magnetic recording tapes, if that device was used to record the hearing.

3. The transcript.

a. The chief hearing examiner shall direct that the verbatim record of a hearing shall be transcribed if requested by any person. If a transcription is made, except as provided in c., the chief hearing examiner shall require the requesting person

and other persons who request copies of the transcript to pay a reasonable charge for them if transcribed by the office. If transcribed by someone other than the office, the person requesting the transcription or a copy shall be liable to the person preparing the transcript for the charge.

b. Charges for transcripts prepared by the office shall be set by the chief hearing examiner, with the approval of the Department of Finance, and all moneys received for transcripts prepared by the office shall be payable to the State Treasurer, Office of Administrative Hearings Account.

c. Pursuant to the provisions of Minn. Stat. § 176.421, subd. 4, clause (3), a party may petition the chief hearing examiner for an order directing that a transcript be prepared, for purposes of appeal to the Court of Appeals, at no cost to the appellant. A petition filed under this provision shall include the following:

- (1) ~~Title~~ Caption of the case;
- (2) Case identification numbers;
- (3) Name, address and telephone number of the attorney representing the appellant;
- (4) A sworn affidavit from the appellant which shall include:

(a) Appellant's monthly personal income from all sources including income from trusts, bonds, and savings certificates;

(b) A list, at market value, of all stocks, bonds, savings certificates or other certificates of indebtedness held by the appellant and the appellant's spouse if residing in the same household;

(c) If residing in the same household, the monthly personal income from all sources for appellant's spouse;

(d) A statement of the monthly expenses for the appellant's household;

(e) If the appellant owns any rental property, a statement showing the appellant's equity in the property and the monthly income and expense for the property;

(f) If the appellant owns outright or is purchasing the property in which he or she resides, a statement showing the market value of the property, the appellant's equity in the property, and the present monthly payments, if any.

H. Continuances during the hearing. If it appears in the interests of justice that further testimony should be received, the compensation judge, ~~in his or her discretion~~ with the consent of all parties, may continue the hearing to a future date and oral notice on the record shall be sufficient if given at the time of the original hearing. Otherwise, the notice of the date for the continued hearing shall be in writing and served on all parties.

I. Hearing procedure.

1. Compensation judge conduct. The compensation judge shall not communicate, directly or indirectly, in connection with any issue of fact or law with any party concerning any pending case, except upon notice and opportunity for all parties to participate. After the time the first witness is sworn, unless all parties agree, all of the proceedings shall be on the record, including any and all motions, objections, offers of proof, rulings of the judge, arguments of the parties other than final arguments, or other comments of the parties, their representative, or the judge. A compensation judge shall not order a court reporter to refrain from recording anything said during the course of a hearing absent the consent of all parties present nor shall a compensation judge turn off an audio magnetic recording device being used to record the proceedings, other than for reasonable breaks, absent the consent of all parties present.

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

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

b. Any stipulations, settlement agreements or consent orders entered into by any of the parties prior to the hearing shall be entered into the record;

c. If the compensation judge requests opening statements, the party with the burden of proof shall proceed first. All other parties shall make such statements in a sequence determined by the compensation judge;

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ADOPTED RULES

d. After any opening statements, the party with the burden of proof shall begin the presentation of evidence. That party shall be followed by the other parties in a sequence determined by the compensation judge;

e. Cross-examination of witnesses shall be conducted in a sequence determined by the compensation judge;

f. When all parties and witnesses have been heard, if the compensation judge believes that legal issues remain unresolved, opportunity may be afforded to present final argument, in a sequence determined by the compensation judge. Final argument may, in the discretion of the compensation judge, be in the form of written memoranda or oral argument, or both. Oral argument shall not be recorded, unless requested by a party or upon the order of the compensation judge. Written memoranda shall, when allowed, be submitted simultaneously or sequentially and within such time periods as the compensation judge shall prescribe. Final arguments shall be limited to legal issues only;

g. After final argument, if any, the hearing shall be closed or continued if ordered by the compensation judge. If continued, it shall be either continued to a certain time and day, which shall be announced at the time of the hearing and made a part of the record, or continued to a date to be determined later, which must be upon not less than 15 days written notice to the parties;

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

J. Disruption of hearing.

1. Cameras. No television, newsreel, motion picture, still or other camera, and no mechanical recording devices, other than those provided by the office of administrative hearings, shall be operated in the hearing room during the course of the hearing unless permission is obtained from the compensation judge and then subject to such conditions as the compensation judge may impose to avoid disruption of the hearing.

2. Other conduct. Pursuant to and in accordance with the provisions of Minn. Stat. § 624.72, no person shall interfere with the free, proper and lawful access to or egress from the hearing room. No person shall interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of interference or disruption or threat thereof, the compensation judge shall read this rule to those persons causing the interference or disruption and thereafter proceed as the judge deems appropriate.

9 MCAR § 2.318 The compensation judge's decision.

A. Basis for the decision.

1. The record. No factual information or evidence which is not a part of the record shall be considered by the compensation judge in the determination of the case.

2. Administrative notice. The compensation judge may take administrative notice of general, technical or scientific facts within the judge's specialized knowledge in conformance with the requirements of Minn. Stat. § 15.0419, subd. 4 provided that notice of the taking of such administrative notice is given and opportunity has been provided to all parties to rebut the facts sought to be noticed.

B. Compensation judge decisions.

1. Following the close of the record, the compensation judge shall prepare his or her decision and, upon completion, shall immediately file it with the commissioner who shall serve it on all parties as required by Minn. Stat. § 176.281 it shall be served on all parties.

2. The compensation judge's decision shall contain the following in the sequence as listed:

- a. The date and location of the hearing and the compensation judge's name;
- b. Appearances by parties, if pro se, or their attorneys, giving the full name and mailing address, including zip code, of each;
- c. The date on which the record of the hearing closed;
- d. A notice of the right of parties to appeal and how the appeal can be perfected;
- e. Findings of fact, conclusions and a determination on each issue raised. In cases involving a multiplicity of issues, the compensation judge may organize the decision by major subissues if the judge determines that organizing the decision in that manner will aid the reader in understanding the contents of it.

C. Readability. Compensation judge decisions shall be clear and concise and shall be written in a prose style which can be read and understood by persons of average intelligence. English rather than Latin terms shall be used unless it is necessary to utilize the Latin terminology.

D. Proposed decision filed by party. Any party may file a proposed decision with the compensation judge before the record is closed. Any proposed decision submitted shall conform to the provisions of these rules, shall be served on all other parties and shall be in a form which would allow the compensation judge to sign and issue the decision if it is acceptable. It shall also include a brief memorandum setting forth the issues and explaining the decision on each issue.

9 MCAR § 2.319 Rehearing. When a compensation judge has issued his or her findings, conclusions and decision, the judge's jurisdiction over the case shall end, except for taxation of disbursements or awarding of attorney's fees, unless the matter is ~~referred~~ referred to the compensation judge by the Court of Appeals and the chief hearing examiner for supplemental findings, taking of additional testimony, rehearing, or other action; provided that compensation judges may correct clerical or mathematical errors in decisions at any time prior to appeal.

9 MCAR § 2.320 Settlements.

A. Stipulations. Stipulations for settlement are allowed pursuant to Minn. Stat. §§ 176.081, subd. 7a and 176.521 and shall conform to ~~that section~~ those sections and to the requirements of this rule.

B. Filing. All stipulations for settlement shall be filed within 30 days of the date the settlement was negotiated.

C. Approval. ~~Stipulations for settlement shall be filed with and approved by the commissioner or the commissioner's designee if the case has not been referred to the chief hearing examiner.~~

Stipulations for settlement reached and agreed upon subsequent to the referral of the case to the chief hearing examiner shall be filed with and, except in cases where all parties are represented by attorneys or for those filed pursuant to Minn. Stat. § 176.081, subd. 7a, subject to approval by the compensation judge assigned to hear the case or the a calendar judge if the matter has not yet been assigned.

Where a settlement has been agreed upon pursuant to Minn. Stat. § 176.081, subd. 7a, when the offer and acceptance is filed, it shall include findings of fact, conclusions and an award on all issues, including attorney's fees and costs. It shall be filed with the chief hearing examiner who shall immediately send the settlement and the file to the commissioner for entry of the agreed upon award. Where approval is not required pursuant to Minn. Stat. § 176.521, the award required by 9 MCAR 2.320 G. shall be immediately signed by the compensation judge, served on all parties, and filed with the commissioner.

D. Contents. Stipulations for settlement shall contain the following information:

1. A brief statement of all of the admitted material facts;
2. A detailed statement of the matters in dispute, setting forth the contentions of the parties, supported by all medical reports or other documents in the possession of each party pertaining to each issue;
3. The weekly wage and compensation rate of the ~~employee~~ petitioner;
4. An itemization of the sums, if any, previously paid by the employer and insurer;
5. A statement that all medical or treatment expenses have been paid by the employer and insurer, or an itemization of the expenses which have not been paid by the employer and insurer, indicating which payments, if any, have been made by the employee. The stipulation shall specifically state whether any third party has paid any of the expenses and, if payments have been made, shall include the name and address of the third party together with any identifying claim or policy number;
6. The number of weeks and rate of compensation and, in cases of permanent partial disability, the percentage loss or loss of use upon which the compromise agreement is based;
7. Where applicable, the amount payable by the employer and insurer to the workers' compensation division for the benefit of the special compensation fund;
8. Where applicable, a statement that the employee has been fully advised of the provisions of Minn. Stat. §§ 176.132 and 176.645, and the effect of the settlement upon any future claims for supplementary benefits or adjustment of benefits;
9. Where applicable, a statement that the ~~employee~~ petitioner is claiming or waiving his or her right to make application for an award of attorney's fees against the employer or insurer pursuant to Minn. Stat. §§ 176.081, subd. 7 or 8, 176.135 or 176.191.

E. Attorney's fees detailed. Stipulations for settlement of cases in which the ~~employee or dependents~~ petitioner have

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ADOPTED RULES

engaged the services of an attorney shall be accompanied by a statement of the amount of attorney's fees requested and an itemization of the costs incurred, specifying who will be responsible for payment of each cost, and shall provide sufficient information to show the reasonableness of the requested fees and costs in accordance with Minn. Stat. § 176.081. If no fees are requested, the stipulation shall so state.

F. Medical reports. Stipulations for settlement shall be accompanied by copies of all medical reports in the possession of the parties which have not previously been filed.

G. Award. The parties involved in the settlement shall submit an award on stipulation prepared for signature by the applicable judge and sufficient copies thereof for all parties to be served if the settlement is approved.

H. Copy to client. The attorney representing the ~~employee or dependents~~ petitioner shall furnish a copy of the stipulation for settlement to his or her client at the time the client signs the stipulation.

I. Signatures. Stipulations for settlement shall be signed by all parties as required by Minn. Stat. § 176.521.

J. Payment. The employer and insurer shall make payments pursuant to an award on stipulation within 14 days from the date the award on stipulation is ~~served~~ filed with the commissioner.

9 MCAR § 2.321 Attorney fees.

A. ~~Authorization~~ Notice of representation. Whenever an employer or insurer receives notice that an attorney is representing an ~~employee or dependent~~ petitioner, 25 percent of the compensation, not including medical expense, shall be withheld pending an order determining the reasonable value of any claim for legal services or disbursements pursuant to Minn. Stat. § 176.081. Written notice that the compensation is being withheld shall immediately be mailed to the ~~employee or dependents~~ petitioner, the attorney and the division or its Saint Paul office.

B. Filing of certain documents as application. In applicable cases, the filing of a claim petition or an objection to discontinuance of compensation shall constitute an application for the award of attorney fees against the employer and insurer pursuant to Minn. Stat. § 176.081, subd. 7.

C. Application. Application for determination and approval of any claim for legal services or disbursements may be filed by the employer or insurer, the ~~employee or dependents~~ petitioner or the attorney. Unless ordered otherwise by a compensation judge, an application for attorney fees shall be by written petition. Any application shall disclose the amount of compensation withheld, the total fees or disbursements previously paid to said attorney or his associates and, if filed by the attorney for the ~~employee or dependents~~ petitioner, the amount of any retainer fee paid. Applications filed by attorneys shall contain sufficient information to show the reasonableness of the requested fees in accordance with Minn. Stat. § 176.081, subd. 5.

A separate application is not necessary if filed as part of a stipulation for settlement ~~as provided in these rules~~.

~~C. D.~~ Filing. Applications under this rule shall be filed with the ~~commissioner unless the case has been referred to the chief hearing examiner for assignment, in which case it shall be filed with~~ the compensation judge assigned to hear the case or ~~the a~~ calendar judge if no assignment has been made.

E. Settlements. In cases where an offer of settlement has been made, in writing, pursuant to the provisions of Minn. Stat. § 176.081, subd. 7a, and the offer has not been accepted, upon receipt of the compensation judge's decision, the following procedure shall be followed:

1. The party seeking to impose the sanctions imposed by Minn. Stat. § 176.081, subd. 7a, shall file proof of the offer with the chief hearing examiner within ten calendar days of the date of the compensation judge's decision. The filing shall include an order prepared for signature by the chief hearing examiner which would amend the compensation judge's decision.

2. When filing the material requested above, copies shall be served on all other parties at the same time.

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

4. If no objection is received, the chief hearing examiner shall sign, serve and file the order within ten calendar days of its filing. If objection has been received, it shall be determined by the chief hearing examiner within ten calendar days after the filing of the objection. Parties shall not have the right to a hearing on the objection. The chief hearing examiner's determination shall be in writing and is appealable to the Workers' Compensation Court of Appeals.

9 MCAR § 2.322 Taxation of costs and disbursements.

A. Informal request. Prior to submitting a formal request for payment or reimbursement of costs and disbursements, an informal

request should be made by the taxing party. If agreement cannot be reached on all items, the taxing party may then proceed as delineated herein, including in the formal request an indication of those costs agreed upon.

~~A-~~ B. Service of formal request. Service of the request for taxation of costs and disbursements shall be made upon the other parties, or their attorneys, by the taxing party.

~~B-~~ C. Service of objection. An opposing party has five working days from the date of service upon him in which to serve and file a formal objection to taxation or allowance, with admission or proof of service upon the other parties.

~~C-~~ D. Hearing. If requested, a time for hearing before the compensation judge who heard the case shall be fixed. A notice thereof shall be given to the parties by the compensation judge.

9 MCAR § 2.323 Second injury law.

~~A. Application-~~ Application for registration of physically impaired employees shall be in a format prescribed by the division and submitted pursuant to rules of the commissioner.

~~B. Hearing-~~ Should the commissioner deem the application unacceptable prior to the subsequent injury, the applicant may, within 60 days following receipt of notice of rejection, petition to the division, in writing, for hearing upon the application. A copy of the petition shall be served by the applicant upon the state treasurer, custodian of the special compensation fund, and upon the attorney general. Upon receipt of the petition, the commissioner shall refer the matter to the chief hearing examiner for hearing which hearing shall be conducted by a compensation judge as provided by Minn. Stat. § 176.411, with right of appeal.

~~C. Referral-~~ If a dispute arises following the notice of intention to claim reimbursement under Minn. Stat. § 176.131, subd. 6, and the commissioner shall refer refers the matter to the chief hearing examiner who it shall assign the matter be assigned to a compensation judge for hearing which hearing shall be conducted as provided by Minn. Stat. § 176.411, with right of appeal.

9 MCAR § 2.324 Other hearings. Pursuant to the provisions of Minn. Stat. § 15.052, subd. 3, all hearings not discussed herein but required to be conducted by a compensation judge of the office of administrative hearings shall be conducted in substantial compliance with these rules provided, however, that in any dispute wherein an immediate hearing is necessary in order to carry out the purpose and intent of the Minnesota workers' compensation law, the notice of hearing shall be given not less than five working days prior to the hearing date. The chief hearing examiner shall provide expedited assignment of compensation judges to these hearings and shall assign compensation judges to the hearings in a manner which will allow the compensation judge's decision to be issued immediately upon conclusion of the hearing or as soon thereafter as may be reasonable and practical.

9 MCAR § 2.325 Permanent partial disability panel.

A. Notification to administrator. Upon receipt of a file from the commissioner, if the chief hearing examiner, or a calendar or compensation judge if the case has been assigned to them, determines from a review of the file that permanent partial disability is a significant issue to be determined in the case, the chief hearing examiner shall immediately notify the administrator of the workers' compensation court of appeals if the employee petitioner resides in a county selected by the court of appeals pursuant to the provisions of Minn. Stat. § 176.152, subd. 7.

B. Questions to panel. When the administrator of the workers' compensation court of appeals notifies the chief hearing examiner of the names and addresses of the members of the permanent partial disability panel, the compensation judge, or the chief hearing examiner in cases in which a compensation judge has not yet been assigned, shall submit written questions to the panel. A copy of the questions shall be served on all parties at the same time.

C. Hearing. When the chief hearing examiner or compensation judge receives the report of the panel, the case shall be set for a regular hearing as soon as practicable.

D. Disputes relating to payment of panel members. Disputes relating to the payment of the fees of panel members arising pursuant to the provisions of Minn. Stat. § 176.152, subd. 6, shall be brought to the attention of the compensation judge assigned to hear the case no later than 20 days prior to the date of the hearing. The parties disputing the fee shall notify the compensation judge, in writing, of the intent to dispute the fee, stating therein the specific facts relied upon in disputing the fee. A copy of this notification shall be served on all other parties and the members of the panel at the same time as it is filed with the compensation judge. At the hearing, the dispute shall be determined as other issues in the case.

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ADOPTED RULES

9 MCAR § 2.326 Exhibits: removal and return.

A. Requests for removal. All requests for permission to remove any exhibit or document from the official file must be made to the compensation judge to whom the file has been assigned or to the supervisor of the docket section of the office.

B. Return without consent or notice. Upon the expiration of the time in which to appeal, all exhibits or other documentary evidence may be returned to their source of origin without the consent of the parties or notice thereto, ~~upon order of the compensation judge~~. A copy of the letter of transmittal of the exhibits or documents shall remain in the file as part of the record of the case.

C. Request for return. Upon expiration of the time in which to appeal, exhibits or other documentary evidence shall be returned to their source upon the request of the party producing the exhibit or evidence at the hearing or the party which introduced the evidence into the record. A request for return of exhibits or documents shall be made in writing to the compensation judge, shall contain the title and appropriate identification number of the case in which they were entered into evidence, and shall identify the exhibits or documents requested. A telephone number of the person making the request shall be

Department of Commerce Insurance Division

Adopted Rules Exempting Insurers from Certain Filing Requirements for Commercial Lines of Insurance

The rules proposed and published at *State Register*, Volume 6, Number 15, pages 620-621, October 21, 1981 (6 S.R. 620) are now adopted as proposed.

Minnesota Housing Finance Agency

Adopted Rule Governing Income Limits for Limited Unit Developments

The rule proposed and published at *State Register*, Volume 6, Number 19, pages 875-876, November 9, 1981 (6 S.R. 875) is now adopted with the following modifications:

Rule as Adopted

12 MCAR § 3.002 O. "Persons and families of low and moderate income" means:

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 the amounts set forth in Exhibit 12 MCAR § 3.002 O.-1. 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. "Metropolitan area" has the meaning given it in Minn. Stat. § 473.121, subd. 2-;

Exhibit 12 MCAR § 3.002 O.-1.

Mortgage Interest Rate	Nonmetropolitan Area Maximum Adjusted Income	Metropolitan Area Maximum Adjusted Income
0-10.59%	\$19,000	\$24,000
10.60-11.09%	\$20,000	\$25,000
11.10-11.59%	\$21,000	\$26,000
11.60-12.00%	\$22,000	\$27,000

2. With respect to limited-unit mortgage loans to veterans and veterans' dependents to assist in making down payments pursuant to Minn. Stat. § 462A.05, subd. 19, those persons and families whose adjusted income does not exceed \$22,000 for the nonmetropolitan area and \$27,000 for the metropolitan area regardless of the interest rate on the mortgage loan for which down payment assistance has been given;

Reletter. Reletter 12 MCAR § 3.002 O.2.-4. as O.3.-5.

Minnesota Housing Finance Agency

Adopted Rules Governing the Rental Rehabilitation Loan Program

The rules proposed and published at *State Register*, Volume 6, Number 19, pages 879-881, November 9, 1981 (6 S.R. 879) are now adopted with the following modifications:

Rules as Adopted

12 MCAR § 3.053 Eligible applications.

B. Credit risk. Each applicant must be a reasonable credit risk with the ability to pay the loan obligation, as determined by the agency or by the lending institution, if any, servicing the loan on behalf of the agency pursuant to 12 MCAR § 3.013.

Minnesota Housing Finance Agency

Adopted Amendment to and Adoption of Rules Governing Eligibility for the Home Ownership Assistance Fund

The rules proposed and published at *State Register*, Volume 6, Number 19, pages 877-879, November 9, 1981 (6 S.R. 877) are now adopted as proposed.

Minnesota Housing Finance Agency

Adopted Temporary Rules Governing Income Limits for the Home Improvement Loan Program

The temporary rule proposed and published at *State Register*, Volume 6, Number 21, page 1007, November 23, 1981 (6 S.R. 1007) is now adopted as proposed.

Minnesota Housing Finance Agency

Adopted Rule Amending Provisions Relating to Downpayments under the Homeownership Assistance Fund

Rule as Adopted

The rule proposed and published at *State Register*, Volume 6, Number 19, pages 881-882, November 9, 1981 (6 S.R. 881) is now adopted as proposed.

Minnesota Municipal Board

Adopted Rule Governing Filing Fees

The rule 10 MCAR § 4.020 Schedule of Filing Fees is now adopted as proposed and published at *State Register*, Volume 6, Number 18, Pages 746-747, November 2, 1981 (6 S.R. 746).

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ADOPTED RULES

Department of Public Welfare Support Services Bureau

Adopted Repeal of Rules Governing Protection of Public Assistance Records (12 MCAR § 2.045), Contracts with Nonprofit Medical and Hospital Service Organizations (12 MCAR § 2.046), and Pilot Dental Care Programs for Senior Citizens (12 MCAR § 2.059)

The above rules proposed for repeal at *State Register*, Volume 6, Number 22, pp. 1060-1061, November 30, 1981 (6 S.R. 1060) are now repealed.

Department of Revenue Income Tax Division

Adopted Rule Governing Filing and Payment of Withholding Tax

The rule proposed and published at *State Register*, Volume 6, Number 19, pages 889-890, November 9, 1981 (6 S.R. 889) is now adopted with the following modifications:

Rule as Adopted

13 MCAR § 1.6301 **Filing and payment of withheld tax.** For purposes of determining the timeliness of withholding tax payments, returns, or deposits under Minn. Stat. § 290.92, subd. 6, clause (1), the payment, return, or deposit shall be treated as having been made on the earlier of the following dates:

- A. The date actually received by the Department of Revenue; or
- B. The date of mailing, but only if the payment, return, or deposit was mailed on or before the ~~second~~ day prior to the due date, including any extension of time granted for making the payment, return, or deposit. The person required to make the payment, return, or deposit shall have the burden of establishing that the payment, return, or deposit was timely mailed in the United States by United States mail in an envelope or other appropriate wrapper, postage prepaid, and properly addressed.

SUPREME COURT

Decisions Filed Friday, February 5, 1982

Compiled by John McCarthy, Clerk

81-154/Sp. *State of Minnesota v. Mitchell Blanchard*, Appellant. Becker County.

Erroneous admission of non-prejudicial hypnotically influenced testimony is not reversible error in the circumstances of this case.

Admission of evidence of defendant's abuse of victim's son was proper.

Erroneous admission of evidence of defendant's drug dealing was not prejudicial.

Erroneous admission of evidence of victim's fear of defendant was not prejudicial.

Affirmed. Peterson, J. Took no part, Kelley, J.

81-265/Sp. *Barbara A. Talmage v. Medtronic, Inc., et al.*, Relators. Workers' Compensation Court of Appeals.

Application of the rule that findings of the Workers' Compensation Court of Appeals will not be disturbed unless consideration of the evidence and the inferences permissible therefrom requires reasonable minds to adopt a contrary conclusion dictates affirmance of the decision of a divided Court of Appeals determining that employee is entitled to compensation for continuing temporary total disability.

Affirmed. Peterson, J. Dissenting. Otis, J. Took no part, Kelley, J.

STATE CONTRACTS

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

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

Department of Corrections

Notice of Request for Proposals for Work Release Services

Proposals are being accepted by the Minnesota Department of Corrections for the provision of work release services. These services are to be provided in the metropolitan area to approximately 30 male and female offenders who are in the custody of the Minnesota Department of Corrections. Proposals are being accepted from community corrections facilities licensed by the State of Minnesota, or eligible for licensing, to provide community residential facilities to adult offenders. It is anticipated that the contract which may arise out of this Request for Proposal will cover the 15 month period of time, April 1, 1982-June 30, 1983. Details regarding the format required by this Request for Proposal and the types of services to be provided can be obtained by contacting:

Dennis Doege, Director
Project Reentry/Work Release
Department of Corrections
900 North Fourth Street
Minneapolis, Minnesota 55401

All interested parties are encouraged to contact the issuing office as soon as possible. The deadline for proposals is 4:30 p.m., Monday, March 1, 1982.

Department of Energy, Planning and Development Department Resources Division

Notice of Request for Proposals for Feasibility Study

Proposals are being accepted for a feasibility study to determine service options for the Chicago Northwestern Railroad branch line within Lac Qui Parle and Yellow Medicine counties scheduled for abandonment.

The purpose of the study is to determine the feasibility of existing rail services, and the alternative options without the services. The study will focus on the demand for the service, the impact on the community if abandoned, and what alternatives are available for the community.

The department estimates that the cost of such a study to be \$23,000. A contract award will be made March 9, 1982.

Proposals must be submitted no later than 4:00 p.m. Friday, March 5, 1982. Further information is available by writing or calling: Dana Weber Young, Director, Development Resources Division, Department of Energy, Planning and Development, 480 Cedar Street, St. Paul, Minnesota, 55101; (612) 296-3976.

Metropolitan Council of the Twin Cities Area

Request for Proposals for Preparation of Report on Landfill Abatement of Sewage Sludge Ash

The Metropolitan Council solicits a proposal for entering into a contract for the performance of preparing a report on abatement of sewage sludge ash. Six copies of the proposal should be submitted to the Metropolitan Council, Suite 300 Metro Square Bldg. St. Paul, Minnesota 55101, Attention: Mr. James Frost, Contract Manager.

The council, by this request for proposals, does not promise to accept the lowest, or any other, proposal and specifically reserves the right to reject any or all proposals, to waive any formal proposal requirements, to investigate the qualification and experience of any proposer, to reject any provision in any proposal, to obtain new proposals, or to proceed to do the work

STATE CONTRACTS

otherwise. All proposals received on or before 4:00 p.m. on March 12, 1982 will be considered by the council. In the event that a proposal is accepted, the council will notify the successful proposer in writing within 30 days following its consideration of the proposal.

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

Copies of the Request For Proposal can be obtained by contacting Mr. James Frost at (612) 291-6519.

OFFICIAL NOTICES

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

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

Office of Administrative Hearings For the Department of Commerce, Insurance Division

In the Matter of the Petition by the Workers' Compensation Insurers Rating Association of Minnesota for Changes in the Schedule of Rates to Reflect Automatic Increases in Weekly Benefits on October 1, 1980 and October 1, 1981 and Special Compensation Fund Assessments

Notice of and Order for Hearing

Issued and entered this 8th day of February, 1982 by Michael D. Markman Commissioner of Insurance

I. BACKGROUND

On January 12, 1982, the Workers' Compensation Insurers Rating Association of Minnesota (hereinafter WCIRA) filed a petition to amend the Scheduled Rates for Workers' Compensation Insurance (Schedule Rates).

The proposed amendments to the schedule rates, as specified in the petition of the WCIRA, are alleged to reflect upward adjustments in the statewide average weekly wage made on October 1, 1980 and October 1, 1981 by the Minnesota Department of Labor and Industry. These changes correspondingly increase the minimum and maximum benefits payable for injured employees on all types of injuries. Also reflected in the petition are changes in the Special Compensation Fund assessments for January 1, 1981 and January 1, 1982. The proposed amendments to the schedule rates would raise all workers' compensation rates on the average of 11.9%. The changes in the statewide average weekly wage for 1980 and 1981 would raise rates 6.2%. Proposed changes in the schedule rates due to increased assessments for Special Compensation Funds for years 1981 and 1982 would add 5.4%. Thus, if all the increases became effective as proposed by the Rating Association, workers' compensation insurance rates would increase on the average in Minnesota 11.9 (1.054 × 1.062).

II. FINDINGS AND CONCLUSIONS

Based upon the petitions of the WCIRA in this matter, the commissioner FINDS and CONCLUDES that:

1. The petitions for hearing set forth sufficient facts and information indicating the need for a hearing to consider amendment to the schedule rates.
2. The petitions do not reflect any need for a rate increase due to any factors which the Commissioner's Order of April 21, 1981 required to be studied further prior to any further rate adjustments.

III. ORDER

1. It is hereby ordered that a hearing shall be held to consider the facts and issues raised by the Workers' Compensation

Insurers Rating Association of Minnesota (WCIRA) petition. The hearing shall be conducted before Hearing Examiner Jon Lunde, Office of Administrative Hearings, Room 310, Fourth Avenue South, Minneapolis, Minnesota 55415, 341-7600.

2. The hearing in this matter will be held for the purpose of providing the petitioner, WCIRA, with an opportunity to present evidence in support of amendments to the manual requested in their petitions. The hearing will be conducted as a contested case hearing according to the procedures set forth in Minn. Stat. § 15.0411-15.052; 79.076, subd. 2(2); 79.071; 79.072 and pursuant to 9 MCAR §§ 2.101-2.199.

3. Throughout the proceedings in this matter, interested parties may be represented by legal counsel or by a person or representative of their choice. Questions concerning the hearing should be directed to the hearing examiner. Questions concerning this order, concerning discovery or concerning an informal disposition of this matter may be directed to the hearing examiner or to Rey Harp, 1100 Bremer Tower, 7th and Minnesota Street, St. Paul, Minnesota 55101, 296-9701.

IV.

NOTICE OF PREHEARING CONFERENCE

1. Notice of pretrial conference. Notice is hereby given that a pretrial conference will be held at 9:00 a.m. on the fourth day of March at 400 Summit Bank Building, Courtroom #3, 310 Fourth Avenue South, Minneapolis, Minnesota before the Hearing Examiner. The pretrial conference will be held for purposes establishing a hearing date for this matter, and to consider any pretrial motions.

2. Any person or organization who intends to appear at the prehearing must file a Notice of Appearance with the hearing examiner within 20 days of the publication of this notice. In addition, public comments may be presented at the hearing either orally or in writing. If no persons contest the proposals or the petitions, they may be deemed true. In the event the proposals are taken as true or the issues are deemed proven, it is possible that the proposed amendments to the schedule rates requested by the WCIRA will be granted.

3. Minn. Stat. chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, Subd. 11 (1979 Supp.) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than \$250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than \$250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The Statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, 296-5615.

4. Copies of the proposed amendments to the schedule rate may be obtained from the Workers' Compensation Insurers Rating Association of Minnesota, 510 Marquette Avenue, Minneapolis, Minnesota 55402, 338-4500. In addition, copies may be inspected during regular business hours at the Minnesota Insurance Division, Department of Commerce, 500 Metro Square Building, St. Paul, Minnesota 55101.

Michael D. Markman
Commissioner of Insurance

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

Notice of Intent to Solicit Outside Opinion Regarding Proposed Rules Governing Vocational Education Licenses for Adult Supplementary, Part-time Preparatory and Substitute Teachers

Notice is hereby given that the State Board of Education (State Board for Vocational Education) is seeking information or opinions from sources outside the agency in preparing to amend rules 5 MCAR §§ 1.0782, 1.0786, 1.0791 and 1.0793 governing

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the time period for initial and renewed licenses. The promulgation of these rules is authorized by Minn. Stat. §§ 125.185, subd. 4 and 121.11, subd. 12.

The State Board of Education (State Board for Vocational Education) requests information and comments concerning the subject matter of these rules. Interested or affected persons 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
529 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 comments shall be accepted until March 5, 1982. Any written material received by the State Board of Education (State Board for Vocational Education) shall become part of the record in the event that the rules are amended.

Mary Thornton Phillips
Assistant Commissioner
Division of Vocational-Technical Education

Energy Agency Conservation Division

Notice of Intent to Solicit Outside Opinion on Rules Relating to the Minnesota Energy Conservation Service

Notice is hereby given that the Energy Agency is seeking information or opinions from sources outside the agency in considering a revision of rules that regulate the Minnesota Energy Conservation Service, 6 MCAR §§ 2.2300-2313. The rules are authorized by Minn. Stat. § 116H.17.

Existing state rules regulating the program may be modified in accordance with recent changes proposed by the U.S. Department of Energy in its rules regulating the Residential Conservation Service Program. Those proposed rules were published in the *Federal Register* on November 12, 1982 at pp. 55836 to 55874.

All interested or affected persons may submit information on this subject until the Agency publishes its proposed rules, expected by June, 1982. Written or oral information and comments should be addressed to:

Greg Hubinger
(612) 297-2117
Minnesota Energy Conservation Service Program
Minnesota Energy Agency
980 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

Any written materials by the agency will be made part of the record in the event amendments to the rules are proposed.

Department of Energy, Planning & Development Energy Policy Development Council

Notice of Council Meeting

The next meeting of the council is scheduled for February 22, 1982, 1:00 to 4:30 p.m. in Conference Room A on the third floor of the Northwestern National Bank Building, 7th and Marquette, Minneapolis. The meeting will address questions of capital availability for the development of Minnesota's energy resources. Contact Allen Jaisle, 296-2641, for further information.

State Board of Investment

Notice of Regular Meeting

The State Board of Investment will meet Tuesday, February 16, 1982, at 9:45 a.m. in the State Capitol, Room 130, Saint Paul.

Investment Advisory Council

Notice of Regular Meeting

The Investment Advisory Council will meet Tuesday, February 16, 1982, at the MEA Conference Room, 41 Sherburne Avenue, Saint Paul, at 7:30 a.m.

Minnesota State Retirement System

Regular Meeting, Board of Directors

The regular bi-monthly meeting of the Board of Directors, Minnesota State Retirement System, will be held on Friday, February 19, 1982 at 9:00 a.m. in the office of the System, 529 Jackson Street, St. Paul, Minnesota.

Department of Natural Resources Soil and Water Conservation Board

Notice of Meeting

The Minnesota Soil and Water Conservation Board has cancelled their regular monthly meeting for February. The Board will resume their regular schedule on March 9, 1982.

Minnesota Pollution Control Agency

Application by the Metropolitan Waste Control Commission and the Metropolitan Council for Reissuance of Its National Pollutant Discharge Elimination System (NPDES)/State Disposal System (SDS) Permit for the Metropolitan Wastewater Treatment Facility, 2400 Childs Road, St. Paul, Minnesota

Notice of and Order for Hearing

It is hereby ordered and notice is hereby given that a contested case hearing concerning the above-entitled matter will be held by the Minnesota Pollution Control Agency (MPCA) pursuant to Minn. Stat. ch. 115 (1980) and 6 MCAR § 4.8036 on Monday, April 26, 1982, at the MPCA Board Room, 1935 West County Road B-2, Roseville, Minnesota 55113, commencing at 9:00 a.m. The hearing will be continued thereafter until adjournment. In addition, evening sessions will be held on Monday, April 26, 1982, and Tuesday, May 11, 1982, at the same location for the purpose of taking public testimony from persons who are unable to attend the day sessions.

The Metropolitan Waste Control Commission (MWCC) and the Metropolitan Council (Council) have applied for reissuance of the NPDES/SDS permit for the Metropolitan Wastewater Treatment Facility, (Metro Plant), 2400 Childs Road, St. Paul, Minnesota. The Metro Plant treats industrial, municipal and domestic wastewater from the Minneapolis-St. Paul Area and discharges to the Mississippi River.

The director of the MPCA made a preliminary determination to reissue the proposed permit. The proposed permit would authorize the MWCC and council to operate the Metro Plant in accordance with the effluent limitations, monitoring requirements and other conditions set out in the permit. The proposed permit would expire June 30, 1987.

Public notice (number 14M-640) of the permit application and the preliminary determination to reissue the proposed permit was made on November 20, 1981, pursuant to 6 MCAR § 4.8036. The State of Wisconsin (petitioners) requested a hearing in response to the public notice. The petitioners have objected to certain terms and conditions of the proposed permit. In response

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to the public notice, comments were also received from the MWCC, the council, and U.S. Environmental Protection Agency, Region V.

The purpose of the hearing is to determine whether the proposed permit should be issued and, if so, the terms and conditions of such permit. Please be advised that the issues may, without further notice, be modified and/or amended by the hearing examiner during prehearing conferences. Additionally, prehearing conferences may result in the establishment of foundation for witnesses and exhibits and, furthermore, may lead to a settlement of the issues surrounding the permit issuance. A prehearing conference is currently scheduled for February 22, 1982, at 2 p.m., Executive Director's Office, MPCA, 1935 West County Road B-2, Roseville, Minnesota 55113.

The hearing will be held before Allan W. Klein, Office of Administrative Hearings, 400 Summit Bank Building, 310-4th Avenue South, Minneapolis, Minnesota 55415, telephone (612) 341-7609, a hearing examiner appointed by the chief hearing examiner of the State of Minnesota. All parties have the right to be represented by legal counsel, themselves, or any other representative of their choice, if not otherwise prohibited as the unauthorized practice of law. The hearing will be conducted pursuant to the procedures set out in Minn. Stat. §§ 15.0411 through 15.052, 9 MCAR §§ 2.201 through 2.299 (Office of Administrative Hearings Contested Case Rules), and 6 MCAR §§ 4.3001 through 4.3013 (Minnesota Pollution Control Agency Rules of Procedure), to the extent the latter rules do not conflict with the former rules.

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

The following persons are parties to the hearing at the present time, pursuant to 6 MCAR § 4.3009: the applicant (the MWCC and the council), the petitioners (the State of Wisconsin) and, the MPCA director. Any other person wishing to become a party to the hearing must file a petition to intervene with the hearing examiner pursuant to 9 MCAR § 2.210 on or before March 19, 1982. A copy of the petition must be served on all existing parties and the MPCA. The petition may be filed after March 19, 1982, if there is good cause for the petitioner's failure to file the petition in a timely manner. The petition must show how the petitioner's legal rights, duties, or privileges may be determined or affected by the contested case, and shall set forth the grounds and purposes for which intervention is sought and indicate the petitioner's statutory right to intervene if one should exist. The name and address of the hearing examiner are noted above. The names and addresses of counsel for the parties are as follows:

Metropolitan Council
John Hoeft
Metro Square Building
St. Paul, MN 55101

Metropolitan Waste Control Commission
Robert Hillstrom
Hillstrom, Bale & Nemo
750 Pillsbury Building
Minneapolis, MN 55402

State of Wisconsin
Ray Roder, Assistant Attorney General
Department of Justice
P.O. Box 7857
Madison, Wisconsin, 53707

Minnesota Pollution Control Agency Director
Marlene E. Senechal
Special Assistant Attorney General
1935 W. County Road B-2
St. Paul, MN 55113

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

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

The application form, proposed permit, comments received, hearing requests, and other documents related to this matter may be inspected and copied any time between 8:30 a.m. and 4 p.m., Monday through Friday, at the Minnesota Pollution Control Agency, 1935 West County Road B-2, Roseville, Minnesota, telephone: (612) 296-7217.

Questions concerning the issues raised in this notice of and order for hearing or concerning informal disposition or discovery may be directed to Special Assistant Attorney General Marlene E. Senechal at the address noted above (telephone (612) 296-7346).

All persons are advised that, if they intend to appear as parties at the hearing, the notice of appearance form enclosed with this order must be completed and returned to the hearing examiner within twenty (20) days of the date of service of the notice of and order for hearing. Should a party fail to appear at the hearing, the issues set out in this order may be deemed proved, with the consequence that the proposed permit may be issued in its present form.

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

February 8, 1982

Virgil C. Herrick
Chairman

Minnesota Pollution Control Agency

In the Matter of the Recommendation by the Director to Certify as Intrinsically Suitable Sites for the Disposal of Metropolitan Waste Control Commission's Sewage Sludge and Solid Waste

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 proposed sites for the disposal of the Metropolitan Waste Control Commission's sewage sludge and solid waste will be held by the Minnesota Pollution Control Agency (MPCA) pursuant to Minn. Stat. § 473.153 (1980 and 1981 Supp.) at the following times and places:

Sites 2 and 4 (see descriptions below) on Monday, February 22, 1982, at Westwood Junior High School, Cafeteria, 701-91st Avenue N.E., Blaine, MN 55434, commencing at 7:00 p.m.

Sites 10, 15, and B (see descriptions below) on Wednesday, February 24, 1982, Farmington High School Commons, 800 Denmark, Farmington, MN 55024, commencing at 7:00 p.m.

Sites 17, 18, 22 and 31 (see descriptions below) on Thursday, February 25, 1982, Shakopee High School Auditorium, 10th Avenue and Lewis, Shakopee, MN 55379, commencing at 7:00 p.m.

The hearings will be held before the following hearing examiners appointed by the chief hearing examiner of the State of Minnesota:

Sites 2 and 4:

Allan W. Klein
Office of Administrative Hearings
400 Summit Bank Building
310-4th Avenue South
Minneapolis, Minnesota 55415
(612) 341-7609

Sites 10, 15, and B:

David Kuduk
1200 Soo Line Building
Minneapolis, Minnesota 55402
(612) 339-9242

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Sites 17, 18, 22, and 31:

Alan R. Nettles
Meyer, Njus, Johnson & Nettles
1814 1st Bank Plaza West
Minneapolis, Minnesota 55402
(612) 341-2181

The procedures to be followed at this hearing were published in the *State Register* on July 13, 1981, (6 S.R. 55). A copy of these procedures may also be obtained by contacting the MPCA at the address noted below.

The Metropolitan Council (council) has provided to the MPCA data relating to the intrinsic suitability of the nine sites proposed for the disposal of the Metropolitan Waste Control Commission's sewage sludge and solid waste. The director of the MPCA has made a preliminary recommendation that the first seven sites discussed below (Nos. 10, B, 15, 17, 18, 22, and 31) be certified as intrinsically suitable for their proposed use because they can reasonably be expected to qualify the MPCA permits assuming certain conditions are met. The director of the MPCA has made a preliminary recommendation that the last two sites discussed below (Nos. 2 and 4) not be certified as intrinsically suitable because they cannot reasonably be expected to qualify for MPCA permits.

SITE 10 LAKEVILLE-FARMINGTON

This site is located entirely within Section 22 of Township 114 North, Range 20 West in the Cities of Lakeville and Farmington in Dakota County. The site is proposed as a landfill site. This site can reasonably be expected to qualify for MPCA permits assuming the following conditions are met: a 300 foot setback must be maintained between the fill area and the stream located in the northern part of the site; either a 1000 foot setback must be maintained between the fill area and residences or adequate screening must be provided; either the fill area cannot be located in major drainage courses or drainage must be rerouted; the fill area cannot be located where sandy soils and a high perched water table are present; a liner and leachate collection system must be provided; and contaminated surface water must be prevented from leaving the site.

SITE B FARMINGTON

This site is essentially the southwest quarter of Section 26, Township 114 North, Range 20 West in the City of Farmington, Dakota County. The site is proposed as a landfill site. This site can reasonably be expected to qualify for MPCA permits assuming the following conditions are met: the fill area cannot be located in the 100 year flood plain which is in the northeast corner of the site; either a 1000 foot setback must be maintained between the fill area and residences or adequate screening must be provided; either the fill area cannot be located in major drainage courses or drainage must be rerouted; the fill area cannot be located where sandy soils and a high perched water table are present; a liner and leachate collection system must be provided; and contaminated surface water must be prevented from leaving the site.

SITE 15 EUREKA TOWNSHIP

This site is located in portions of Sections 25, 26, 35 and 36 of Township 113 North, Range 20 West, in Eureka Township, Dakota County. The site is proposed as a landfill site. This site can reasonably be expected to qualify for MPCA permits assuming the following conditions are met: the fill area cannot be located in the southern and eastern portions of the site because of the presence of high bedrock; either a 1000 foot setback must be maintained between the fill area and residences or adequate screening must be provided; either the fill area cannot be located in major drainage courses or drainage must be rerouted; a liner and leachate collection system must be provided; and contaminated surface water must be prevented from leaving the site.

SITE 17 SAND CREEK TOWNSHIP

This site is located in Sections 9, 10, 15 and 16 in Township 114 North, Range 23 West, Sand Creek Township in Scott County. The site is proposed as a landfill site. This site can reasonably be expected to qualify for MPCA permits assuming the following conditions are met: the fill area must be located 300 feet from the stream running through the center of the site; the fill area cannot be located in the wetland in the southwest corner of the site; either a 1000 foot setback must be maintained between the fill area, and residences and highways or adequate screening must be provided; either the fill area cannot be located in major drainage courses or drainage must be rerouted; a liner and leachate collection system must be provided; contaminated surface water must be prevented from leaving the site; and, the fill area cannot be located in the steeply sloped area located in the northwestern corner of the site.

SITE 18 HELENA-BELLE PLAINE TOWNSHIPS

This site is located in Sections 25 and 36 of Township 113 North, Range 24 West, Belle Plaine Township and in Sections 30 and 31 of Township 113 North, Range 23 West, Helena Township in Scott County. The site is proposed as a landfill site. The site can reasonably be expected to qualify for MPCA permits assuming the following conditions are met: a 300 foot setback must be maintained between the fill area and the stream located in the western part of the site; either a 1000 foot setback must be

maintained between the fill area, and residences and the highway, or adequate screening must be provided; either the fill area cannot be located in major drainage courses or drainage must be rerouted; a liner and leachate collection system must be provided; and contaminated surface water must be prevented from leaving the site.

SITE 22 DAHLGREN TOWNSHIP

This site is located in Sections 17, 18, 19 and 20 of Township 115 North, Range 24 West, Dahlgren Township, Carver County. The site is proposed as a landfill site. This site can reasonably be expected to qualify for MPCA permits assuming the following conditions are met: a 300 foot setback must be maintained between the fill area and the stream located in the western part of the site; the fill area cannot be located in the wetland located in the northwest corner of the site; either a 1000 foot setback must be maintained between the fill area and residences and highways, or adequate screening must be provided; either the fill area cannot be located in major drainage courses or drainage must be rerouted; a liner and leachate collection system must be provided; and contaminated surface water must be prevented from leaving the site.

SITE 31 SHAKOPEE

This site is located in Sections 15, 16, 21 and 22 of Township 115 North, Range 22 West in the City of Shakopee, Scott County. The site is proposed as a landspreading site. This site can reasonably be expected to qualify for MPCA permits assuming the following conditions are met: sewage sludge cannot be spread in the extreme southwestern portion of the site due to extreme slopes and coarse soils; a 200 foot setback must be maintained between potable water supply wells and the land application area; a 200 foot setback must be maintained between residences and the land application area; a 600 foot setback must be maintained between the housing development north of the site and the land application area; and, required setback distances from dry runs must be maintained.

SITE 2 BURNS-OAK GROVE TOWNSHIPS

This site is located in portions of Sections 24 and 25 of Township 33 North, Range 24 West, Oak Grove Township and Sections 19 and 30 of Township 33 North, Range 25 West, Burns Township in Anoka County. The site is proposed as a landfill site. This site cannot reasonably be expected to qualify for MPCA permits because: ground water under portions of the site is not protected by an aquiclude; and, ground water cannot be adequately monitored by routine methods. No acceptable resolution to these problems have been proposed.

SITE 4 FOREST LAKE TOWNSHIP

This site is located in Sections 21 and 28 of Township 32 North, Range 21 West, Forest Lake Township in Washington County. The site is proposed as a landfill site. This site cannot reasonably be expected to qualify for MPCA permits because: ground water under portions of the site may not be protected by an aquiclude; and, a wetland located in the center of the site may be impacted during development. No acceptable resolutions to these problems have been proposed.

The director's preliminary recommendations in regard to all sites except Site 31 are based on the data submitted by the council and applied against criteria contained in Minn. Rule SW 6 and additional criteria adopted by the MPCA on July 28, 1981. The director's preliminary recommendation in regard to Site 31 is based on the data submitted by the council and applied against criteria contained in 6 MCAR § 4.8050. Please be advised that 6 MCAR § 4.8050 is a temporary rule, governing sewage sludge landspreading, which will expire March 1, 1982. Permanent rules governing sewage sludge landspreading have been proposed and published at 6 *State Register* 1187 (December 28, 1981). Upon adoption, the permanent rules will govern the issuance of permits for any landspreading site or facility. The MPCA staff has not independently verified the data submitted by the council. The director's preliminary recommendations may be revised based on information and resolutions to problems submitted at the hearing.

A copy of the MPCA criteria for determining intrinsic suitability, the director's preliminary recommendations, the data submitted by the council and the procedures for this hearing are available for inspection at the following locations. A report containing the basis for the Director's preliminary recommendations will also be available at these locations by February 15, 1982.

Minnesota Pollution Control Agency
1935 W. County Road B-2
Roseville, MN 55113
Phone: (612) 296-7373
Metropolitan Council
Metro Square Building
St. Paul, MN 55101

In addition, all of the above information, with the exception of certain data submitted by the council, will be available for inspection at the following locations:

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Scott County Library
235 S. Lewis
Shakopee, MN 55379

Scott County Library
115 E. First St.
Jordan, MN 55352

Scott County Library
400 E. Main
New Prague, MN 56071

Carver County Library
Jonathan Village Center
P.O. Box 421
Chaska, MN 55318

Dakota County Library
321 Oak St.
Farmington, MN 55024

Forest Lake Public Library
220 N. Lake
Forest Lake, MN 55025

Anoka County Library
3519 Bridge St. N.W.
St. Francis, MN 55070

To the extent feasible, such documents may be copied.

Questions concerning the procedures indicated in this notice and order may be directed to Special Assistant Attorneys General Marlene E. Senechal or Stephen Shakman at the MPCA address above, telephone: (612) 296-7346 and (612) 296-7703, respectively. Questions concerning the director's recommendation may be directed to Dale Wikre, at the MPCA address noted above, telephone (612) 297-2735.

February 8, 1982

Louis J. Breimhurst
Executive Director
Minnesota Pollution Control Agency

Minnesota Pollution Control Agency Minnesota Waste Management Board

Joint Notice of Procedures for Intrinsic Suitability and Hazardous Waste Disposal Facility Candidate Site Selection Hearings

The Minnesota Pollution Control Agency (MPCA) is a statutory agency of the State of Minnesota with responsibility for the administration, implementation, and enforcement of the laws and rules of Minnesota relating to air, land and water pollution. The MPCA consists of a nine member citizen board charged with final decision making authority of the agency. The director of the MPCA is authorized by statute to carry out the executive and administrative functions of the MPCA. The MPCA Staff is supervised by the Director of the MPCA.

The Waste Management Board (WMB) is a statutory agency of the State of Minnesota with responsibility for identifying areas which may be used for the establishment of commercial hazardous waste disposal facilities. The nine member board includes eight citizen members, one from each of the state's Congressional districts, and a full-time chairman who is a state employee. The board is the final decision making authority. The chairman, in addition to being a member of the board, is also the executive and operating officer of the board and as such is authorized by statute to carry out the executive and administrative functions of the board. The WMB staff is supervised by the chairman.

Pursuant to Minn. Stat. § 115A.21 (1981 Supp.), the WMB must select six locations in the state as candidate sites for commercial disposal facilities for hazardous waste. No county may have more than one site. Further, no location may be selected as a candidate site unless the MPCA certifies its intrinsic suitability for the use intended. Following the selection of the six candidate sites, the WMB will develop a hazardous waste management plan and issue a certificate(s) of need for hazardous waste disposal facilities, the MPCA will prepare the environmental impact statement on disposal facilities at each candidate site, the MPCA will issue permits for disposal facilities at the candidate sites and then the WMB will select the final site or sites for a hazardous waste disposal facility.

"Intrinsic suitability" of a site means that, based on existing data on the inherent and natural attributes, physical features, and location of the site, there is no known reason why the facility proposed to be located at the site cannot reasonably be expected to qualify for permits in accordance with MPCA rules. MPCA certification of intrinsic suitability must be based on data submitted to the MPCA by the WMB and data included in the hearing record and applied against criteria in MPCA rules and any additional criteria developed by the MPCA in effect at the time the proposing entity submits the site for certification.

In summary, the procedure for certification and selection of candidate sites is as follows:

1. The WMB selects proposed candidate sites based on the application of a series of factors including the following factors which are required to be considered by Minn. Stat. § 115A.20 (1981 Supp.): 1) economic feasibility, 2) intrinsic suitability, 3) pollution control and environmental protection rules, 4) the risk and effect for local residents and units of government, 5) local land use and development, local laws, ordinances and permits, public facilities and services, 6) protection of agriculture and natural resources, and 7) the opportunities to mitigate or eliminate adverse effects.
2. The MPCA develops criteria for evaluating the intrinsic suitability of proposed candidate sites.
3. The WMB selects proposed candidate sites and submits data relating to the intrinsic suitability of its proposed sites to the MPCA.
4. The director of the MPCA makes a preliminary recommendation as to whether the MPCA board should certify the proposed sites as intrinsically suitable.
5. A hearing is held to gather information relevant to both the MPCA's decision on intrinsic suitability and the WMB's selection of candidate sites.
6. After the hearing, the Hearing Examiner submits a report to the MPCA board containing findings of fact, conclusions and recommendations on intrinsic suitability and to the WMB containing findings of fact, conclusions and recommendations on the issues related to the proposed candidate sites raised in the record.
7. The director of the MPCA makes a final recommendation to the MPCA board regarding the intrinsic suitability of the proposed sites.
8. The MPCA board reviews the director's final recommendation, the hearing examiner's findings and recommendations and the record of the hearing and makes a determination as to the intrinsic suitability of the proposed sites.
9. The WMB reviews the hearing examiner's findings and recommendations and the record of the hearing and selects the six candidate hazardous waste disposal sites.

The director's preliminary recommendations will be based on the data submitted by the WMB and applied against criteria adopted by the MPCA. The MPCA staff will not independently verify the data submitted by the WMB. The director's preliminary recommendations may be revised based on information submitted at the hearing. No factual information or evidence which is not a part of the hearing record will be considered by the hearing examiner or the MPCA in the determination of the intrinsic suitability of proposed candidate sites.

A copy of the factors utilized by the WMB to select proposed candidate sites and the MPCA criteria for determining intrinsic suitability are available for inspection at the MPCA and WMB offices at the address listed below. In addition, the data submitted to the MPCA by the WMB, a report containing the director's preliminary recommendations and a report containing the basis for the WMB's decision to propose a site as a candidate site will be available prior to the hearing. To the extent feasible, such documents may be copied. However, PLEASE BE ADVISED that it may not be possible to copy certain documents, such as large maps.

The purpose of the hearing is twofold: 1) to gather information relevant to the MPCA's decision on intrinsic suitability; and, 2) to gather information relevant to the WMB's decision on candidate site selection. The subject of the hearing is limited to information submitted by the WMB Staff, the MPCA staff and additional information submitted by the public on the intrinsic suitability of the proposed sites and on the appropriateness of the proposed sites for a hazardous waste disposal facility. Information related to whether the proposed sites meet the criteria utilized by the MPCA, as well as any information which may assist the WMB in determining whether a site should be selected as a candidate site, may be submitted at the hearing. PLEASE BE ADVISED that the hearing will not be a forum to reconsider the MPCA criteria for determining intrinsic suitability.

OFFICIAL NOTICES

PLEASE BE ADVISED THAT this hearing is neither a contested case hearing nor a rulemaking hearing. Therefore, the procedural rules applicable to contested case and rulemaking hearings are inapplicable. Pursuant to Minn. Stat. § 115A.21, the hearing is to be conducted in a manner consistent with the completion of the proceedings and the hearing examiner's report to the MPCA and the WMB in the time allowed by the statute. Therefore, the following procedures shall be followed:

1. The hearing will be opened by the hearing examiner who will explain the hearing procedure.
2. The WMB staff will introduce jurisdictional documents and the report containing the basis for proposing the site.
3. The MPCA staff will introduce jurisdictional documents, the MPCA criteria, the director's preliminary recommendations, and the report containing the basis for the recommendations.
4. The WMB staff will briefly summarize the basis for proposing the site.
5. The MPCA staff will then briefly summarize the basis for the director's recommendations.
6. Members of the public will be given an opportunity to make oral statements, to offer written documents into the record, or to request any clarification from the MPCA or WMB staffs necessary for the presentation of their information. Representatives of the MPCA staff and the WMB staff may direct questions to members of the public.
7. The hearing examiner may exclude any testimony which is irrelevant, immaterial, or unduly repetitious. In addition the hearing examiner may exclude any question which is asked for purposes other than to obtain clarification or which is unduly repetitious, argumentative, harassing or adversarial in nature.
8. Pursuant to Minn. Stat. § 624.72 (1980), no person may interfere with the conduct of, disrupt or threaten interference with or disruption of the hearing. In the event of such interference or disruption or threat thereof, the hearing examiner will take appropriate action.
9. Following the end of the hearing, members of the public will have seven calendar days in which to submit additional documents and comments into the hearing record. To be considered, such material must be postmarked within the seven day period. Copies of such documents and comments must be submitted to the hearing examiner, the MPCA staff and the WMB staff.
10. The MPCA and WMB staffs will have seven calendar days following receipt of the last comment postmarked within the seven day public comment period, in which to respond to both public testimony presented at the hearing and subsequent documents submitted into the hearing record. These responses will be submitted to the hearing examiner.
11. Copies of additional documents submitted by members of the public and MPCA and WMB staffs' responses will be available for inspection at the WMB and MPCA offices.
12. The hearing examiner will prepare a report which will contain findings of fact, conclusions and recommendations on the intrinsic suitability of the proposed sites, and on the issues related to the proposed candidate sites raised in the record.
13. The director of the MPCA will make a final recommendation to the MPCA board regarding the intrinsic suitability of the proposed sites.
14. The MPCA board will make a determination at a public meeting of the board as to the intrinsic suitability of the proposed sites and submit its determination to the WMB.
15. The WMB staff will make a final recommendation to the WMB regarding the proposed sites.
16. The WMB will make a determination at a public meeting of the board as to which six sites should be selected as candidate sites.
17. Persons wishing to be notified of the availability of the Hearing Examiner's report, the MPCA board's meeting(s) to determine the intrinsic suitability of the proposed sites, or the WMB's meeting(s) to select the six candidate sites may so indicate at the hearing.

PLEASE BE FURTHER ADVISED that, while persons may submit documents or other information at the hearing or up to seven calendar days after the hearing, it would be very helpful to have such documents submitted to the MPCA and WMB staffs in advance of the hearing. Therefore, persons wishing to submit documents or other information are encouraged to do so at the earliest possible time so that the MPCA and WMB staffs have sufficient time to review such documents and information.

To submit documents, obtain copies of the MPCA and WMB criteria, or for additional information, please contact:

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

Telephone: (612) 536-0816 or 1-800-652-9747

John Holck
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, MN 55113

Telephone: (612) 297-2707

Dated: January 29, 1982

Louis J. Breimhurst, Executive Director
Minnesota Pollution Control Agency

Dated: February 1, 1982

Robert Dunn, Chairman
Minnesota Waste Management Board

Pollution Control Agency Water Quality Division

Notice of Intent to Solicit Outside Opinion Concerning Proposed Rules Relating to Certification of Waste Disposal Facility Operators and Inspectors

Notice is hereby given that the Minnesota Pollution Control Agency (Agency) is considering the adoption of rules that require operators and inspectors of waste disposal facilities to obtain a certificate of competency from the Agency.

The proposed rules are authorized by Minn. Stat. § 116.41, subd. 2 (1980). The proposed rules if adopted would:

1. establish a Certificate Committee to oversee the training and certification program;
2. establish educational training, experience and examination requirements for individuals that need to be certified;
3. establish the procedures for applying for examination;
4. establish standards for use, issuance and renewal of certificates;
5. establish fees for certification;
6. establish criteria for imposing sanctions against a certificate holder; and
7. establish a deadline by which individuals must become certified.

All interested or affected persons or groups may submit data or views on the proposed rules. Statements of information and comment may be made orally or in writing. Comments and information concerning the proposed rule should be directed to:

Art Dunn or Clarence Manke
Operator Training Unit
Division of Water Quality
Minnesota Pollution Control Agency
1935 West County Road B-2
Roseville, Minnesota 55113
Telephone: (612) 296-7764

All statements and information should be received by February 24, 1982. All written material reviewed by the Agency shall become part of the hearing record.

Louis J. Breimhurst
Executive Director

Errata

Rule actions published in this issue (Vol. 6, Number 33) of the *State Register* were omitted from the MCAR AMENDMENTS AND ADDITIONS list on pp. 1412-1413. The omitted items appear below:

TITLE 4 COMMERCE

Part 1 Commerce Department

4 MCAR §§ 1.9350-1.9352 (adopted)1438

Part 11 Electricity Board

4 MCAR § 11.004 (proposed)1414

TITLE 9 LAW

Part 2 Administrative Hearings Office

9 MCAR §§ 2.301-2.326 (adopted)1418

TITLE 10 PLANNING

Part 4 Municipal Board

10 MCAR § 4.020 (adopted)1439

TITLE 12 SOCIAL SERVICES

Part 2 Public Welfare Department

12 MCAR §§ 2.045-2.046, 2.059 (repealed)1440

Part 3 Housing Finance Agency

12 MCAR § 3.002 O. [Temp] (adopted)1439

12 MCAR § 3.002 (adopted)1438

12 MCAR §§ 3.053-3.054 (adopted)1439

12 MCAR § 3.133 (adopted)1439

12 MCAR § 3.134 (adopted)1439

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